

LEECH LAKE D.R.M.
Revised: March 2015

DRM Director
Rich Robinson

Administrative Support
Administrative Assistant

DRM Secretary Receptionist
Nicole Kingbird

Conservation Enforcement
Jamie Mitchell, Chief C.O.

Conservation Officers
Frank Bowstring
William Bowstring
Kyle Fairbanks

Environmental Lands Department
Levi Brown, Env. Lands Director

Air Quality Specialist
Brandy Toft

Air Quality Technician
Ben Benoit

Brownsfield Program
Diane Thompson

Hazardous Waste Technician
Jason Helgeson

GAP
Michael Northbird, GAP Coordinator

Superfund
John Persell, Superfund Coordinator

Water Resources
Jeff Harper, WQ Specialist

Water Quality Technicians
Sam Malloy
Brenda Pence
Alyssa Mhyer

Environmental Lands Asst.
Marti French

Field Survey Technician
Dave Bismarck

GIS
Ryan Anderson, GIS Specialist

Lakeshore Lease Administration
Becky Felt

Land Use Administrator
Pebbles Brown

Trust Estates Coordinator
Della Kingbird

Probates
Norma Ducheneaux

Fish, Wildlife & Plant Resources
Department
Steve Mortensen, FWP Director

Assistant Hatchery Manager
Gary White

Invasive Species Program Manager
Bobby Henderson

Fish & Wildlife Technician
Jon Finn

Fish & Wildlife Technician
Martin Robinson

Outreach Education Crew Leader
Lisa Becker

Forest Resources
Keith Karnes, Forest Ecologist

Forestry Technicians
Jesse Dunn
Dave Hare
Pat Haugen

Wildfire Program
Duane Bebeau, Fire Coordinator

Fire Prevention Coordinator
Robert Gotchie

Fire Crew Members
Tim Bebeau
George Jacobs
James TeJohn

Heritage Sites
Thor Olmanson, Director

H.S./THPO Office Manager
Sheila Gotchie

Field Director
Coleen Wells

Arch. Technicians.

Field Director
Matthew Matson

THPO
Amanda Burnette, THPO

Ojibwe Fisheries (Wild Rice)
James Reyes, O.F. Manager

DRM Technician
Charles Bobolink

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

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LEECH LAKE BAND OF CHIPPEWA)
INDIANS, et al,)
)
 Plaintiffs,)
)
 vs.)
)
 ROBERT L. HERBST, Commissioner)
 of Natural Resources of the)
 State of Minnesota, et al,)
)
 Defendants.)

3-69 Civ. 64

CONSENT JUDGMENT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 STATE OF MINNESOTA,)
)
 Defendant.)

3-70 Civ. 228

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The above-captioned consolidated matters were instituted by the Leech Lake Band of Chippewa Indians and the United States of America alleging violations of certain federal treaty rights of the Leech Lake Band and Minnesota Chippewa Tribe by the State of Minnesota and various state offices. On January 25, 1972, this Court entered an amended judgment declaring that the Leech Lake Band has a treaty right to hunt, fish, trap and gather wild rice within the boundaries of the Leech Lake Reservation without state regulation or control. The judgment of this Court was appealed to the United States Court of Appeals for the Eighth Circuit by the State. Cross-appeals were filed by the Band and the United States of America on the issue of the Band's exclusive

I certify this to be a true copy of
the original record in my custody.
JUN 13 1973
Harry A. Stebbins, Clerk.
By Ronald L. Brown
Deputy Clerk.

JUN 13 1973
Filed
Harry A. Stebbins, Clerk
By Ronald L. Brown
Deputy

authority to regulate non-Indians as well as Indians within the boundaries of the Leech Lake Reservation. United States Court of Appeals for the Eighth Circuit, Docket numbers 72-1154, 72-1155, 72-1163.

On June 30, 1972, judgment was entered by the United States Court of Appeals for the Eighth Circuit remanding the cases to this Court for appropriate proceedings based upon a joint motion and affidavits by the attorneys for all parties to the litigation stating that a settlement of the controversy had been reached and that on ratification and implementation of that settlement by the Minnesota Legislature, application would be made to this Court for the entry of a consent judgment.

On January 26, 1973, a formal Memorandum of Agreement and Settlement was signed by all parties and filed with this Court.

On April 23, 1973, Chapter 124, Laws of Minnesota, 1973 First Regular Session, ratifying the settlement agreement and conferring implementing powers on the Commissioner of Natural Resources was signed by the Governor of Minnesota.

It is therefore ORDERED, ADJUDGED and DECREED as follows:

I.

The Memorandum of Agreement and Settlement as amended, heretofore filed with this Court, is approved and each of the parties is hereby directed to implement and perform the terms of this Judgment which incorporates the provisions of said Agreement.

II.

The Amended Judgment of this Court dated January 25, 1972, is withdrawn and this Consent Judgment adopted in its place.

III.

Definitions.

For purposes of this Judgment, the following expressions

shall have the meanings assigned to them respectively:

- A. "The Band" means the Leech Lake Band of Chippewa Indians.
- B. "Band member" means an Indian duly enrolled in the Band pursuant to the regulations of the Band and of the Minnesota Chippewa Tribe.
- C. "Tribal member" means a duly enrolled member of the Minnesota Chippewa Tribe who is not a Band member.
- D. "RBC" means the Reservation Business Committee of the Leech Lake Band of Chippewa Indians.
- E. The "Reservation" means the Leech Lake Reservation described as follows and depicted graphically on the map marked Exhibit A and attached to the Memorandum of Agreement and Settlement on file with this Court.

Leech Lake Indian Reservation Boundary Description

Beginning at a point on the Mississippi River, opposite the mouth of the Wanoman River (Vermillion River in Cass County), as laid down on Sewell's map of Minnesota; thence north to a point two miles further north than the most northerly point of Lake Winnibigoshish; thence west to the range line between ranges 25 and 26 West; thence north on said range line to the twelfth standard parallel; thence west on said standard parallel to the range line between Ranges 28 and 29 West; thence south on said range line to the High-Water Mark on the north shore of Dixon Lake; thence southerly along the High-Water Mark on the easterly shore of Dixon Lake to the High-Water Mark on the right bank (looking downstream) of the Third River at its outlet from Dixon Lake; thence southerly along the High-Water Mark on the right bank (looking downstream) of the Third River to a point two miles further north than the most northerly point of Lake Winnibigoshish; thence west to a point two miles west of the most westerly point of Cass Lake; thence south to the High-Water Mark on the left bank (looking downstream) of the Kabekona River; thence southeasterly along the High-Water Mark on the left bank (looking downstream) of the Kabekona River to its mouth at Kabekona Bay of Leech Lake; thence easterly along the High-Water Mark on the north shore of Kabekona Bay of Leech Lake to Walker Bay of Leech Lake; thence northeasterly along the High-Water Mark of Walker Bay of Leech Lake to the easterly extremity of Sand Point of Leech Lake, thence southerly through Walker Bay of Leech Lake to the most southern point of Leech Lake (said point being the southwest corner of Government Lot 4 of Section 11, Township 141 North, Range 31 West); thence in a direct line to

the southeast corner of Government Lot 6 of Section 32, Township 141 North, Range 27 West; thence northerly along the High-Water Mark on the west shore of Inguadona Lake to the High-Water Mark on the right bank (looking downstream) of the Little Boy River at its outlet from Inguadona Lake; thence northerly along the High-Water Mark on the right bank (looking downstream) of the Little Boy River to its inlet into Boy Lake; thence northerly through Boy Lake by the shortest water route to the High-Water Mark on the right bank (looking downstream) of the Little Boy River at its outlet from Boy Lake; thence northerly and westerly along the High-Water Mark on the right bank (looking downstream) of the Little Boy River to its mouth at Boy Bay of Leech Lake; thence in a direct line to the southern extremity of Sugar Point of Leech Lake; thence northeasterly along the High-Water Mark of Boy Bay of Leech Lake to the range line between Ranges 28 and 29 West; thence north on said range line to the High-Water Mark on the southerly shore of Waboose Bay of Leech Lake; thence northerly along the High-Water Mark of Waboose Bay of Leech Lake to the High-Water Mark on the right bank (looking downstream) of the main channel of the Leech Lake River, as it now exists, at its outlet from Waboose Bay of Leech Lake; thence easterly along the High-Water Mark on the right bank (looking downstream) of the main channel of the Leech Lake River, as it now exists, to its intersection with the original channel of the Leech Lake River, said intersection being approximately 4500 feet west of the inlet of the main channel into Mud Lake as it now exists; thence along the High-Water Mark on the right bank (looking downstream) of the original channel of the Leech Lake River in an easterly and northerly direction to its inlet into Mud Lake; thence southerly and easterly along the High-Water Mark of Mud Lake to the inlet of the Bear River; thence northerly along the High-Water Mark of Mud Lake to the High-Water Mark on the right bank (looking downstream) of the main channel of the Leech Lake River, as it now exists, at its outlet from Mud Lake; thence easterly along the High-Water Mark on the right bank (looking downstream) of the main channel of the Leech Lake River, as it now exists, to its junction with the High-Water Mark on the right bank (looking downstream) of the main channel of the Leech Lake River, as it now exists, to its junction with the High-Water Mark on the right bank (looking downstream) of the main channel of the Mississippi River; thence along the High-Water Mark on the right bank (looking downstream) of the main channel of the Mississippi River to the mouth of the Wanoman River (Vermillion River in Cass County); thence northeasterly across the Mississippi River to the point of beginning.

Also, beginning at a point north of a point on the Mississippi River, opposite the mouth of the Wanoman River (Vermillion River in Cass County) as laid down on Sewell's map of Minnesota, where the section line between Sections 14 and 11, and 10 and 15, of Township 55 North, Range 27 West of the fourth principal meridian, if extended west would intersect the same; thence east on said extended section line to section corner between Sections 11, 12, 13 and 14; thence north on the section line between Sections 11 and 12, and 1 and 2, all of the same township and range above mentioned; to the township line between Townships 55 and 56 North; thence continuing north on the section line between Sections 35 and 36,

and 26 and 25 to the northeast corner of Section 26, Township 56 North, Range 27 West; thence west on the section line between Sections 26 and 23, and 27 and 22 to the High-Water Mark on the easterly shore of Big White Oak Lake; thence westerly along the High-Water Mark on the north shore of Big White Oak Lake to a point north of a point on the Mississippi River, opposite the mouth of the Wanoman River (Vermillion River in Cass County), as laid down on Sewell's map of Minnesota; thence south to the point of beginning.

Definitions:

High-Water Mark is the line which the water impresses on the soil by covering it for sufficient periods of time to deprive it of vegetation.

F. "The State" means the State of Minnesota.

G. "DNR" means the Department of Natural Resources of the State of Minnesota.

H. "Commissioner" means the Commissioner of the Department of Natural Resources of the State of Minnesota.

I. "Additional sum" means the amount added to the total charge imposed by the State for the privilege of hunting, fishing and trapping within the Reservation.

J. "Unrestricted License" means a hunting, fishing or trapping license or permit valid within the boundaries of the Leech Lake Reservation pursuant to this Agreement for which an additional sum has been charged.

K. "Restricted License" means a hunting, fishing or trapping license or permit issued by the State of Minnesota and valid throughout the State of Minnesota, except within the boundaries of the Leech Lake Reservation or other Indian country, for which no additional sum has been charged.

L. "Separate License Stamp" means a stamp which, when affixed to the Restricted License, is the equivalent of an Unrestricted License and for which an additional sum has been charged.

M. "The Code" means the Conservation Code of the Leech

Band of Chippewa Indians affixed to the Memorandum of Agreement and Settlement as Exhibit B as filed with this Court.

N. "Non-game" fish means the fish species called buffalo-fish, burbot, bullhead, carp, catfish, coho, dogfish, gar, quillback, sheephead, suckerfish, tulibee and whitefish and any other species which may be added by agreement of the parties.

O. "Confiscated game" means all fish, game and wild rice taken into custody by the DNR because of violation of the state game, fish and wild rice laws.

P. "Ricing" means the harvesting of wild rice.

Q. "Persons entitled to harvest wild rice" means those persons defined in Minnesota Statutes 1971 §84.10.

R. "Taking for commercial purposes" means the taking of fish or game for barter or sale.

S. "Fishing" shall mean angling, spearing, netting and erection of fish houses for the purposes of angling, netting or spearing.

T. "Fish station" shall mean a facility maintained and operated for the purpose of capturing fish, stripping and retaining the fish eggs and returning the fish to the waters.

IV.

Term

A. This Judgment shall be binding upon the parties so long as there continues to be a Reservation and/or Tribal and Band hunting, fishing and ricing rights, recognizing that termination of the Reservation and/or Tribal and Band hunting, fishing and ricing rights may only be accomplished by action of the United States Congress expressly stating that the Reservation and/or all hunting, fishing and ricing rights of the Tribe or Band are terminated.

B. In the event there is a final judgment of the United States Supreme Court or a Federal Appellate Court of competent jurisdiction in which the Band or the Tribe is a party holding that the treaties and statutes construed in this litigation do not reserve to or confer upon the Minnesota Chippewa Tribe or the Band any rights to hunt, fish, trap and gather wild rice upon public lands and waters other than those generally provided under Minnesota law to all persons, then this judgment shall terminate as provided herein.

C. Should the Congressional action referred to in paragraph A above occur or the judicial decision referred to in paragraph B above be rendered, then any of the parties hereto may apply to the United States District Court for the District of Minnesota for vacation of this Consent Judgment. If an application for vacation of this Judgment is based on the occurrence of the events described in paragraph B above, the parties may also request the entry of a fresh, original judgment from which an appeal may be taken.

V.

Agreements

A. The Band will uniformly and fairly enforce the Code upon all of its members and Tribal members duly licensed pursuant to the Code. The Code shall only apply to Band and Tribal members. The Band or the Tribe shall have no jurisdiction over non-members of the Band or Tribe. Said non-members shall at all times remain subject to State law only except as otherwise provided by Federal law. All Band and licensed Tribal members shall be exempt from State law governing hunting, fishing, trapping or ricing while within the Reservation, except for the offense of trespass relating

to privately owned land which has been posted pursuant to Minnesota Statutes 1971 §100.29(21), and in lieu thereof shall be subject to the Code. All Band and licensed Tribal members shall be exempt from State law governing the possession and transportation anywhere within the State of game, game fish, non-game fish and wild rice which has been taken within the Reservation. The Code shall not be modified, amended or altered except by agreement of each of the parties or as provided in the Memorandum of Agreement and Settlement, and in no event shall the Band or Tribe permit the commercial taking or sale of game fish or game.

B. The State shall establish and maintain:

1. Licensing System

a. From and after June 22, 1973, all persons required to hold a hunting, fishing or trapping license or permit in order to exercise the privilege of hunting, fishing or trapping within the State of Minnesota shall be required to pay an additional sum over and above the amount otherwise assessed by the State of Minnesota for said license or permit (including surcharges) for the privilege of hunting, fishing or trapping within the boundaries of the Reservation. Said additional sum shall be an amount established annually by the RBC, which amount shall not exceed fifty percent (50%) of the State resident license fee (including any surcharge) then in effect for the purchase of hunting, fishing or trapping licenses.

b. The additional sum shall be collected by the DNR in the following manner:

(i) The DNR shall offer for sale through all agencies then selling hunting, fishing and trapping licenses, as the State's primary license, an

Unrestricted License as defined in Part III hereof, except that in the year of enactment of the legislation, the Commissioner in his discretion need not sell an Unrestricted License.

(ii) It is understood and agreed that the State and/or the DNR will continue to sell a Restricted License as defined in Part III hereof, and may in the future enter into agreements covering other Indian country and special licensing arrangements for said Indian country.

(iii) The DNR shall offer for sale, in addition to the Unrestricted License, a Separate License Stamp as defined in Part III hereof. The amount charged for the Separate License Stamp need not be the same as the additional sum included in the Unrestricted License fee; however, the cost of the Separate License Stamp shall not exceed fifty percent of the State resident license fee (including any surcharge) then in effect for the license in question.

(iv) The RBC shall inform the Commissioner no later than thirty (30) days after it receives notice from the Commissioner of the State's license fee schedule each year of the Band's determination of the amount to be added for the Unrestricted License and the amount to be charged for the Separate License Stamp for the year in question. In the event the RBC fails to timely inform the Commissioner of the additional sum, then the previous year's additional sum shall be charged. The sum to be added to the

Unrestricted License for the year 1973 shall be \$1.00; the sum to be charged for the Separate License Stamp for fishing licenses and small game licenses for the year 1973 shall be \$1.00; in all other cases the charge for the Separate License Stamp shall be \$2.00, except in those cases where the charge for the Restricted License is less than \$4.00, in which case the Separate License Stamp shall be 50% of the Restricted License fee.

c. The additional sums collected from sales of Unrestricted Licenses and Separate License Stamps shall be remitted to the RBC at least quarterly. The State may, however, deduct from the receipts the added administrative cost and sales commission incurred by it in connection with the sale of said Unrestricted Licenses and Separate License Stamps which it would not otherwise incur but for the existence of the unrestricted license system. The State may pay the same percentage of sales commission to the Vendor of the Unrestricted License and Separate License Stamp it pays for the sale of Restricted Licenses. The books and records of the State with respect to license sales, amounts collected and costs of administering and selling shall at all times be open to inspection by any duly authorized representative of the signatory parties hereto. Any disputes with respect to the sale and administrative costs shall be subject to arbitration as hereinafter provided.

d. The holder of a Restricted License, an Unrestricted License or a Separate License Stamp, who is not a Band or

Tribal member duly licensed pursuant to the Code, will at all times remain subject to the laws, regulations, rules and ordinances of the State of Minnesota and its political subdivisions with respect to hunting, fishing and trapping and all other restrictions presently enacted or hereinafter enacted, including specifically but not exclusively seasons, limits and methods of taking. The purchase of the Unrestricted License and/or the Separate License Stamp shall confer no exemption upon the holder thereof from any law or regulation governing hunting, fishing, or trapping. The existence of the Unrestricted License system shall impose no duty upon the State or the DNR to establish seasons, limits or methods of taking for the Reservation which in any way differ from the seasons, limits or methods of taking established for other areas within the State.

e. It is expressly understood and agreed that in the event the Code is not uniformly and fairly enforced by the Band, the State may withhold all receipts due the Band until such time as fair enforcement is resumed. The State shall give prompt notice of its intent to withhold funds because of unfair enforcement by the Band. Upon receipt of said notice, the Band may request a hearing in ten days before the arbitrators, who thereafter, and upon the evidence and in the manner provided in Part VII hereof, shall decide if there has been a breach of the Band's duty to enforce the Code and the period of time during which said breach has continued.

In the event that it is determined by the arbitrators

that there has not been uniform and fair enforcement of the Code, so much of the sums held by the State and collected during the period in which there has not been uniform and fair enforcement shall be forfeited by the Band.

2. Wild Ricing Regulation

a. From and after June 22, 1973, the regulation and licensing of wild rice harvesting by Band and Tribal members within the Reservation shall be vested in the RBC.

b. The RBC shall adopt and shall recommend to the Commissioner for adoption appropriate regulations to control:

- (i) Methods of harvesting,
- (ii) Seasons of harvesting,
- (iii) The number of persons permitted to harvest, by requiring the issuance of Band permits to all persons entitled to harvest wild rice, whether or not Band or Tribal members.
- (iv) The lakes and rivers or portions of lakes and rivers open to ricing, and
- (v) Licensing of buyers.

The Commissioner shall promulgate regulations consistent with the regulations adopted and recommended by the RBC for the purpose of regulating and licensing persons entitled to harvest wild rice within the Reservation, save and except that no regulation, limitation or license fee recommended by the Band may be adopted or imposed which will discriminate against or among those otherwise entitled to harvest wild rice or buy the same within the Reservation.

c. All persons entitled to harvest wild rice within the Reservation shall provide appropriate identification to the RBC or its agents when obtaining a Band permit to harvest wild rice. Said permit shall be carried upon the person and displayed to authorized conservation officers of the Band and/or the State upon reasonable request while engaged in harvesting.

d. All persons other than Band or duly licensed Tribal members shall be required to have a State ricing license, in addition to a Band permit. No additional sum shall be added to the State ricing license, and in lieu thereof, the Band may charge a fee for a Band permit. The fee for the Band permit shall be the same as that charge to Band members.

3. Non-Game Fish Taking

a. From and after June 22, 1973, the taking of non-game fish from the waters within the Reservation for commercial purposes shall be the exclusive right of the Band.

b. Non-game fish may be taken for non-commercial purposes at times, by methods and in amounts prescribed by the Commissioner or by State law by any person otherwise entitled to fish within the Reservation. The Commissioner agrees to promulgate a regulation limiting netting of non-game fish to residents of the State and further limit the number of whitefish taken within the Reservation to 25 such fish in the possession of any person at any time.

c. The DNR retains the right to remove non-game fish

from the waters of the Reservation in the event that, in the opinion of the Commissioner, the Band does not take sufficient quantities of said fish to maintain proper ecological balance within the waters. Prior to taking any action to remove non-game fish, the Commissioner shall notify the Band of the amount of non-game fish he desires to have removed and allow the Band a reasonable opportunity to remove said non-game fish.

4. Minnows and Other Baits

a. From and after June 22, 1973, the taking of minnows and other bait from the waters within the Reservation for commercial purposes shall be the exclusive right of the Band, save and except that resort owners or bait dealers whose resorts or bait shops are within the Reservation boundaries may take minnows for resale at retail at their resorts or bait shops within the boundaries of the Reservation.

Bait dealers or resort owners authorized to take minnows within the Reservation shall have added to the State license for such taking an additional sum equal to 50% of the State license fee, which additional sum shall be remitted to the Band in the same manner as provided in Section B of this Part.

b. The sale of minnows and other baits from whatever source shall remain unrestricted within the Reservation.

5. Confiscated Game and Fish

From and after June 22, 1973, confiscated game (not

including furs, pelts, hides or skins), fish and wild rice taken into custody by the DNR within the Reservation or within a reasonable distance from the Reservation boundaries and all game or fish injured or killed in connection with conservation activities of the DNR within the Reservation shall be offered without cost or other charge to the RBC for consumption and use by Band members. The State shall have no duty to transport said confiscated game, fish or wild rice.

6. Fry

The State shall place, in the lakes of the Reservation annually, in the form of fry, a minimum of 10% of the green eggs taken at fish stations in the waters of the Reservation or in waters adjacent to the Reservation. The minimum percentage may be raised by mutual consent of the parties. In the event a dispute arises over raising the minimum percentage, the matter shall be submitted to arbitration.

7. Posting

The State shall post the boundaries of the Reservation by placing appropriate signs on all public roads leading into the Reservation at or near the boundaries of the Reservation. The sign shall contain a notice indicating that special licenses are required for hunting, fishing, trapping and ricing within boundaries of the Reservation and shall further indicate the penalties for destruction of the signs.

VI.

Enforcement

A. Duly constituted and properly identified conservation officers of the DNR may arrest Band or Tribal members for violations of the Code committed in their presence and may initiate such

proceeding under the Code for violations as are provided for therein.

B. Duly constituted and properly identified Band conservation officers may arrest non-Band members and Tribal members not duly licensed under the Code for violations of State game and fish laws committed in their presence, and may initiate such proceedings for violation of State law as are provided by statute.

VII.

Arbitration

A. Any dispute or disagreement between the parties, including specifically but not exclusively:

1. Fair enforcement of the Code,
2. Modifications of the Code as provided therein,
3. Game or fish management,
4. Protection of endangered species, and
5. Administration and sale of licenses,

shall be settled by arbitration at the request of any party. In any such arbitration, the State shall be considered as one party, and the Band, the United States and the Minnesota Chippewa Tribe shall be the other party, although the Band, the United States and the Minnesota Chippewa Tribe need not act unanimously in any matter other than selection of the arbitrators, and each may demand arbitration of any dispute with the State pursuant to this section without the consent of the others. The party desiring to initiate arbitration shall serve on the other party, by certified mail (return receipt requested) a written demand for arbitration setting forth (a) the nature of the dispute to be resolved, (b) the claim of the party initiating arbitration with respect to such dispute, and (c) the name and address of one arbitrator selected by the party

initiating arbitration. The other party shall have ten days after receipt of such demand to select a second arbitrator. If no second arbitrator is selected within such ten-day period, then the sole arbitrator shall be the one selected by the party initiating arbitration. If within such ten-day period the party receiving the demand for arbitration selects a second arbitrator by giving written notice of the arbitrator's name and address to the party initiating arbitration and to the first arbitrator by certified mail, then the two arbitrators so selected shall choose a third arbitrator within ten days after the receipt by the first arbitrator of notice of the selection of the second arbitrator. If the first two arbitrators fail to choose a third arbitrator within the prescribed ten-day period, then either party to the arbitration, on notice to the other, may apply to the Chief Judge of the United States District Court for the District of Minnesota for the appointment of a third arbitrator.

B. As promptly as practicable after their appointment, the arbitrators shall hold a preliminary meeting with the parties to determine the most expeditious method of assembling all pertinent evidence. The arbitrators, in their discretion, may require the parties to appear for depositions and produce documents, answer interrogatories and make admissions in accordance with the discovery procedure specified in the Federal Rules of Civil Procedure. Should any party fail to comply with any procedural order or requirement of the arbitrators, such failure may be given such weight as the arbitrators deem appropriate in the determination of the issue presented for arbitration.

C. After presentation of the evidence, the matters in dispute shall be arbitrated by the three arbitrators so chosen,

and the award of the arbitrators, or a majority of them, shall be final, and judgment upon the award rendered may be entered in the United States District Court for the District of Minnesota. The arbitrators may include in their award a determination of responsibility for the expenses of arbitration. Prior to the making of the award by the arbitrators, none of the parties to this Judgment shall commence any lawsuit or other proceeding against any other party hereto, if such lawsuit or proceeding arises out of any dispute or disagreement between the parties relating to the matters set forth in this Judgment. When an award has been made by the arbitrators hereunder, all parties shall be subject to the personal jurisdiction of the United States District Court for the District of Minnesota for the entry of judgment thereon in these proceedings, and all parties may be served by certified mail in such proceeding in such Court for the entry of such judgment.

VIII.

Assignment

A. All rights, duties and privileges recognized or granted hereunder are exclusively the property of the Band pursuant to the delegation and assignment from the Minnesota Chippewa Tribe and not of any individual member thereof.

B. None of the rights, duties and privileges recognized or granted herein may be assigned or delegated by the Band to other than its administrative and judicial agencies, save and except that the Band may permit hunting, fishing, trapping and ricing by tribal members pursuant to the Code.

IX.

Severability

No portion of this Judgment shall be severable except by

mutual consent then given by all the signatory parties hereto and agreement by the Court.

In the event that the Memorandum of Agreement and Settlement or any portion of said Agreement or any portion of the legislation enacted pursuant to the Agreement is held void, illegal or unconstitutional by the Supreme Court of the State of Minnesota or by any Federal Court of competent and final jurisdiction, then in that event, this Judgment shall terminate and any party may apply to this Court for a new appealable judgment consistent with the judgment entered by this Court on January 25, 1972, in this litigation.

X.

Implementation

1. The defendant State of Minnesota shall cause copies of this Judgment to be served either in person or by certified mail - personal return receipt requested - to the county attorneys of Beltrami, Cass, Itasca, and Hubbard Counties, all village or city attorneys in said counties, all Justices of the Peace, county court judges, county court judicial officers and all peace officers having any jurisdiction within any of said counties.

The State shall make and retain a verified list of the names and addresses of the persons to whom such personal service or mailing was made. Within thirty (30) days of the date of the filing of this Judgment, the State shall file with the Court and serve upon plaintiffs an Affidavit of Compliance with the foregoing provisions of this paragraph setting forth that such mailings have been made, that such verified list has been made and retained, and describing any other action taken by defendants to ensure receipt of actual notice of this Judgment.

2. This Judgment shall be binding upon plaintiffs and defendants, their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise.

Dated this 18th day of JUNE, 1973.

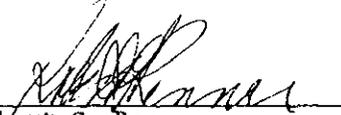
LET JUDGMENT BE ENTERED ACCORDINGLY.

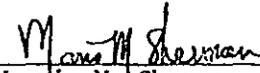

Edward J. Devitt
Chief Judge
United States District Court

APPROVED AS TO FORM AND SUBSTANCE,

UNITED STATES OF AMERICA

STATE OF MINNESOTA

By 
Robert G. Renner
United States Attorney
596 United States Court House
110 South Fourth Street
Minneapolis, Minnesota

By 
Morris M. Sherman
Special Assistant Attorney General
818 Farmers & Mechanics Bank Bldg.
520 Marquette Avenue
Minneapolis, Minnesota 55402

LEECH LAKE BAND OF CHIPPEWA INDIANS

By 
Bernard P. Becker
Legal Aid Society of Minneapolis, Inc.
501 Park Avenue
Minneapolis, Minnesota 55415

AMENDMENT

WHEREAS, the Minnesota Legislature, in Minnesota Laws 1980, Chapter 614, Section 83, Subd. 2, permitted the Commissioner of Natural Resources to amend the method of payment in the Memorandum of Agreement and Settlement and Consent Judgment, dated June 18, 1973, and attached hereto, between the Leech Lake Band of Chippewa Indians and the State of Minnesota; and

WHEREAS, the Leech Lake Band of Chippewa Indians desires to change only the method of payment in accordance with the above-mentioned law;

NOW, THEREFORE, the parties hereto agree as follows:

I.

Article V, Agreements, paragraph B.1., a., b., c., d. and e. shall be stricken, and in lieu thereof, Article V, paragraph B.1. shall read as follows:

B. The State shall provide for the following:

1. State Payments

a. The State shall pay to the Band each year an amount equal to five percent (5%) of the proceeds from the sale in that year of all licenses sold in the State of Minnesota for hunting, fishing, trapping or taking of minnows and other bait.

b. Payment to the Band will be made by the State quarterly, and shall be based on the total amount of proceeds from the sale of the aforementioned licenses which the State has received for that particular quarter. The State shall make its quarterly payments to the Band in the form of a check made payable to the Leech Lake Band of Chippewa Indians. Payment shall be made within two months of the close of each quarter for the State's licensing year.

c. The books and records of the State with respect to license sales shall at all times be open to inspection by any duly authorized representative of the parties hereto. Any disputes with respect to the sale of licenses and the amount of proceeds therefrom shall be subject to arbitration as provided in this Agreement.

d. It is expressly understood and agreed that in the event the Code is not uniformly and fairly enforced by the Band, the State may withhold all receipts due the Band until such time as fair enforcement is resumed. The State shall give prompt notice of its intent to withhold funds because of unfair enforcement by the Band. Upon receipt of said notice, the Band may request a hearing in ten days before the arbitrators, who thereafter, and upon the evidence and in the manner provided in Article VII hereof, shall decide if there has been a breach of the Band's duty to enforce the Code and the period of time during which said breach has continued.

In the event that it is determined by the arbitrators that there has not been uniform and fair enforcement of the Code, so much of the sums held by the State and collected during the period in which there has not been uniform and fair enforcement shall be forfeited by the Band.

e. The State shall incorporate references to this Agreement and its terms in the DNR public synopsis of hunting and fishing laws, as well as on various State hunting and fishing licenses where

appropriate and practical. The provisions of this Agreement contained in Sections V.2., V.3. and V.4. shall be referenced on the appropriate State licenses.

II.

Article V, Agreements, paragraph 7, Posting, shall be stricken, and in lieu thereof, Article V, paragraph 7 shall read as follows:

V.7. The State shall continue to post the boundaries of the Reservation by placing appropriate signs on all public roads leading into the Reservation at or near the boundaries of the Reservation. The signs shall contain a notice that it signifies the boundary of the Reservation and that special licenses are required for ricing and for the taking of minnows and other bait and shall further indicate the penalties for destruction of the signs.

III.

Article I., Definitions, paragraphs J. ("Unrestricted License"), K. ("Restricted License"), and L. ("Separate License Stamp") shall be stricken.

IV.

In the event there is a final judgment of the Supreme Court of the State of Minnesota holding that Minnesota Laws 1980, Chapter 614, Section 83, Subd. 2, permitting the Commissioner of Natural Resources to amend the method of payment in the Memorandum of Agreement and Settlement between the Leech Lake Band of Chippewa Indians and the State of Minnesota is illegal or unconstitutional, then this Amendment to the Agreement and Settlement between the above parties shall be void as of that

date and the original Memorandum of Agreement and Consent Judgment should be reinstated in full with the original provisions applying as to method of payment.

V.

Article V, Agreements, Section B.4., the second paragraph which reads:

- a. Bait dealers or resort owners authorized to take minnows within the Reservation shall have added to the State license for such taking an additional sum equal to 50% of the State license fee, which additional sum shall be remitted to the Band in the same manner as provided in Section B of this Part.

shall be stricken.

This Amendment shall become effective on the 1 day of Mar, 1981.

APPROVED:

LEECH LAKE BAND OF
CHIPPEWA INDIANS

By Shirley White

Date: 3/4/81

By Frank P. ...

Date: 3/4/81

STATE OF MINNESOTA

By Albert H. Duil

Date: 3/4/81

DEPARTMENT OF NATURAL RESOURCES
OF THE STATE OF MINNESOTA

By Jay ...

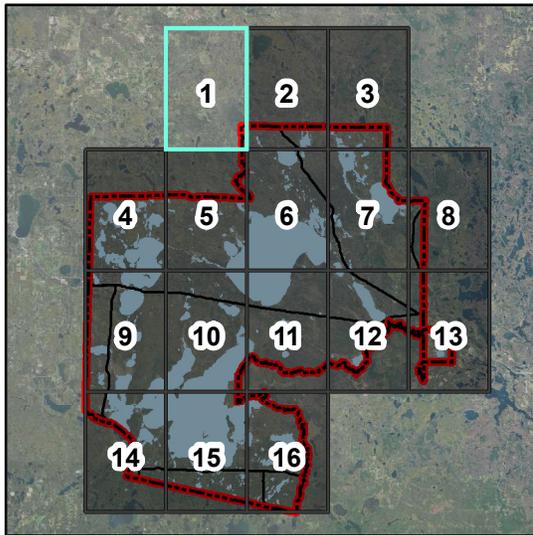
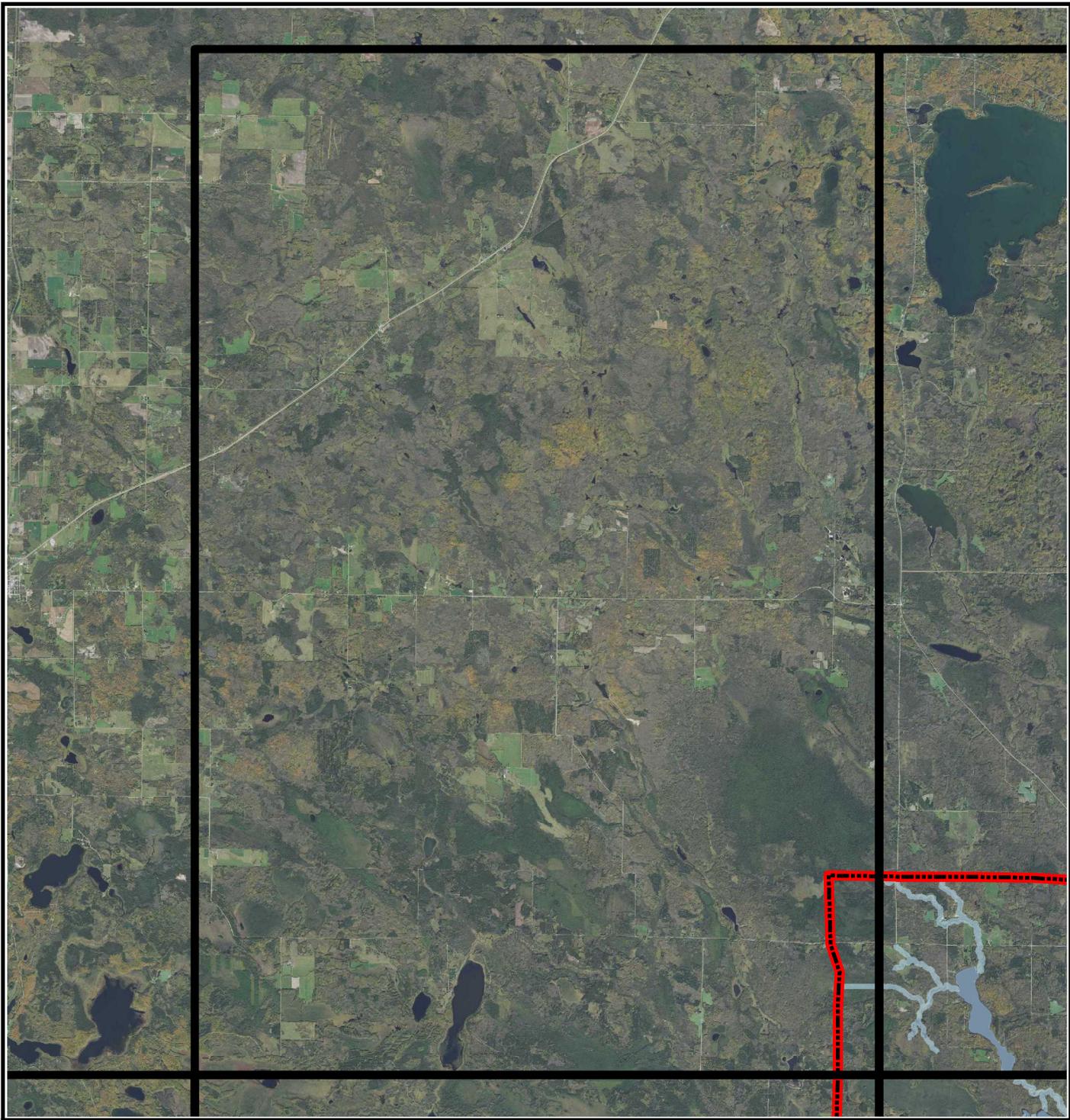
Date: 4 Mar 81

APPROVED AS TO FORM AND EXECUTION:

