



The Grand Traverse Band of Ottawa and Chippewa Indians

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April 11, 2019

U.S. Environmental Protection Agency
EPA Docket Center, Office of Water Docket
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

via Electronic Submission

Subject: Docket ID No. EPA-HQ-OW-2018-0149

Environmental Protection Agency:

The Grand Traverse Band possesses inland fishing, gathering, and hunting rights reserved in the March 28, 1836 Treaty of Washington (7 Stat. 491) confirmed by the November 2, 2007 Consent Decree in the *United States v. Michigan* litigation (Dkt. 1799 in Case No. 2:73-CV-26, U.S. District Court for the Western District of Michigan), *see United States v. Michigan*, 471 F. Supp. 192 (W.D. Mich. 1979), *aff'd*, 653 F.2d 277 (6th Cir. 1981), *cert. denied*, 454 U.S. 1124 (1981). Inland usufructuary rights reserved in the 1836 Treaty "are property rights protected by the United States Constitution." *Grand Traverse Band of Ottawa and Chippewa Indians v. Director, Michigan Department of Natural Resources*, 971 F. Supp. 282, 288 (W. D. Mich. 1995), *aff'd*, 141 F.3d 635 (6th Cir. 1998), *cert. denied*, 525 U.S. 1040 (1998). These property rights in the fauna and flora resources dependent upon surface waters are likely to be adversely impacted by the proposed restrictions in the "waters of the United States" rule, as is stated in the April 10, 2019 letter from the Chippewa Ottawa Resource Authority (tracking number 1k3-999w-3321).

The United States has a trust responsibility to preserve and protect the rights retained by the Grand Traverse Band in the 1836 Treaty, *see United States v. Michigan, supra*, 471 F. Supp. at 205, 218, and 228. "The protection of those rights is the solemn obligation of the federal government, ..." *United States v. Michigan*, 653 F.2d 277, 278 (6th Cir. 1981). Therefore, the Environmental Protection Agency should not enact a rule change impacting the Grand Traverse Band's treaty-reserved rights without first engaging in a comprehensive analysis to determine whether the proposed rollback of Clean Water Act protections might result in detrimental impacts upon our treaty-reserved rights within vast areas of the State of Michigan, *see attached map of the 1836 Treaty cession*.

Sincerely,

Thurlow ("Sam") McClellan
Tribal Chairman

