



WISCONSIN ASSOCIATION OF LAKES, INC.

*is a nonprofit group of citizens,
organizations, and businesses working for clean, safe, healthy lakes for everyone.*

One Point Place, Suite 101 Madison, WI 53719-2809
800/542-5253 (WI) • 608/662-0923 • FAX 608/833-7179
e-mail: wal@wisconsinlakes.org / website: www.wisconsinlakes.org

February 20, 2006

Todd Ambs, Administrator
Division of Water
Wisconsin Department of Natural Resources
101 S. Webster Street
Madison, WI 53703

**Re: Lac du Flambeau Band of Lake Superior Chippewa Indians,
Application for Treatment as a State under Section 518(e) of the
Clean Water Act.**

Dear Mr. Ambs,

The Wisconsin Association of Lakes is the only statewide group working for clean, safe, healthy lakes for everyone. Our members—who include over 350 lake associations and districts as well as businesses and individuals—recognize the continued health of our lakes depends on the connection between lakes and the people who live on them, use them, and rely on them for their livelihoods. The importance of partnerships in protecting our lake resources cannot be overstated.

As an organization, we are concerned about all of Wisconsin's 15,000 lakes, 260 of which are located on the tribal lands of the Lac du Flambeau Band of Lake Superior Chippewa Indians (Lac du Flambeau band). The Lac du Flambeau band shares our concern—and the concern of many Vilas County residents—about the quality of our lakes. We welcome initiatives that will help protect lake and water resources, and we support the Lac du Flambeau band's application to the Environmental Protection Agency (EPA) for treatment as a state under the Clean Water Act.

The tribe's efforts to protect the tribal water resources enjoyed by tribal members, non-native residents, and an estimated 4000 summer tourists, will enhance the ongoing watershed and lake protection efforts that lake-rich Vilas County has been successfully working towards. Unfortunately, the Band's application for treatment as a state has become an emotional issue fraught with misunderstandings about the Federal laws governing water protection on tribal lands and the rights and responsibilities of tribes (and the state) over water resources on tribal lands.

There is an unfounded, emotional concern by some non-tribal residents that their rights will be negatively impacted if the Band's application is granted. We can find no justification—either legally or in any substantive data—for these concerns. Specific examples of confusion regarding the application process and the WDNR's role in that process include the following:

- **Mistaken impression that Wisconsin has veto authority over the Lac du Flambeau band's application.**

The WDNR's role is limited to commenting on the application to the EPA. Neither the state agency nor the Wisconsin State Legislature has any veto power over this application.

- **Misinterpretation of Wisconsin's Public Trust Doctrine.**

Tribal treatment as a state and Wisconsin's longstanding Public Trust Doctrine can and do co-exist; there is no validity to the claim made by some legislators that the Public Trust Doctrine requires the state to oppose this application.

- **Misunderstanding about the scope of the authority if the tribe were granted treatment as a state**

The Lac du Flambeau's application for treatment of a state is limited to development of water quality standards consisting of designated uses for lakes, rivers, and wetlands; water quality criteria to protect those designated uses; and an anti-degradation procedure to protect high quality resources. The tribe would not have the authority to issue National Pollution Discharge Elimination Systems permits. The fear that cranberry bogs and motorboats would be subject to tribally issued NPDES permits is unfounded.

- **Fear that tribal water quality standards will not be reviewed.**

Tribal water quality standards (pending granting of application as a state) would be reviewed by the EPA. The public can comment and participate in the review of those standards.

- **Confusion over the application process**

The tribe must apply for treatment as a state before it can be granted the authority to develop water quality standards. Some legislators and non-tribal residents have demanded to know what the tribal standards will be before they have been granted the authority to develop them.

We see no evidence that granting the tribe's application will detrimentally affect the health of waters or harm non-tribal resident's rights. Indeed, granting treatment as a state status to the tribe will benefit tribal waters and enhance Vilas County lake protection efforts.

We encourage the Department to support the tribe's application for treatment as a state.

Sincerely,



Peter T. Murray
Executive Director, Wisconsin Association of Lakes