WARREN SPANNAUS
Attorney General

By James M. Schaub

Date: March 4, 1981



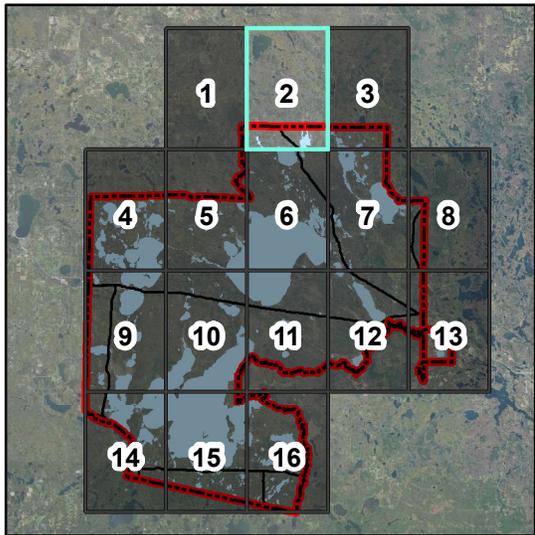
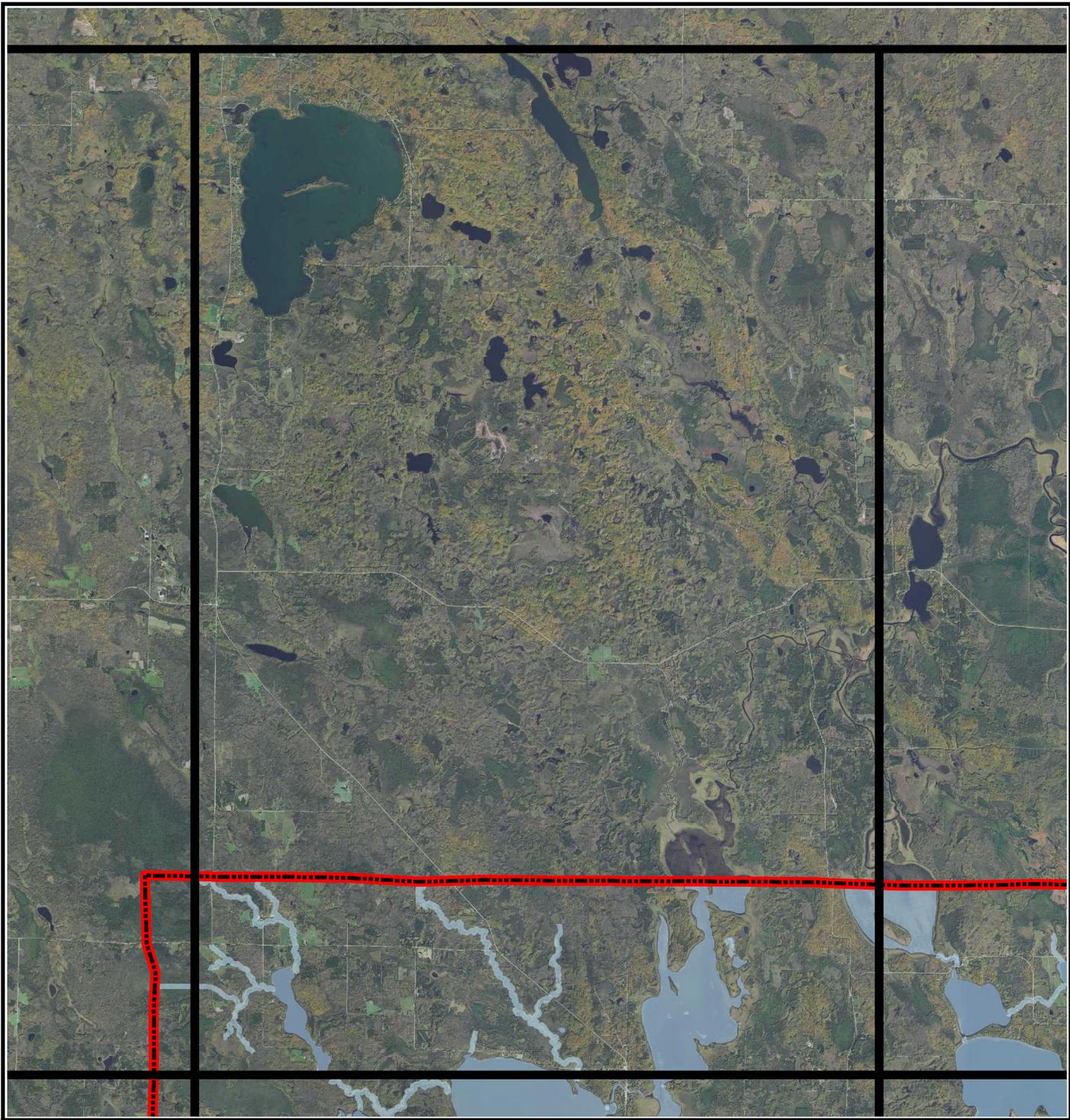
Lakes and Streams Within Leech Lake Reservation



Legend

-  Reservation Boundary
-  Lakes and Streams





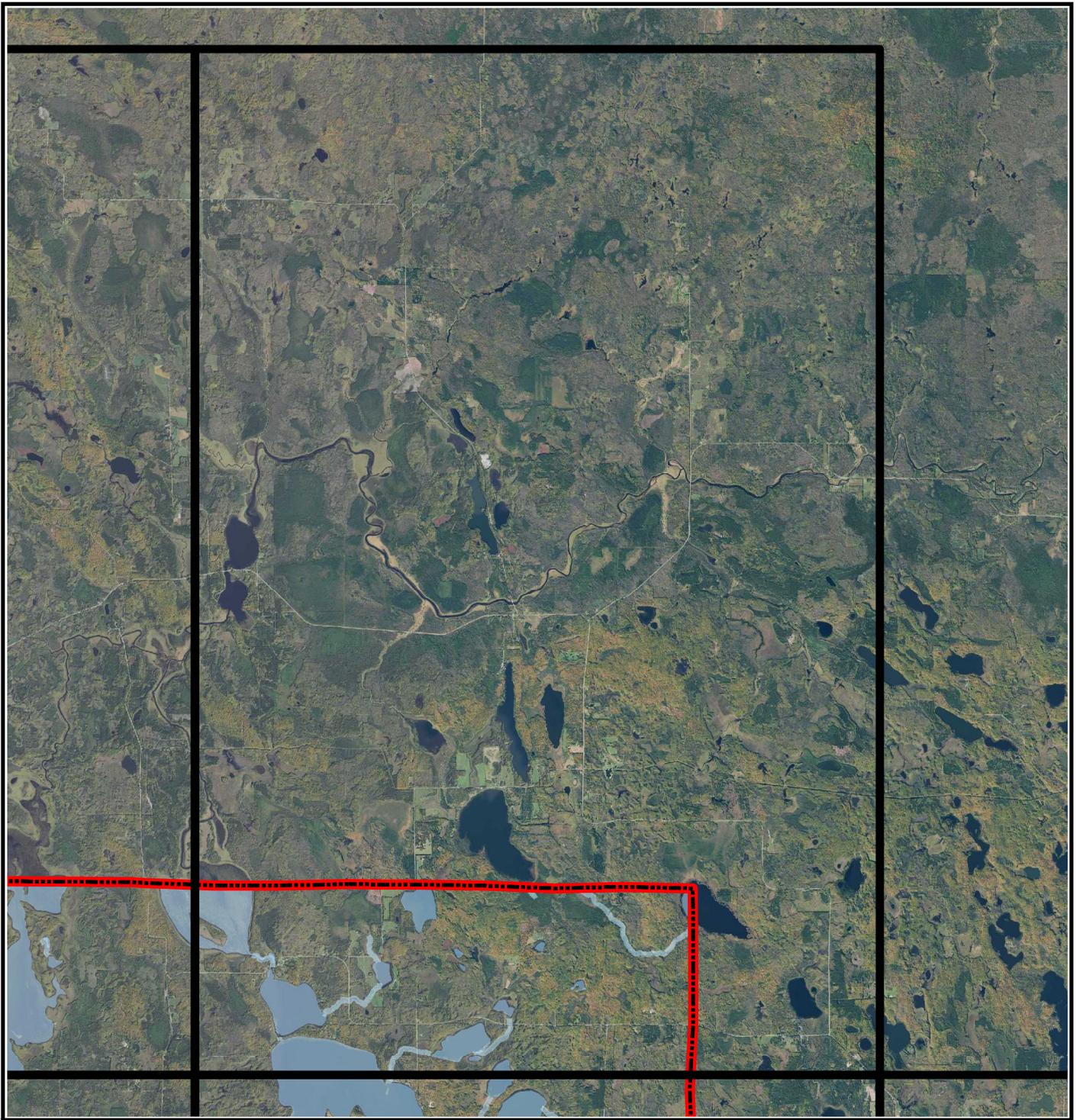
Lakes and Streams Within Leech Lake Reservation



Legend

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-  Lakes and Streams



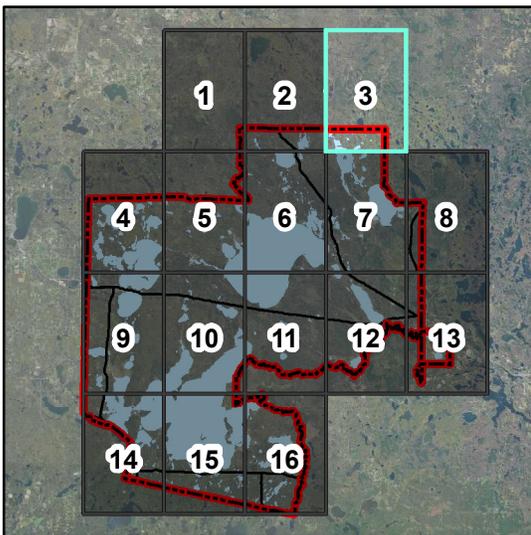


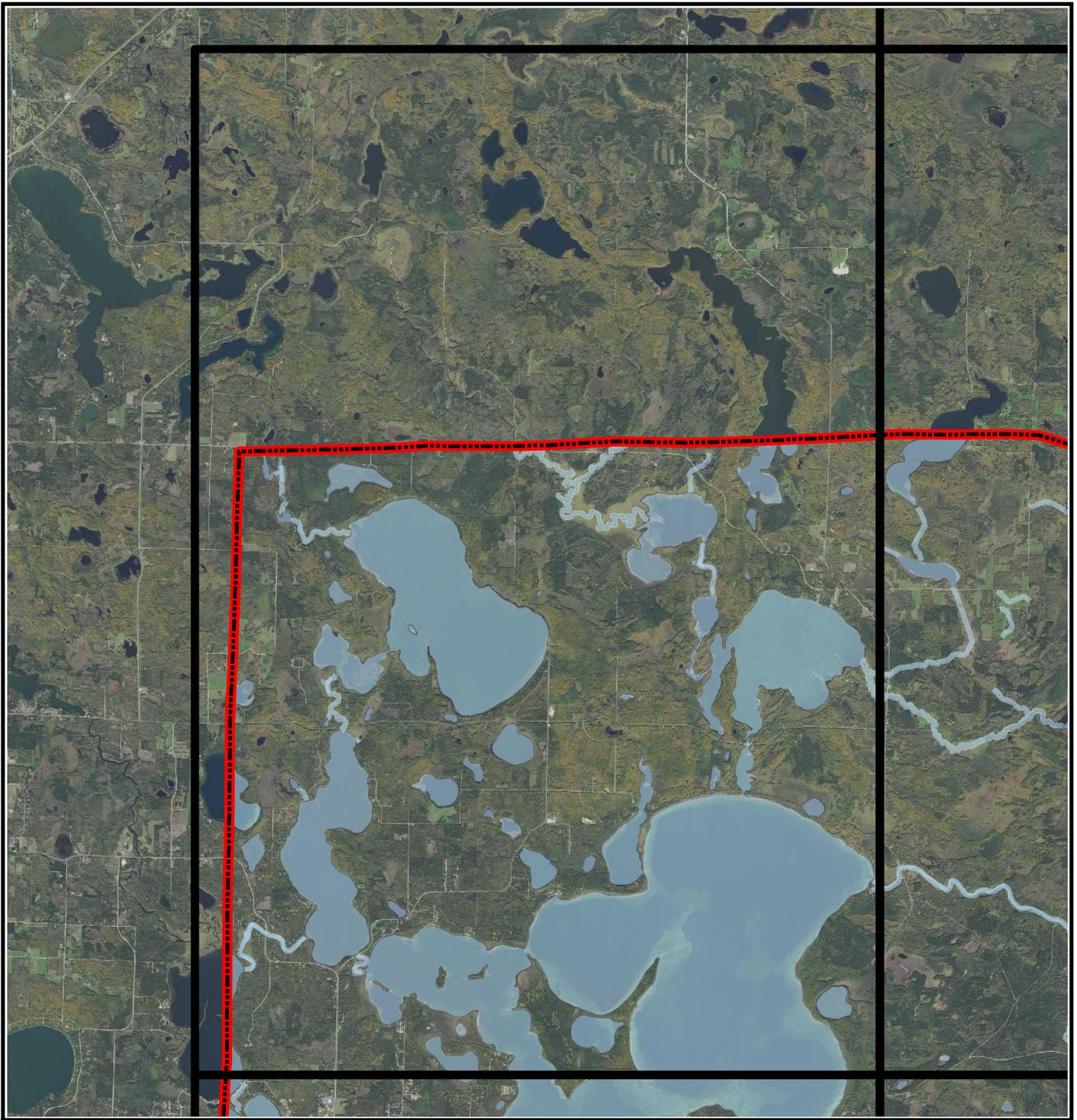
Lakes and Streams Within Leech Lake Reservation



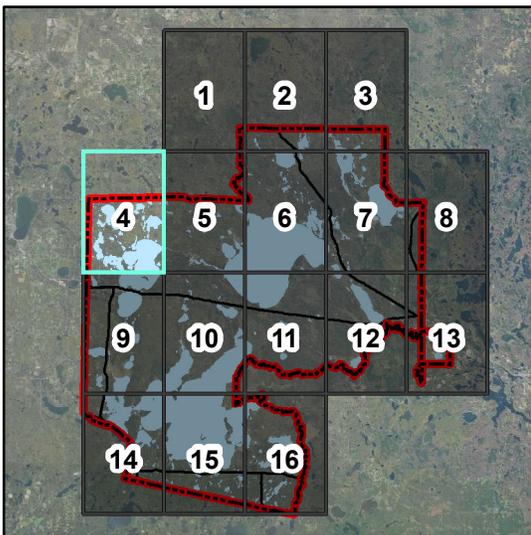
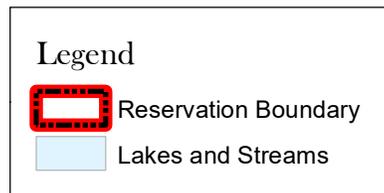
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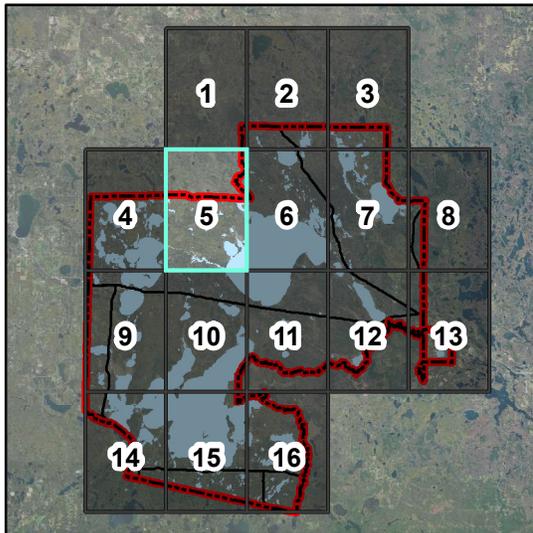
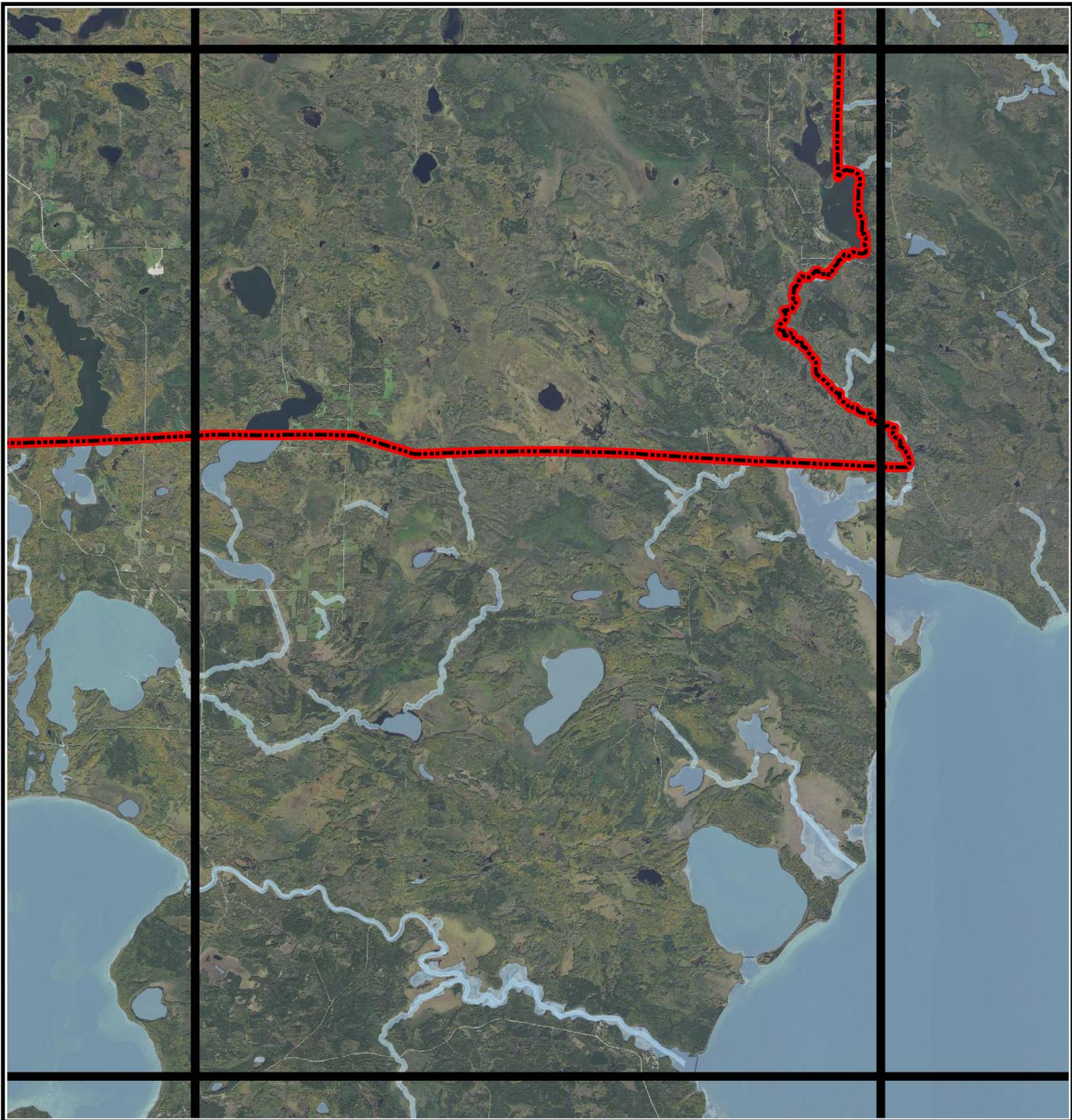
- Reservation Boundary
- Lakes and Streams





Lakes and Streams Within Leech Lake Reservation





Lakes and Streams Within Leech Lake Reservation



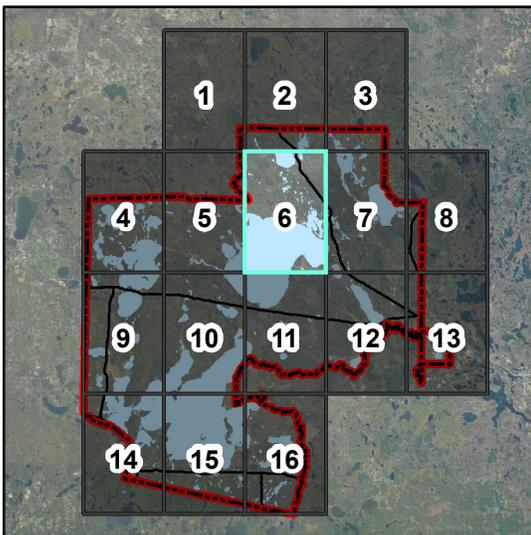
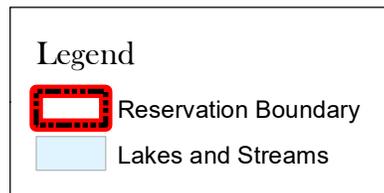
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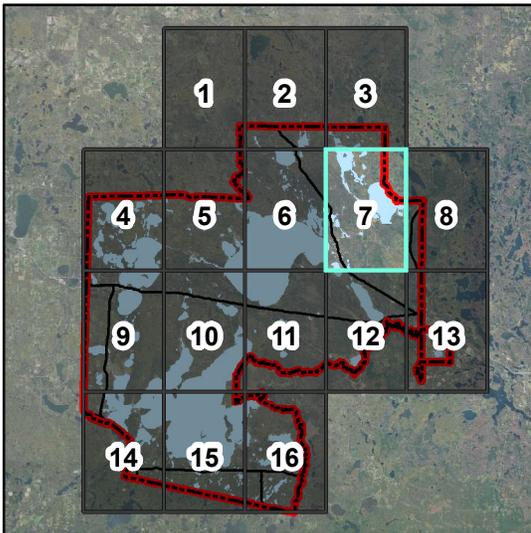
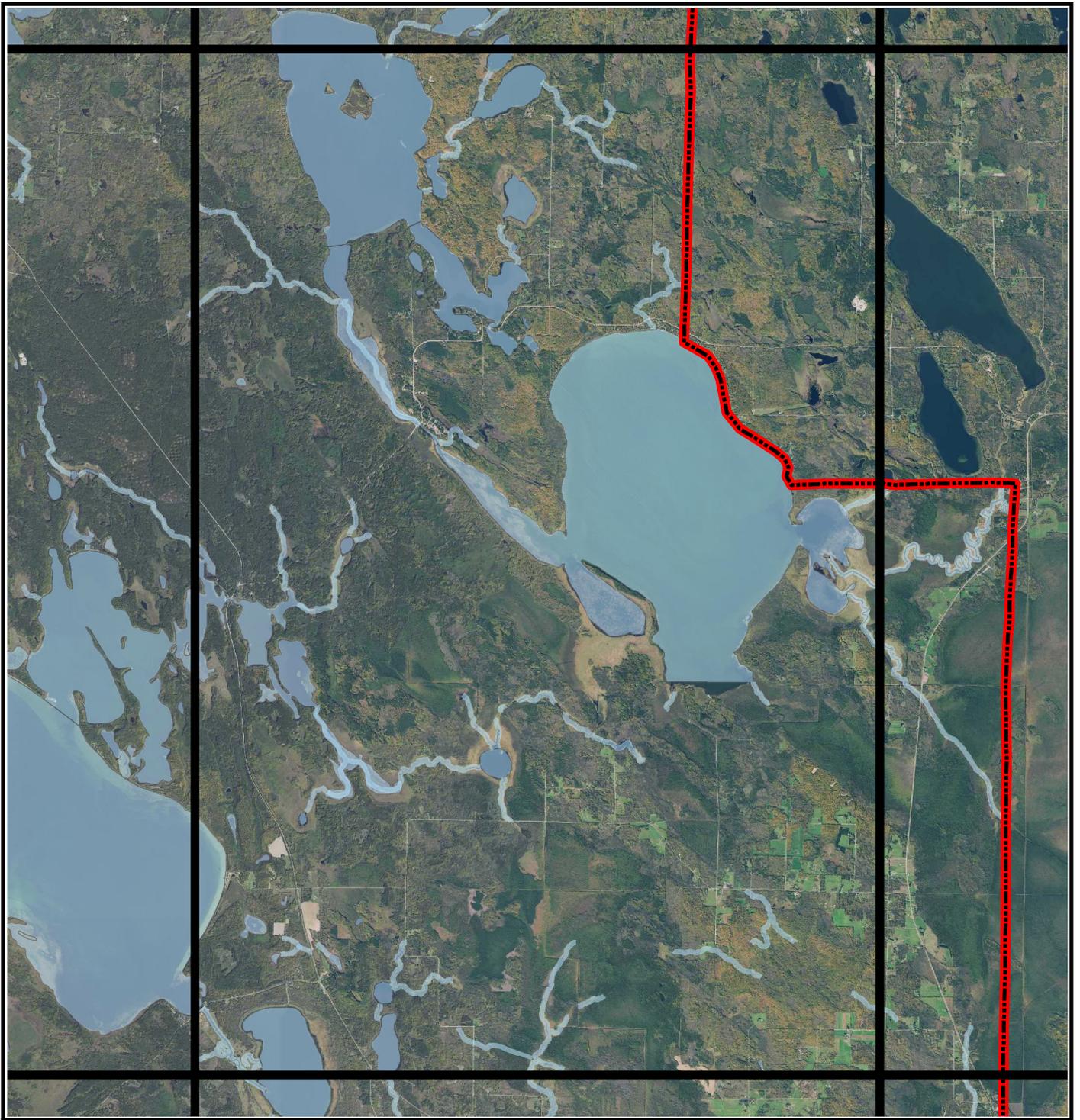
-  Reservation Boundary
-  Lakes and Streams





Lakes and Streams Within Leech Lake Reservation





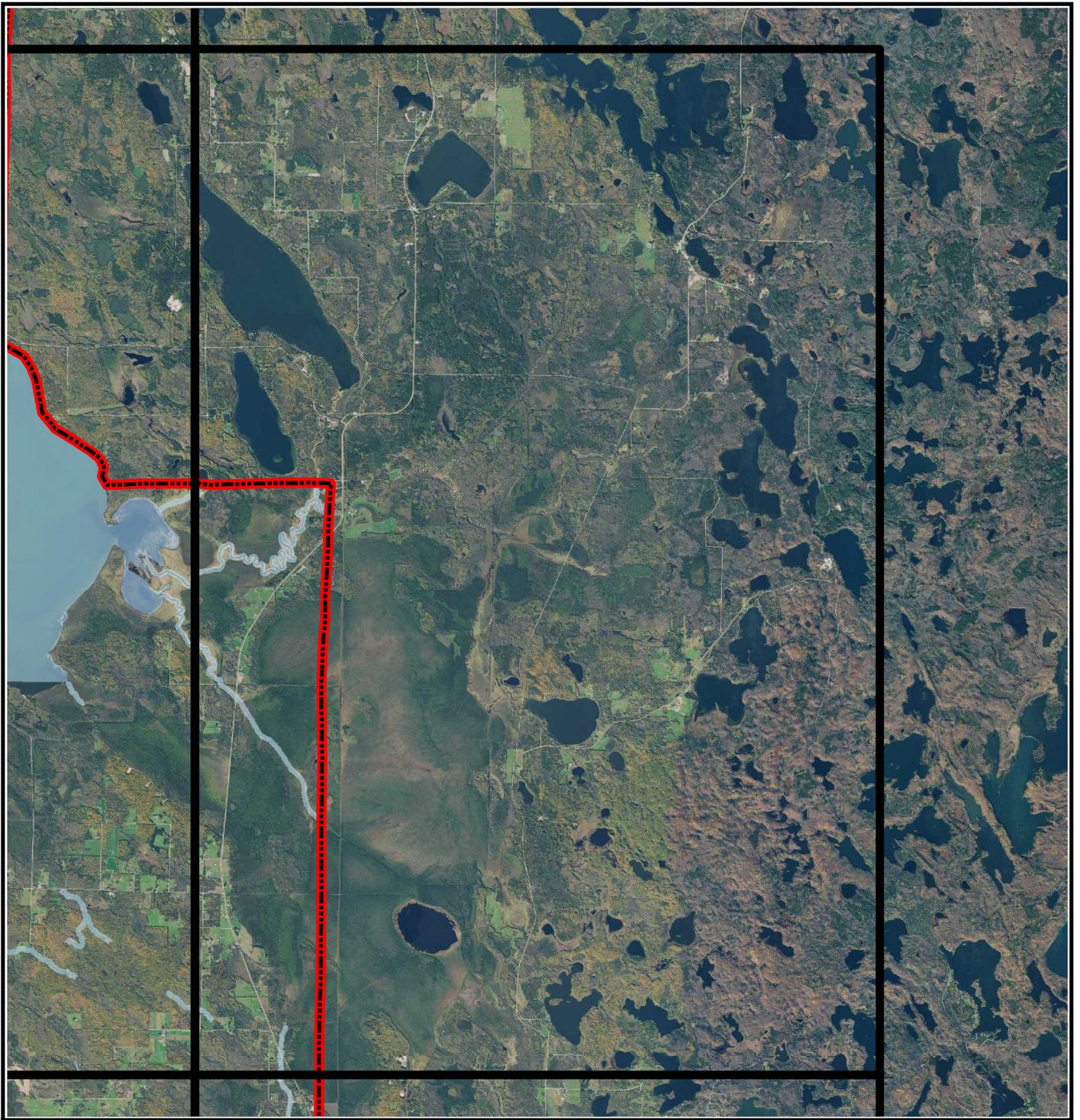
Lakes and Streams Within Leech Lake Reservation



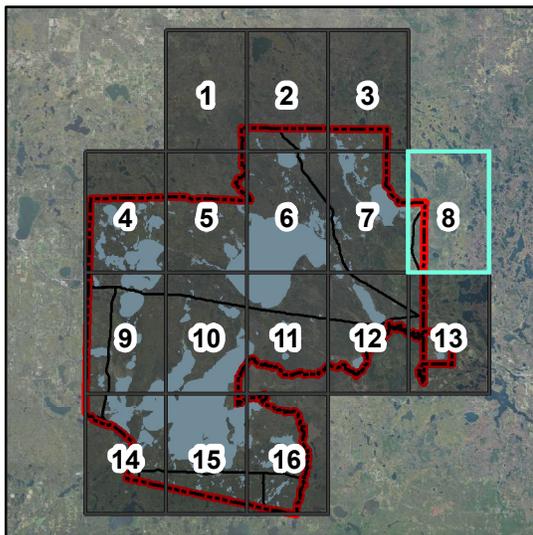
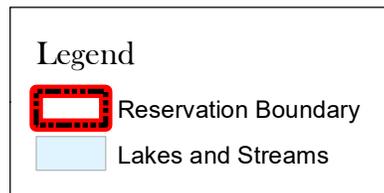
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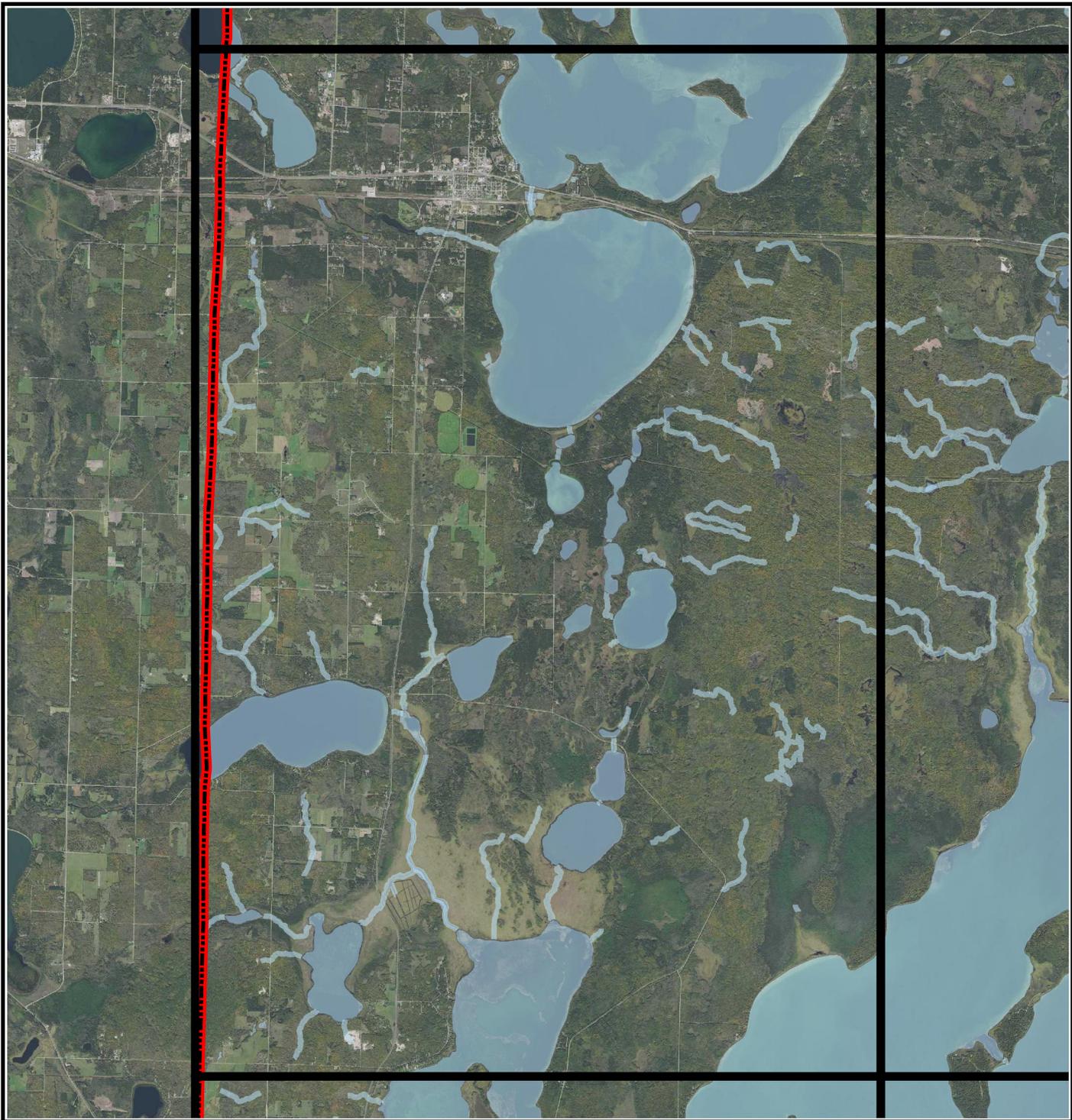
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Lakes and Streams Within Leech Lake Reservation



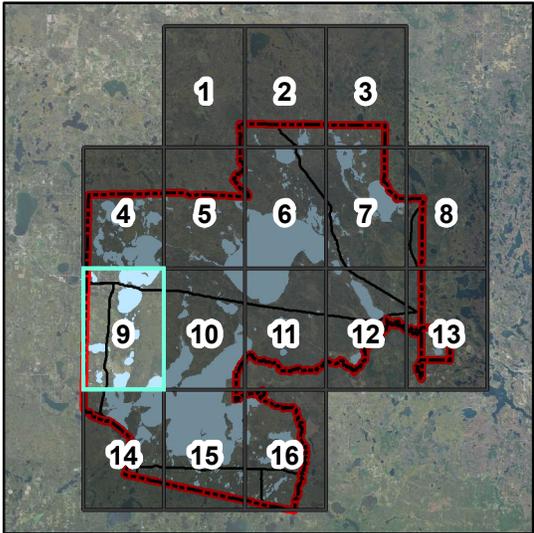


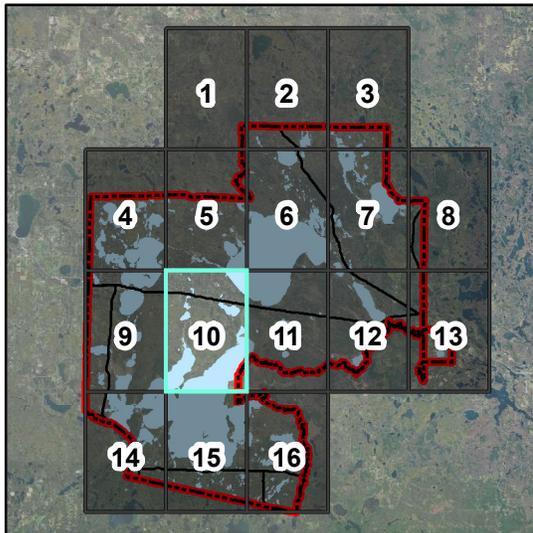
Lakes and Streams Within Leech Lake Reservation



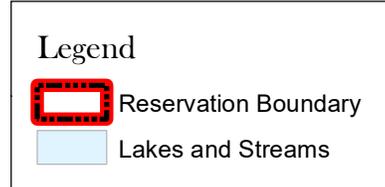
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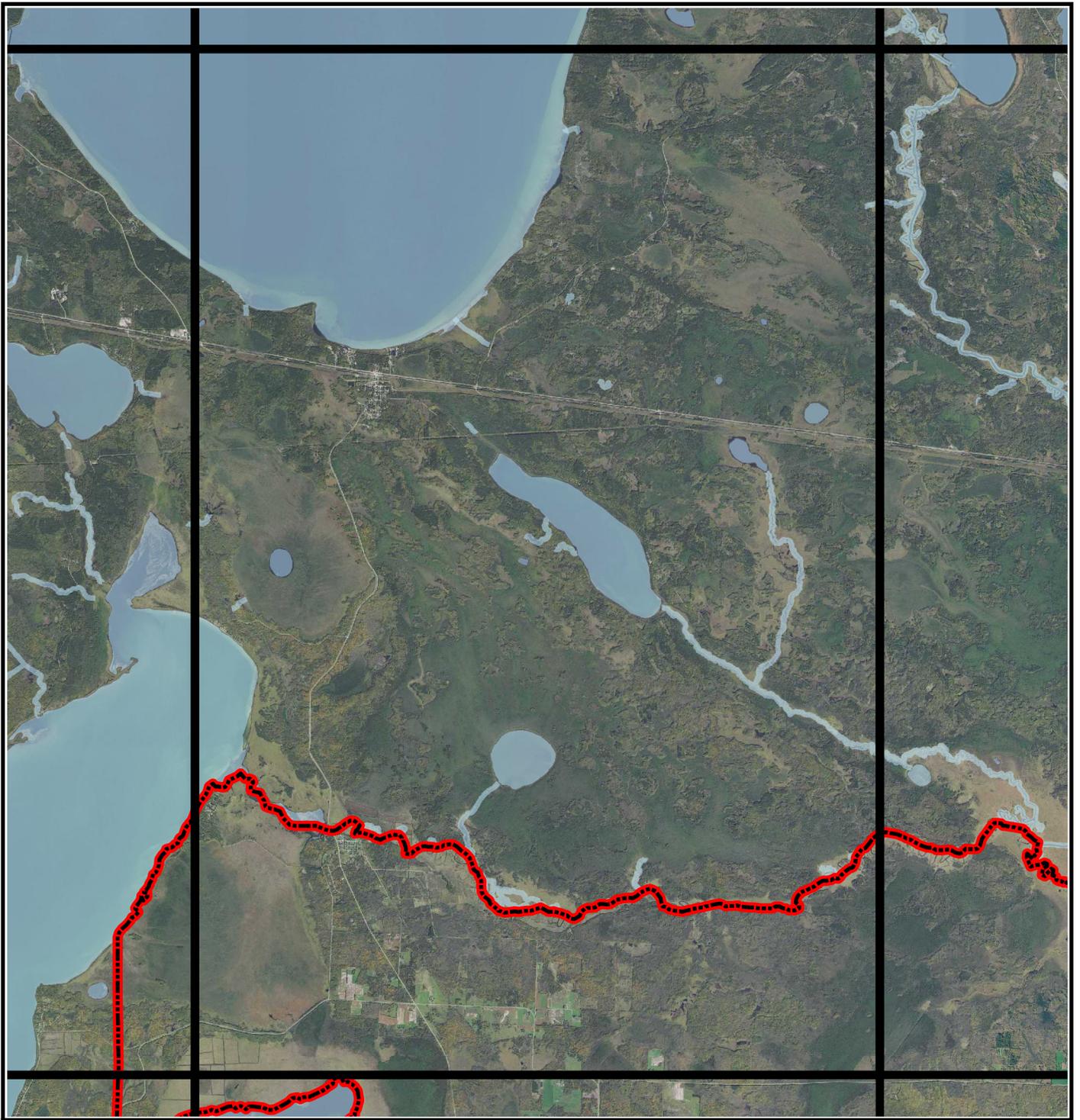
-  Reservation Boundary
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Lakes and Streams Within Leech Lake Reservation



