

Fond du Lac Band of Lake Superior Chippewa

Resource Management Division

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Sarah Furtak
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May 21, 2014

Ms Furtak:

The Fond du Lac Band of Lake Superior Chippewa (the Band) is pleased to provide comments on the USEPA's "Rulemaking to Provide More Opportunities to Fully Engage Tribes in the Clean Water Act Section 303(d) Impaired Water Listing and Total Maximum Daily Load (TMDL) Program." We are gratified to see EPA's response to our repeated concerns and request for addressing this critical gap in tribal authorization to implement a key part of the Clean Water Act, and to move forward with this consultation and rulemaking process.

As the number of tribes with TAS approval for various Clean Water Act programs (§106, §319, §303(c)) has grown, it has become apparent that tribes can successfully exercise those authorities to monitor, assess and protect their water resources. But without a clear process for identifying impaired waters, and the ability to establish and enforce the regulatory and non-regulatory means for restoring beneficial uses, we have not been able to fully address the range of reservation water resource needs. While in some cases EPA has either taken the lead to develop TMDLs for waters in Indian Country, or helped facilitate a cooperative approach between tribes and states, as was happening here in the St. Louis River watershed before one of the state partners withdrew, tribes have not yet been in position to continue the logical progression of establishing standards, monitoring and assessing waters, then identifying and addressing impairments through their own programs. It has become clear to us that tribal priorities for addressing water resource impairments may not necessarily align with states, nor do we currently have clear authority to initiate such actions based upon our community's priorities.

It would be desirable to see a streamlined TAS process defined for this CWA authority, such that a tribe may be able to apply for both CWA §303(c) and §303(d) concurrently. For those tribes that already have secured TAS approval for their water quality standards program, the TAS determination for this additional CWA program authority should be expeditious and not require substantial new information, as their capacity and administrative authorities should already have been clearly established. EPA will also need to carefully consider how tribes that pursue this new CWA authority can be provided with the programmatic (financial, technical) support to successfully implement it.

It is especially noteworthy that this initiative from EPA comes at the 30th anniversary of Administrator Browner's 1994 action memo establishing EPA's Indian Policy and actively promoting tribal capacity for environmental programs. Tribal nations are anxious to engage with our EPA partners in broader implementation of the Clean Water Act, and to exercise our sovereign authorities to protect the water resources that have sustained our communities for many generations and continue to protect them for future generations. We appreciate the opportunity this represents for our ability to expand our tribal water program, and to extend our partnership with EPA in a substantial and meaningful way.

Sincerely,

A handwritten signature in black ink that reads "Nancy Schuldt". The signature is written in a cursive style with a large, prominent initial "N".

Nancy Schuldt, Water Projects Coordinator
Fond du Lac Environmental Program