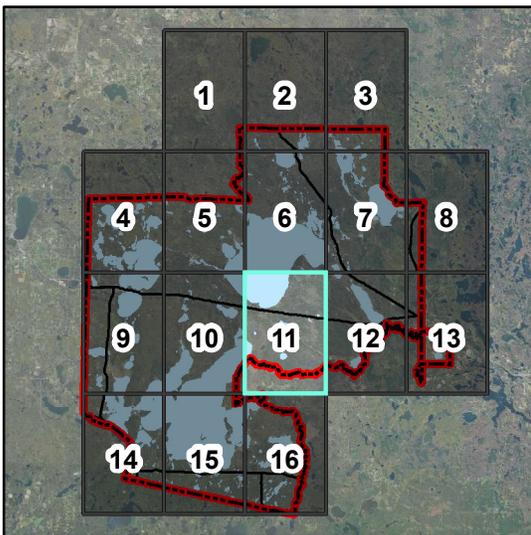


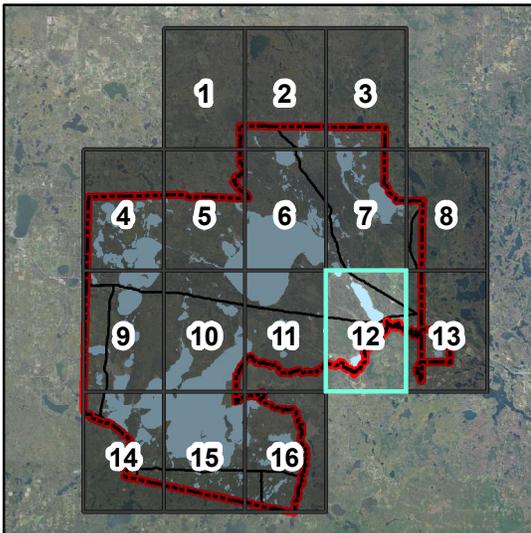
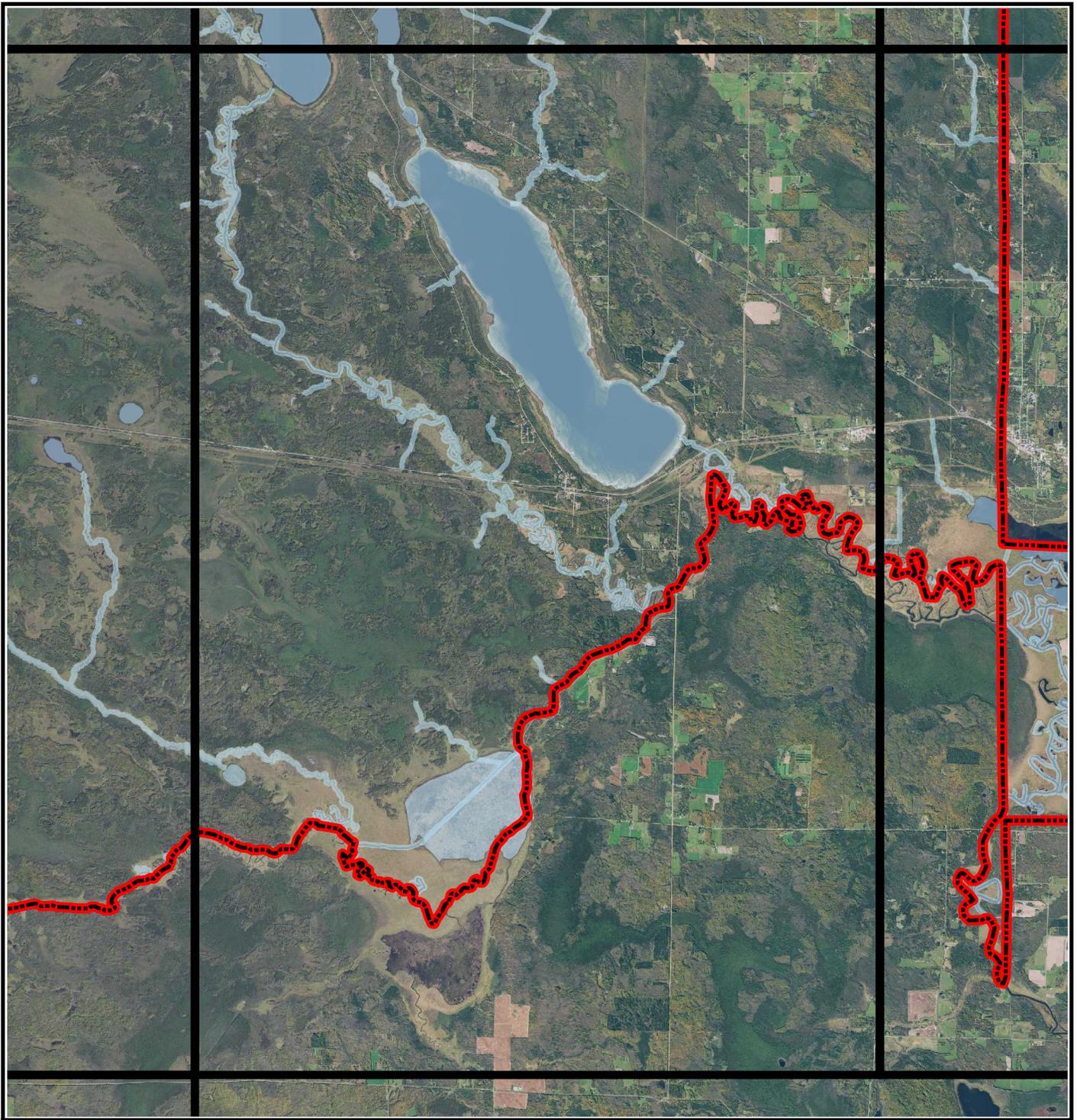
Lakes and Streams Within Leech Lake Reservation



Legend

- Reservation Boundary
- Lakes and Streams





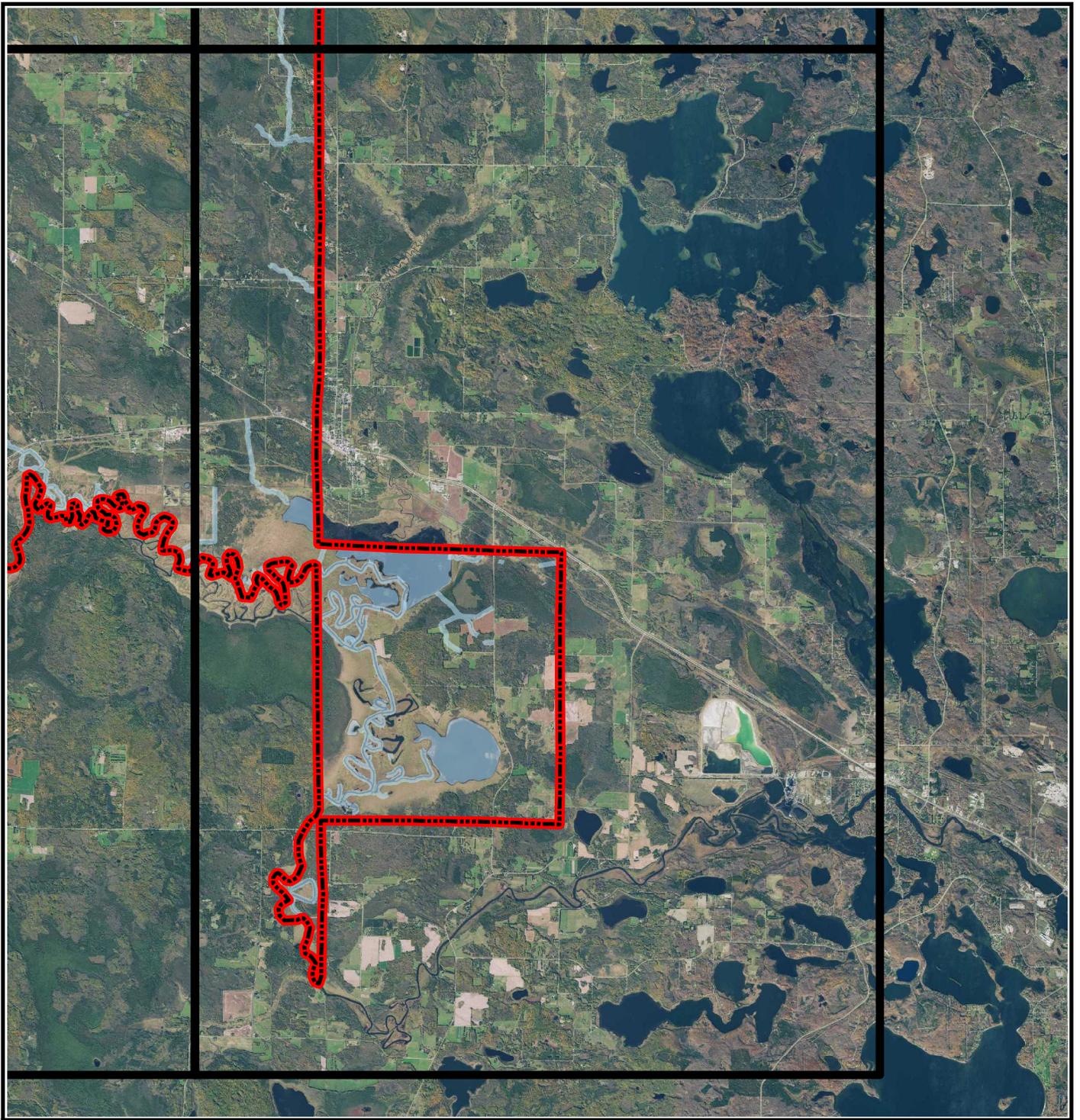
Lakes and Streams Within Leech Lake Reservation



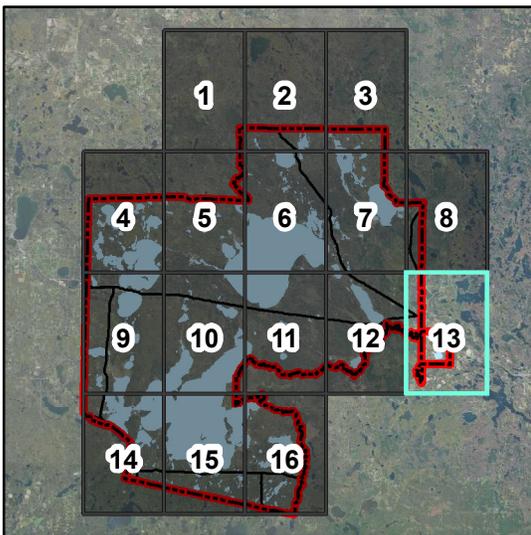
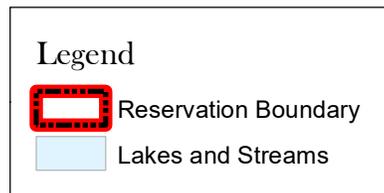
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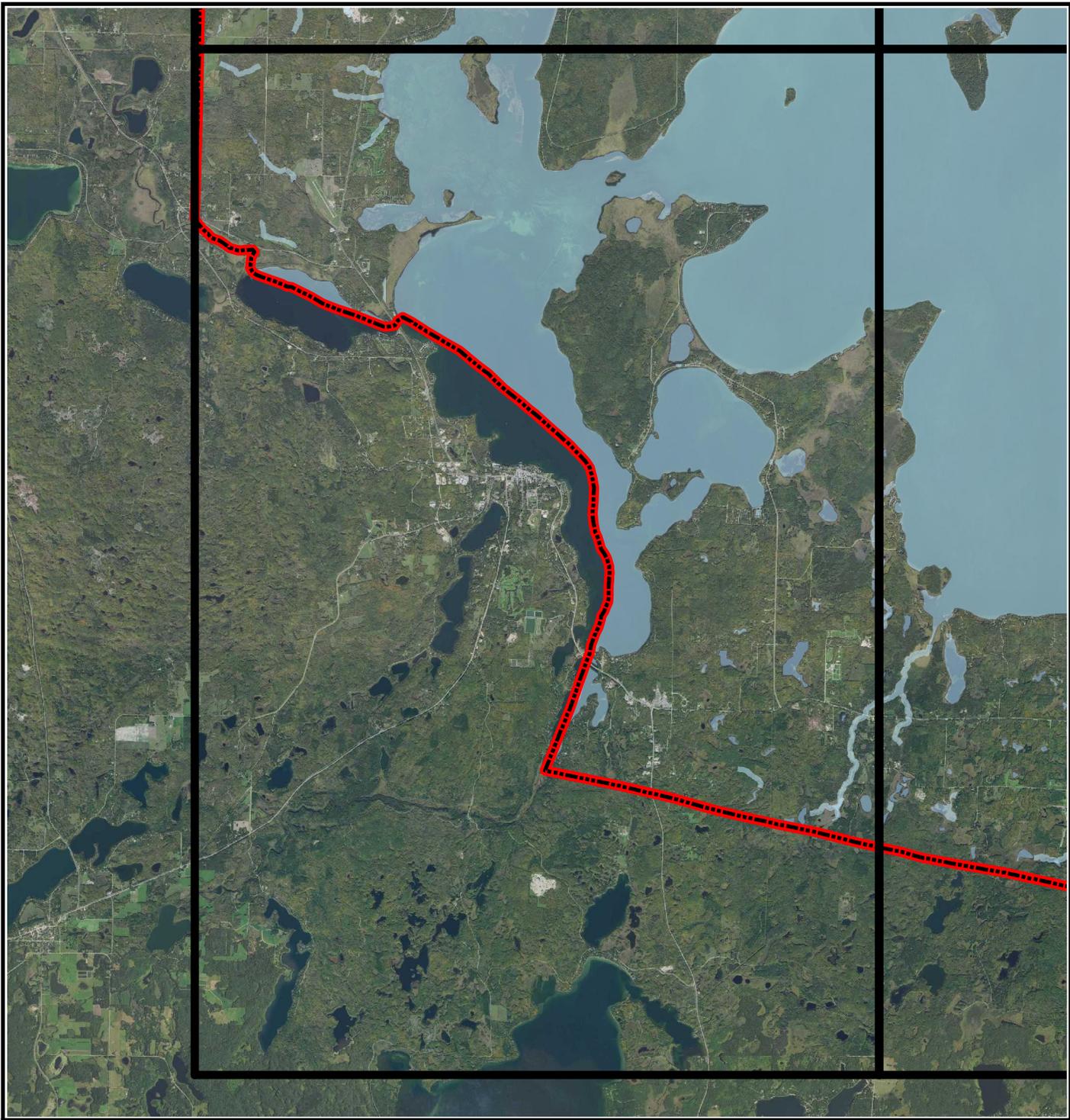
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Lakes and Streams Within Leech Lake Reservation



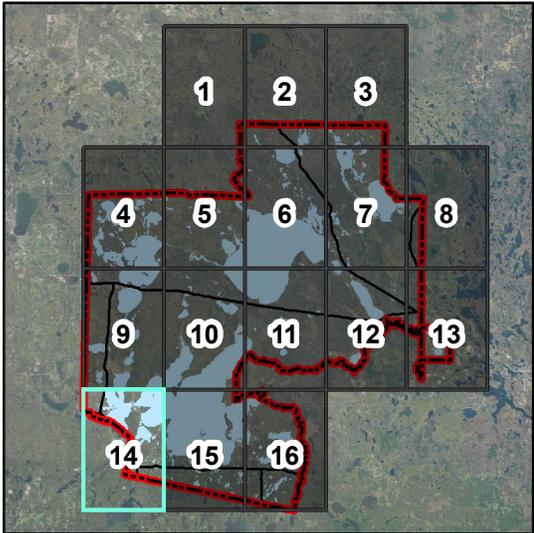


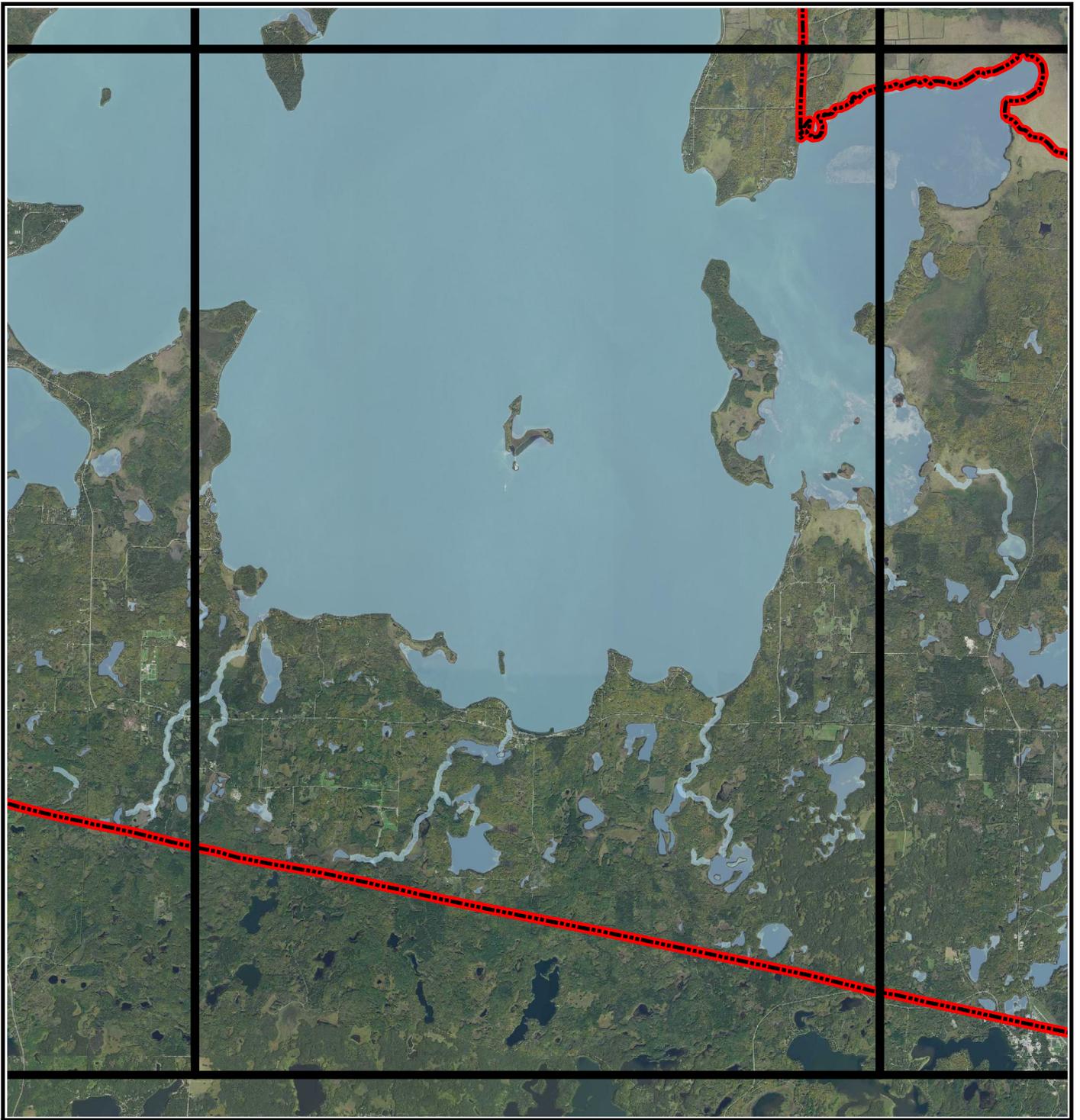
Lakes and Streams Within Leech Lake Reservation



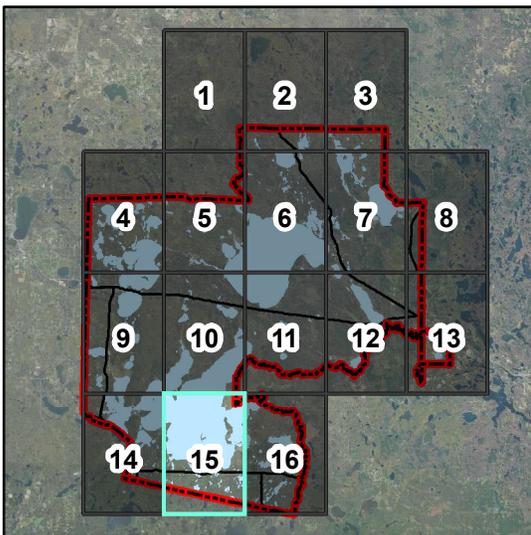
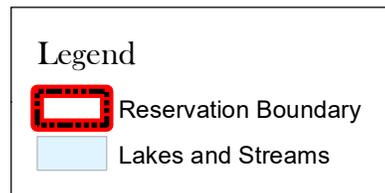
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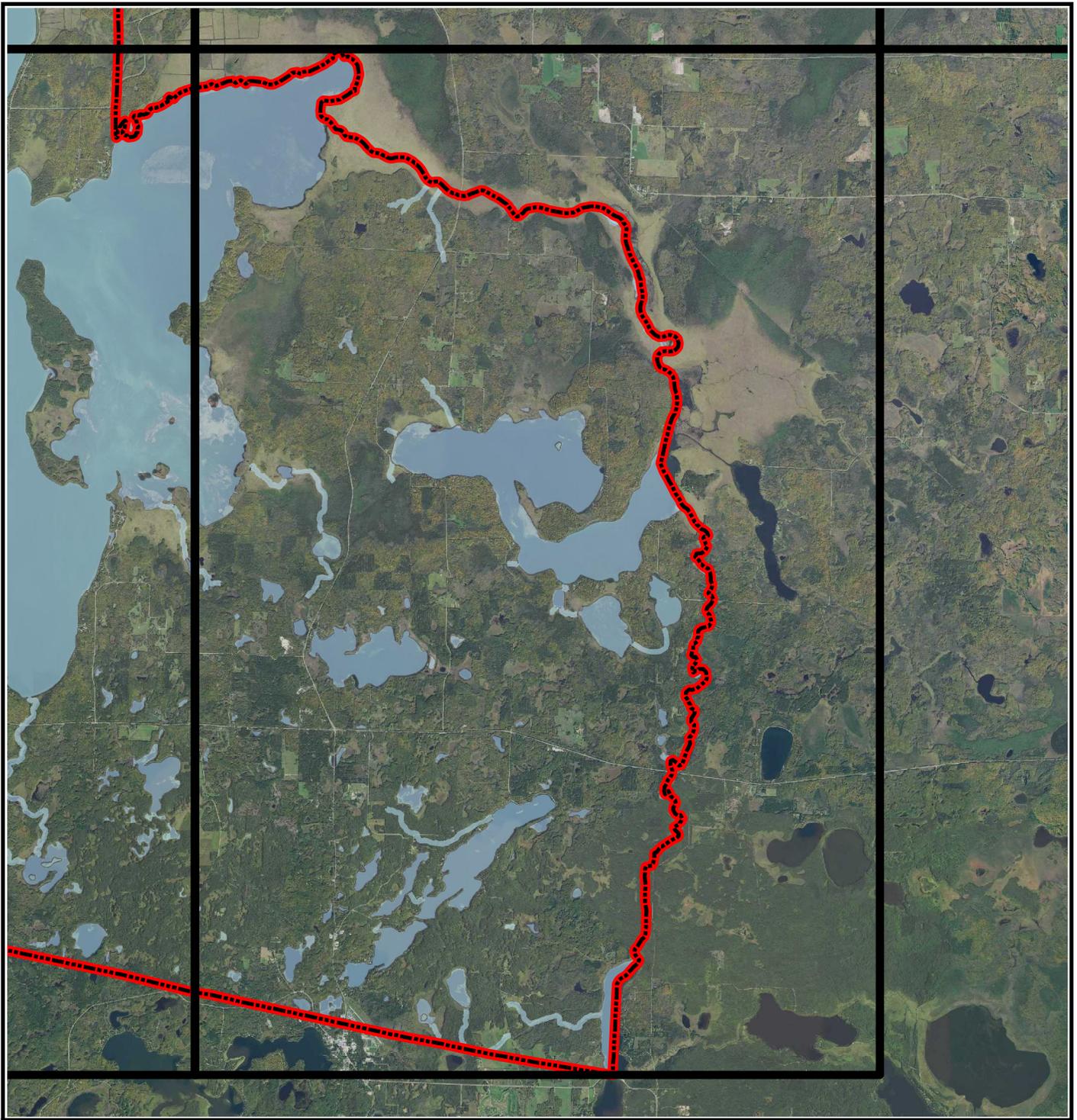
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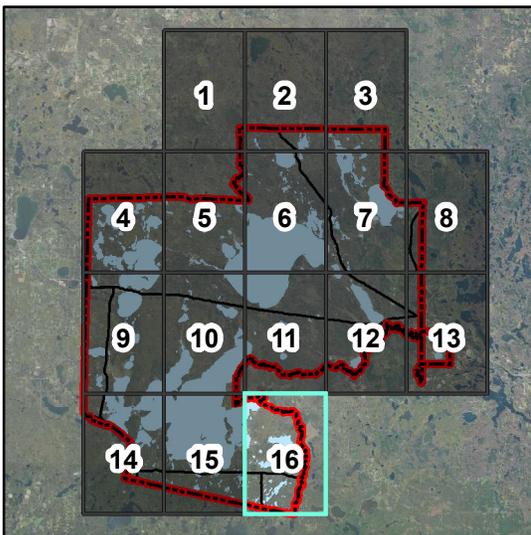
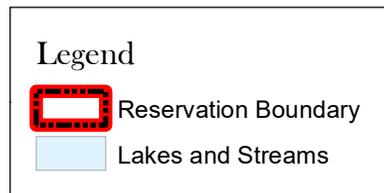


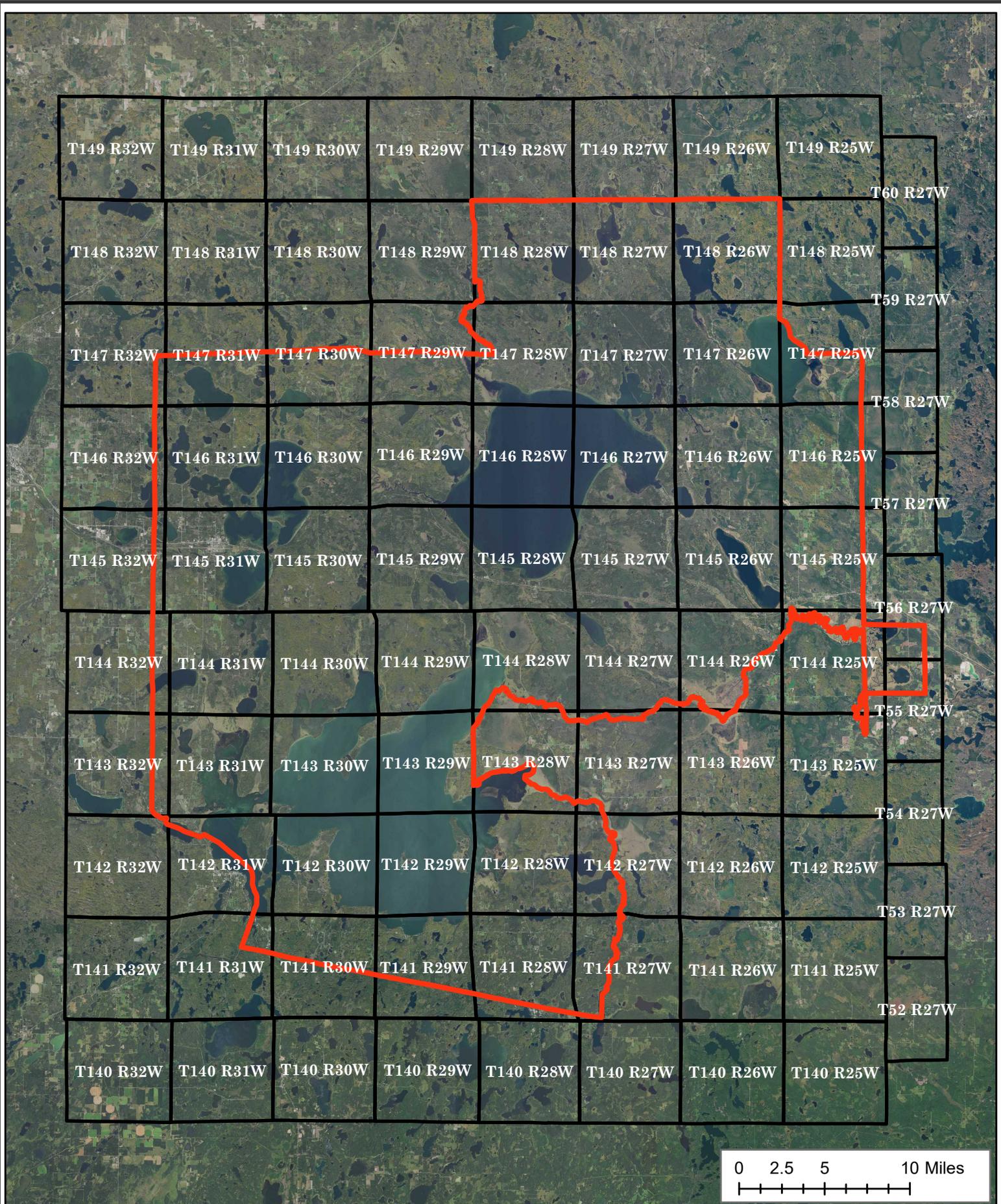
Lakes and Streams Within Leech Lake Reservation





Lakes and Streams Within Leech Lake Reservation





Leech Lake Reservation Lakes & Streams
Township/Range



January 30, 2018

VIA FIRST CLASS MAIL

Cathy Stepp
Regional Administrator
USEPA Region 5
Ralph Metcalfe Federal Bldg.
77 West Jackson Boulevard
Chicago, IL 60604-3590

Re: *Legal Analysis Demonstrating Basis for Leech Lake Band of Ojibwe's Assertion of Authority to Regulate Reservation Water Quality and be Treated in the Same Manner as a State Pursuant to Sections 303 and 401 of the Clean Water Act*

Dear Ms. Stepp:

In our capacity as Special Environmental Counsel, and on behalf of the Leech Lake Band of Ojibwe Tribal Council, this letter sets out our analysis of the civil regulatory jurisdiction of the Leech Lake Band of Ojibwe (Band) to develop, implement and enforce tribal law to protect the health of the reservation population and the quality of the reservation environment. We understand that this analysis is being submitted to Region 5 of the U.S. Environmental Protection Agency (EPA) in support of the Band's application for treatment as a state (TAS) under Sections 303 and 401 of the federal Clean Water Act (CWA). In particular, section 518(3) of the Clean Water Act, 33 U.S.C. § 1377(e), which authorizes EPA to treat eligible federally-recognized Indian tribes as states for the purpose of their implementation of certain functions under the CWA that "pertain to the management and protection" of reservation water resources.

Based on the legal analysis set out herein, we have determined that the Leech Lake Band of Ojibwe, a sovereign Indian Tribe, whose government is recognized by the United States, possesses all necessary civil legal authority over water resources within the reservation environment, and that the Band has demonstrated all necessary water program implementation capability to administer, implement and enforce the Leech Lake Water Quality Management Program. Therefore, we conclude that the Band meets the legal criteria for EPA's approval of its TAS status under the CWA and we submit this analysis as a component of the Band's TAS Application as provided for by 40 C.F.R. § 131.8(b)(3)(ii).

In Section I, we review the requirements that the Band must meet to be treated in the same manner as a state for purposes of Clean Water Act water quality standards jurisdiction. Section II sets out our legal analysis of the Band's proprietary rights and inherent sovereign powers to exercise legal authority in its administration of Sections 303 and 401 of the CWA within the Reservation, and its authority to address pollution-causing activities of members and non-members of the Band. Section III describes the importance of Reservation water resources to the Band.

Finally, in Section IV, we describe the threats to water quality unique to the Reservation Environment that will be addressed through implementation and enforcement of Tribal water quality standards.

During our preparation of this analysis, the EPA reinterpreted its regulations regarding the basis of tribal authority to implement the CWA. Pursuant to 40 CFR § 131.8(b)(3)(ii), applications must include a statement by Tribes' legal counsel that describes the basis for the Tribes' assertion of authority. EPA previously required applicant Tribes to make a jurisdictional showing sufficient to satisfy the *Montana* test before approving TAS applications and water quality standards that would regulate non-member activities. EPA's 2016 reinterpretation of CWA Section 518 now recognizes that the statute expressly delegates authority to Tribes to implement water quality standards, thereby removing any need to satisfy the *Montana* test. This jurisdictional analysis incorporates EPA's reinterpretation regarding express delegation of authority as one basis of the Band's authority to regulate water resources on the Reservation. However, our legal analysis goes on to further demonstrate that the Band not only has the inherent sovereignty to implement water quality standards, but that it also satisfies the *Montana* test for purposes of implementing Tribal water quality standards to regulate member and non-member activities affecting Reservation waters.

Please note that this letter, as well as the legal analysis contained herein, is referred to and expressly incorporated into and made a part of the Band's Clean Water Act TAS Application.

I. The Clean Water Act Authorizes EPA to Treat Tribes In The Same Manner As States.

The purpose of the CWA "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters"¹ is implemented by a partnership between the States and the Federal Government. Under this cooperative framework, states choose either self-regulation (with federal approval and oversight) or federal government regulation of the navigable waters within the state.

Congress's 1987 amendments to the CWA authorized the EPA to treat eligible federally-recognized Indian tribes in the same manner as states for the purposes of the CWA.² Specifically, Section 518 of the CWA provides for tribes to be afforded "treatment in the same manner as a

¹ *Arkansas v. Oklahoma*, 503 U.S. 91, 101 (1992) (quoting 33 U.S.C. § 1251(a)).

² 33 U.S.C. § 1377(e) (1994). Specifically, a tribe may receive TAS status for purposes of:

(a) research, investigations, training, and information under section 104; (b) grants for pollution control programs under section 106; (c) water quality standards and implementation plans under section 303; (d) reports on water quality under section 305; (e) reporting requirements under section 308; (f) enforcement of standards under section 309; (g) clean lake programs under section 314; (h) nonpoint source management programs under section 319; (i) certification under section 401 that federally issued permits or licenses will be in compliance with water quality standards; (j) issuance of NPDES permits under section 402; and (k) issuance of permits for dredged or fill material under section 404. see also 33 U.S.C. 1377(e); Amendments to the Water Quality Standards Regulations that Pertain to Standards on Indian Reservations, 54 Fed. Reg. 39,098 (Sept. 22, 1989)(hereinafter "Amendments") (codified at 40 C.F.R. pt. 131).

state" or "TAS" to regulate water pollution within the exterior boundaries of their reservations (the "Reservation Environment"). Thus, Tribes that receive TAS status have the same authority as states to adopt water quality standards more stringent than the federal minimum standards.³

To secure TAS status, a Tribe must meet the following criteria established in EPA's 1991 "Final TAS Regulations:"⁴

(1) The Indian Tribe is recognized by the Secretary of the Interior. . . ;

(2) The Indian Tribe has a governing body carrying out substantial governmental duties and powers;

(3) The water quality standards program to be administered by the Indian Tribe pertains to the management and protection of water resources which are within the borders of the Indian reservation and held by the Indian Tribe, within the borders of the Indian reservation and held by the United States in trust for Indians, within the borders of the Indian reservation and held by a member of the Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of the Indian reservation; and

(4) The Indian Tribe is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions of an effective water quality standards program in a manner consistent with the terms and purposes of the Act and applicable regulations.⁵

In addition to meeting the above criteria, the EPA has required that the applicant tribe provide proof that it has inherent authority over activities that affect water quality on the reservation⁶ based upon "generalized findings regarding the relationship of water quality to tribal health and welfare."⁷ This requirement was developed in response to the Supreme Court's decision in *Montana v. United States*,⁸ which announced the "general proposition"⁹ that, subject to two exceptions, "the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." Thus, "efforts by a tribe to regulate nonmembers, especially on non-

³ *City of Albuquerque v. Browner*, 97 F.3d 415, 423 (10th Cir. 1996).

⁴ 40 C.F.R. 131.8(a).

⁵ *Id.* 131.8(a)(1)-(4).

⁶ *Id.* at 64,881.

⁷ Specifically, EPA found that: (1) the Agency has "special expertise [in] recognizing that clean water . . . is absolutely crucial to the survival of many Indian reservations;" (2) the enactment of the CWA itself constitutes a legislative finding that activities which affect water quality "may have serious and substantial impacts;" (3) the mobile nature of pollutants may cause serious and substantial impacts even if they do not originate on Indian owned lands; (4) Congress expressed a preference for tribal regulation of reservation water quality; and (5) water quality management protects public health and safety and, therefore, is critical to self-government.

⁸ 450 U.S. 544, 565-66 (1981).

⁹ *Id.*

Indian fee land, are 'presumptively invalid.'"¹⁰ The Supreme Court recognized two exceptions to this "general proposition." Tribes may exercise "civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands"¹¹ as follows:

(1) In instances where nonmembers enter consensual relationships with tribe or tribal members; and

(2) "when the conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."¹²

In the case of TAS authority, where contractual relationships may not be in place, tribal civil regulatory authority would be applicable based on the second *Montana* exception and would be based on the need to regulate conduct that may adversely impact the health of the reservation population and/or the quality of the reservation environment.

To address the second *Montana* exception, the EPA established rules requiring that a Tribe submitting a TAS application support its application with a "relatively simple showing of facts that there are waters within the reservation used by the Tribe or tribal members (and thus that the Tribe or tribal members could be subject to exposure to pollutants present in, or introduced into, those waters) and that the waters and critical habit are subject to protection under the Clean Water Act."¹³

Therefore, a Tribe applying for TAS status must demonstrate that:

(1) There are waters within the reservation used by the tribe;

(2) The waters and critical habitat are subject to protection under the CWA;¹⁴ and

(3) Impairment of such waters by the activities of non-Indians would have a serious and substantial effect on the health and welfare of the Tribe.¹⁵

If a tribe makes such a showing of facts, the EPA will presume an adequate showing of tribal authority over fee lands, unless another government authority demonstrates that the Tribe lacks such authority.¹⁶

¹⁰ *Plains Commerce Bank v. Long Family Land & Cattle Company, Inc. et al.*, 554 U.S. 316, 330, 128 S. Ct 2709, 171 L.Ed. 2d 457 (2008); 450 U.S. 565-66 (citing, *Atkinson Trading Co. v. Shirley*, 532 U.S. 646, 651, 659 (2001))(quoting *Montana, supra* at 565)).

¹¹ *Montana v. United States*, 450 U.S. 544, 565 (1981).

¹² *Id.* at 566.

¹³ 56 Fed. Reg. at 64,879.

¹⁴ *Montana v. EPA*, 137 F.3d 1135, 1139 (9th Cir. 1998).

¹⁵ 56 Fed. Reg. at 64,879.

¹⁶ *Id.*

In addition to TAS status, the Band further seeks from the EPA delegated authority to regulate water quality within the Reservation pursuant to Section 518 of the Clean Water Act, 33 U.S.C. § 1377(e). The Band's authority to implement relevant sections of the Clean Water Act also derives from the express congressional delegation of authority to eligible Indian tribes to administer regulatory programs over their reservation in Section 518 of the Clean Water Act.

The EPA recently issued a final interpretive rule eliminating the requirement that applicant Tribes demonstrate inherent authority to regulate under the CWA. 81 Fed. Reg. 30183 (May 16, 2016). This authority is described in detail in the EPA's final interpretive rule. *Id.* Congressional delegations of authority to Indian tribes provide another means, in addition to inherent sovereignty, by which Indian tribes may regulate conduct of nonmembers. *See United States v. Mazurie*, 419 U.S. 544 (1975); *United States v. Lara*, 541 U.S. 193, 200 (2004); *Strate v. A-1 Contractors*, 520 U.S. 438, 449-450 (1997) ("the general rule and exceptions there announced [in *Montana v. U.S.*] govern only in the absence of a delegation of tribal authority by treaty or statute"). The EPA's reinterpretation recognizes that Section 518 of the CWA expressly delegates authority to Indian tribes to regulate reservation water resources irrespective of their ownership status. This is consistent with the plurality opinion in *Brendale v. Confederated Tribes & Bands of the Yakima Indian Nation*, 492 U.S. 408, 428 (1989), which recognized the CWA TAS provision as an example of express delegation to Tribes, and is consistent with federal appellate court decisions regarding TAS under the Clean Air Act. *See Nance v. EPA*, 645 F.2d 701 (9th Cir. 1981); *Ariz. Pub. Serv. Co. v. EPA*, 211 F.3d 1280 (D.C. Cir. 2000). Thus, for this independent reason, the Band asserts authority pursuant to the express congressional delegation of authority to eligible Indian tribes to administer regulatory programs over their reservation under Section 518 of the CWA. There are no limitations or impediments to the Tribe's authority or ability to effectuate the delegation of authority from Congress.

As the analysis herein demonstrates, the Band retains inherent sovereignty to regulate water resources within the Reservation, and also possesses regulatory authority by virtue of the express Congressional delegation of authority found in Section 518 of the CWA.

II. Leech Lake Band of Objive Satisfies the EPA *Montana* Standard and Possesses the Requisite Authority to Regulate Water Resources within the Reservation.

A. The Band Retains Inherent Sovereignty to Regulate Water Quality Standards Within the Reservation.

1. Band's Legal History and Government

The Band is a signatory to the Treaty of February 22, 1855, 10 Stat. 1165, (Attachment 2)¹⁷ which established Reservations for the Pillager and Winnibigoshish Bands on Cass Lake, Leech Lake and Lake Winnibigoshish. The three Reservations were established by the Treaty of February 22, 1855 (10 Stat. 65 were augmented and connected by Treaties with the Mississippi Bands of Chippewa dated May 7, 1864 (13 Stat. 693) (Attachment 3) and May 19, 1867 (16

¹⁷ References to attachments refer to attachments to Band's TAS Application.

Stat.719) (Attachment 4) and were further enlarged by Executive Orders dated October 29, 1873, November 4, 1873, and May 26, 1874 (Attachments 5-7).

The Band is a Federally recognized Tribe as well as a member of the Minnesota Chippewa Tribe (Tribe), also a federally recognized Indian Tribe governed by a Constitution and Bylaws adopted by the Minnesota Chippewa Tribe pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. §§ 461, *et. seq.*, which were revised in 1963, and subsequently approved by the Assistant Secretary of the Interior in 1964 (Attachment 8). *See* 81 Fed. Reg. 26826, 26828 (May 4, 2016).

Article I, Section 3 of the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, approved by the Assistant Secretary of the Interior on March 3, 1964, empowers the Tribe "to conserve and develop Tribal resources and to promote the conservation and development of individual Indian trust property, to promote the general welfare of the members of the Tribe; (and) to preserve and maintain justice for its members."

Article III, Section 2 of the Band's Constitution provides for the establishment of the Reservation Business Committee ("Tribal Council") of the Leech Lake Band to serve as the governing body of the Leech Lake Reservation. The Business Committee consists of a Chairman, three district representatives, a treasurer, and a secretary who collectively determine and administer the Band's government. The authority of the Business Committee extends to the boundaries of the Leech Lake Reservation and the Territories ceded by the Treaties of 1837 and 1854 where hunting, fishing, ricing and gathering rights were reserved by Leech Lake Band and its members.

2. The Band's Regulatory Authority Is Derived From Its Property Rights.

The Leech Lake Reservation is located in north-central Minnesota and encompasses 869,320 acres within four counties (Beltrami, Cass, Hubbard, and Itasca). Within the Reservation's land base there are various landholders. The Chippewa National Forest comprises 33% of the land within the Reservation, and overlaps most of the Band's lands. The State of Minnesota manages approximately 17% of the Reservation area, the four counties another 5%, and the private sector approximately 15%. The federal government holds 6% of the land base in trust for the Leech Lake Band.

It is important to note that the Band retains civil regulatory jurisdiction over all lands within the exterior boundaries of the Leech Lake reservation. Indian Lands within the Reservation are divided into Tribal, Band, allotted lands and land owned by the Band in fee simple. Tribal lands are those trust lands owned by the Minnesota Chippewa Tribe; Band lands are trust lands owned by the Leech Lake Band; and allotted lands are those lands held in trust for individual Indians and their heirs.

The Band's authority to regulate activities related to the water resources within the Reservation environment is derived from two principal sources. One source is the Band's proprietary rights; the Band has all rights and powers of a property owner with respect to Tribal

property. A more fundamental and pervasive source, however, is the Band's inherent sovereignty, which includes the power to regulate the use of property on the Reservation.¹⁸

As a general principle, tribes exercise full sovereign authority over their members and "Indian" lands, which are those lands owned by or held in trust for the tribe or its members. Conversely, states have no authority within Indian country over Indian tribes, their members, or lands held by or for the tribes or their members, unless Congress has expressly granted that power to the states. Those principles change, however, when it comes to "fee lands": those lands within Indian reservations but owned in fee by nonmembers of the tribe. As to fee lands within Indian country, tribes retain their inherent governmental authority only under certain circumstances. Therefore, like any property owner, the Band may control activities on lands it owns in fee or which are held by the federal government in trust for the benefit of the Band. *See Morris v. Hitchcock*, 194 U.S. 384 (1904); *Barta v. Oglala Sioux Tribe*, 259 F.2d 553, 556 (8th Cir. 1958). The Band's holdings on the Reservation are, consequently, a significant source of regulatory power.

As a land owner, the Band may condition entry upon its lands on compliance with Tribal regulations. To the extent that the Band may choose to permit construction activities, forest practices, or other pollution-causing conduct to take place upon such lands, the Band may, by contract or otherwise, require compliance with Tribal pollution-control regulations. Thus, if development contracts are entered into, they may include mechanisms to implement pollution-control regulations. For example, the use of best management practices, submission to Tribal inspection and emergency measures, and agreement to pay fines for noncompliance can be made conditions of Tribal leases or other development agreements.

3. The Band's Regulatory Powers Are Derived From Tribal Sovereignty

In addition to its proprietary rights, the Band derives regulatory powers from its sovereignty. "Perhaps the most basic principle of all Indian law" is that the powers of Indian tribes are the "inherent powers of a limited sovereignty which has never been extinguished." Powers of Indian Tribes, I Opinions of the Solicitor at 447. *See Washington v. Confederated Tribes of the Colville Reservation*, 447 U.S. 134, 152-54 (1980); *United States v. Wheeler*, 435 U.S. 313, 322-23 (1978); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 560-61 (1832). A Tribe's inherent sovereign powers extend to both its members and its territory.

One of the most basic incidents of sovereignty is a government's power to regulate land use in order to protect the health, safety and welfare of the community. *See, e.g., Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). In his 1934 opinion, the Solicitor asserted that:

[O]ver all the lands of the reservation, whether owned by the tribe, by members thereof, or by outsiders, the tribe has the sovereign power of determining the

¹⁸ *See Powers of Indian Tribes*, 55 I.D. 14 (1934), reprinted in I Opinions of the Solicitor 445, 467; Dept. of the Interior, *Federal Indian Law* 440 (1958).

conditions upon which persons shall be permitted to enter its domain, reside therein, and to do business, provided only such determination is consistent with applicable federal laws and does not infringe any vested rights of persons now occupying reservation land under lawful authority.

Powers of Indians Tribes, I Opinions of the Solicitor at 467. The Solicitor concluded that:

In its capacity as a sovereign, and in the exercise of local self-government, [a tribe] may exercise powers similar to those exercised by any State or nation in regulating the use or disposition of private property, save insofar as it is restricted by specific statutes of Congress.

Id. at 471.

Consequently, Tribes retain all aspects of their sovereignty except those withdrawn by Congress or inconsistent with overriding federal interests. *Washington v. Confederated Tribes of Colville Reservation*, 447 U.S. at 153-54. Even where Congress withdraws some aspect of Tribal sovereignty, it may nevertheless expressly delegate power to Tribes to administer a governmental role that Congress had previously withdrawn. As the Court of Appeals for the Ninth Circuit held in *Nance v. EPA*:

Just as a tribe has the authority to prevent the entrance of non-members onto the reservation, . . . a tribe may exercise control, in conjunction with the EPA, over the entrance of pollutants onto the reservation.

Nance v. EPA, 645 F.2d 701, 715 (1981), *cert. denied sub nom., Crow Tribe of Indians v. EPA*, 454 U.S. 1081 (1981).

As demonstrated below, Tribal regulation of conduct creating environmental hazards, *whether* by Tribal members or by non-members, is consistent with federal policy. In addition, Congress has expressly delegated to Tribes the power to regulate the quality reservation environments.

4. The Band Has Consistently Exercised Its Sovereign Powers to Govern and Administer Programs on the Reservation.

The Band has adopted and administered numerous environmental ordinances as Tribal law, and implements or assists in implementation of significant federal environmental statutes including the Clean Water Act. The Band has enacted and implements various ordinances to preserve Reservation resources and the environment, including the Leech Lake Conservation Code, the Tribal Hazardous Waste Ordinance,¹⁹ Interim Water Quality Standards,²⁰ Pesticide Control

¹⁹ Attachment 22.

²⁰ Attachment 23.

Ordinance,²¹ Regulation of Surface Use of a Portion of the Bowstring River,²² Solid Waste Transportation, Disposal and Recycling Ordinance,²³ Protection and Preservation of Wild Rice Beds,²⁴ a bough harvest ordinance,²⁵ and the Open Burning, Burn Barrel and Fire Prevention Ordinance.²⁶ The Band has established numerous programs within its tribal government to implement these Tribal laws.

The Leech Lake Water Resources Program of the Band's Division of Resource Management (DRM) is responsible for ensuring preservation of water resources for future use and retaining water quality and quantity sufficient to support continued practice of traditional cultural and spiritual practices. The Water Resources Program is funded through grants authorized by Section 106 of the CWA, and its activities include, among others: (a) review and comment on permit applications pertaining to land use plan permits, and proposed activities regarding wetlands and shorelands to minimize potential impacts to aquatic resources from proposed projects; (b) environmental outreach and education; (c) water quality planning, assessments, and studies, including land and stream surveys regarding water quality; (d) review of Tribally-permitted Individual Septic Treatment Systems (ISTS) applications and performance of inspections; (e) wild rice management; (f) source water, surface water, ground water and wetland protection; (g) development of watershed-based plans.

The Leech Lake Air Program was established in 2001 and has conducted numerous air quality projects including: diesel retrofitting and emissions reduction; alternative energies - passive solar and a wind feasibility study; radon testing and mitigation; implementation of a burn barrel ordinance and recycling; indoor air quality assessments; and air site monitoring for PM 2.5, dioxins, toxins, and wet deposition mercury, and meteorological data collection.

The Department of Conservation Enforcement issues certain permits, enforces Tribal and state fish and game laws, and regulates logging, wild rice harvesting, and gathering of plant resources.

The Leech Lake Underground Storage Tank (UST) Program offers compliance assistance and inspections to facilities that are federally regulated by EPA. The UST Compliance Coordinator meets with each UST facility owner at least annually to work with owners/operators to ensure compliance with EPA guidelines, and assists in UST inspections. The Program intends to receive Tribal UST Inspector Credentials, which will enable it to conduct inspections on the Reservation on behalf of EPA.

DRM is also charged with implementing the Band's Pesticide Control Ordinance. In order to protect animals, aquatic life, the environment and human health, safety and welfare, and

²¹ Attachment 18.

²² Attachment 24.

²³ Attachment 25.

²⁴ Attachment 26.

²⁵ Attachment 27.

²⁶ Attachment 28.

minimize pesticide hazards, the Pesticide Ordinance regulates production, sale, purchase, transportation, handling, storage, application, release, disposal and other use of pesticides by any person "on any land, water or air" in the Reservation. Ord. 96-05 at § 3 (Attachment 18).

The Band also regulates solid waste transportation, disposal and recycling. The Band enacted its Solid Waste Transportation, Disposal and Recycling Ordinance to address inefficient, inappropriate, and unsanitary disposal of solid waste that can seriously adversely impact Reservation land, water, and natural resources. Ord. 95-01, § 1 (Attachment 25).

In addition to environmental programs, the Band provides a wide range of health programs through its Health Division, including community health clinics, drug treatment and recovery services, occupational therapy, and a behavioral health program. The Health Division offers other services such as nutritional assistance, home health care assistance and transportation to medical appointments. The Band's Education Division administers educational programs at all levels: (1) Leech Lake Tribal College, which currently has approximately 60 faculty, staff, and administrators, and 350 students, (2) Bug-O-Nay-Ge-Shig School, which serves elementary through high school age children on the Reservation, (3) Leech Lake Head Start Program, which serves up to 245 children ages three to five; and (4) Leech Lake Early Head Start, which serves up to 60 children from ages six weeks to three years.

The Band also operates the Tribal Court, which has both trial and appellate courts.

Finally, the Band also operates several economic ventures that generate revenue and employ Band members, including three casinos, two gas stations, and one office supply store. The Band also sells wild rice harvested on the Reservation. In undertaking these governmental functions and economic activities, the Band continually exercises its sovereign power, providing protection of the resources natural resources and services and jobs for the Band's members.

B. The Band Can Exercise Civil Jurisdiction Over Members and Non-Members to Protect the Reservation Environment.

1. The Band Has Authority to Regulate Pollution-Causing Activities of Its Members.

There has been no implicit divestiture of Tribal sovereignty with respect to the Band's own members. Consequently, Tribal regulatory authority over member conduct that causes pollution is unquestioned. In *United States v. Wheeler*, 435 U.S. 313, 323 (1978), the Court characterized Indian Tribes as "unique aggregations possessing attributes of sovereignty over both their members and their territory." Only with respect to non-members have courts indicated that there has been some diminution of Tribal powers:

The areas in which such implicit divestiture of sovereignty has been held to have occurred are those involving the relations between an Indian tribe and non-members of the tribe. . . .

[T]he powers of self-government, including the power to prescribe and enforce criminal laws, are of a different type. They involve only internal relations among members of a tribe. Thus, they are not such powers as would necessarily be lost by virtue of a tribe's dependent status.

Id.; see also *Montana v. United States*, 450 U.S. 544, 563-64 (1981); *United States v. Mazurie*, 419 U.S. 544, 556-58 (1975).

Regulation of Tribal member activities causing or contributing to pollution involves internal relations among members and is thus an aspect of self-government. It is a retained sovereign power. Consequently, the Band's authority to regulate such activities is well established in law.

2. The Band Has Civil Jurisdiction to Regulate the Activities Of Non-Members In Certain Circumstances.

Indian Tribes retain the inherent sovereign power to exercise a broad range of civil jurisdiction over non-members, including non-Indians. *Montana v. United States*, 450 U.S. at 565-66; *Montana v. EPA*, 137 F.3d 1136, 1141 (9th Cir. 1998), *cert. denied*, 525 U.S. 921, 119 S.Ct. 275, (Oct. 5, 1998). Any doubt concerning the exercise of Tribal civil jurisdiction, even over non-members, in order to protect the reservation environment was put to rest in *Montana*:

To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate, through taxation, licensing or other means, the activities of non-members who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases or other arrangements A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the tribe.

*Id.*²⁷

²⁷ In *Montana*, the Court concluded that the Crow Tribe did not retain power to regulate non-member hunting and fishing on fee lands. This was attributable to certain deficiencies unique to the Crow case. The Tribe established no relationship between hunting and fishing on fee lands and the interests of the Tribe or its members. Non-member hunters and fishers do not enter into agreements for dealings with the Crow Tribe. Nor did the facts of the case suggest that such hunting and fishing threatened the Tribe's economic or political security. Moreover, the complaint did not allege that non-Indian hunting and fishing on fee lands imperils the subsistence or welfare of the Tribe. 450 U.S. at 566. See *New Mexico v. Mescalero Apache Tribe*, 103 S.Ct. 2378, 2384 n.12 (1983) (emphasizing the limited nature of the holding in *Montana*). Activities causing water pollution yield the kind of direct impact that were lacking in *Montana*; accordingly, as we discuss in the text, the federal courts have had no difficulty in holding that tribes retain inherent sovereign power to regulate such activities.

The Ninth Circuit Court of Appeals held that Tribes have inherent Tribal sovereignty to exercise jurisdiction over non-consenting non-members within the exterior boundaries of the reservation when regulating to secure the health and safety of the Tribe. *Montana v. EPA*, 137 F.3d at 1140-41. *Montana v. EPA* involved the authority of the Salish and Kootenai Tribes to regulate water quality under the Clean Water Act pursuant to an EPA approval program. The state of Montana challenged EPA's grant of TAS status to the tribes, arguing that the delegated authority permitted the Tribes to exercise a greater level of authority over non-members than the scope of such authority recognized in *Montana v. United States*. See *id.* at 1138. The Ninth Circuit disagreed with the state and proclaimed that because waters and water rights are integral to the health and welfare of the Tribes, the Tribes retained inherent sovereignty over the conduct of non-members that could pose a threat to such waters. See *id.* at 1141.

Tribal civil jurisdiction over non-members has been recognized in a wide variety of contexts. Recent decisions uphold the power of Tribes to adjudicate the contractual rights of non-Indians, to impose taxes on the activities of non-Indians, to apply Tribal health and safety codes to non-Indian buildings, to zone non-Indian lands, and to regulate the exercise by non-Indians of self-help remedies. See, e.g., *Williams v. Lee*, 358 U.S. 217 (1959) (adjudication of contract disputes); *Merrion v. Jicarilla Apache Tribe*, 102 S.Ct. 894 (1982) (imposition of severance tax); *Washington v. Confederated Tribes of Colville Reservation*, 447 U.S. 134 (1980) (imposition of sales tax); *Snow v. Quinault Indian Nation*, 709 F.2d 1319 (9th Cir. 1983) (imposition of business activity tax); *Cardin v. De La Cruz*, 671 F.2d 363 (9th Cir. 1982), *cert. denied*, 103 S.Ct. 293 (application of tribal building code); *Knight v. Shoshone and Arapaho Tribes*, 670 F.2d 900 (10th Cir. 1982) (application of tribal zoning ordinance); *Babbitt Ford, Inc. v. Navajo Indian Tribe*, 710 F.2d 587 (9th Cir. 1983) (regulation of repossession of personal property); *Dolgenercorp, Inc. v. Mississippi Band of Choctaw Indians*, 746 F.3d 167 (5th Cir. 2014), *aff'd sub nom Dollar General Corp. v. Mississippi Band of Choctaw Indians*, ___ U.S. ___, 136 S.Ct. 2159, 195 L. Ed.2d 637 (2016) (per curiam) (adjudication of non-member business that entered consensual business relationship to operate store on reservation).

Protection of the Reservation's environment and trust resources is crucial for the health and welfare of the Leech Lake Band members and is extended to the Band's non-Indian neighbors. As it stands, the Reservation's waters are unprotected by water quality standards applicable under the Clean Water Act; state water quality standards have no effect within the Reservation and there are no federal water quality standards to fill the regulatory gap.²⁸ Maintaining the environment and trust resources, which support the traditional lifestyles of its members, is a high priority of the Band. Degradation of these resources would imperil the "political integrity, the economic security, [and] the health and welfare" of the Band for the reasons set forth herein and in the Band's Clean Water Act TAS Application. Accordingly, the Band has jurisdiction to implement Clean Water Act water quality standards.

²⁸ See 81 Fed. Reg. 66900, 66902 (Sept. 29, 2016) (describing how state CWA water quality standards do not apply within Reservations and how there is a "gap in water quality protection under the CWA for waters on Indian reservations").

III. Water is Vital to the Cultural, Spiritual and Economic Survival of the Leech Lake Band.

The following section provides a description of the water resources within the exterior boundaries of the Leech Lake Reservation and highlights the Band's cultural, spiritual and economic ties to those resources.

A. Water Resources of The Leech Lake Reservation.

The Leech Lake Indian Reservation, or Gaa-zagaskwaajimekaag in the Ojibwe language, is located in the north-central Minnesota counties of Beltrami, Cass, Hubbard, and Itasca. It is the land base for the Leech Lake Band of Ojibwe. As of 2016, the Reservation population was 10,848, making it the largest Indian reservation in the state by total population.²⁹ And as of 2014, the reservation population was 10,666, again making it the largest Indian reservation in the state by number of residents.³⁰ Among Reservation residents, 4,828 (44.51%) self-identified as being American Indian in 2016.³¹ As of 2016, the Band's enrolled membership totaled 9,465.³² Eleven communities make up the villages of the Leech Lake Indian Reservation, with two additional communities with substantial number of Leech Lake Band members.

The Reservation is the second-largest in Minnesota (to the White Earth Indian Reservation) in terms of land area at 2,518.806 km² (972.517 square miles), although it would be the largest if water area were also considered (total surface area, including water, is 3,392.65 km² (1,309.909 square miles)). Approximately one-fourth of its territory comprises lakes, the largest of which are Leech Lake, Lake Winnibigoshish, and Cass Lake. Approximately 837.841 km² (337.392 sq. miles) of the Leech Lake Reservation is covered by water, including hundreds of lakes, as well as 162,591 acres of wetlands, forest ponds, ephemeral pools, and 260 miles of rivers and streams. The bulk of the Reservation's waters are drained by the headwaters of the Mississippi River, eventually emptying into the Gulf of Mexico. The northeastern part, however, lies east of the Laurentian Divide and drains northward into Canada and Hudson Bay.

Included in the Band's water resources is groundwater, which is used to provide drinking water for the majority of the Indian and non-Indian people living and working on the Reservation (Reservation Population.) Most residential areas are connected to groundwater wells for their potable water. Residences either have their own well, or if they live in a larger municipal area, they have access to municipal drinking water supply systems. Cass Lake and other municipal areas supply residents groundwater from wells located on the Reservation. Reservation groundwater is hydrologically connected to surface water, and discharges to streams, lakes, and

²⁹ Attachment 56.

³⁰ Attachment 29.

³¹ See Attachment 56. Among Reservation residents, 5,124 (48.04%) self-identified as being American Indian in 2014. Attachment 29.

³² See Attachment 56. As of 2013, the Band's enrolled membership totaled 9,378. Attachment 29.

wetlands.³³ Major groundwater discharge areas include the Mississippi River, Leech Lake River, Boy River, Cass Lake, Leech Lake, and Lake Winnibigoshish.

The Reservation is located in the Central Pine-Hardwoods Forest ecoregion, a zone of transition between boreal (conifer) forest and deciduous (hardwood) forest. The forests are mostly second growth. The Reservation lands also reflect characteristics of the nearby tall-grass prairie region, resulting in a diverse area with a variety of plants, wildlife, and habitat types, including a number of species that are rare, endangered, or threatened. The area provides timber and other plant resources, an abundance of habitat for game and non-game wildlife species, and warm water and cool water fishing.

B. The Water Resources of the Leech Lake Reservation Provide Subsistence as well as Cultural and Spiritual Benefits to the Band.

1. Wild Rice, a cultural and economic resource, requires good water quality and sufficient water quantity.

Wild rice, a native grass that is unique to Michigan, Minnesota, Wisconsin and the lower portions of Ontario, Canada, is abundant on the Leech Lake Reservation. The Reservation has some 40 wild rice producing lakes, making it the largest natural wild rice production area of any of Minnesota's reservations. In Minnesota there are approximately 13,000 acres of natural wild rice stands, many of which are on the Leech Lake Reservation and are among the largest natural stands in the world.

Wild rice plays an integral cultural and spiritual role in Anishinabe (Ojibwe) culture, and in particular provides the Band identity and social cohesion.³⁴ It is a key component of the Ojibwe Migration Story, as the Band's predecessors came to settle in the Minnesota lakes region where they found "the food that grows on water," believing the wild rice to be a sacred gift from Creator. For hundreds of years, wild rice has been a dietary staple for Band members, and non-members, and plays a prominent role in traditional ceremonies. "The very existence of the Ojibwe people depends on the vitality of their environment, their resource use and their culture which is intricately connected to natural wild rice."³⁵

Wild rice is central to the cultural and economic traditions of the Leech Lake Band of Ojibwe, as well as to the people of northern Minnesota. The right to harvest and use wild rice was reserved and guaranteed in treaties with the federal government and under a settlement agreement with the state of Minnesota. Minn. Stat. 97A.151 (2015) (1986 c. 386, art. 1, sec. 29; 1991 c. 259, sec. 23). Wild rice is also a necessary component of the ecological systems of northern Minnesota

³³ Richard J. Lindgren, Hydrogeology and Ground-Water Quality of Glacial-Drift Aquifers, Leech Lake Reservation, North-Central Minnesota (1996) at p.33.

³⁴ See Vennum, Thomas, Jr. Wild Rice and the Ojibway People. Minnesota Historical Society Press. St. Paul, 1988, Vennum, pp. 74, 195-196, 285-286.

³⁵ Attachment 30, Tribal Statement Regarding MNDNR Wild Rice Study Submitted to the State Legislature February 15, 2008, at pp.111-12.

generally, and of the Leech Lake Reservation specifically. Wild rice is a food source for waterfowl, birds, and other animals which constitute the aquatic natural resources of the Tribe. It protects shorelines and provides habitat for fish and is integral to the ecological balance of the lakes and wetlands where it is found.

The economic importance of the wild rice crop is difficult to determine, due to subsistence use, but is a basis of both the tribal and non-tribal economies in the area. The Leech Lake Division of Resource Management (DRM) purchases wild rice gathered by Band members each year, which provides an important source of income to rice harvesters.³⁶ In 2013, the DRM purchased \$259,642.50 worth of wild rice, which was equivalent to being paid \$23 per hour. In 2014, DRM bought \$92,118 worth of wild rice, which equated to \$21 per hour for rice harvesters. In 2015, DRM spent \$238,890 buying wild rice, which provided harvesters with income equivalent to a \$19 per hour job. In 2016, DRM purchased \$183,352 worth of wild rice, which was the equivalent of paying harvesters \$26.60 per hour. The Band sells a portion of the wild rice purchased by DRM each year. Sales totaled \$24,000 in 2013, \$43,756 in 2014, \$56,872.00 in 2015, and \$47,857.50 in 2016. Wild rice production measured by the MCT Research Lab on several Tribal rice lakes found average production to range from 200 to 300 pounds per acre.³⁷

Thus, the health of the wild rice stands in Reservation's water bodies is of grave concern to Tribal members, as well as to resource managers and researchers. The Band has invested considerable time and expense to continue sampling and monitoring of wild rice ecosystems to assure that Leech Lake wild rice quality and productivity does not decline, and is appropriately managed to preserve the cultural, economic, and environmental foundation it has for centuries.

Wild rice requires good water quality and appropriate water quantity. It is dependent on circulation of mineral-rich water and does not tolerate chemical pollutants or changes in water quality.³⁸ For example, rice plants appear to grow best within an alkalinity range of 5 to 250 parts per million (ppm), but the presence of sulfates in water may have an adverse impact on growth. Studies show that wild rice has limited growth in waters with sulfate levels greater than 10 ppm and fails to grow if the sulfate level is 50 ppm or greater.³⁹ Sulfates, copper, stream flow, pH levels and nutrients can all adversely impact the wild rice plants. Arsenic, lead and other heavy metals can accumulate in the rice, having implications for human health.⁴⁰ Excessive dissolved nutrients cause attached algae to overproduce on the growing rice stalks, which weights down and potentially drowns the stalk.⁴¹

In addition to water quality, water quantity is necessary for healthy rice stands. To optimize rice production, water levels need to be managed to prevent drowning and also prevent drought.

³⁶ See Attachment 31, Leech Lake Division of Resource Management Wild Rice Reports.

³⁷ Attachment 32, Minnesota Chippewa Tribe Water Research Lab, Research Report No. 47, (1989).

³⁸ See Vennum, *supra*, at 14.

³⁹ Attachment 33, Moyle, John, *Wild Rice in Minnesota*, 8 J. Wildlife Mgmt. 177, 178 (Jul. 1944).

⁴⁰ Attachment 34, Bennett et al., *Heavy Metals in Wild Rice from Northern Wisconsin* (2000).

⁴¹ Attachment 35, Minnesota Chippewa Tribe Water Research Lab, Research Report No. 28, (1987).

Without water to support stalks they will fall into the shallow or muddy surroundings, and the harvest will be lost.

2. The Water Resources of the Reservation Support Subsistence and Commercial Fishing and Hunting and Traditional Plant Gathering.

The waters of the Leech Lake Reservation contain 50 species of fish, including whitefish, walleye, northern pike, largemouth bass, and panfish. These fish are harvested by Band members for subsistence purposes. In addition, whitefish, which is generally only found in some of the larger deeper lakes, plays a prominent role in the Band's Migration Story and is held in high regard by Band members.

The Conservation Code of the Leech Lake Band allows band members to harvest fish through subsistence netting or by other means of harvest pursuant to federal treaty.⁴² The Code provides that Leech Lake enrolled members alone may take game fish by netting for personal family use and may not sell it. The Leech Lake DRM issues fishing licenses to member and non-member residents and monitors the harvest of fish by Band members through subsistence netting and commercial harvest of rough fish. Hook and line sport fishing, open to the general population, also occurs on the Reservation, and represents the cornerstone of the Band's recreation-based economy.

The Band's Fisheries Program has run the Winnibigoshish ("Winnie") Ponds Fish and Wildlife Management Area. It was originally constructed in the 1950s by the Minnesota Department of Natural Resources to rear walleye fingerlings; however, the large ponds proved to be difficult to manage and operations ceased in the 1970s. Through legislation passed by the State of Minnesota, the Winnie Ponds Area reverted to the Band in the 1990s. After years of planning and construction, the Band rehabilitated and modernized the rearing ponds that had sat idle for twenty years. The Winnie Ponds Area was redeveloped to include 10 acres of fish rearing ponds and 26 acres of waterfowl rearing ponds. The remainder of the area provides wildlife habitat.

The Band has completed the improvements at the Winnie Ponds Area, with a total investment of approximately \$750,000 dollars. Historically, fish reared in the Winnie Ponds were released into Reservation waters for the benefit of Band members and non-members alike. The fish were hatched and reared in water drawn from Lake Winnibigoshish. Any degradation of lake water quality, such as decreases in dissolved oxygen, which leads to eutrophication, or addition of pollutants to lake water, would detrimentally impact the fish-rearing operations. Unfortunately, the Tribe is currently unable to use the ponds for fish rearing due to the infestation of zebra mussels, but the ponds could be used again in the future if conditions improve. Nevertheless, the ponds continue to provide high quality wildlife habitat for many species. Thus, clean water in

⁴² See *Minnesota, et al., v. Mille Lacs Band of Chippewa Indians et al.*, 526 U.S. 172 (1999) (Held that the Chippewa retained certain hunting, fishing, and gathering rights on the ceded land.)

Lake Winnibigoshish and its adjacent wetlands is essential to the Band's fishery operations and to area wildlife.

The Band also operates a successful fish hatchery program. The hatchery has operated for more than three decades, and has reared millions of lake whitefish fingerlings, walleye fry, and walleye fingerlings, in addition to smaller numbers of other fish species. Water for the fish hatchery is drawn from surface water sources and two groundwater wells, so any degradation in surface water quality would harm hatchery operations that rely on clean, high quality surface waters to operate. Over the years, the Band has invested approximately \$1.4 million dollars on construction and rehabilitation of the hatchery, as well as renovation of the Lake Winnie fish ponds. The hatchery currently operates on an annual budget of approximately \$100,000, which funds are received from the Tribal Council and the Bureau of Indian Affairs. Fish reared by the hatchery provide important resources for harvesting by Tribal members and non-Tribal members alike. A prior estimate of the economic value of fishing on Reservation waters, based on U.S. Forest Service angler data, was calculated at \$8.1 million. In addition, commercial fishing and processing generates substantial money for the Band and local economy.

The riparian areas of the waters of the Reservation are important habitat for the waterfowl and animals that are hunted by Band members and make up a portion of their subsistence diet. Those areas also support important plants, first and foremost of which is manomin (wild rice), as well as numerous others like cat tails, which are gathered by Band members for cultural purposes.

3. Preservation of the Reservation's water resources is essential to the cultural and spiritual identity of the Band and its members.

The culture of the Leech Lake Band of Ojibwe is interconnected in fundamental ways with the waters of the Reservation. For instance, water, and the water-dependent resources of wild rice and fish, play a primary role in the creation story of the Anishinaabe people. Water ceremonies are held regularly; band members also participate in sweat lodge ceremonies. But unlike the discrete and seasonal recreational interests of tourists and summer residents, these links are not separable—they are all related elements of the Leech Lake way of life. As the federal courts have found, "[t]he significance of fishing for the Chippewa is religious and cultural as well as economic. Traditional religious rituals and festivals are an important part of Chippewa fishing activities." *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Stop Treaty Abuse-Wisconsin*, 781 F. Supp. 1385, 1389 (W.D. Wis. 1992); *accord Mille Lacs Band of Lake Superior Chippewa Indians v. Minnesota*, 861 F. Supp. 784, 791 (D. Minn. 1994) ("[t]he Chippewa also used fish and game in spiritual ceremonies. For example, fresh fish are still necessary for funerals and burials"); *Reich v. Great Lakes Indian Fish and Wildlife Commission*, 4 F.3d 490, 492 (7th Cir. 1993) (Posner, J.) (Chippewas retained treaty rights for "traditional Indian activities (which incidentally have a religious as well as economic significance for Indians), such as fishing for walleye pike and muskellunge, hunting deer and moose, gathering wild rice and the sap of maple trees..."). Granting the Band TAS status would recognize the Band's inherent authority to protect these vital, culturally significant interests by regulating water quality on its own Reservation.

By regulating water quality standards, the Band will be able to monitor and regulate water pollutants which enter or may enter the reservation environment. The Band may also implement ordinances, comment on rules and permits, and assist with the protection of human health and environmental health for not only all the Band members who utilize and rely on the Reservations' resources, but also for the nearby residents and recreational users of the Reservation environment.

IV. Activities by non-Indians on fee lands have serious and substantial impacts on the political integrity, economic security, and health and welfare of the Band.

As the EPA explained when promulgating its TAS regulations, the mobile nature of water pollutants makes it impracticable to try to separate water quality impairment of tribal waters from impairment of non-Indian waters.⁴³ Thus, the activities of non-Indians on fee lands pose serious threats to the Reservation's water resources. This in turn poses a serious threat to the Band's political integrity, economic security, and health and welfare, all of which are related. As EPA recognizes that "water quality management serves the purpose of protecting public health and safety, which is a core governmental function, whose exercise is critical to self-government,"⁴⁴ the Band's political integrity is harmed if it is unable to manage water quality of Reservation waters.

As with most environmental issues, damage to the Band's water resources is already in progress. The following sections identify known threats to the Reservation's water resources which have or may result in serious and substantial consequences for the political and economic security of the Band and the health and welfare of the Band members and others who reside within the Reservation.

A. St. Regis Superfund Site Presents a Substantial and Ongoing Threat to the Integrity of the Band's Water Resources.

1. Overview of St. Regis Site History.

The St Regis Superfund Site (Site) within the City of Cass Lake, Minnesota is located entirely within the exterior boundaries of the Reservation.⁴⁵ The Site poses a substantial and ongoing threat to the Reservation's water resources. The St. Regis Paper Co. operated the property as a wood treating operation from approximately 1958 until 1985.⁴⁶ The former operations area is within 800 feet of Cass Lake and Pike Bay. Lumber was pressure-treated with creosote, pentachlorophenol (PCP), and copper chromium arsenate at the Site. As a result of site operations, these contaminants have come to be located in the groundwater, surface water and sediment in and around the St. Regis property, Fox Creek, Cass Lake, and Pike Bay.

⁴³ Amendments, 56 Fed. Reg. 64,876, 64,878 (Dec. 12, 1991).

⁴⁴ Amendments, 56 Fed. Reg. 64,876, 64,879 (Dec. 12, 1991).

⁴⁵ A large portion of the former operations area was deeded to the City of Cass Lake. Other portions of the St. Regis Site are located on Burlington Northern and Santa Fe Railway (BNSF) property and Cass Forest Products property.

⁴⁶ U.S. EPA's Findings of Fact, Administrative Settlement Agreement and Order on Consent for Feasibility Study, USEPA Region 5, CERCLA Docket No. V-W-08-C-912, September 11, 2008.

On September 21, 1984, U.S. EPA placed the Site on the Superfund National Priorities List pursuant to CERCLA Section 105, 42 U.S.C. § 9605 due to contamination of the soil and groundwater with dioxins and furans, pentachlorophenol, and polycyclic aromatic hydrocarbons. (Fed Reg. 37070). In 1985, Champion acquired the property through a merger with the St. Regis Paper Company and closed Site operations. As a result of the acquisition and subsequent merger with Champion International Corporation in 2000, International Paper (IP) is the current owner of the former Champion portion of the Site.⁴⁷

Between 1957 and 1980, the wastewater generated from the wood treating operations was discharged to a number of wastewater disposal ponds on the Site. Between 1957 and 1960, wastewater and sludges were hauled to a pit within the former city dump of the City of Cass Lake and burned. The disposal from the ponds occurred almost daily at an estimated rate of 500 gallons per day for a total of 547,500 gallons for those three years. And between 1960 and 1975, unknown quantities of sludge were hauled to the city dump pit where they were burned. The pit, containing the ash and unburned residue, was eventually covered.⁴⁸

Water from the wastewater treatment ponds was occasionally sprayed on grass directly south of the pond and in the southwest area of the Site. The pond was also dredged on one occasion and the dredged material was placed around the pond. After 1980, wastewater from the process waste either was evaporated in tanks, was disposed in a manhole located within the Chippewa National Forest that discharged to the City of Cass Lake sewage treatment facility, or was reused in the wood treating process. Sludge from the Wood Treatment Facility Area was disposed of on the eastern edge of the Site and in a pit located in the Cass Lake City Dump.⁴⁹

In 1986, the Minnesota Pollution Control Agency (MPCA) (the responsible government unit for the site until 1995) signed two Minnesota Enforcement Decision Documents which outlined the response actions for each cleanup area at the Site. These areas include: (1) the treatment facility, (2) the Cass Lake City Dump Pit, (3) a contaminated soil vault, and (4) the extension of the Cass Lake municipal water system.⁵⁰ In 1987, Champion constructed the groundwater extraction system at the treatment facility area and the city dump area, which extracts the contaminated groundwater, treats it onsite, and then discharges it into a channel between Pike Bay and Cass Lake. Ground water is pumped at an average rate of 170,000 gallons per day (and a maximum rate of 288,000 gallons per day) before being discharged into surface waters. Champion also constructed an onsite containment vault at the Site which contains 37,500 cubic yards of contaminated soil and sludge from the wastewater lagoons and 4,500 cubic yards of contaminated soil and sludge from the city dump pit. The current Site owner, International Paper

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

Company, has been conducting long-term monitoring of the ground water to determine the effectiveness of the treatment system and monitoring and maintaining the soil vault.⁵¹

Five Five-Year Reviews have been conducted to date, including in 1995 by Minnesota Pollution Control Agency (MPCA) and in 2000, 2005, 2010, and 2015 by U.S. EPA. It was concluded that additional soil sampling and the performance of a Risk Assessment were necessary to determine the adequacy and continuing effectiveness of the Site remedy.

A field investigation and on- and off-Site sampling of the soil, sediment, groundwater, fish tissue, and surface water conducted by the U.S. EPA in 2001 indicated preliminary levels of dioxin in soil on Site at levels above the Superfund Removal Action Levels, thus requiring additional response actions.⁵² In 2003, EPA ordered International Paper to conduct additional confirmatory sampling to further determine the extent of dioxin contamination in on-Site soil.⁵³ The results of the 2003 sampling confirmed that Site contaminants in some areas were above human health and ecological screening levels. Specifically, some areas of the former operations area exceeded the U.S. EPA residential level and one area exceeded the low end of the commercial/industrial policy level range for dioxin in soil.⁵⁴

In 2004, EPA ordered IP to conduct a human health and ecological risk assessment.⁵⁵ The company sampled for contaminated dust in residences as a part of the risk assessment. The results showed an increased risk to residents near the site. In response, IP agreed to clean up contaminated dust in nearby residences. This area is known as operable unit 7 (OU-7). In late 2005, U.S. EPA issued an Interim CERCLA Record of Decision for actions in and near the residential properties adjacent to the St. Regis former operations area.⁵⁶ U.S. EPA subsequently directed IP and BNSF⁵⁷ to undertake dioxin-contaminated soil removal actions in the former Site operations area,⁵⁸ which were conducted in late 2006.

⁵¹ Id.

⁵² Sample values of up to 7,160 ng/kg (TEQ) for dioxin were reported in the soil of the former operations area. Sample values of up to 23 mg/kg for pentachlorophenol were reported in the soil of the former southwest operations area. U.S. EPA's residential policy level for dioxin in soil is 1,000 ng/kg (TEQ), and the commercial/industrial level is 5,000 to 20,000 ng/kg (TEQ). The U.S. EPA ecological screening level value for pentachlorophenol is 7.6 mg/kg.

⁵³ U.S. EPA issued a Unilateral Administrative Order on July 24, 2003. EPA, Administrative Order, Docket No. V-W-03-C-748.

⁵⁴ U.S. EPA's Findings of Fact, Administrative Settlement Agreement and Order on Consent for Feasibility Study, USEPA Region 5, CERCLA Docket No. V-W-08-C-912, September 11, 2008.

⁵⁵ U.S. EPA, Unilateral Order for Human Health and Ecological Risk Assessment, Docket No. V-W-04-C-796, August 11, 2004.

⁵⁶ U.S. EPA, Unilateral Administrative Order for St. Regis Paper Company Site, Cass Lake, MN – Interim Remedial Action, Docket No. V-W-05-C-833, Dec. 2, 2005; *see also* U.S. EPA's Findings of Fact, Administrative Settlement Agreement and Order on Consent for Feasibility Study, USEPA Region 5, CERCLA Docket No. V-W-08-C-912, September 11, 2008.

⁵⁷ BNSF has owned and operated an active railway line on a portion of the Site.

⁵⁸ *See* U.S. EPA's Findings of Fact, Administrative Settlement Agreement and Order on Consent for Feasibility Study, USEPA Region 5, CERCLA Docket No. V-W-08-C-912, September 11, 2008.

In 2011, IP updated the Human Health and Ecology Risk Assessment and submitted a Feasibility Study that evaluated remedies to address contaminated soils at the site. EPA approved the Feasibility Study report in 2011 and issued a Proposed Plan outlining EPA's preferred remedial alternative. At the request of the Band and the Minnesota Pollution Control Agency, the EPA agreed to defer issuing a record of decision until additional soil sampling was conducted.

At the direction of the EPA, IP conducted additional sampling in 2012 and 2013 to improve the understanding of contaminant distribution at depth in the soils at the Site. In 2016, the EPA proposed a final cleanup plan for OU 7 based on the results of that study and the update risk assessment. EPA's proposed cleanup plan includes: (1) removal of contaminated soil from affected residential areas and replacement with clean soil; (2) management of most of the removed soil at an on-site facility; (3) disposal of a limited amount of heavily contaminated soil at an off-site facility; and, (4) monitoring of the contaminated soils stored on-site.

Currently, the groundwater and soil/sludge containment remedy is in operation at the Site. This includes the daily discharge of treated effluent from the Site groundwater pump and treat system that contains Site contaminants into Tribal surface waters. Independent testing of this effluent is impossible because the effluent discharge pipe is now buried in the sediments. Notably, a third contaminated groundwater plume was discovered at the Site in 2014, and previously known groundwater plumes have yet to be fully characterized or contained. This situation results in negative impacts to the Band's natural and trust resources that are part and parcel of its cultural identity.

The Band seeks TAS approval in order to establish EPA-approved water quality standards so that, *inter alia*, it can conduct a CWA antidegradation review. Under the CWA, the Band may adopt and secure approval of water quality standards for surface waters within the Reservation. Those standards comprise three elements: (1) a designated use or uses for a water body; (2) water quality criteria necessary to protect the use or uses; and (3) an antidegradation policy and implementation method to maintain and protect existing water quality. The Band has substantial, well-founded concerns that effluent from the St. Regis pump-and-treat system is deleteriously affecting Reservation waters and compromising existing uses of these water bodies. Establishing Tribal water quality standards is necessary for the Tribe to conduct an antidegradation review for Site effluent, and take any necessary and appropriate actions.

The Band also wishes to establish Tribal water quality standards to establish Tribal ARARs for water. CERCLA remedies incorporate all applicable or relevant and appropriate requirements ("ARARs"). The Band is concerned about the impacts of potential remedies at the St. Regis Site on the Reservation environment. Establishment of Tribal environmental standards like water quality standards will ensure that any future remedy adequately assesses impacts to and protectiveness of Reservation waters. TAS approval is a necessary prerequisite to accomplishing this goal.

2. The St. Regis Superfund NPL Site is a threat to the Human Health of the Reservation Population.

International Paper's 2007 risk assessment concluded that human health and ecological risks remain at the Site above acceptable levels. Specifically, the Risk Assessment after review by the U.S. EPA found that: (1) the future child resident scenario is above acceptable levels for noncancer risk on nearby residential properties; (2) the utility worker scenario with regard to ground water exposures is above acceptable levels for noncancer risk in a portion of the former operations area; and (3) with the addition of fish consumption to total risk for a residential land use scenario in the former operations area, the cumulative total Site cancer risks are above acceptable levels.

The risk assessment showed elevated levels of dioxins in Cass Lake/Pike Bay walleye and whitefish as compared to reference levels.⁵⁹ The EPA issued a "close-out" letter for the HHERA in August, 2008, conditionally approving the risk assessment subject to EPA's modifications and successful completion of additional ecological risk testing in the Fox Creek area. Additional work for the Human Health and Ecological Risk Assessment was completed in 2011 following sampling and testing of contaminants in the Fox Creek area. The 2011 risk assessment determined that there were unacceptable risks to terrestrial invertebrates from contaminated soil in the southwest corner of Operable Unit 2.⁶⁰ Establishment of Tribal water quality standards under a TAS program will help the Band address contaminants in Reservation waters that are ingested by local fish and, if consumed, pose a potential threat to public health.

3. The St. Regis Superfund NPL Site is a threat to Band's Water Resources.

The 2007 Risk Assessment demonstrated that soil near containment vault had high values of Site-related contaminants and was acutely toxic to soil invertebrates, and that city dump contaminants including arsenic, barium, chromium, cobalt, lead, manganese, nickel, silver, LPAH, and HPAH are potential contributors to reduced chironomid growth identified in samples taken from the Fox Creek area.

With regard to the groundwater within the area of the Site, the 2005 Five-Year Review concluded that additional information was needed to determine whether the groundwater remedial actions were protective of human health and the environment.⁶¹ New soil borings and monitoring wells were installed in mid-2006 and the borings revealed that a tarry liquid was present in the plume originating from the City Dump. This new data raised questions regarding how effectively lighter contaminants are being contained by the extraction well system of the City Dump. Additional investigation is ongoing.

⁵⁹ Human Health and Ecological Risk Assessment, St. Regis Paper Company Site (2007) at Appx. C-16 to C-17.

⁶⁰ See Fifth Five-Year Review Report for St. Regis Paper Company Superfund Site, U.S. EPA Region 5, July 2015, at p. A-8.

⁶¹ Third Five-Year Review Report for St. Regis Paper Company Superfund Site, U.S. EPA Region 5, September 2005.

EPA is also requiring an investigation by the PRPs near ground water wells owned and operated by the Leech Lake Band to determine the effectiveness of the till between the upper aquifer and the lower aquifer from which the Band takes drinking water. The Band's wells are located adjacent to the Site and are used for providing water to the fish hatchery. The Band does not provide potable water to residential or commercial entities on the reservation.

In response to these concerns, scientists at the Minnesota Department of Health reviewed available health information for the Cass Lake area. The review found that residents are experiencing an excess of cancers, but was not able to determine if that excess is linked to the Site or to other factors. The report recommended that risk assessment and remediation activities for the Site take into consideration the excess disease burden, the unique exposures of tribal lifestyles, and ongoing exposures from contaminated soil and dust.⁶²

The Site lies immediately adjacent to Pike Bay on Cass Lake — an area used by the Reservation Population and visitors for boating, fishing and other recreational activities. Wells in the vicinity supply water to the Band's fish hatchery and drinking water to the town of Cass Lake. Site contaminants have been detected in the Band's fish hatchery wells, in an area where wild rice grows and is harvested, and surrounding habitats known to be utilized by several endangered species, as well as fish and wildlife that is critical to the Band's traditional, cultural and spiritual well-being. The impacts to the Cass Lake and Pike Bay ecosystem from the Site present a serious risk to the health and welfare of the Reservation Population and to the quality of the Reservation environment.

Following the 2015 Five-Year Review, EPA directed International Paper to develop a new conceptual site model. Recent analysis of a groundwater plume in OU-1 reveals that the plume is uncontained, moving underneath the channel linking Pike Bay and Cass Lake, and is hydrologically connected the surface waters of Pike Bay.

B. Other On-Reservation Activities That Threaten the Band's Water Resources.

1. Current and Future Land Use Activities Impact Groundwater and Surface Water on the Reservation.

Land uses within the Leech Lake reservation vary from urban to semi-wilderness. Approximately three (3) percent of the Reservation is urban, residential or commercial, fifteen (15) percent is agricultural, forty-five (45) percent is upland forest. The remainder is surface water and wetlands. A map depicting Reservation land use zoning is attached as Attachment 36. Annual population growth of enrolled members has been approximately one percent since 1990.

⁶² Minnesota Department of Health News Release, February 14, 2006, (<http://www.health.state.mn.us/news/pressrel/regis021406.html>).

By 2030, the State of Minnesota population is expected to increase 7.81% from present.⁶³ The Minnesota State Demographic Center estimates that by 2030 the population of the four counties in which the Leech Lake Reservation is situated will increase as follows: Beltrami (10.09%); Itasca (3.21%); Cass (3.82%); Hubbard (3.99%).⁶⁴ Based on information from State demographers, the Minnesota Pollution Control Agency expects that the population residing within the Leech Lake Watershed will increase significantly in the next twenty years, and that related development will result in additional stress to surface water resources.⁶⁵

Sedimentation and erosion into the rivers and lake could significantly increase due to land clearing activities for the construction of new households. In 1990, there were 733 private lakeshore residences and 1,384 lodging and camping units on Leech Lake alone.⁶⁶ The Band does not have more recent statistics, but the Band is aware that the number of such cabins have and will likely continue to increase, especially in light of population projections. In addition, changes in land use from less intense land uses (agricultural and forest) to more intense uses (residential and commercial) result in impacts to groundwater water⁶⁷ as well as surface water. Shoreland development also presents a threat to native plants, including wild rice, due to increased nutrient and sediment loading and decreased water clarity.⁶⁸

2. Water Quality is Affected by Forestry, Utilities and Waste Incinerators on and Adjacent to the Reservation.

Approximately forty-five (45) percent of the Reservation is forested, much of which lies within public ownership (Federal, State, and Tribal forestlands), while approximately five (5) percent is owned by private interests. Over five (5) percent of the forested area is harvested every year and, since some of that area is privately owned, it is uncertain whether best management practices are used in all the cuts. The most common impacts of timber harvesting on water quality characteristics are: (1) sediment loading (2) increased dissolved nutrients, and (3) higher water temperature. Storm water runoff from logging operations contributes to deterioration of water quality in the region.⁶⁹

⁶³ Minnesota State Demographic Center population projections for total population available in excel form at <http://mn.gov/admin/demography/data-by-topic/population-data/our-projections/> (last visited August 1, 2016).

⁶⁴ Minnesota State Demographic Center population projections available at <http://mn.gov/admin/demography/data-by-topic/population-data/our-projections/> (last visited August 1, 2016).

⁶⁵ Attachment 37, Minnesota Pollution Control Agency, Leech Lake River Watershed Monitoring and Assessment Report, at p.14 (June 2016), available at <https://www.pca.state.mn.us/sites/default/files/wq-ws3-07010102.pdf>.

⁶⁶ Attachment 38, Leech Lake Division of Resource Management and Minnesota Chippewa Tribe joint report, A Water Quality Assessment of the Leech Lake Watershed, at p.4 (July 1997) (citing U.S. Army Corps of Engineers, Mississippi River Headwaters Lakes in Minnesota: Low Flow Review, at App'x K-2 (1990)).

⁶⁷ Attachment 39, Stark, J.R., Busch, J.P., and Deters, M.H., Hydrogeology and Water Quality of Glacial-drift Aquifers in the Bemidji-Bagley Area, Beltrami, Clearwater, Cass, and Hubbard Counties, Minnesota, U.S. Geological Survey, Water-Resources Investigations Report 89-4136 (1991).

⁶⁸ Attachment 40, Minnesota Dep't Natl. Resources, Aquatic Vegetation of Leech Lake, 2002-2009 (Aug., 2010) at p.13-14.

⁶⁹ See Attachment 41, Cass Cnty. Env't. Servs. and Mn. Bd. of Soil and Water Resources, Cass County Large Lakes Assessment, at p.10 (2012).

In 2011, 34,803 million board feet were harvested in the Minnesota Chippewa Forest, and 35,727 million board feet were harvested in 2010.⁷⁰ The Chippewa National Forest's Forest Management Plan recognizes that while best management practices are required to protect water quality, the National Forest's management plans have not provided sufficient proactive management or protection of fish habitat, such as limits on vegetation removal near and in streams and lakes that would provide crucial habitat structure, shade, and bank stability.⁷¹

Three watersheds are present on the Reservation: Leech Lake Watershed, Mississippi River-Headwaters Watershed, and the Big Fork River Watershed.⁷² Land use within the Leech Lake Watershed is approximately 51% forest, 20% water, 20% wetland, 7% agricultural, 2% transportation, and 1% urban/residential.⁷³ The Big Fork River Watershed is also highly forested and forestry, along with tourism, are the dominant industries within the watershed.⁷⁴ Clearcutting of upland forests can increase local streamflow substantially, and increased surface runoff can lead to stream sedimentation and threaten spawning and nursery areas for aquatic biota.

Illegal dumping and methamphetamine laboratories within the Chippewa National Forest present additional threats to water quality. Those activities, which may occur near surface waters, result in the release of hazardous chemicals into the environment. The Band works with the Chippewa National Forest to clean up illegal dump sites in key riparian areas, using the Band's expertise in this area.⁷⁵

Facilities, such as coal-fired utilities and waste incinerators, surround the Reservation producing pollutants, including mercury, that both settle immediately around the source and are transported long-range before being deposited to land or water. Minnesota Power operates the 1,081 megawatt coal-fired Clay Bowell power plant in Cohasset, Itasca County, less than twenty miles from the Reservation. In addition, a 400 megawatt natural gas energy facility is set to begin construction in 2018 in Cohasset.⁷⁶ As of 2005, approximately 50% of all Minnesota mercury emissions came from coal-fired electric generation plants.⁷⁷ Atmospheric deposition of mercury

⁷⁰ See Attachment 42, Chippewa National Forest, Annual Report 2011, at p.4, available at http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5379757.pdf; Chippewa National Forest, Annual Report 2010 at p.3, available at http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5316545.pdf.

⁷¹ Attachment 43, Chippewa National Forest, 2004 Forest Management Plan, at Appendix A-18, available at http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsm9_016230.pdf.

⁷² Watershed hydrologic codes are as follows: Leech Lake Watershed (07010102), Mississippi River-Headwaters Watershed (07010101), and the Big Fork River Watershed (09030006).

⁷³ Attachment 38, Leech Lake Division of Resource Management and Minnesota Chippewa Tribe joint report, A Water Quality Assessment of the Leech Lake Watershed, at p.1 (July 1997).

⁷⁴ Attachment 44, Minnesota Pollution Control Agency, Big Fork River Watershed Monitoring and Assessment Report, at p.1 (Dec. 2013), available at <https://www.pca.state.mn.us/sites/default/files/wq-ws3-09030006b.pdf>.

⁷⁵ See Attachment 45, Chippewa National Forest, 2005-2009 Annual Monitoring and Evaluation Reports on Tribal Rights and Interests, at p.10, available at <http://www.fs.usda.gov/main/chippewa/workingtogether/tribalrelations>.

⁷⁶ See Attachment 46, <http://itascacountymn.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=4456&MeetingID=1231>.

⁷⁷ Attachment 47, MPCA, Minnesota's Plan to Reduce Mercury Releases, at p.2 (Oct. 2009), available at <https://www.pca.state.mn.us/sites/default/files/wq-iw1-28.pdf>.

poses a significant threat to Reservation waters and environmental resources. While elemental mercury is not harmful, bacteria in lakes and wetlands convert it into methylmercury.⁷⁸ Methylmercury bioaccumulates and becomes more concentrated in organisms higher on the food chain, particularly fish. Methylmercury in fish is a well-recognized threat to human health, especially for fetuses, nursing infants, young children, and in populations like Native Americans whom consume greater amounts of fish in their diet than other population groups.

3. Nonpoint Source Contamination is a Significant Threat to the Reservation's Water Resources.

There are approximately 1,000 non-member owned lakeside cabins within the Reservation that are used for summer recreation, hunting and fishing. Many of these cabins have outhouses or failing septic systems that contribute nitrate, phosphate, as well as fecal coliform to groundwater and adjacent water bodies. Lakeshores remain a popular development locale, with 54% of new houses built in Cass County in 2011 being on lakeshore lots.⁷⁹ Eutrophication and decreased levels of dissolved oxygen are directly related to the addition of these pollutants. Future increases in Reservation population and shoreline development will exacerbate existing conditions. In addition, economic costs associated with eutrophication are significant and include impacts to recreation and angling, lake property values, loss of biodiversity, drinking water costs, and health costs.⁸⁰ Tribal water quality standards will provide the Band with an important tool to protect water quality from these threats and protect the Reservation's water resources for current and future generations.

4. Multiple Point Source Discharges Impact the Reservation's Water Resources.

The Bemidji municipal sewer treatment plant (STP), which discharges into the Mississippi River approximately ten (10) miles above Big Wolfe Lake, is a point source that has in the past impacted the waters of the Reservation. The current STP was rebuilt in 1984 and was designed to achieve 0.3 milligrams per liter of phosphorus in the treated effluent. However, prior to the improvements to the facility, many tons of phosphorus were loaded to, and adversely impacted, Big Wolf, Andrusia, and Cass lakes.⁸¹

Until 1984, the City of Cass Lake discharged sewage into Fox Creek, a tributary of Pike Bay. Pike Bay flows into Cass Lake via Pike Bay Creek. In 1984, the City converted the sewage

⁷⁸ Attachment 48, MPCA, Sources of Mercury Pollution and the Methylmercury Contamination of Fish in Minnesota, at p.1 (Feb. 2013), available at <https://www.pca.state.mn.us/sites/default/files/p-p2s4-06.pdf>.

⁷⁹ Attachment 55, Leech Lake Association Lake Management Plan (Aug. 2012) at p.9.

⁸⁰ See Attachment 49, Dodds, W.K., and Bouska, W.W., Eitzmann, J.L., Pilger, T.J., Pitts, K.L., Riley, A.J., Schloesser, J.T., and Thornbrugh, D.J., 2009, Eutrophication of U.S. freshwaters—Analysis of potential economic damages: Environmental Science & Technology, v. 43, no. 1, p. 12–19, available at <http://pubs.usgs.gov/sir/2010/5196/pdf/sir20105196.pdf>; see also Attachment 55, Leech Lake Association Lake Management Plan (Aug. 2012) at p.9-10.

⁸¹ Attachment 50, Persell, J., A Nutrient Water Quality Assessment of the Lakes: Big Wolf, Andrusia, Cass and Winnibigoshish, Leech Lake Band of Ojibwe and Beltrami County, (January 2001).

treatment facility to land irrigation.⁸² The St. Regis Superfund Site is the other point source discharger on the Reservation. IP discharges charcoal treated effluent into Pike Bay Creek from the groundwater pump and treat operation. In addition, during operation of the wood-treatment facility from 1957 to 1984, runoff impacted by wood treatment contaminants likely ran downhill to Pike Bay Creek and it is known that for a short period of time some facility wastes were discharged into the City of Cass Lake's sanitary sewer system and facility runoff waters.

5. Pipelines on the Reservation Pose Potential Threats to the Reservation Water Resources.

Six pipelines currently cross the Leech Lake Reservation. (Attachment 51). These pipelines carry various hydrocarbon products, including crude oil, natural gas, and other petroleum products.

In 2002, a leaking flange was discovered in the Enbridge pipeline South Cass Lake Pumping Station that resulted in the release of heavy crude oil and other associated petroleum products into the Reservation environment. Prior releases were also suspected. Approximately 304 cubic yards of contaminated soil were removed and it is estimated that 48,000 gallons of light non-aqueous phase liquid (LNAPL) consisting inter alia, of residual crude oil remain “floating” on top of the water table, approximately 28 feet below the ground surface.

The Band's DRM issued an agreed order to Enbridge under the Band's Hazardous Substance Control Act (HSCA) requiring that Enbridge conduct additional investigations and implement interim actions necessary to reduce threats to human health and the environment from the release. Groundwater monitoring continues, and a bioventing remediation system was installed at the Site in 2015.

Pipeline leaks in remote areas pose a danger to the Reservation environment as leaks may not be detected and rectified promptly. For example, a 2010 oil spill occurred on the Deer River, within the Reservation. This spill was not detected until an unknown number of days after the initial leak when firefighters fighting a forest fire noticed the spill because of the intensity of the fire over the pipeline.

Pipelines represent a threat to the soil, groundwater, and surface waters. In the case of the 2002 Enbridge pipeline spill, the cleanup of which is being regulated by the Band pursuant to Tribal law, the spill did not reach surface water. However, the likelihood of impacts to surface water from similar releases remain high because the Reservation contains so many surface water bodies and the remote nature of these pipelines makes prompt identification and response to spills challenging. Implementation of Tribal water quality standards will ensure that any such future release is cleaned up to appropriate levels to protect Tribal resources.

⁸² *Id.*

6. There are Numerous Brownfield Sites Within the Reservation that Threaten Surface and Ground Waters.

In 2001, the Band established a Brownfield Response Program (BRP) to identify, inventory, and cleanup sites potentially contaminated with hazardous substances. As of March 2007, there were 51 active federally-regulated USTs on the Leech Lake Reservation.⁸³ This placed the Reservation on the list of the top ten reservations with the highest number of active USTs. The BRP has experience handling UST Sites, including those in close proximity to Reservation waters. The BRP has also addressed other brownfield sites that are close to and pose a potential threat to Reservation waters. Given the close proximity of many of these brownfield sites to Reservation waters, attaining TAS approval and implementing Tribal water quality standards and antidegradation provisions will better equip the Band to protect Reservation waters from threats posed by future brownfield sites.

- Cass Lake Mini Mart: The Band's Brownfield program was notified in 2016 that a release had occurred at a Shell gas station in Cass Lake, MN. An investigation performed prior to the Band's notification of the release revealed the presence of a groundwater plume with contaminant levels exceeding the Band's Hazardous Substances Control Act (HSCA). Further investigation revealed the relatively confined nature of the plume, and natural attenuation was selected as the response action.
- Cass Lake Transfer Station: The Brownfield program learned in 2015 that the Leech Lake Cass Lake Transfer Station in Cass Lake, MN had improperly stored household hazardous substances in violation of HSCA. Following a site visit, the BRP notified the facility's solid waste manager of the violation and the potential release of hazardous substances. The BRP is currently working with all five Leech Lake Band of Ojibwe transfer stations to ensure HSCA compliance.
- Enbridge Energy – Line 1 spill: The BRP was notified in 2010 that a pipeline leak had occurred near Deer River, MN. An estimated five barrels were released into a wetland area. The BRP oversaw cleanup work at the spill site, which continued through 2013, including monitoring cleanup activities and providing guidance on HSCA procedures.
- Tom's Resort: A March 27, 2006 site assessment performed at the Site resulted in the detection of a leaking underground storage tank as evidenced by the discovery of free product, stained soils, and the noted presence of petroleum odors. Tom's resort is located within several hundred feet from the shores of Cass Lake. The BRP notified the owner of Tom's Resort of its potential responsibility under HSCA. Monitoring wells were installed in 2006, a bioventing system was installed in 2013 and operated until September 2014, and additional monitoring continued through January 2015.

⁸³ Attachment 52, Report to Congress On Implementing and Enforcing the Underground Storage Tank Program in Indian County, U.S. EPA 510R07006.

- *Methamphetamine Labs and Dumping:* Methamphetamine labs in the Chippewa National Forest have been an increasing problem. These labs produce numerous toxic chemicals, which are usually dumped to ground either to avoid detection, or because they are no longer useful.⁸⁴ The Band conducted a Phase I environmental assessment for one such site located on the Reservation near Portage Creek and Waboose Bay.
- *Onigum Parish Hall:* The Brownfield Program secured cleanup of the abandoned Onigum Parish Hall, where asbestos and lead based paint posed a risk to children and the environment. The Band conducted a Phase I assessment and Phase II soil sampling. Soil sampling confirmed soils surrounding the property exceeded the lead cleanup standard established by the Band's HSCA. The Band approved a cleanup plan that required demolition and soil remediation. The Band received the Brownfields Recognition Award from EPA Region 5 for its successful cleanup of the site.

7. Threats to Water Quality Threaten the Tribe's Economy.

The Reservation's streams and lakes are the focal point of a broad recreation-based economy for the Band. As of 1990, an estimated 250,000 to 300,000 people visited Leech Lake annually and spent \$3.0 to \$3.5 million for lake associated recreations, and those numbers have only risen since.⁸⁵ Outdoor recreation is a primary draw for visitors, and 59% of recreational visitors to the Reservation indicated their primary recreation activity was fishing.⁸⁶ Polluted waters, with diminished or contaminated fish resources, seriously impact the appeal of Leech Lake and other Reservation waters to those who currently come and spend money on the Reservation. As a result, ensuring the long term integrity of Reservation waters—and protecting those waters from pollution and degradation—is necessary for the economic security of the Band.

In addition, the Band has a number of economic enterprises on the Reservation. The Band operates two gas stations and an office supply store, and sells wild rice hand-harvested by tribal members. The Tribe also operates three gaming enterprises, two of which include hotel accommodations. Reductions in tourism due to diminishing water quality and fish resources would seriously reduce government revenues, which are used to provide numerous essential services to Band members, including public health and education.

By obtaining TAS approval and implementing a Tribal water quality program, the Band will be able to protect and enhance the quality of Reservation waters. Maintaining and improving Reservation water quality is vital to expanding water-oriented recreation on the Reservation, which

⁸⁴ Attachment 42, Department of the Interior, United States Forest Service, Chippewa National Forest Annual Report (2003) p. 9.

⁸⁵ Attachment 38, Leech Lake Division of Resource Management and Minnesota Chippewa Tribe joint report, A Water Quality Assessment of the Leech Lake Watershed, at p.4 (July 1997) (citing U.S. Army Corps of Engineers, Mississippi River Headwaters Lakes in Minnesota: Low Flow Review (1990)).

⁸⁶ Attachment 53, Ingrid E. Schneider & Raintry J. Salk, University of Minn. Tourism Ctr., *Leech Lake Area Summer Visitor Profile: A focus on interest in culture and nature based experiences*, at p. v (Dec. 2004), available at http://conservancy.umn.edu/bitstream/handle/11299/170371/cfans_asset_147179.pdf?sequence=1&isAllowed=y.

is an extremely important part of the Reservation economy and directly affects the economic well-being of many Band members. Potential loss of employment due to diminishing tourism attributable to declining water quality would not only impact Band members' income, but also their mental health and access to health care. Thus, public health, environmental quality, and economic vitality are all intertwined. Protecting and enhancing Reservation water quality therefore has a reverberating effect on the economic welfare and human health of Band members.

8. Mercury and PCB Contamination of Fish Pose a Serious Health Risk to Tribal Members and Non-Members.

Studies have shown elevated levels of mercury Leech Lake fish, as well as the presence of PCBs, which bioaccumulate in fish tissue.⁸⁷ These have lead the Band to issue a fish consumption advisory. The State of Minnesota has also issued a fish consumption advisory for certain fish in Leech Lake due to mercury contamination. Mercury pollution is associated with the loss of intelligence in children—and this in turn means significant health and economic losses from mercury pollution.⁸⁸ The problem of mercury pollution is deeply felt on the Reservation, in large part because Band members rely on fish for subsistence.

Atmospheric loading of mercury is a major concern regarding Reservation water quality.⁸⁹ Fossil fuel combustion is the primary source of mercury loading in Leech Lake, and 87% of incoming mercury to Leech Lake is from direct atmospheric deposition.⁹⁰ Decreased mercury loading in Reservation lakes, including reducing atmospheric deposition or other inputs through establishment of TMDLs, would decrease fish contamination, which in turn could alleviate the need for fish consumption advisories and enable Tribal members to freely consume fish in a manner consistent with cultural practices without risks to human health.⁹¹

9. Summation of Impacts Resulting from Degradation of Water Quality.⁹²

All of the threats identified above have caused actual impacts to Band water resources and continue to pose potential threats to Reservation waters in the future. In sum, overall impacts resulting from degradation of water quality include:

- Decreased availability of surface waters for cultural and spiritual uses

⁸⁷ Attachment 38, Leech Lake Division of Resource Management and Minnesota Chippewa Tribe joint report, A Water Quality Assessment of the Leech Lake Watershed, at p.11 (July 1997).

⁸⁸ Attachment 54, Leonardo Trasande, Phillip J. Landigran and Clyde Schecter, Public Health and Economic Consequences of Methyl Mercury Toxicity to the Developing Brain, 113 Env. Health Perspectives 5 (May 2005).

⁸⁹ Attachment 38, Leech Lake Division of Resource Management and Minnesota Chippewa Tribe joint report, A Water Quality Assessment of the Leech Lake Watershed, at p.18 (July 1997).

⁹⁰ Attachment 38, Leech Lake Division of Resource Management and Minnesota Chippewa Tribe joint report, A Water Quality Assessment of the Leech Lake Watershed, at pp. 15, 18 (July 1997).

⁹¹ Attachment 38, Leech Lake Division of Resource Management and Minnesota Chippewa Tribe joint report, A Water Quality Assessment of the Leech Lake Watershed, at p.18 (July 1997).

⁹² Attachment 50, Persell, J., A Nutrient Water Quality Assessment of the Lakes: Big Wolf, Andusia, Cass and Winnibigoshish Lakes, Leech Lake Band of Ojibwe and Beltrami County, (January 2001). p. 21.

- Reductions in diversity and abundance of aquatic life
- Increase in abundance of fish, but change to less desirable species, decreased recruitment due to an increase in fish diseases and parasitism
- Safety problems with swimming due to limited transparency; discomfort due to skin irritations associated with insects and parasites
- Increased abundance of plants causes interference with boating
- Aesthetics: unattractive conditions, odors, insects

V. Conclusion

The Leech Lake Band of Ojibwe's existence cannot be separated from the waters within and that flow through the Leech Lake Reservation. As demonstrated in the Band's application, Tribal members rely upon the water, the game, the fish, and the wild rice of the Reservation for basic subsistence and culturally and spiritually significant practices. Since nearly half of the Reservation is covered by surface water—lakes, interlocking rivers and streams and wetlands—use of these waters is and has always been of critical importance to the Band and its members, since the Ojibwe began occupying these lands centuries ago. The Band and its members are today—as they have been for generations—dependent on the fish and game that use these waters for habitat and the production of wild rice from these waters. The health of these resources impacts the health of the Band, its members, and its overall welfare.

Threats to the resources also threaten the economy of the Band. Tribal members rely upon the harvest of resources such as wild rice and fish not only to provide their own food source, but also to earn an income, which is particularly important given depressed income levels on the Reservation. More generally for the Band, a healthy water-based environment encourages visitors to the Reservation and to the Band's economic enterprises, the income from which supports essential government functions. Degradation of the resources depletes the revenue source from which the Band meets the basic needs of its members, such as housing and healthcare.

The Band's identity is inextricably linked with the health of its Reservation waters spiritually, culturally, and politically. Non-member activity on the Reservation significantly impacts Reservation waters, and has the potential to increase over time. Off-Reservation impacts also significantly affect the water quality. Both the internal and external impacts emphasize the need for the Band to take critical steps to ensure that activities do not further diminish the quality of the Band's waters, and subsequently, its health, culture, economy, and sovereign existence. The Band's inherent sovereign authority thus clearly extends to protecting the quality of the waters of the Reservation under the second exception to the *Montana* test, which allows tribes to regulate nonmember activity on reservation fee lands where "that conduct threatens or has some direct effect on the political integrity, economic security or the health or welfare of the tribe." *Montana v. United States*, 450 U.S. at 563-67. The Band knows its waters best. It has been caring for its water since the days of its migration story. Modern techniques now allow the Band to even better protect and care for its waters.

Based on the foregoing, the Leech Lake Band of Ojibwe possesses the requisite authority and jurisdiction over Reservation waters sufficient to implement the CWA and protect the Band's water resources. The Band was expressly delegated authority by Congress to implement the CWA, satisfies the *Montana* test and EPA's related regulatory requirements for purposes of implementing the CWA, and has met the requirements set out by Congress, and interpreted by EPA, to receive TAS authority to implement Sections 303(c) and 401 of the Clean Water Act.

Sincerely,

SHORT CRESSMAN & BURGESS PLLC

A handwritten signature in black ink, appearing to read 'Richard A. Du Bey', with a large, sweeping flourish extending to the right.

Richard A. Du Bey
Special Environmental Counsel to
Leech Lake Band of Ojibwe

Leech Lake Reservation Waters

LAKES						
County Name	Lake Name	Township	Range	Section(s)	Acres in County	Boundary Water
Beltrami						
	Burns	146	29;30	6;7;1;12	75	
	Bullhead	146	30	7	24	
	Pug Hole	146	30	7;8	85	
	McDonald	146	30	15;16	46	
	Schram	146	30	28;33	133	
	Tank	146	30	34,35	13	
	Kitchi	146;147	30	4-8;31;33	1850	
	Moose	147	30	11;14;15;21;22	617	Yes
	Little Pimushe	147	30	19;30	22	
	Unnamed	147	30	21	16	
	Popple	147	30	26;27	135	
	Little Rice	147	30	30;31	124	
	Cass	145;146	30;31	Various	19,651	
	Rice	147	30;31	19;30;24;25	642	
	Pimushe	148;148	30;31	6-8;17-20;31	1,350	Yes
	Drewery	145;146	31	3;4;33;34	148	
	Unnamed	146	31	4,9	12	
	Andrusia	146	31	7;8;17-20;30	1448	
	Silver	146	31	9;16	131	
	Blue Sky	146	31	9;10	35	
	Ten	146	31	10	182	
	Buck	146	31	12-14;23;24	352	
	Lost	146	31	14;15;22;23	139	
	Luck	146	31	14;23	30	
	Little Lost	146	31	15	43	
	Mission	146	31	20;21	27	
	Windigo	146	31	35;36	184	
	Big	146;147	31	various	3565	
	Flora	147	31	19-20	48	
	Jessie	147	31	30-32	48	
	Big Wolf	145;146	32	1;2;25;26;35;36	1,073	Yes
	Unnamed	146	32	1	111	Yes
	Stocking	146	32	13;24	80	
	Swenson	146	32	11--14	394	Yes
	Total 34				32,833	
Cass County						
	Inguadona	140;141	27	5-8;17;18;29;32	935	Yes
	Portage	142	27	28,29,32,33	156	
	Rabbit	142	27	NC 31	34	
	Lomish	142	27	31,32	282	
	Rice	145	27	33,34	56	
	Nushka	145	27	34,35	56	
	Tamarack	146	27	32,33	96	
	Long	141	27,28	7,18,13,23,24,26,27	926	
	Boy	142	27,28	5-21,29-31,13,14,21	3,466	Yes

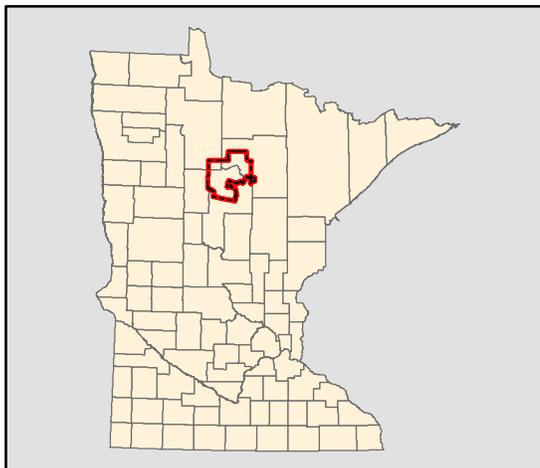
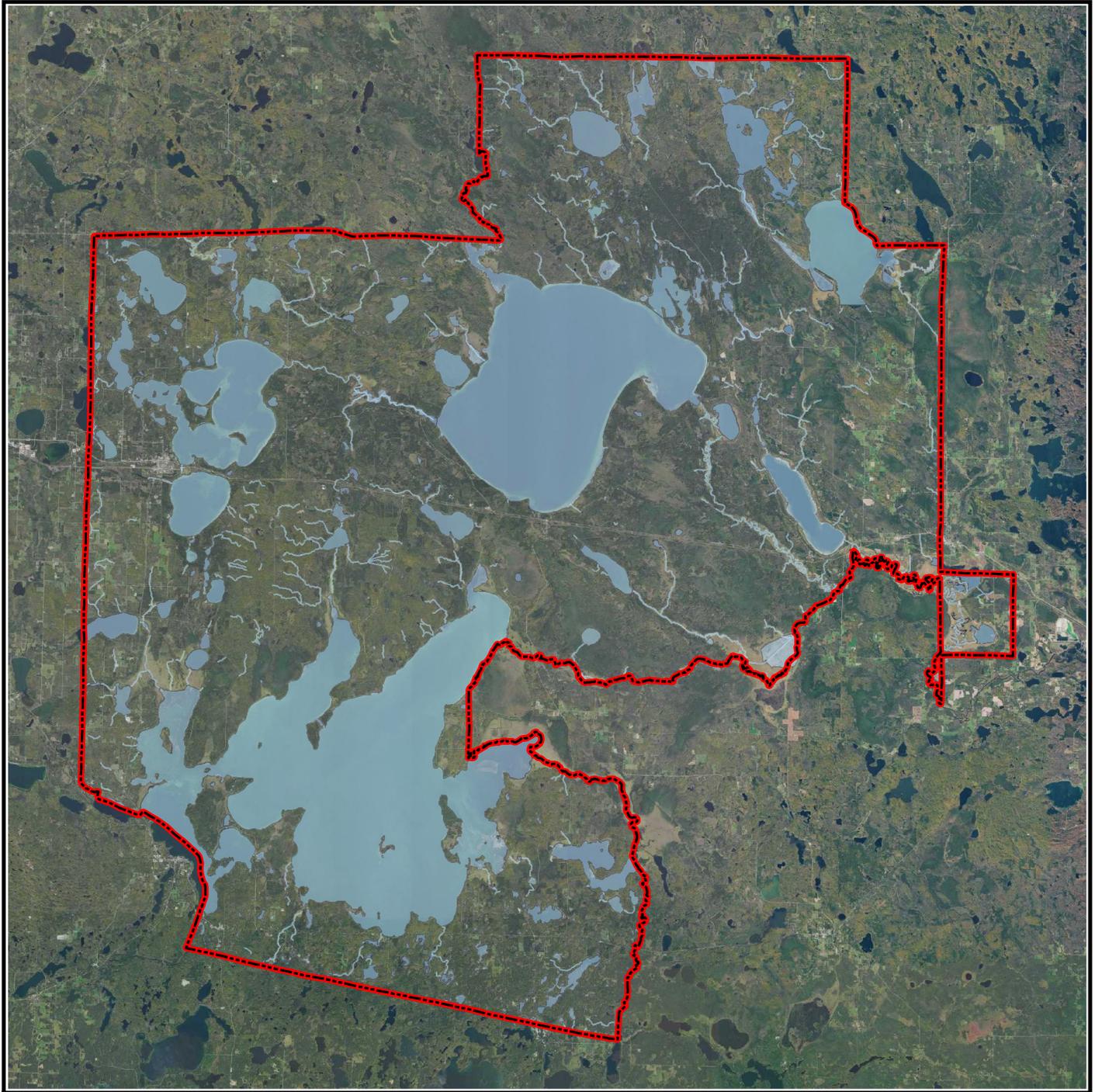
County Name	Lake Name	Township	Range	Section(s)	Acres in County	Boundary Water
	Blacksmith	144	27,28	18,19,13,24	142	
	Drumbeater	144	27,28	19,30,24,25	376	
	Six Mile	144,145	27,28	5-8,17,1-36	1,232	
	Winnibigoshish	145-147	26-29	Various	37,983	Yes
	Gooseberry	141	28	C5	24	
	Marshall	141	28	WC6	16	
	Three Island	141	28	7,8,17,18	168	
	Football	141	28	10	57	
	Crown	141	28	11,12	33	
	Lundeen	141	28	11-14.	178	
	Maple	141	28	14,15,22,23	60	
	Kego	141	28	14,23	105	
	Boxell	141	28	22,27,28	56	
	Bullhead	141	28	25,26,35,36	88	
	Gijik	141	28	25,36	118	
	Craig	141	28	SC27	44	
	Nellie	141	28	27,28,33,34	55	Yes
	Tamarack	141	28	35,36	63	
	Town Line	141,142	28	2,3,34,35	662	
	Haugen	141,142	28	4,33	25	
	Blackduck	142	28	4,5	60	
	Mad Dog	142	28	NC21	27	
	Iverson	142	28	NW27	80	
	Camp	142	28	28,33	58	
	Aultman	142	28	33,34	26	
	Hole In Bog	144	28	9	76	
	Blacksmith	144	28	12	10	
	Silver	141	28,29	19,30,24,25	104	
	Leech	141-144	28-32	Various	109,285	Yes
	Portage	145	28,29	31,22,23,25-27,35	1,381	
	Horseshoe	141	29	3,10,11	132	
	Rat	141	29	7,8	104	
	Lauer	141	29	9,10	22	
	Wawa	141	29	9,10,15,16	102	
	Cedar	141	29	11,14	121	
	Mud	141	29	13,14,23,24	184	
	Hagen	141	29	16	37	
	Pine	141	29	17-20	256	
	Spearns	141	29	NC24	22	
	Pollywog	141	29	24-26	20	
	Hazel	141	29	25	12	Yes
	Sucker	144,145	29,30	31,32,35,36	598	
	Lydick	144,145	29,30	7,1,2	68	
	Grass	145	29,30	18,13	122	
	Sucker	145	29,30	19,24	120	
	Middle Sucker	145	29,30	30,24,25	290	
	Little Turtle	141	30	5,6	38	
	Hanson	141	30	10,15	62	
	Shell	141	30	13,14,3,24	96	
	Big Hanson	141	30	WC15	18	
	Spruce	141	30	NE16	30	
	Bag	141	30	17	36	Yes
	Jack	141,142	30	2,3,34,35	145	
	Turtle	141,142	30	5,32	80	
	Rice	142	30	20	94	
	Wabegon	142	30	21,28	42	

County Name	Lake Name	Township	Range	Section(s)	Acres in County	Boundary Water
	Deep	142	30	28,33,34	34	
	Nomad	142	30	34	20	
	Life Raft	144	30	23	45	
	Mark	145	30	2	16	
	Tank	145	30	3	14	
	Strawberry	145	30	18	40	
	Gould	142	30,31	7,12	108	
	Pike Bay	145	30,31	9,30,13-15,22-27,3	4,820	
	Experiment	145	30,31	33,36	12	
	Cass				10,124	
	Swamp	143	31	5-8,17,18	592	
	Twin	144	31	1,2,11	170	
	Moss	144	31	2,3	208	
	Hessie	144	31	NW11	38	
	Little Twin	144	31	11,12	114	
	Thirteen	144	31	12-14.	556	
	Little Moss	144	31	14	93	
	Portage	144	31	15,16,21,22	352	
	Steamboat Bay	144	31	20,21,28,29	68	
	Faherty	144	31	23,24	24	
	Welsh	144	31	25,26	191	
	Crooked	144	31	26,34-36	550	
	Ten Section	145	31	35	34	
	Camp	145	31	35	26	
	Drewery				48	
	Steamboat	144	31,32	19,29,30,24,25	1,077	Yes
	Little Wolf	145	31	32	409	
	Total	92			181,233	
Itasca County						
	Little White Oak	55	27	2-4,10,11	493	
	White Oak	56;144	27;25	Various	905	Yes
	Taylor	147	25	15;16;21;22	36	Yes
	Ball Club	144;145	25;26	Various	4,951	
	Bowstring	146;147	25;26	Various	8,900	Yes
	Four Towns	148;149	25;26	Various	378	Yes
	Humphrey	145	26	4, 5	34	
	Egg	146	26	3;10	118	
	First River	146	26	6-8	401	
	Tibbett	146	26	7;18	39	
	Coffee	146	26	19,20,29,30	29	
	Tuttle	146	26	29	56	
	Little Ball Club	146	26	29;32	184	
	Two Mile	147	26	20;29	28	
	Portage	147;148	26	3;4;10;33;34	756	
	Minni Car Car	147;148	26	4;32;33	31	
	Sand	147;148	26	Various	3,785	
	Ames	148	26	3	12	
	Stone Axe	148	26	8	62	
	Cedar	148	28	9;15;16	181	
	Beaver	148	26	10	29	
	Cole	148	26	11	12	
	Rush Island	148	26	15;21;22	294	
	Bass	148	26	15;22	92	

County Name	Lake Name	Township	Range	Section(s)	Acres in County	Boundary Water
	Bird's Eye	148	26	21	139	
	Mushgee	148	26	27;34	185	
	Little Whitefish	148;149	26	4;5;33	154	Yes
	Little Winnibigoshish	145;146	26;27	Various	1,287	
	Schoolhouse	146	26;27	19;24	48	
	Little Cutfoot Sioux	146;147	26;27	Various	1,357	
	Little Sand	148	26;27	4;18;12	222	
	Unnamed	146	27	2	8	
	Goodwin	146	27	3,10,11	61	
	Unnamed	146	27	13	24	
	Cutfoot Sioux	146;147	27	Various	3,222	
	Unnamed	147	27	5	2,809	
	Wart	147	27	6	13	
	Unnamed	147	27	7	25	
	Mosomo	147	27	8;17	44	
	Biauswah	147	27	8;9;16;17	131	
	Greely	147	27	9	17	
	Amic	147	27	15	38	
	Sunken	147	27	16	48	
	Simpson	147	27	17	38	
	Dry Creek	147	27	21;22	75	
	Unnamed	147	27	26	12	
	Unnamed	147	27	29	14	
	Unnamed	148	27	29	14	
	Alice	148	27	31	45	
	One Loaf	148	27	31	18	
	Rice	148;149	27	1;2;35;36	911	Yes
	Nature's	148;149	27	Various	2,885	Yes
	Middle Pigeon	147	27;28	22	173	
	Lower Pigeon	148	27;28	6;7;1;12	293	
	Pigeon Dam	147	27;28	Various	511	
	Pigeon Flowage	147	27,28	30;25	57	
	Round	148	27;28	Various	2,959	
	Unnamed	147	28	1	10	
	Lost	147	28	1;12	26	
	Wilderness	147	28	4	27	
	Farley	147	28	10;11	33	
	Hale	147	28	24	14	
	Dunbar	148	28	8;9;16	273	
	Lower Twin	148	28	21	30	
	Virgin	148	28	23;26	58	
	Sioux	148	28	32	70	
	Upper Pigeon	148	28	36	86	
	Dixon	148	28,29	30,31,24,25,36	666	Yes
	Rabbits	146	29	1;2;11;12	209	
	Tower	146	29	7	23	
	Raven	146	29	10;11	111	
	Sugar	146	29	13;14;22-26	1,585	
	Mিনny	146	29	19	12	
	Kenogama	146;147	29	4;5;8;9;33	580	
	Minisogama	147	29	27;34	128	
	Bog	147	29	28	47	
	Rice	147	29,30	30,25	42	
	Total	77			43673	

County Name	Lake Name	Township	Range	Section(s)	Acres in County	Boundary Water
Hubbard County						
	Steamboat				684	Yes
	Little Wolf				108	
	Spring	143	32	1	58	
	Mud	145	32	1	68	Yes
	Bowman	145	32	13,24	71	
	Reed	145	32	NE24	15	
	Big Wolf				133	Yes
	Kabekona	142,142	32,33	Various	2,607	
	Total	8			3,744	
Total Acres of Reservation Lakes						
Beltrami	32,833					
Cass	181,233					
Hubbard	3,744					
Itasca	43,673					
Total Acres	261,483					
RIVERS, STREAMS, CREEKS, BROOKS						
Name	Boundary Water					
Mississippi River (aka Cass River)	Yes					
Dunbar River	Yes					
Popple River	Yes					
Big Fork River	Yes					
Island Lake Creek	Yes					
Third River	Yes					
Stony Point Brook						
Farley Creek						
Crane Creek	Yes					
Dinner Creek						
Simpson Creek						
Twomile Creek						
First River						
Pigeon River						
Ball Club River	Yes					
Bowstring River						
Grouse Creek	Yes					
Fisherman's Brook						
Pike Bay Channel						
Steamboat River						
Necktie River						
Crooked Creek						
Sucker Creek						
Portage Creek						
Leech Lake River	Yes					
Drumbeater Creek						
Sixmile Brook	Yes					
Peggy Brook						
Jessie Brook	Yes					
Snake Creek						
Vermillion River	Yes					
Nolan Creek						
Boy River	Yes					

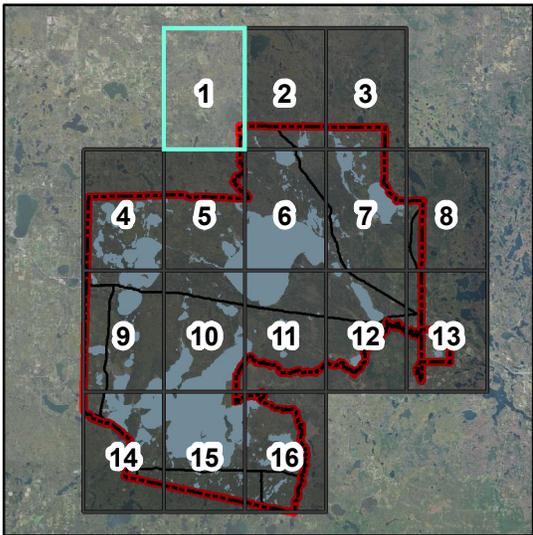
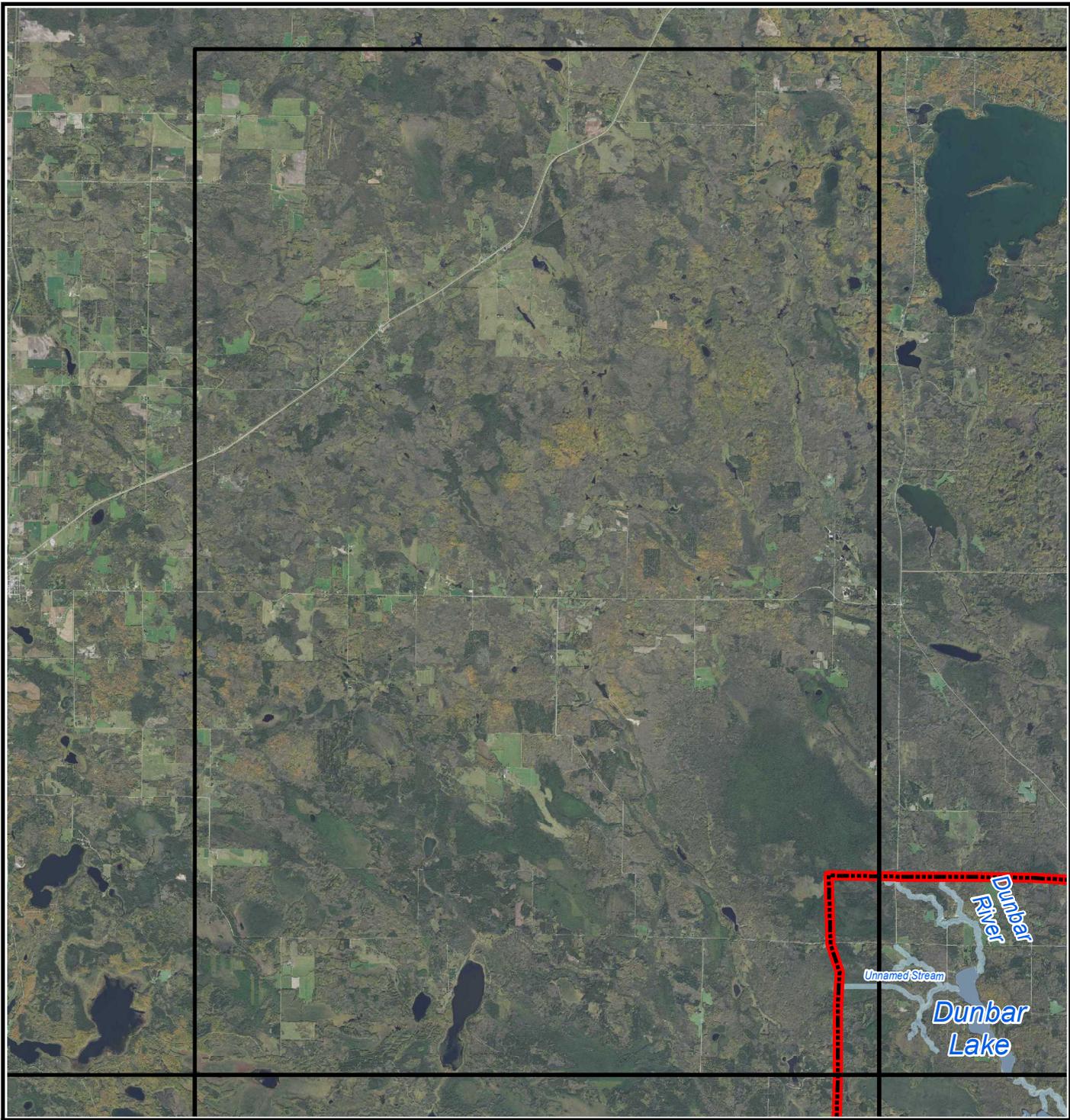
Name	Boundary Water					
Whipholt Creek						
Various unnamed streams within the extant boundaries of the Leech Lake Reservation						



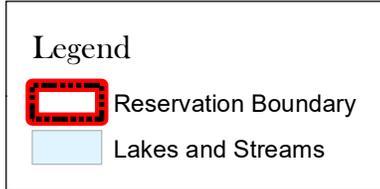
Lakes and Streams Within Leech Lake Reservation

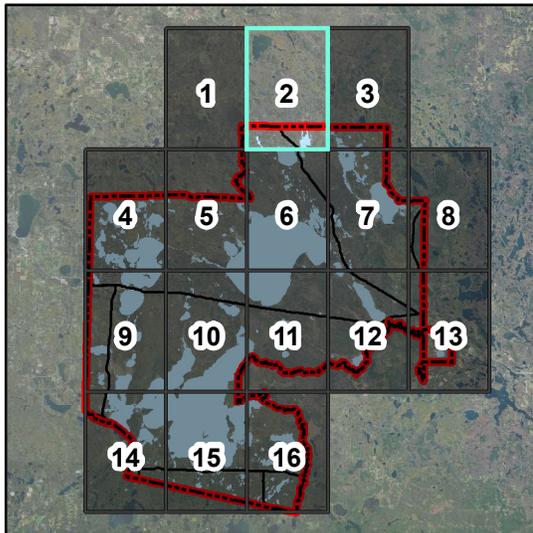
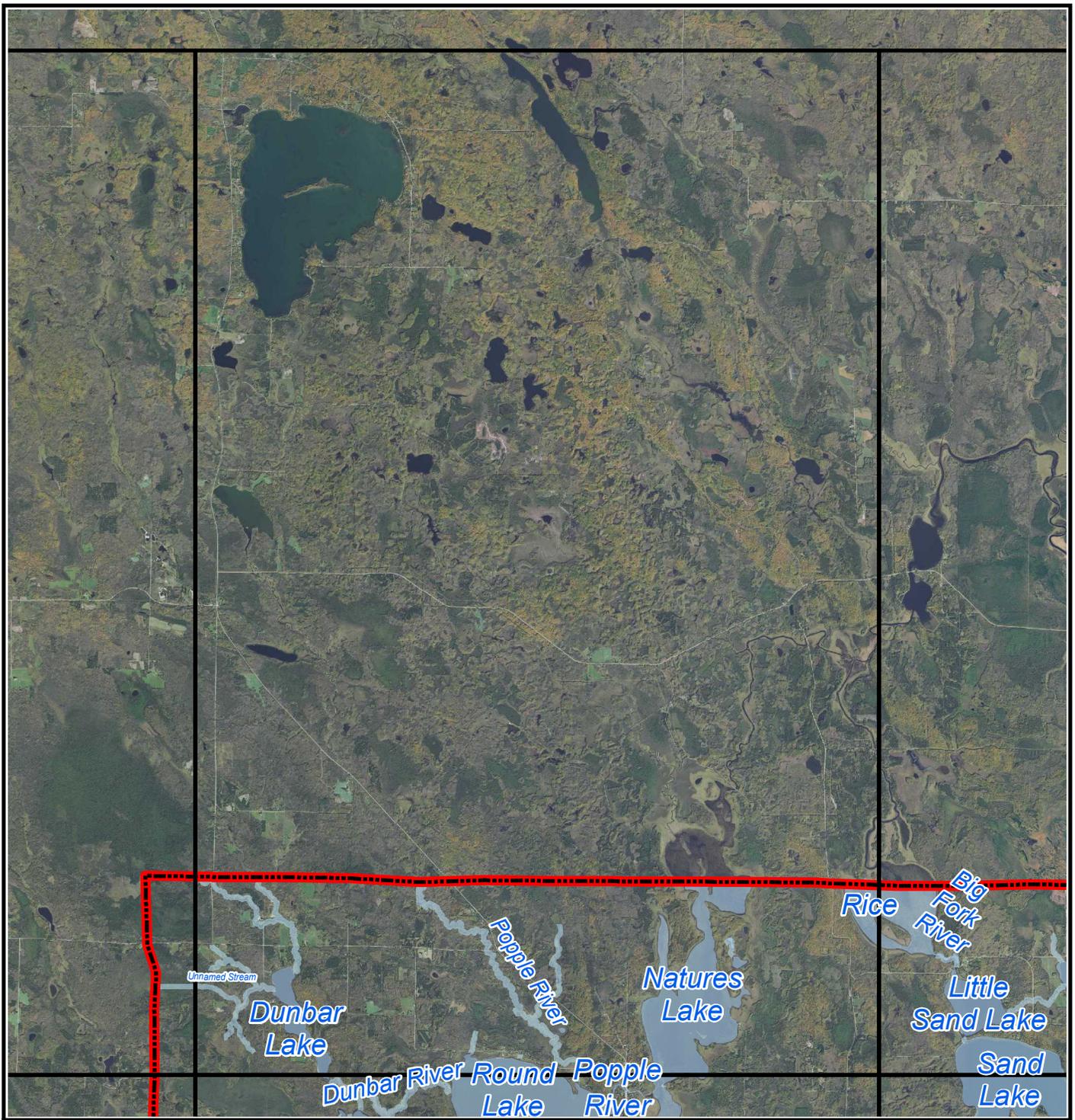


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LLBO DRM
9/5/2017

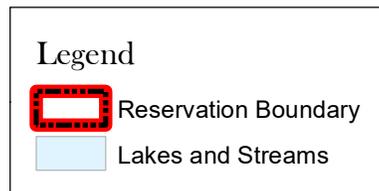


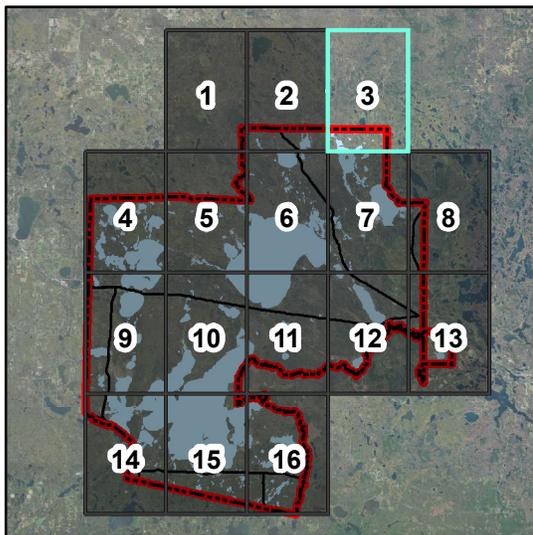
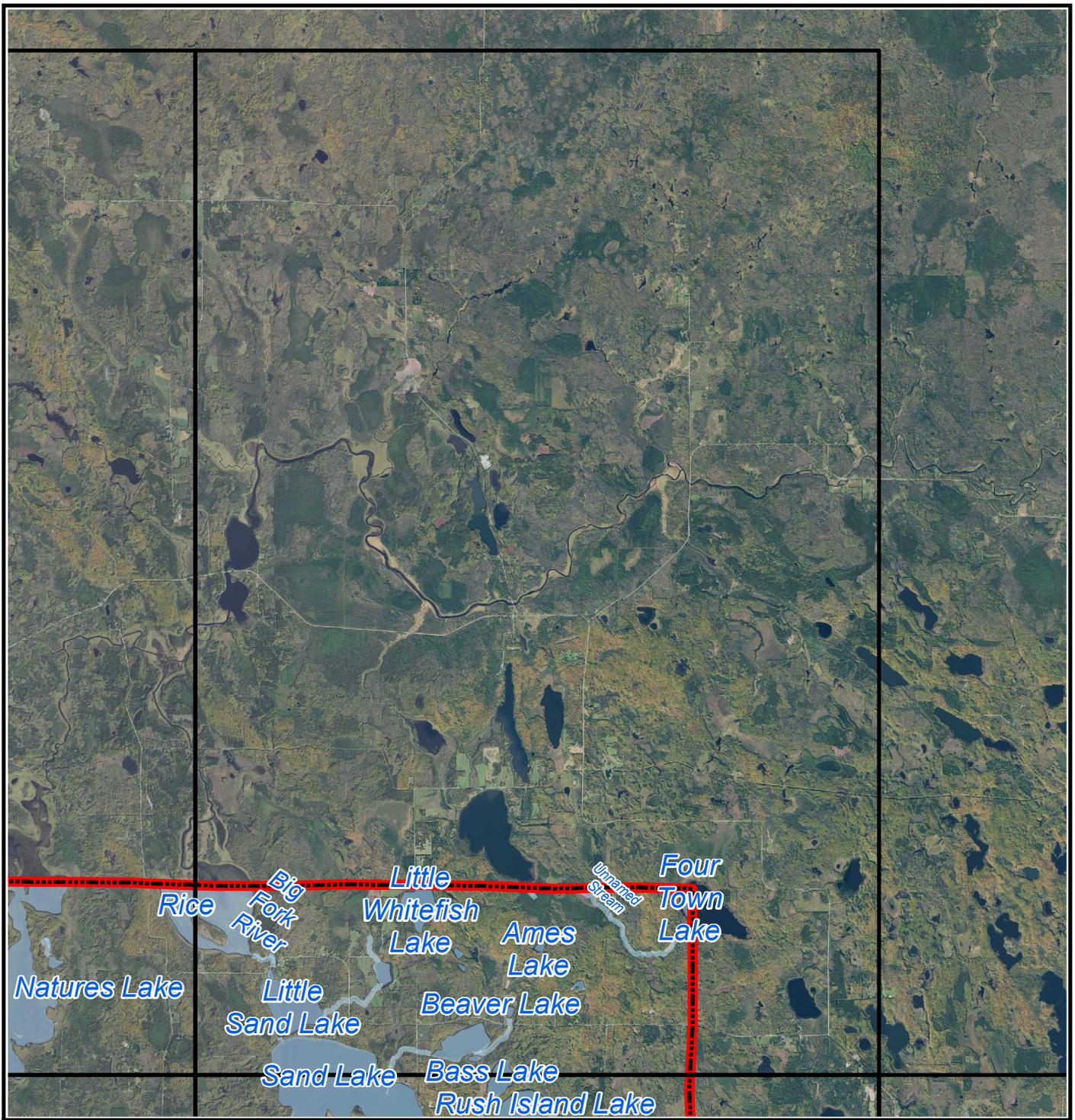
Lakes and Streams Within Leech Lake Reservation





Lakes and Streams Within Leech Lake Reservation





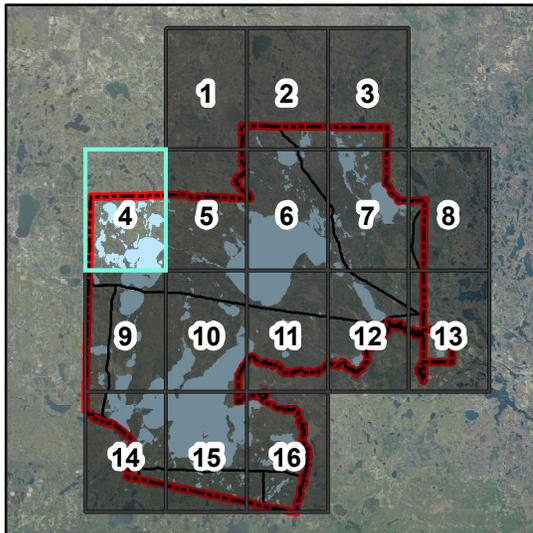
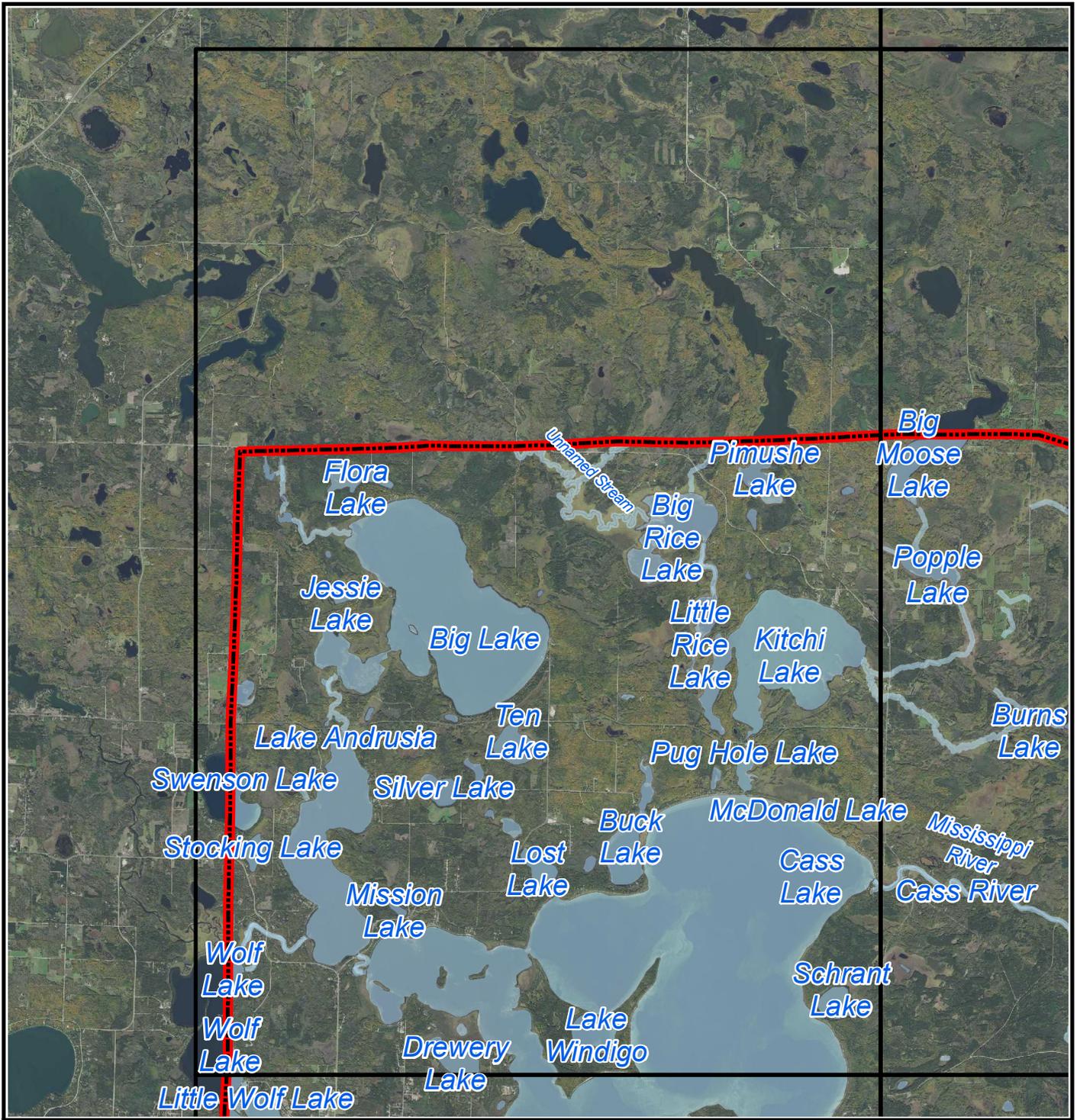
Lakes and Streams Within Leech Lake Reservation



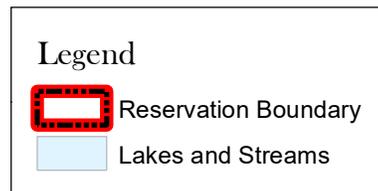
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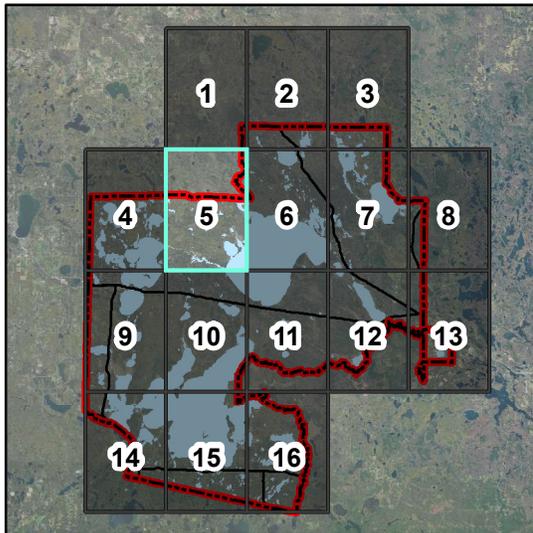
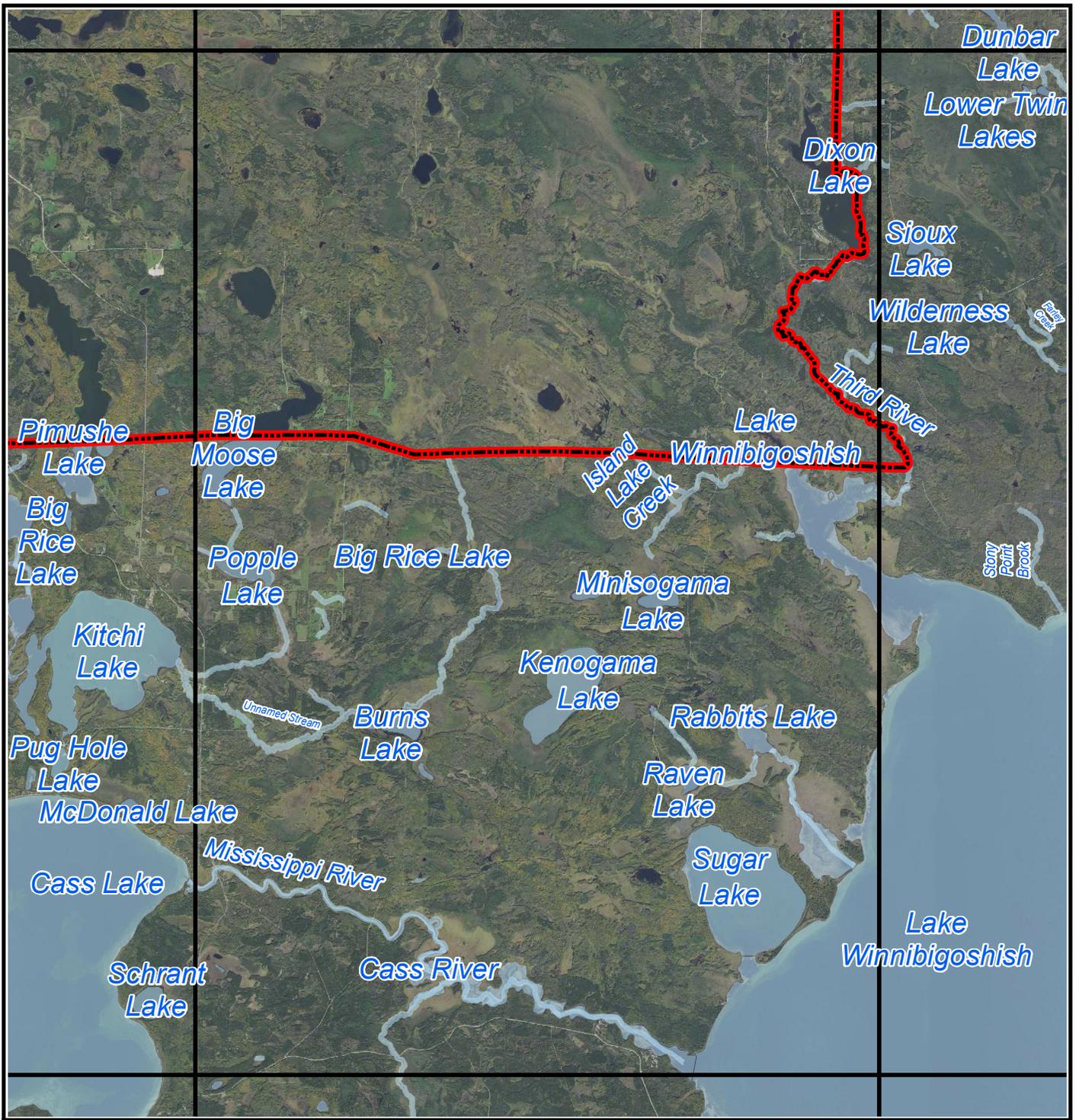
- Reservation Boundary
- Lakes and Streams



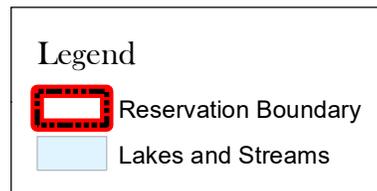


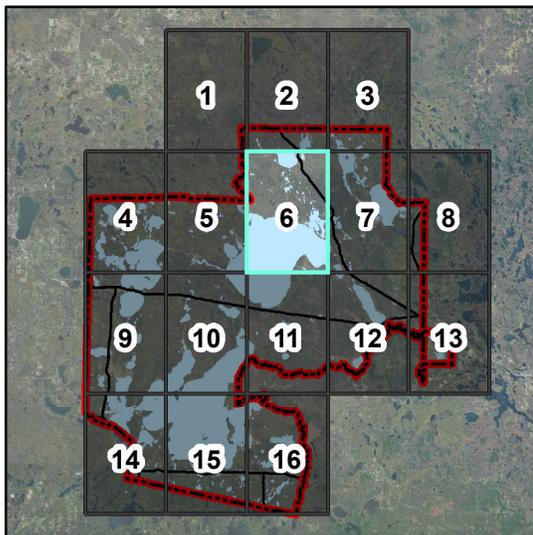
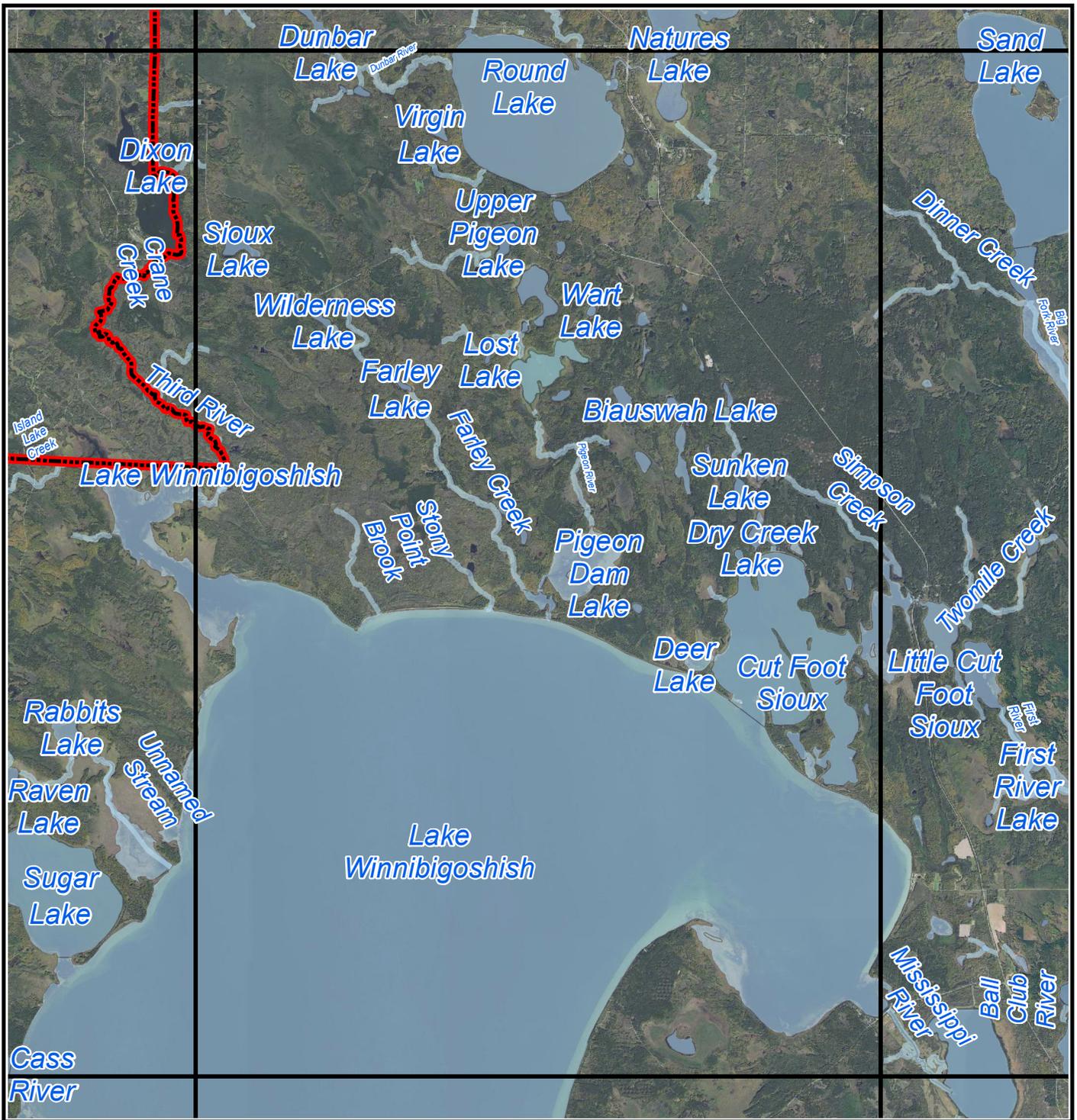
Lakes and Streams Within Leech Lake Reservation



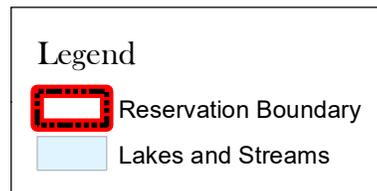
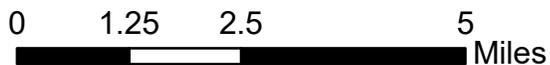


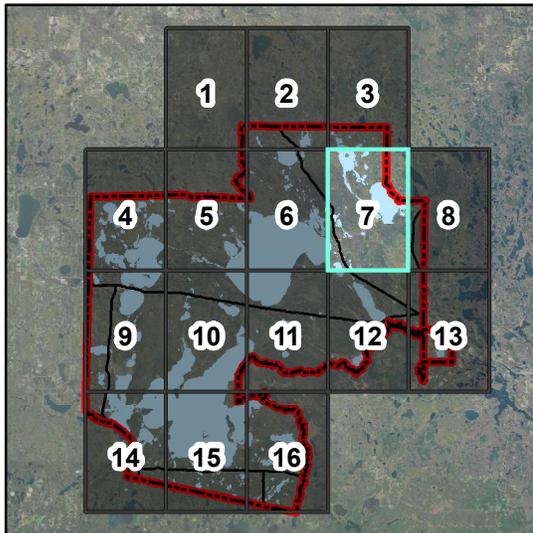
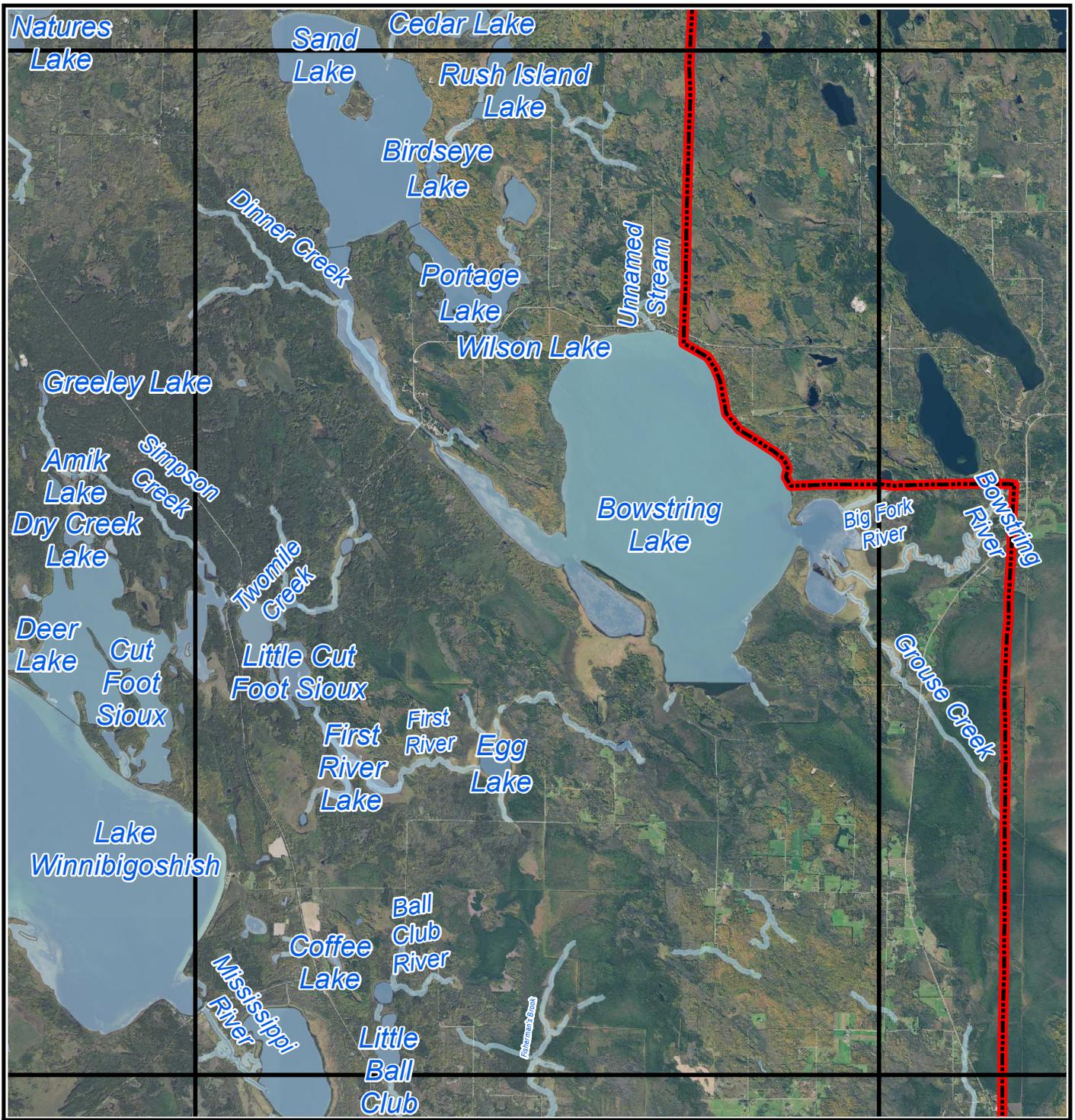
Lakes and Streams Within Leech Lake Reservation





Lakes and Streams Within Leech Lake Reservation





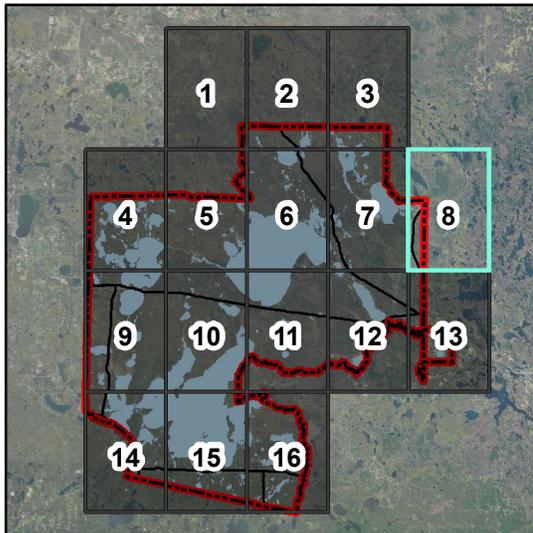
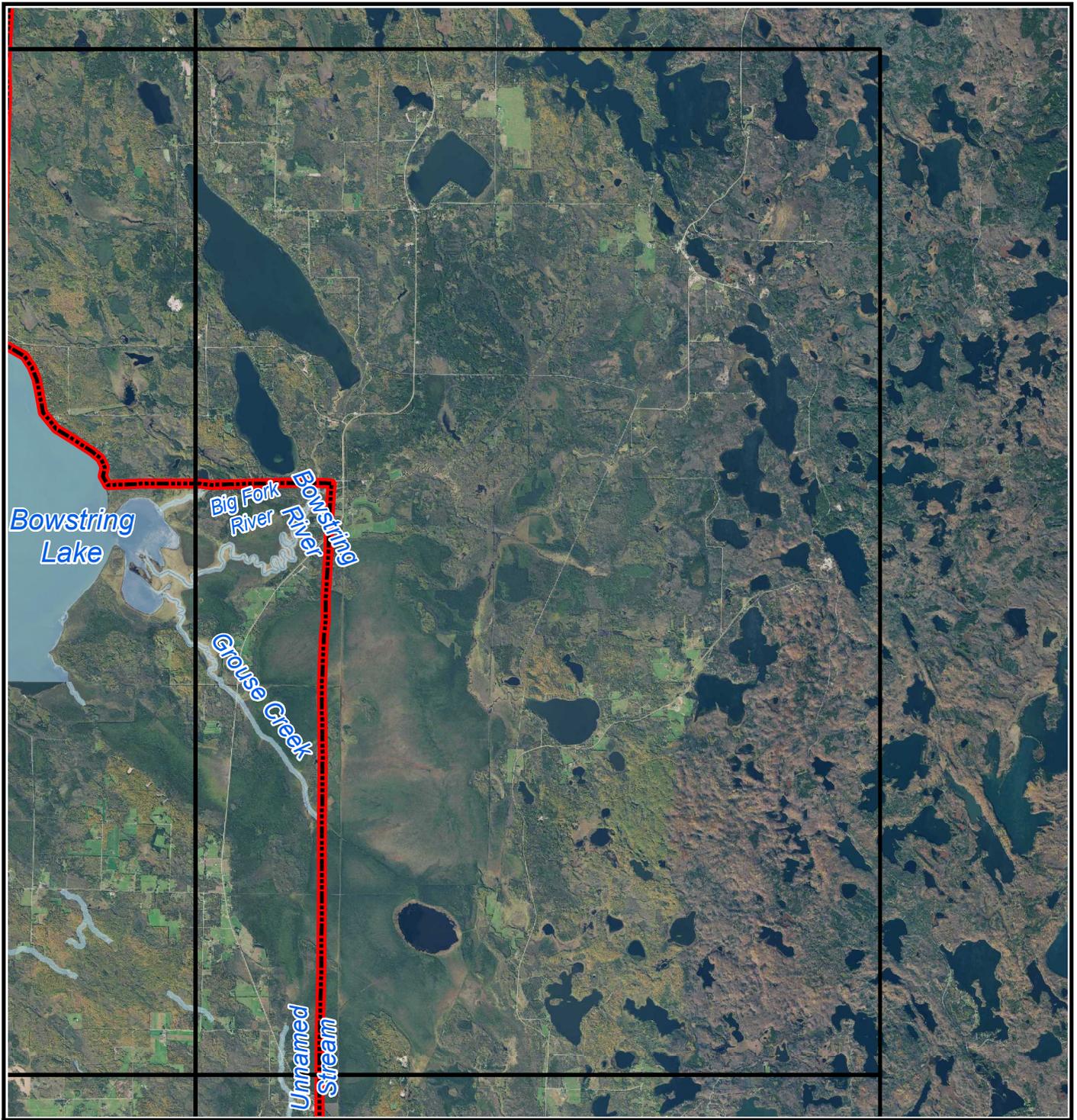
Lakes and Streams Within Leech Lake Reservation



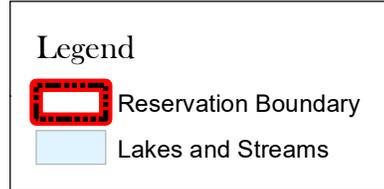
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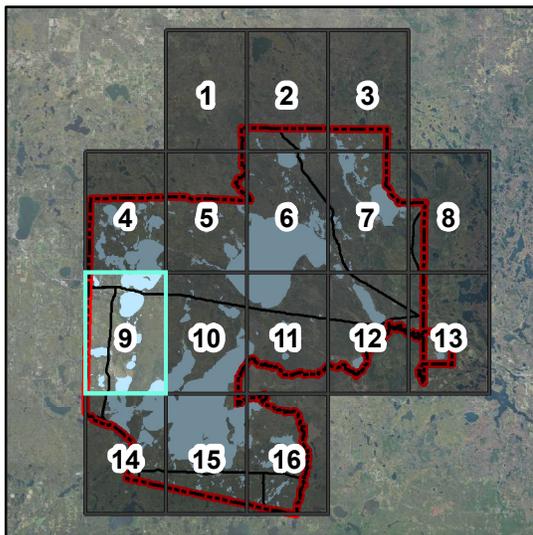
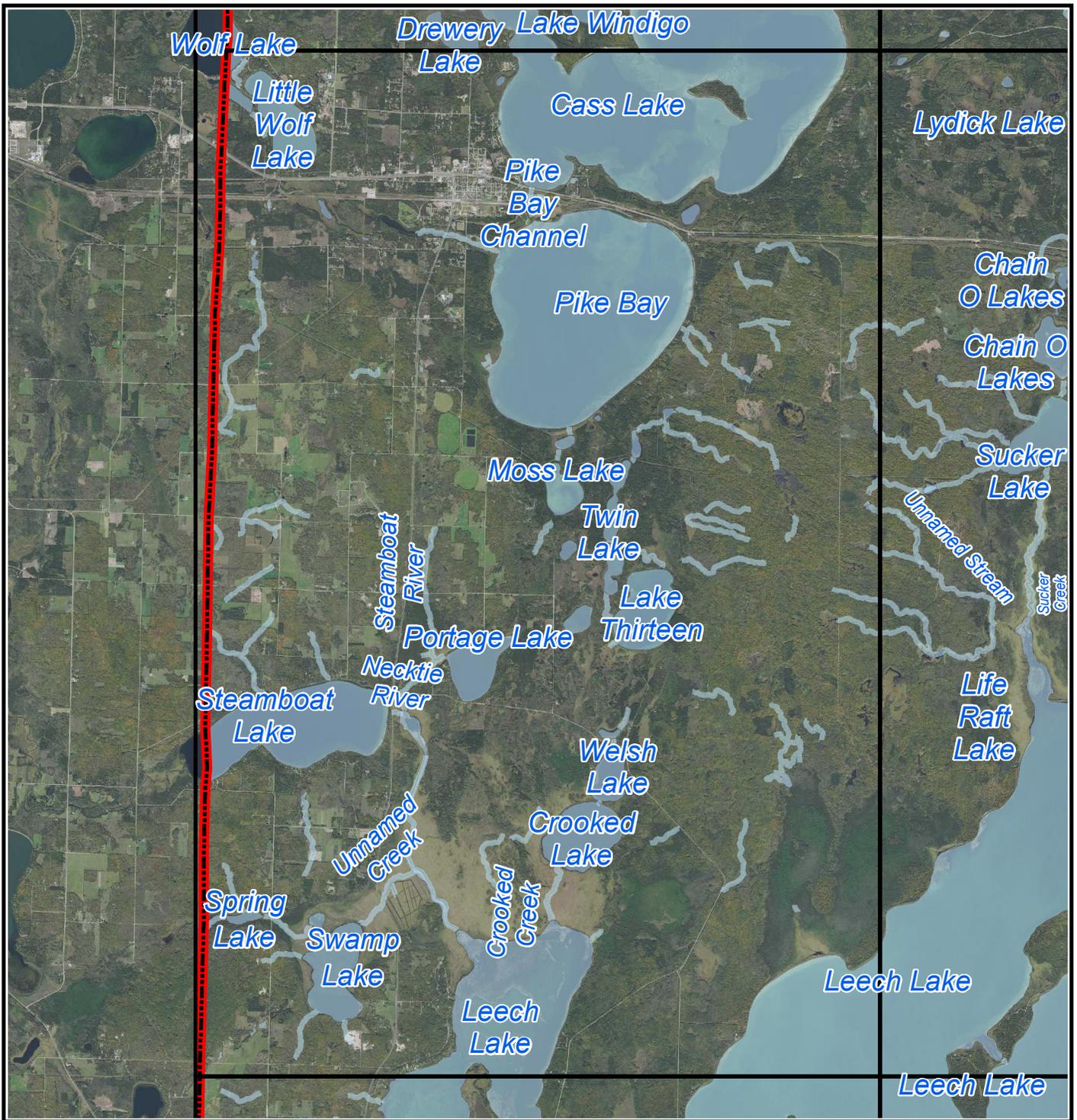
- Reservation Boundary
- Lakes and Streams





Lakes and Streams Within Leech Lake Reservation





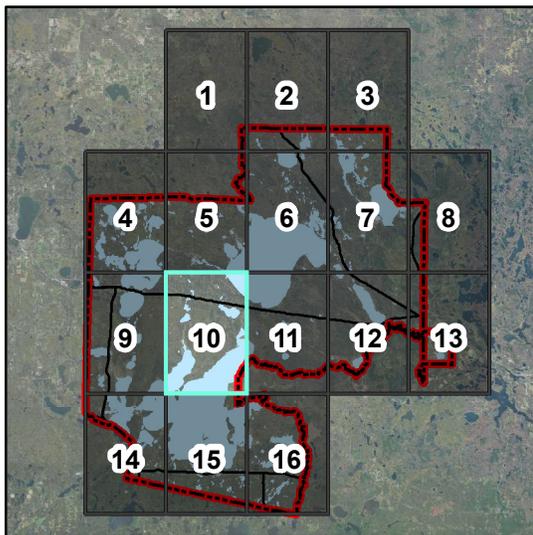
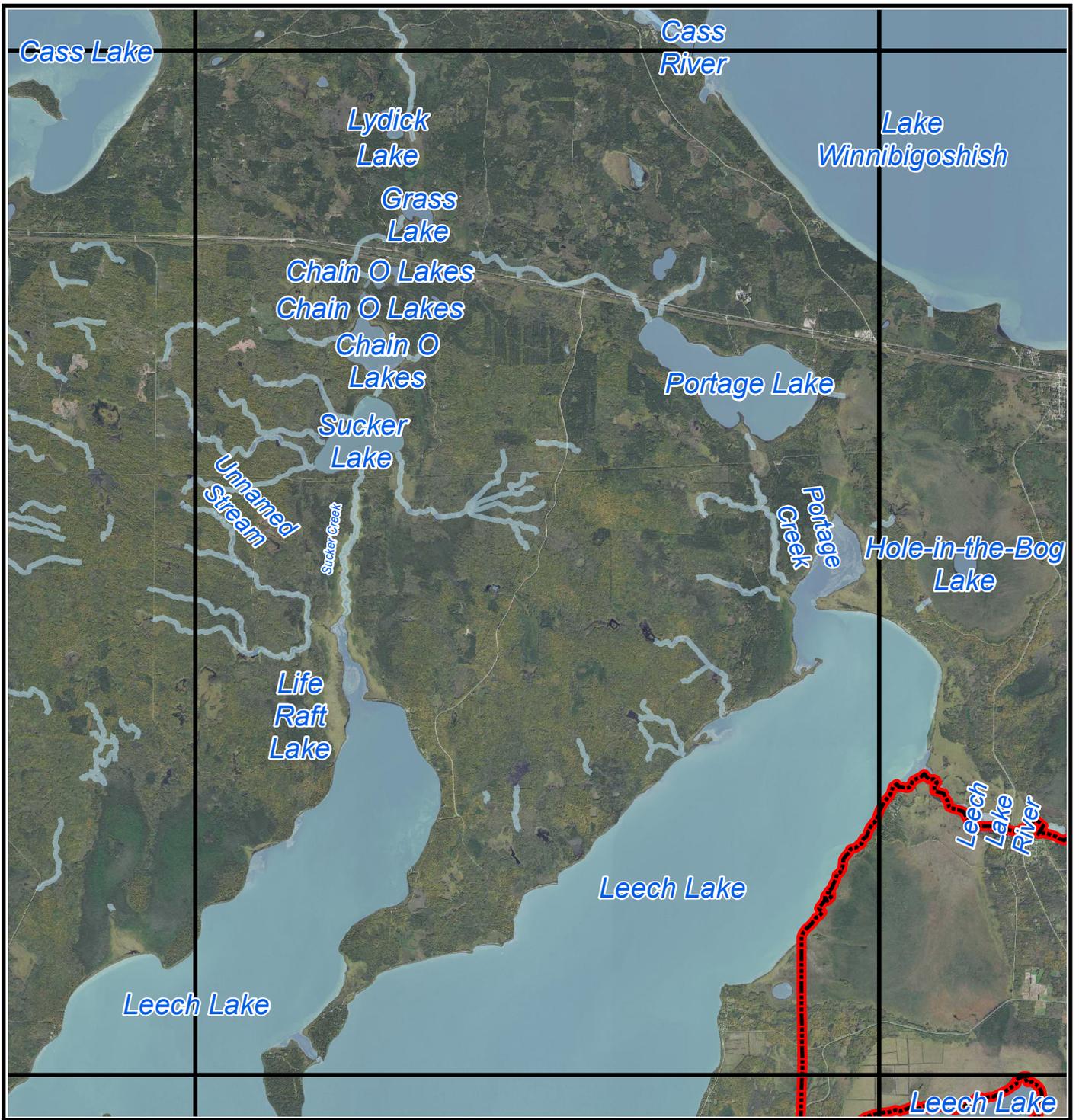
Lakes and Streams Within Leech Lake Reservation



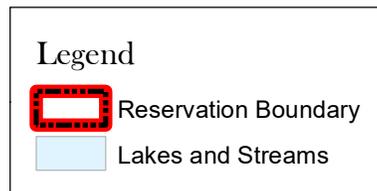
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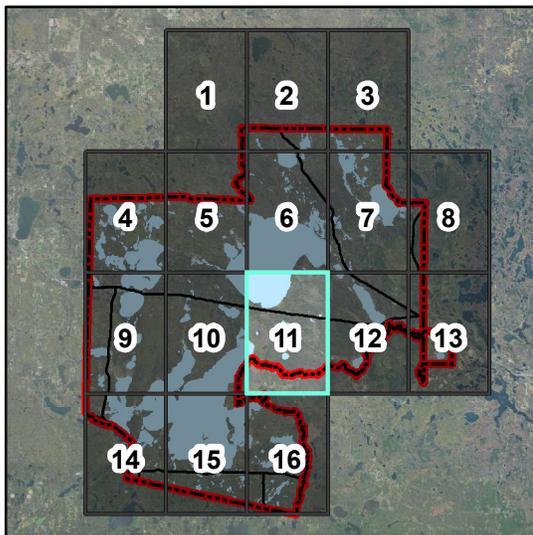
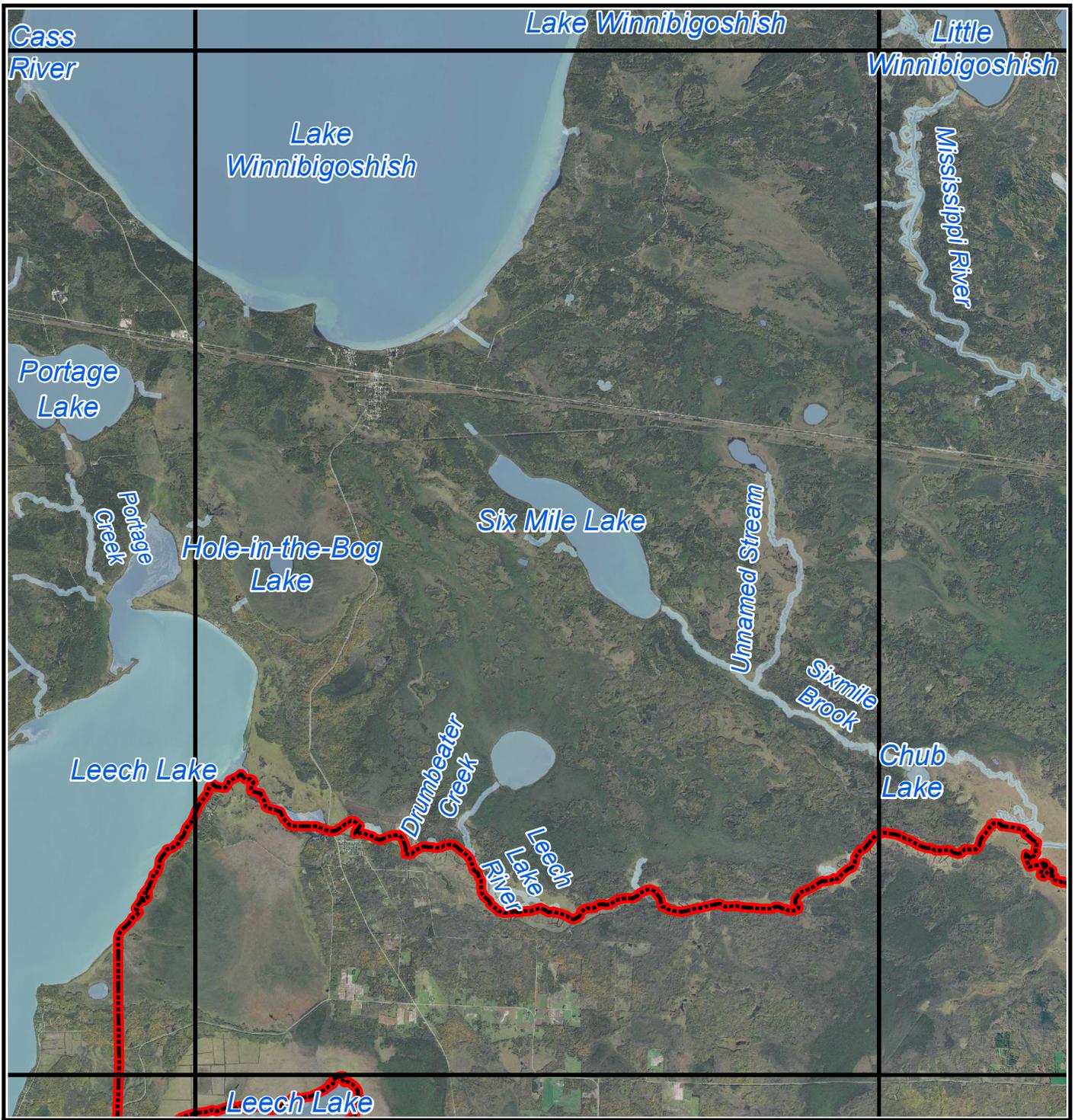
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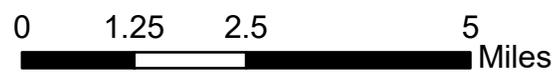


Lakes and Streams Within Leech Lake Reservation





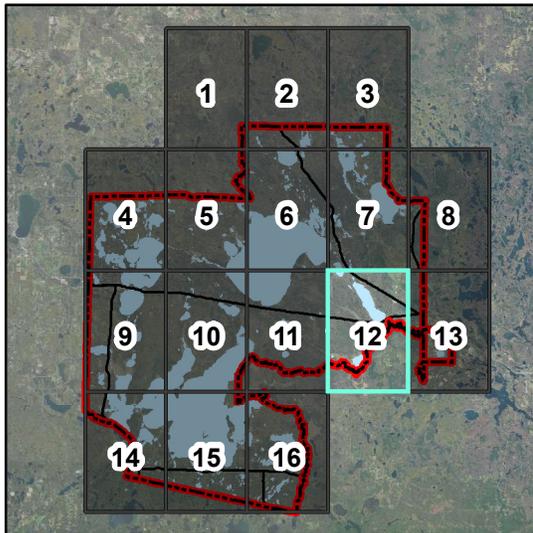
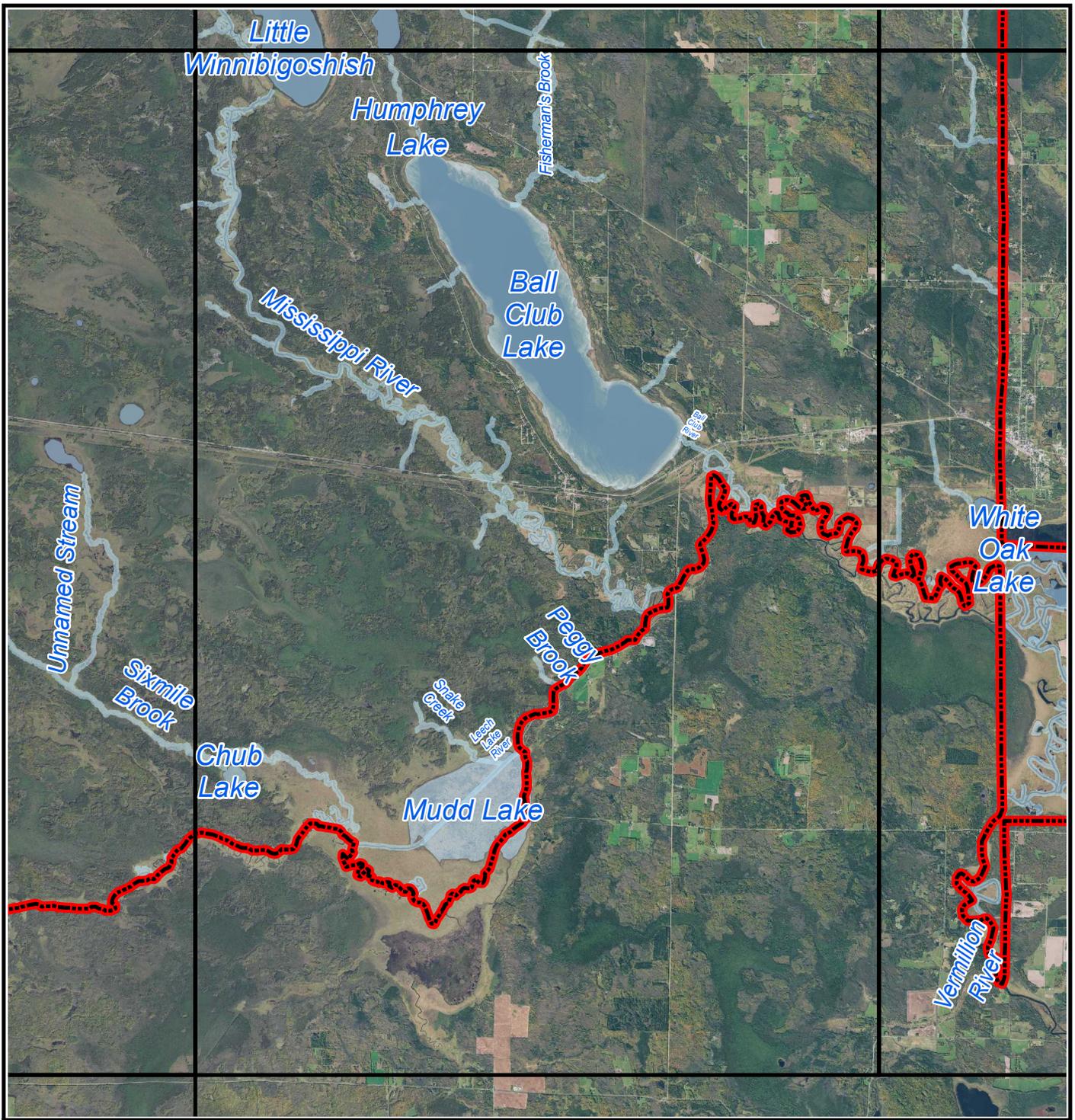
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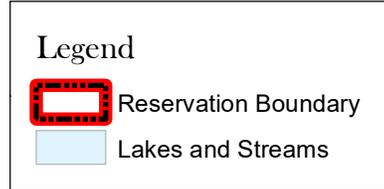
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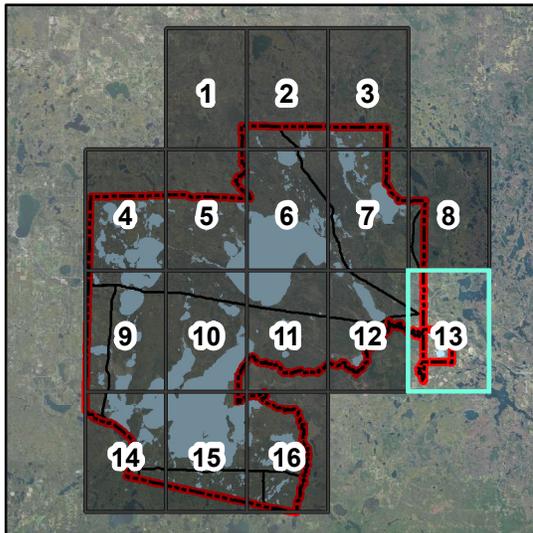
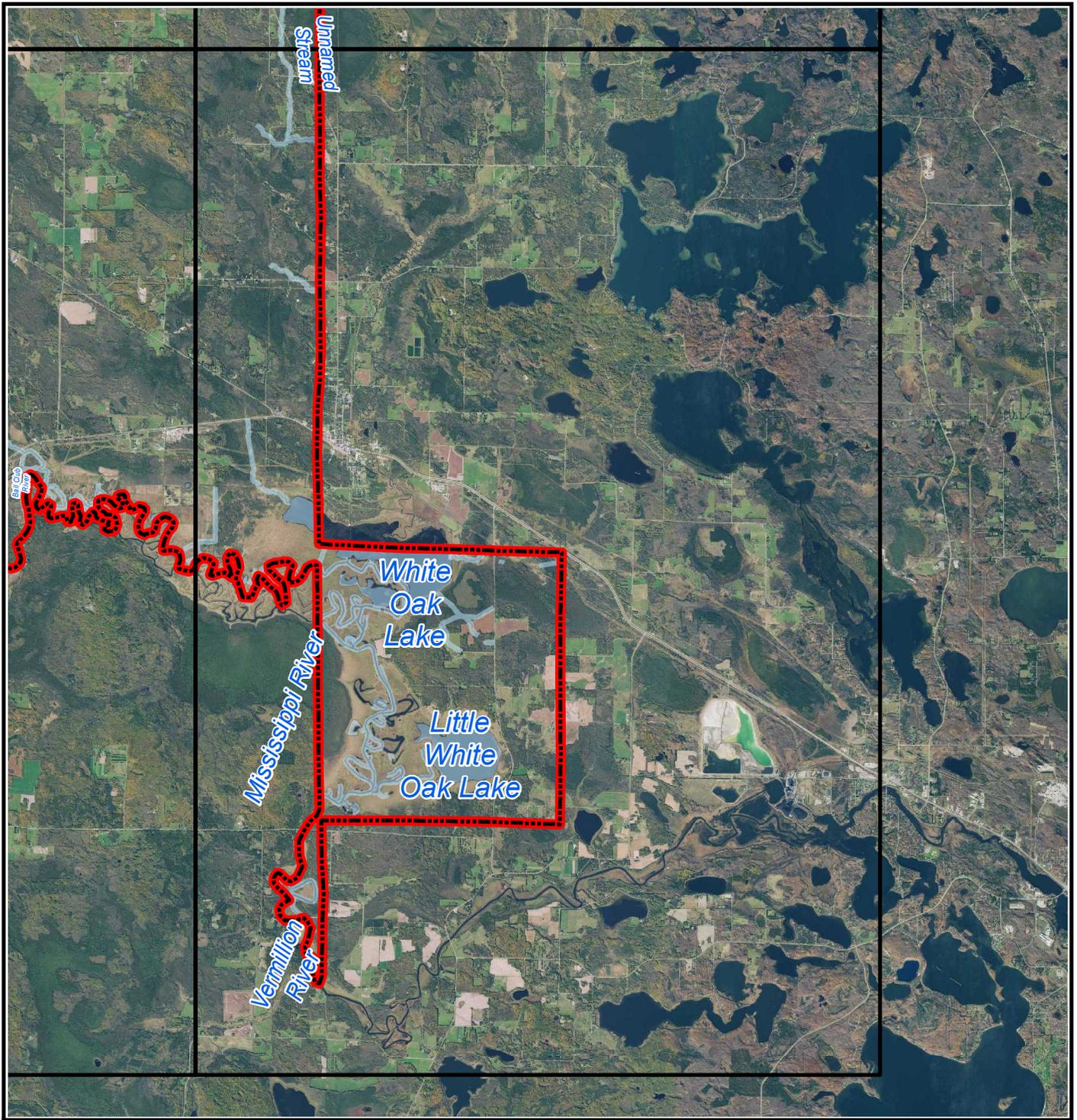
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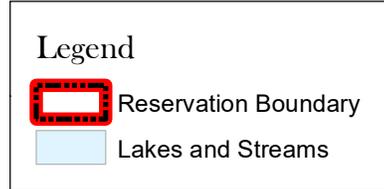


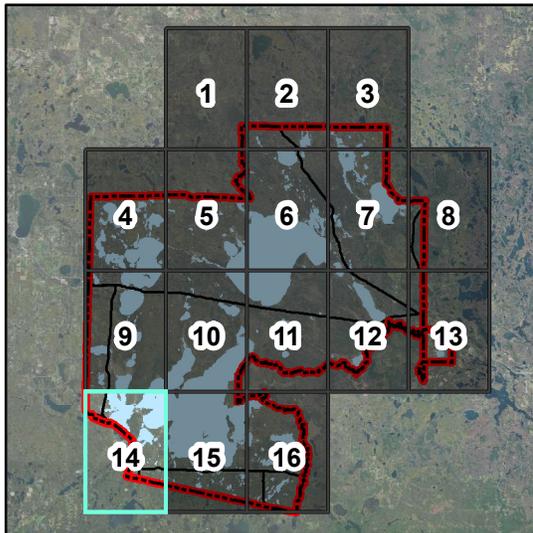
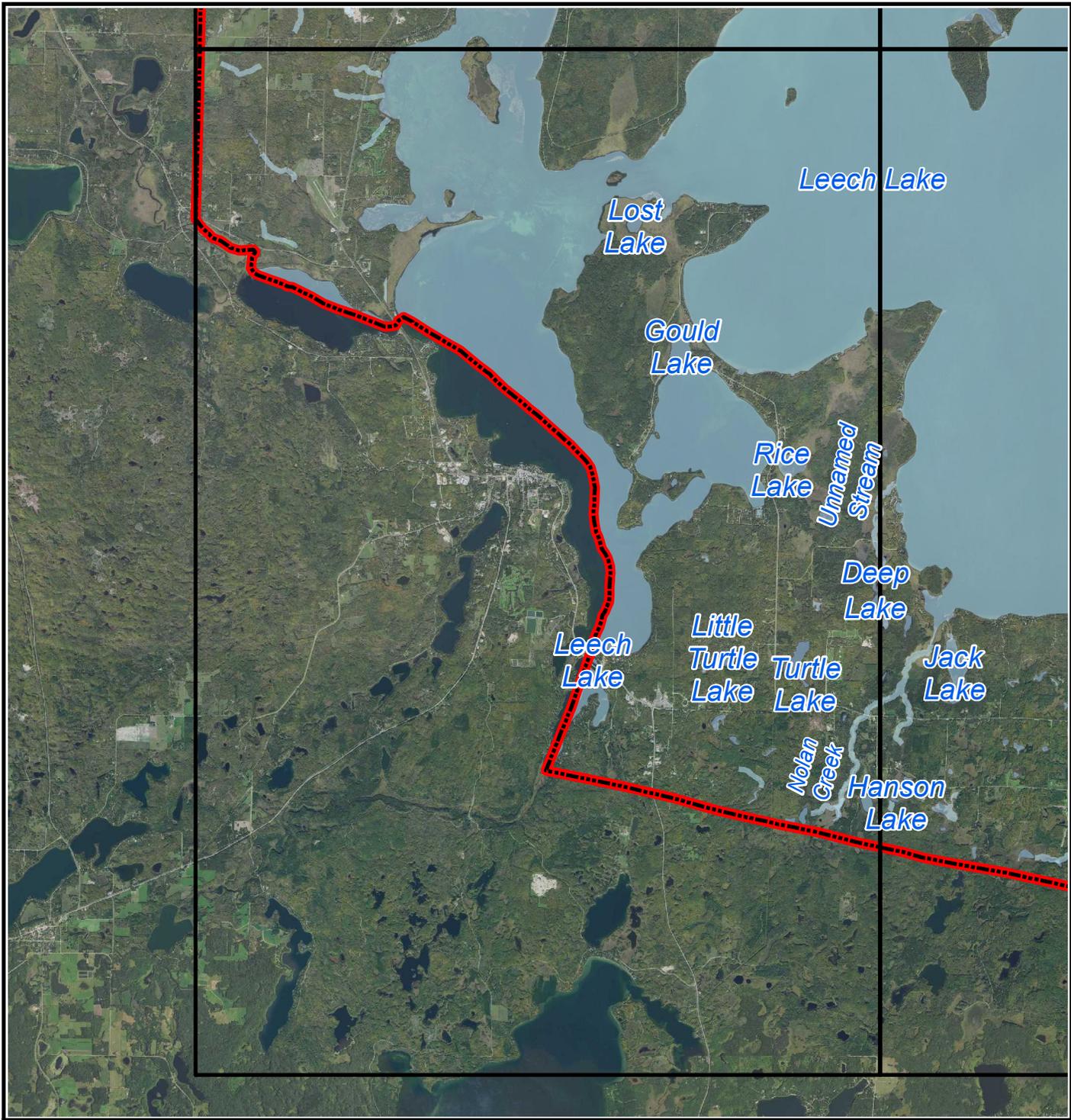
Lakes and Streams Within Leech Lake Reservation





Lakes and Streams Within Leech Lake Reservation





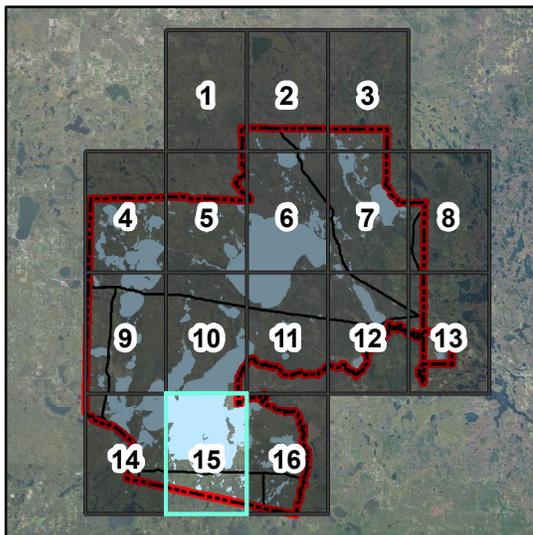
Lakes and Streams Within Leech Lake Reservation



Legend

- Reservation Boundary
- Lakes and Streams





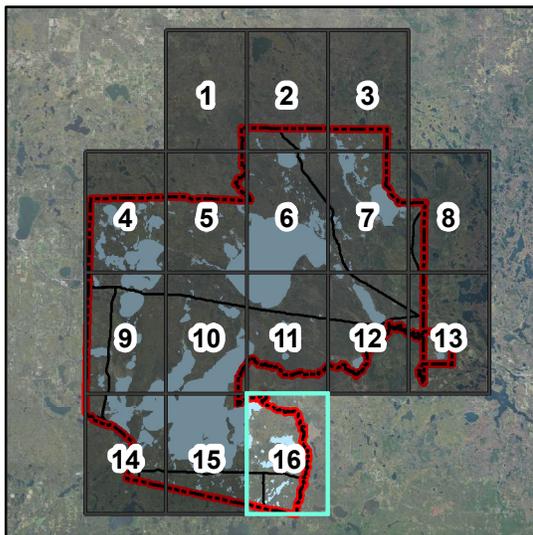
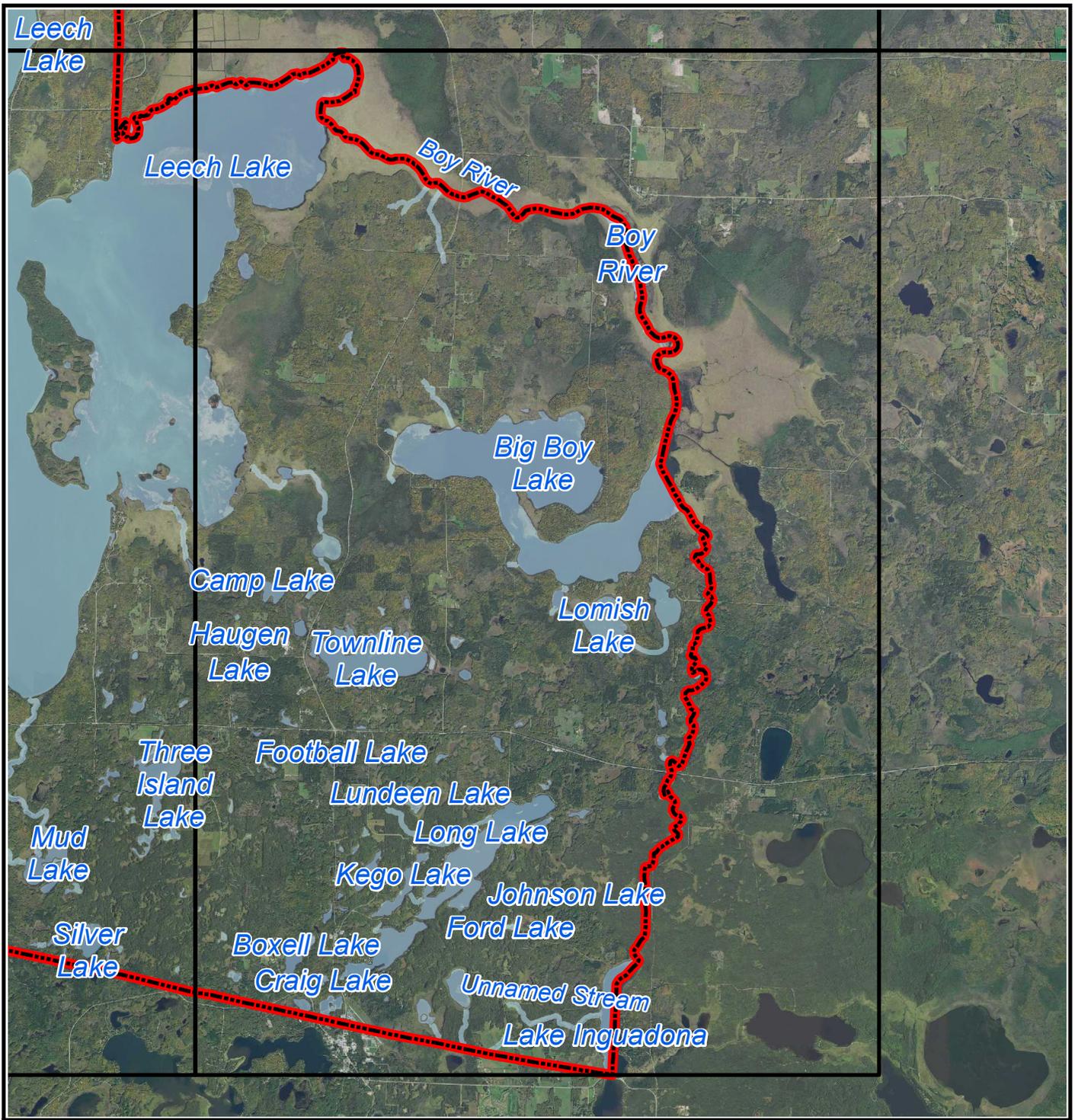
Lakes and Streams Within Leech Lake Reservation



Legend

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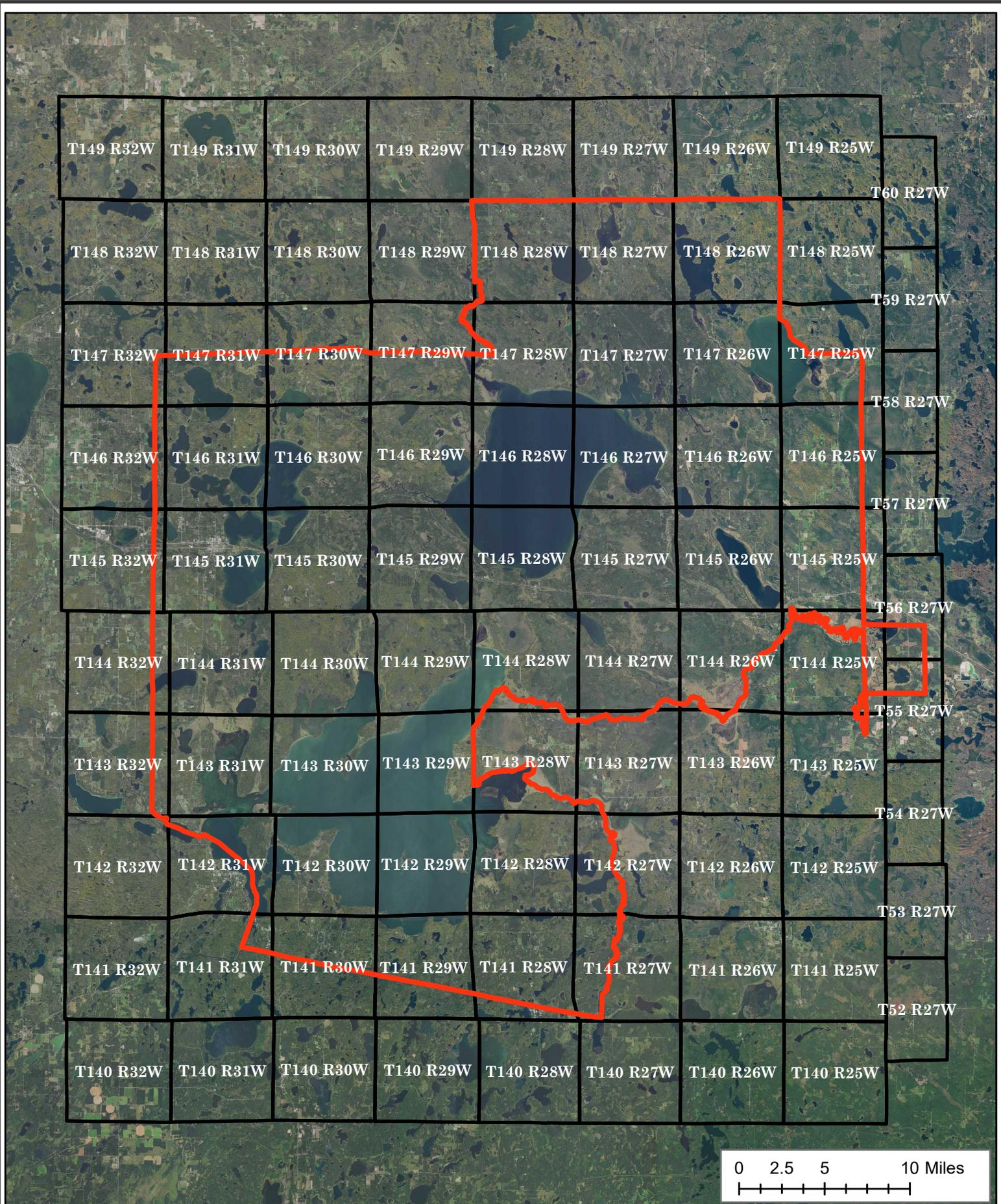
Lakes and Streams Within Leech Lake Reservation



Legend

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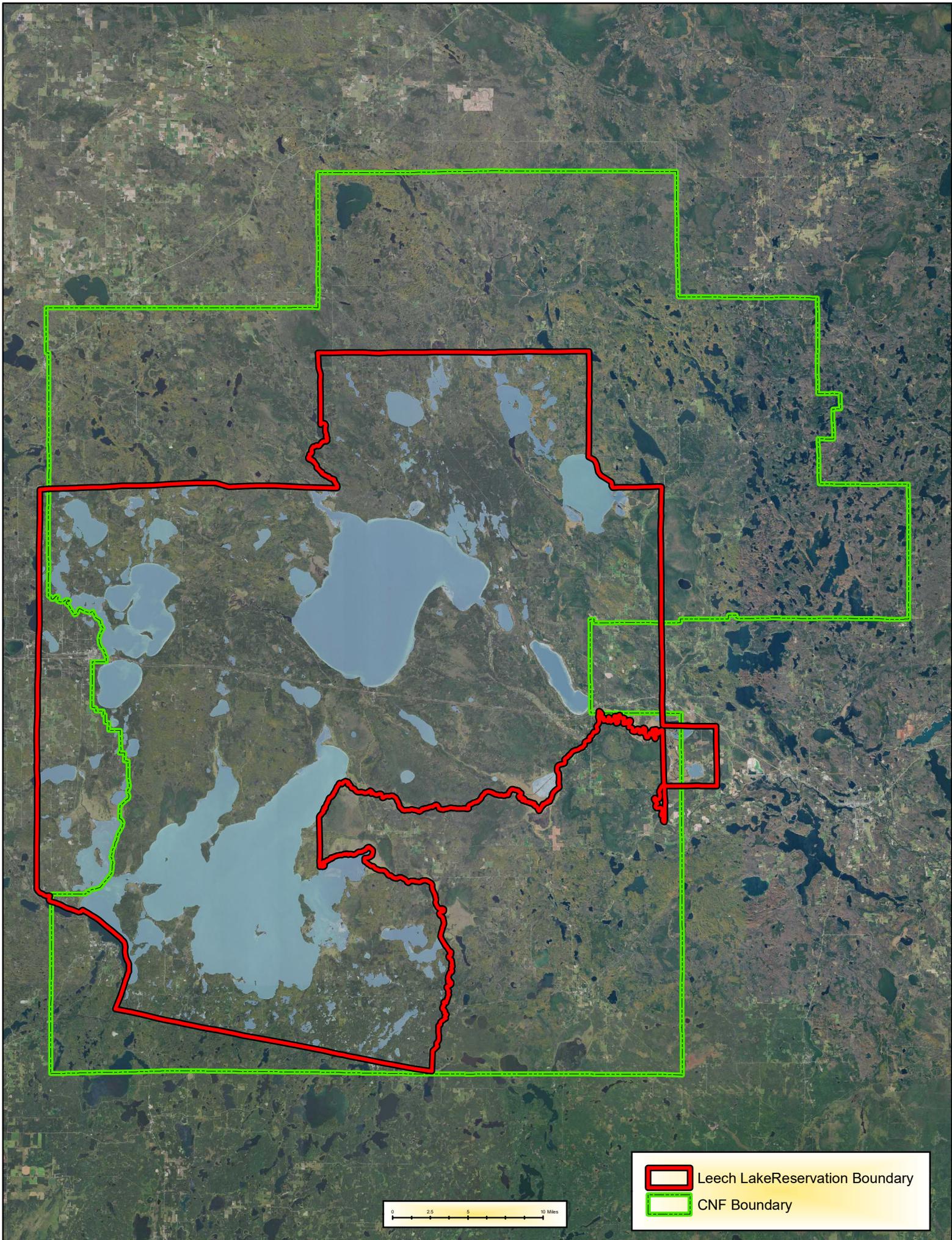




Leech Lake Reservation Lakes & Streams

Township/Range





 Leech Lake Reservation Boundary
 CNF Boundary

0 2.5 5 10 Miles

LEECH LAKE BAND

OF

CHIPPEWA INDIANS

PESTICIDE CONTROL ORDINANCE

ORDINANCE NO. 96- 05

LEECH LAKE BAND
OF
CHIPPEWA INDIANS

PESTICIDE CONTROL ORDINANCE

ORDINANCE NO. 95-_____

BE IT ENACTED by the Leech Lake Reservation Tribal Council:

Sec. 1. Title.

This ordinance shall be known as the Pesticide Management Ordinance, or "PMO."

Sec. 2. Findings.

The Leech Lake Reservation Tribal Council finds and declares that:

(1) it is the duly elected governing body of the Leech Lake Band of Chippewa Indians;

(2) it has inherent authority as a sovereign tribal government and also delegated authority under Article VI of the Constitution of the Minnesota Chippewa Tribe, which was adopted pursuant to the Indian Reorganization Act, 25 U.S.C. § 476, *et seq.*, to enact legislation governing the Leech Lake Reservation; and

(3) regulation of pesticides inside the Reservation will help to protect the natural environment and health, safety and general welfare of all residents of the Reservation.

Sec. 3. Purpose and Scope.

In order to protect animals, aquatic life, the environment and human health, safety and welfare, and to minimize hazards caused by pesticides, this ordinance regulates the production, sale, purchase, transportation, handling, storage, application, release, disposal and other use or introduction of pesticides by any person on any land, water, or air in the Leech Lake Indian Reservation.

Sec. 4. Definitions. The terms defined in this section shall have the following meaning whenever used in this ordinance unless the context requires otherwise.

Subd. 1. "Aerial application" means an application made by aircraft to the ground.

Subd. 2. "Animals" means all vertebrate and invertebrate species, including, but not limited to, man and other mammals, birds, fish and shellfish.

Subd. 3. "Agricultural commodity" means any plant or part thereof, or animal product produced by a person or persons for sale, consumption, propagation or other use.

Subd. 4. "Application" means the distribution of any pesticides or combination of pesticides for the purpose of preventing, destroying or regulating any pest.

Subd. 5. "Aquatic life" means animal and plant or other life that resides in water at some stage in its life history.

Subd. 6. "Certified applicator" means any individual who is certified under the Federal Insecticide Fungicide and Rodenticide Act as authorized to use or supervise the use of any pesticide which is classified for restricted use. The term includes private and commercial applicators.

(a) "Private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for the purpose of producing any agricultural commodity on property, owned or rented by him or his employer or is applied without compensation (other than trading or personal services between producers of agricultural commodities) on the property of another person.

(b) "Commercial applicator" means a certified applicator (whether or not he is a private applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purposes or on any property other than as provided by paragraph (a) of this subdivision.

Subd. 7. "Empty pesticide container" means any pesticide container from which the pesticide has been substantially removed or drained whether intentionally or unintentionally.

Subd. 8. "Endangered species" means those plants or animals declared to be an endangered species by the Federal Government.

Subd. 9. "Director" means the Director of the Division of Resource Management of the Leech Lake Reservation Tribal Council.

Subd. 10. "EPA" means the United States Environmental Protection Agency.

Subd. 11. "Environment" means water, air, and land and the interrelationship which exists between them.

Subd. 12. "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act of June 25, 1947, *as amended*, 7 U.S.C., ch. 6.

Subd. 13. "Ground application" means applications made by use of a tractor, motorized equipment, backpack or other method used to apply pesticides from the ground to the ground.

Subd. 14. "Hazard" means the probability that a given pesticide will have an adverse effect on human health or the environment in a specific situation, the relative likelihood of danger or ill effects being dependent on the interrelated factors present at any given time and location.

Subd. 15. "Label" means the written, printed or graphic matter on or attached to the pesticide or device or any of its containers.

Subd. 16. "Labelling" means all labels and all other written materials, printed or graphic matter accompanying the pesticides or device, and references to the label or literature accompanying the pesticide or device, except to current official publications of the EPA, the U.S. Department of Agriculture and the Department of the Interior, the Department of Health, Education and Welfare, State Experiment Stations, State Agricultural Colleges and similar federal and state institutions or agencies authorized by law to conduct research in the field of pesticides.

Subd. 17. "Land" means all land, water, and permanent structures within the Reservation, regardless of the issuance of any patent, including rights-of-way running through the Reservation.

Subd. 18. "Leech Lake Band Pesticide License" means a General Pesticide License or a Pesticide Applicator License.

Subd. 19. "Non-target organism" means a plant or animal other than the one against which the pesticide is applied.

Subd. 20. "Person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not, including a person acting in a fiduciary or representative capacity, and further including any government agency.

Subd. 21. "Pest" means (1) any insect, rodent, nematode, fungus, weed;(2) any other form of terrestrial or aquatic plant or animal life or various, bacteria, or other micro-organisms (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which are in an area where they are not wanted; or (3) any other organism declared to be a pest by the Leech Lake Reservation Tribal Council.

Subd. 22. "Pesticide" means (1) any substance or mixture of substances intended to prevent, destroy, repel or mitigate any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, causing the leaves or foliage to drop from a plant, or artificially accelerate the drying of plant tissue, or accelerating or retarding

the rate of growth or maturation or otherwise altering the behavior of plants or the product thereof.

Subd. 23. "Pesticide container" means any can, barrel, bottle, tank or other receptacle in which a pesticide is stored, held or transported.

Subd. 24. "PMO" means the Pesticide Management Ordinance.

Subd. 25. "Records" means written, electronic or printed documentation of all applications of pesticide, including location, date, time, amount per acre, wind speed and direction, and other similar information.

Subd. 26. "Reservation" means the Leech Lake Indian Reservation as established by the Treaties of 1855, 1864 and 1867 and the Executive Orders of October 29 and November 4, 1873 and May 26, 1874 and described specifically in an unpublished judgment in Leech Lake v. Herbst, Nos. 3-69 Civ. 64 and 3-70 Civ. 228 (U.S. Dist. Ct., Dist. of Minn., June 18, 1973).

Subd. 27. "Restricted areas" means all of the following and all areas within a radius of $\frac{1}{4}$ of a mile therefrom:

- (1) schools;
- (2) public buildings;
- (3) all rights-of-way;
- (4) wildlife management areas and refuges;
- (5) wetlands;
- (6) waters of the reservation; and
- (7) areas where an endangered, threatened or culturally significant species is located.

Subd. 28. "Right-of-way" means any area two rods on either side of the center-line of a public road, railway, electric power lines, pipelines and other similar areas.

Subd. 29. "Restricted use pesticide" means any pesticide classified for restricted use by the Minnesota Department of Agriculture, the EPA, or the Director.

Subd. 30. "Tribal Court" means any court duly established by the Leech Lake Reservation Tribal Council which has original jurisdiction over a violation of the PMO.

Subd. 31. "Waters of the Reservation" means all accumulations of surface water and ground water, whether natural or artificial, or public or private, and any parts thereof, to the extent they are within or flow through the Leech Lake Reservation; provided that the term does not include any pond, reservoir or facility built for reduction, treatment or control of pollution or cooling of water prior to discharge. The term includes, but is not limited to, wetlands.

Subd. 32. "Wetlands" means areas that are inundated and saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated (hydric) soil conditions. Wetlands generally include, but are not limited to, swamps, marshes, bogs, and similar areas.

Subd. 33. "Work plan" means a written document stating the target organism, application rate, amount, and method of application and location of the proposed pesticide use for the project.

Sec. 5. Leech Lake Pesticide Program.

Subd. 1. Organization; Responsibility. The Leech Lake Reservation Tribal Council hereby establishes the Leech Lake Pesticide Program within its Division of Resource Management. The Director shall be responsible for implementing and enforcing the PMO.

Subd. 2. Authority. As he may deem necessary to carry out the purpose and intent of the PMO, the Director may:

- (1) designate restricted use pesticides;
- (2) restrict, regulate or prohibit the sale, purchase, production, processing, transportation, handling, storage, application, disposal or other use of pesticides within the Reservation;
- (3) require, restrict, regulate or prohibit the use of designated facilities, equipment, materials and methods for the purchase, sale, production, processing, transportation, handling, storage, application, disposal or other use of pesticides within the Reservation;
- (4) enter in a lawful manner any public or private premises within the Reservation to observe or inspect any stores of pesticides; and any apparatus, aircraft, vehicle, equipment, supplies, material, storage and handling areas and facilities, disposal sites and devices which are used or intended for use in the production, processing, transportation, handling, storage, application, disposal or other use of pesticides;
- (5) restrict, regulate or prohibit the production, processing, transportation, handling, storage, application, and disposal or other use of pesticides in the

reservation on a basis of time, geographic area or other relevant circumstance or condition;

(6) issue or approve permits, licenses or work plans for production, processing, sale, distribution, transportation, storage, application, disposal or use of pesticides within reservation;

(7) adopt by reference laws, rules, regulations, orders, or other requirements prescribed by the United States or by the State of Minnesota with respect to pesticides;

(8) issue administrative orders and take other enforcement actions as provided in Section 11 of the PMO;

(9) obtain advice and assistance from federal, tribal, state, county and municipal government agencies, and private agencies, and persons with technical expertise with respect to the adoption and implementation of the Leech Lake Pesticide Program; coordinate activities and cooperate with other governmental agencies having similar responsibilities within their respective jurisdictions; and to utilize the Tribal Court to enforce the PMO and any rules, regulations and orders adopted pursuant thereto;

(10) enter into agreements with federal, state, and local governments and with private organizations as appropriate to provide coordination, cooperation and assistance, including but not limited to financial assistance, in achieving the purposes of the PMO.

(11) delegate program administrative responsibility and authority to a Pesticide Coordinator and designate other authorized representatives of the Pesticide Program to conduct inspections, observations, inquiries, and enforcement of the PMO;

(12) make such reports to the Administrator of the EPA in a manner and containing such information as the Administrator may, from time to time require; and

(13) regularly monitor the development, production, transportation, storage, handling, use, impacts and disposal of restricted use pesticides.

Sec. 6. Licensing and Record Keeping.

Subd. 1. Leech Lake Pesticide Licenses.

(a) General Pesticide License. No person shall produce, store, process, transport, distribute, handle, sell, dispose of any restricted use pesticide within the Reservation, or offer to do any of the foregoing, without a Leech Lake Band General Pesticide License.

(b) Pesticide Applicator License. No person who would be considered a "certified applicator," "commercial applicator" or "private applicator" of restricted pesticides under FIFRA or the PMO shall apply or supervise the application of any restricted use pesticide

within reservation without a current Leech Lake Band Pesticide Applicator License.

(c) Applications. Application for a Leech Lake Band pesticide license or permit shall be in such form as is prescribed by the Director.

(d) Issuance. Issuance of the Leech Lake Band pesticide license shall be issued only if the applicant (1) is competent to perform the licensed activities; (2) is familiar with their nature and characteristics, and the dangers which may result from their application, use and handling; (3) is knowledgeable about, and able and willing to take appropriate precautions to protect the public health, safety and welfare; (4) has suitable equipment, in safe and proper operating condition, for application or other use, with trained, reliable and responsible operators, as appropriate; and (5) has not demonstrated lack of responsibility in prior processing, transportation, handling, storage, application, disposal or other usage of restricted use pesticides within the Reservation or elsewhere.

The demonstration or other satisfaction of the foregoing requirements may be by oral or written examination, completion of training course, actual field operation, questionnaires or reports from other persons, reliance upon federal and state certifications and licenses, or any combination of the foregoing.

(e) Qualification, Conditions and Restrictions. Any Leech Lake Band pesticide license issued may be subject to any reasonable qualifications, conditions, restrictions and limitations deemed appropriate by the Director.

(f) Financial Responsibility. Before issuing a Leech Lake Band pesticide license, the Director shall require proof that the applicant has currently in force liability insurance protecting persons who may suffer death, injury, illness or property damage as a result of actions taken under the license. The Director shall accept liability insurance only from companies authorized to do business in the State of Minnesota. The insurance shall be in an amount specified by the Director and shall include coverage for property damage, personal injury or illness, death, and public liability, each separate. The insurance shall be maintained in not less than the specified sum at all times during the licensing period. The insurance shall be written in a form acceptable to the Director and shall be evidenced by certificates delivered to the Director. Each policy shall require written notice to the Director at least ten (10) days before any cancellation or change thereof. The Director shall suspend the license of any licensee who fails, at any time, to satisfy the insurance requirements. The Director may increase the amount of required insurance at any time upon fifteen (15) days notice to the licensee.

(g) Term. A Leech Lake pesticide license may be issued by the Director for a period not to exceed twelve (12) months from the date of approval of the license by the Director. It may be renewed annually upon application to the Director and satisfaction of all qualifications and prerequisites therefor.

(h) Fees. A fee shall be charged for the issuance and each annual renewal of a Leech Lake Band pesticide license, and an additional fee shall be charged for the reactivation of any license that is suspended for any reason. The Director shall establish by rule or order a fee schedule and may revise it from time to time. All such fees shall be submitted to the Band through the Director, with checks made payable to the Leech Lake Reservation Tribal Council.

(i) Additional Requirements. The Director may alter, modify, or increase the requirements, conditions, restrictions or limitations imposed on any license or permit issued pursuant to the PMO, as may be reasonable and necessary to protect the public health, safety, welfare and the integrity of the environment.

Subd. 2. Records and Reports. Each person who applies pesticides pursuant to a Leech Lake Band Pesticide Applicator License shall keep a record of each property treated and, upon request by the Director, shall furnish copies of such records to the Director. Such records shall be kept by such persons for a period of two years, unless a longer period is specified by the Director, and shall contain the name and address of the owner of the property and the exact location of the property treated; the crop treated; the pest or pests involved; the name, type and strength of the pesticide used; a description of the method by which such pesticide was applied; the name and address of the person or firm where the pesticide was purchased; the name and address of the person applying the pesticide; the date, month, year and time of the day of application; the direction and estimated velocity of the wind at the time of the application and a description of the principal equipment used therefore; the name and address of the person who disposed of the pesticide containers, the type of container and the manner and location in which the containers were disposed of.

Sec. 7. Registration of Pesticides.

No person shall produce, process, distribute, sell, purchase, deliver, transport, receive, store, apply or otherwise use any pesticide within the Reservation, or offer to do any of the foregoing, unless that pesticide is properly and currently registered pursuant to FIFRA; provided that if an unregistered pesticide is subject to an experimental use permit issued pursuant to FIFRA, the Director may authorize its experimental use by the permittee within the Reservation in strict compliance with the terms of the permit and such additional restrictions or requirements as he may impose.

Sec. 8. Use of Pesticides.

Subd. 1. Transportation. All transportation of pesticides within the Reservation shall comply with the requirements of this subdivision.

(a) Transportation routes shall be selected so as to minimize the impact of a potential spills on waters of the Reservation;

(b) All containers shall be inspected prior to loading in order to ensure that all caps, plugs and bungs are tightened and there are no leaks;

(c) No restricted use pesticide shall be transported by boat or aircraft across water bodies.

Subd. 2. Storage. All storage of pesticides inside the Reservation, except for storage incidental to the year around or seasonal use of property for residential purposes, shall comply with the requirements of this subdivision.

(a) All pesticides shall be stored within designated storage areas within buildings. Storage areas shall have floors constructed of concrete or other impermeable materials and shall have drains or sills with sumps large enough to contain the contents of the largest container stored therein. Storage areas shall not be located within 500 feet of a well, wetland or water body. Storage areas shall be locked at all times to avoid misuse or vandalism.

(b) All empty pesticide containers must be washed prior to storage.

(c) All empty pesticide containers shall be triple rinsed prior to storage.

(d) Empty pesticide containers may be stored at a permanent land site for up to one year after the date of use. No empty pesticide containers shall be stored within the Reservation for longer than one year unless authorized in writing by the Director.

Subd. 3. Mixing and Loading Operations. All mixing and loading of pesticides within the Reservation shall comply with the requirements of this subdivision.

(a) The label shall be reviewed before opening the container, and all label directions shall be strictly followed during all phases of mixing and loading.

(b) Neither mixing nor loading may be carried in a restricted area.

(c) Hoses used to fill pesticide application equipment shall be stored and transported in a manner that prevents direct contact with pesticides, gasoline, oils or surfaces on which the substances have been spilled.

(d) Pesticides shall not be introduced into mixing or application equipment until after filling the equipment from a water source.

(e) Pesticides shall not be mixed or loaded with water directly from a water body.

(f) Pour caps shall be replaced and bags or other containers shall be closed immediately after use.

(g) Spray and mix tanks shall not be left unattended while being filled.

(h) An air gap shall be provided between the water source and the mixture surface so as to prevent backsiphoning.

(i) Pesticide mixing or application equipment shall not be filled directly from a public water supply unless the outlet from the water supply is equipped with a backflow device.

Subd. 4. Application of Pesticides. All applications of pesticides inside the Reservation shall comply with the requirements of this subdivision.

(a) The label directions shall be reviewed prior to application and shall be strictly adhered to during application.

(b) Records of application shall be maintained as specified in Section 6, subdivision 2.

(c) All application equipment shall be inspected prior to use taking particular care to check for leaking hoses, connections, and plugged or worn nozzles.

(d) Spray equipment shall be calibrated prior to use so as to achieve uniform distribution and rate.

(e) Treatment areas shall be clearly marked and identified.

(f) Equipment shall produce the appropriate rate and lowest reasonable pressure for the chemical being applied.

(g) Pesticides shall not be applied if the likelihood of drift exists, and a drift control agent shall be used as necessary.

(h) Application shall be made only under the wind, temperature and humidity conditions recommended on the pesticide label.

(i) No pesticide shall be applied within fifty (50) feet of an operating school bus.

Subd. 5. Equipment Clean-up. All equipment used to handle, transport, store, or apply pesticides inside the Reservation shall be cleaned as required by this subdivision.

(a) Pesticide residues shall not be disposed of within a restricted area as defined in Section 4, Subdivision 27.

(b) All equipment shall be thoroughly cleaned after each use, including but not limited to rinsing the mixing apparatus at least three times.

Subd. 6. Container and Waste Disposal. All pesticide wastes and containers shall be disposed of according to the product label.

Subd. 7. Responding to Spills. Any person who spills one (1) gallon or more of a pesticide or observes or otherwise becomes aware of such a spill shall contact the Director within 2 hours of becoming aware of the spill. If the spill occurs during the weekend or after normal business hours such person shall contact the Minnesota Duty Officer at (800)422-0798 where phones are answered 24 hours every day.

Sec. 9. Applications Within Restricted Areas.

Subd. 1. The Provisions of this section shall apply to all applications of restricted pesticides regardless of land use and all applications of other pesticides except applications on property currently being used for year around or seasonal residential purposes.

Subd. 2. Applications Prohibited. No person shall apply restricted use pesticides in a restricted area as defined in Section 4, subdivision 27 unless (1) the applicator has submitted a work plan to the Director stating the type, amount, rate, target organism, location and method of application of the pesticide intended for the project; and (2) the Director has approved the work plan. The work plan shall be submitted at least two business days in advance of the proposed application. If the Director fails to respond within two business days of submission, the work plan shall be deemed to have been approved.

Subd. 3. Special Requirements. Applications within 500 feet of a school may be made only when:

- (1) the school is on summer break, and there are no activities being conducted;
- (2) the school is on weekend break, and there are no activities being conducted or;
- (3) the school is closed for the day.

Subd. 4. Right-of-Way Applications. The applicator must notify all households within one-quarter ($\frac{1}{4}$) mile of any right-of-way proposed to be treated with pesticides and receive written statements of approval, prior to submitting a workplan to the Director for approval pursuant to subdivision 2 of this section.

Sec. 10. Prohibited Acts. In addition to prohibitions set forth elsewhere in the PMO, no person shall:

- (1) violate any provision of the PMO or rule or order issued pursuant thereto;
- (2) interfere with the lawful enforcement of the PMO;
- (3) aid, abet or help any person who is committing or attempting to commit any act prohibited by the PMO;
- (4) distribute, move, damage, obstruct or interfere with any equipment or activities of the Leech Lake Pesticide Program or its duly authorized personnel;
- (5) operate defective pesticide application equipment;
- (6) operate pesticide application equipment negligently;
- (7) apply a pesticide in a manner inconsistent with the labeling registered with the U.S. EPA for that pesticide, or in violation of U.S. EPA or the Director's restrictions on the use of that pesticide;
- (8) make false or misleading statements during any inspections carried out under the PMO or in any application, plan or report required by the PMO;
- (9) sell any pesticide that does not have proper branding or labeling attached to its package;
- (10) make an application which would unreasonably affect a non-target organism;
- (11) sell any pesticide that is not registered or whose registration has been cancelled or suspended;
- (12) fail to report any and all spills or pesticides to the Director within two (2) hours of the time of the event;
- (13) make any aerial application of a pesticide within the Reservation.

Sec. 11. Enforcement.

Subd. 1. Remedies Available. The provisions of the PMO may be enforced by any one, or a combination, of the administrative and judicial remedies contained in this section.

Subd. 2. Administrative Order; Issuance and Appeal. The Director may issue an administrative order directing any person whom the Director finds to be in violation of the PMO or any rule or order promulgated thereunder to cease and desist such violation and take such action as he may deem necessary to mitigate any damage caused by the violation to persons, property or the environment. Any person to whom an administrative order is issued may appeal to the Tribal Court. Appeals shall be in writing and shall be filed within thirty (30) days after issuance of the order.

Subd. 3. Revocation or Suspension of Leech Lake Pesticide License; Authority and Appeals. The Director may revoke or suspend any Leech Lake pesticide license if he finds that the licensee has violated the PMO or any rule or order issued thereunder; or any certificate, license or permit issued to the licensee pursuant to FIFRA. Revocations and suspensions shall be in writing and shall state the reasons therefore. Any person whose license is revoked or suspended may appeal such action to the Tribal Court in the manner described in subdivision 2 of this section.

Subd. 4. Civil Penalties. The Tribal Court, in a civil action brought in the name of the Band by the Director, a Leech Lake Conservation Officer or other duly authorized agent of the Band, may levy a civil penalty for violations of the PMO or any rule or order issued thereunder as provided in this subdivision.

(a) Any holder of a Leech Lake Band pesticide license or any person who is required to have such a license may be required to forfeit and pay to the Band a civil penalty, in an amount to be determined by the Court, of not more than \$5000 for each offense.

(b) Any person other than a licensee or person required to have a license as described in paragraph (a) of this subdivision may be required to forfeit and pay to the Band a civil penalty if not more than \$1500 for a first offense and not more than \$5000 for each subsequent offense.

Subd. 5. Injunctions. Violations of any provision of the PMO or any rule or order issued thereunder may be enjoined by the Tribal Court in an action brought by the Director in the name of the Band.

Subd. 6. Actions to Compel Performance.

(a) The Director may bring an action in the name of the Band in Tribal Court to seek an order to compel performance of any administrative order issued pursuant to subdivision 2 of this section or compliance with the provisions of the PMO or any rule issued thereunder.

(b) In any such action the Tribal Court may require any defendant adjudged responsible to do and perform any and all actions necessary, which are reasonable and within the defendant's power, to accomplish the purposes of the PMO or any rule or order

issued thereunder.

Sec. 12. Severability.

If any provision of this code is held invalid, the remainder of this code shall not be affected thereby.

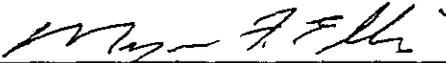
Sec. 13. Preservation of Sovereign Immunity.

Nothing in the PMO shall be constructed as waiving, in whole or in part, the sovereign immunity from suit of the Band or its officials, agents or employees, except for appeals of actions of the Director pursuant to Section 11, Subd. 2 and 3 of the PMO.

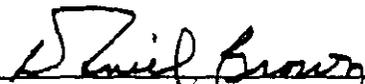
Sec. 14 Effective Date.

This ordinance shall become effective on June 1, 1996.

We certify that the foregoing Pesticide Management Ordinance Number 96-05 was duly adopted by the Leech Lake Reservation Tribal Council at a SPECIAL meeting thereof held in Cass Lake, Minnesota on May 24, 1996.



Myron F. Ellis, Acting Chairman



Daniel Brown, Secretary/Treasurer

Leech Lake Tribal Council



IN REPLY REFER TO:

ALFRED R. PEMBERTON,
CHAIRMAN
DANIEL S. BROWN,
SECRETARY-TREASURER
ALFRED FAIRBANKS, JR.,
DISTRICT I REPRESENTATIVE
JACK H. SEELYE,
DISTRICT II REPRESENTATIVE
MYRON F. ELLIS,
DISTRICT III REPRESENTATIVE

**LEECH LAKE RESERVATION
SOLID WASTE TRANSPORTATION, DISPOSAL & RECYCLING ORDINANCE
ORDINANCE NO. 95-01**

1. Findings.

The Leech Lake Reservation Tribal Council recognizes that the sanitary and environmentally-sound transporting and disposal of solid waste is important to the health, welfare and safety of all individuals residing on or near the Leech Lake Reservation. The Tribal Council also recognizes that proper waste transporting, disposal, and recycling are important to the protection of the Reservation environment and natural resources. Inefficient, inappropriate, and unsanitary disposal of solid waste can have serious adverse impacts on the land, waters and other natural resources which are vital to the Leech Lake Reservation. Recycling is recognized as an important and valuable method of reducing the amount of waste requiring final disposal and is therefore strongly encouraged.

2. Authority.

This Ordinance is promulgated based on the authority of the Leech Lake Tribal Council to enact regulation as granted by Article VI of the Constitution of the Minnesota Chippewa Tribe, and as recognized by the United States under Section 16 of the Indian Reorganization Act, 25 U.S.C. ss 476.

3. Applicability.

This Ordinance applies to all activities within the exterior boundaries of the Leech Lake Reservation, which involve the transporting, disposal, or recycling of solid waste on or near these boundaries.

4. Definitions.

- a. "Collection Site" means any designated place where solid wastes are presented for recycling or transportation to a disposal site.
- b. "Collector" means any natural or legal person, and that person's employees and agents, who gather from another person that person's solid waste.

- c. "Hazardous Waste" means any solid waste defined as hazardous waste by the U.S. Environmental Protection Agency under the provisions of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. ss 6901 et seq., as amended.
- d. "Non-resident" means any person who does not have a permanent place of abode on the Reservation, except as hereafter provided. Non-resident does not mean any temporary or seasonal resident, for purposes of solid waste generated at the temporary or seasonal residence, and does not mean any place of business, or corporate entity for purposes of solid waste generated at the business, or corporate presence.
- e. "Reservation" and "Reservation Boundaries" means the Leech Lake Indian Reservation as defined by the Treaty of February 22, 1855; Treaty of March 19, 1867; Executive Order of October 29, 1873; Executive Order of November 4, 1873 and Executive Order of May 26, 1874.
- f. "Solid Waste" means all waste, garbage, rubbish, offal, trash and other discarded solid waste material resulting from residential, commercial, agricultural, industrial, community, and other human activities, including liquid waste contained within solid waste, and including hazardous waste, but does not include sewage and human wastes.
- g. "Transfer Station" means the existing solid waste collection site within the exterior boundaries of the Leech Lake Reservation.
- h. "Reservation Tribal Council" means the duly elected Tribal Council of the Leech Lake Band of Chippewa Indians.
- i. "Band" or "Tribe" means the Leech Lake Band of the Minnesota Chippewa Tribe.
- j. "Solid Waste Coordinator" means the Reservation Tribal Council employee responsible for the coordination of the solid waste collection and disposal sites on the Reservation.

5. Solid Waste Storage

- a. Solid waste within the reservation boundaries shall be handled, stored, collected, transported, transferred, processed and disposed of only in strict accordance with the provisions of this ordinance.
- b. The owner or occupant of any premises, business establishment, or industry shall be responsible for the sanitary storage of all solid waste accumulated at the premises, business establishment or industry.
- c. Solid waste shall be stored in durable, rust resistant, non-absorbent, water tight, rodent proof, and easily cleanable containers with a close fitting insect-tight cover.
- d. Unless otherwise provided for in a written rental agreement or lease, the tenant of any single unit detached residence and the landlord of any multi-unit residence shall be responsible for the provision and maintenance of containers as specified in paragraph (c), above.
- e. Solid waste shall be transferred to Leech Lake Transfer Station by the responsible party in a timely manner, to prevent noxious odors and other public nuisance conditions.

6. Solid Waste Disposal

- a. No person shall leave, deposit, or dump solid waste anywhere within the reservation except at designated disposal or collection sites approved by the Reservation Tribal Council. This provision shall not be interpreted to prohibit compost piles that are constructed and maintained so as to prevent the escape of noxious odors, the development insect or rodent infestations, and the creation of public nuisance or health hazard.
- b. No person shall dispose of any solid waste generated outside the boundaries of the Reservation on any lands, collection sites, or landfills within the boundaries of the Reservation.
- c. No person shall deposit solid waste from any stopped or moving vehicle onto state, county, or tribal highways, roads, or right of ways, within the Reservation.

- d. No person shall dispose of any hazardous waste within the Leech Lake Reservation except as part of a household hazardous waste collection project approved and sanctioned by the Leech Lake Tribal Council.
- e. No person shall dispose of solid waste at a collection or disposal site on the Reservation except in a manner approved by the Solid Waste Coordinator as established by the Reservation Tribal Council and/or county solid waste officers or county boards.

7. Solid Waste Recycling.

- a. The Reservation Tribal Council will encourage residences to cooperate with recycling programs that are available for the purpose of reducing waste and disposal costs and to conserve natural resources.
- b. The Reservation Tribal Council will seek assistance from County, State, Federal and other resources for the purpose of developing and maintaining a recycling program and collection sites for the Reservation.

8. Solid Waste Collection and Transport.

- a. All solid waste transported on, or across the reservation shall be collected and transported in a manner that prevents the waste from leaking, blowing off, or falling from the transport vehicle.
- b. Commercial vehicles or containers used for collection and transportation of garbage and other putrescible wastes, or solid waste containing such materials, shall be covered, leak-proof, durable, and of easily cleanable construction. These shall be cleaned to prevent nuisances, pollution, or insect breeding and shall be maintained in good repair.
- c. No commercial collector or transporter of solid waste shall operate or conduct business on the Reservation without a solid waste permit issued by the Reservation Tribal Council.

9. Enforcement.

- a. Reservation enforcement officers shall be designated, and empowered to enforce this ordinance (i.e. Officers of DRM).

- b. Actions for violation of this Ordinance may be commenced in the Tribal court of the Leech Lake Reservation Tribal Council by citation or by summons and complaint.
- c. Violation of any provision of this ordinance may be punished or remedied by a civil forfeiture not to exceed \$5,000. Each day of any continuing violation may be charged as separate violation, and a separate forfeiture may be imposed.
- d. In addition to a civil forfeiture, any personal property, including vehicles and other equipment, which has been used in connection with the violation of this Ordinance may be seized and forfeited pursuant to the appropriate section of the ordinances Tribal Court.
- e. Nothing herein shall prevent the Leech Lake Band from bringing suit against any violator of this ordinance for money damages for harm to any Band resource caused by the violation, or for injunctive relief.
- f. Any person may bring suit in tribal court to enjoin a violation of this Ordinance.

11. Administration.

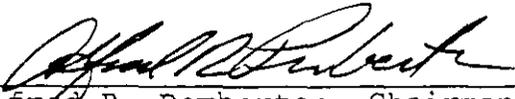
- a. The Reservation Tribal Council and its delegates shall be responsible for the administration and enforcement of this ordinance and for of any tribally owned and operated solid waste collection facilities or systems.
- b. This Ordinance is effective: February 24, 1995.

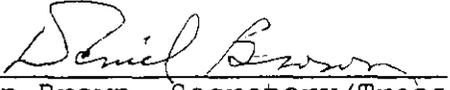
12. Severability and Non-Liability.

If any section, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance will not be affected thereby. The Reservation Tribal Council declares there is no liability on the part of the Band, its agencies, or employees for damages that may occur as a result of reliance upon or conformance with this ordinance. The Reservation Tribal Council, by adoption of this Ordinance, does not waive sovereign immunity in any respect.

Ordinance No. 95-01
Page Six

We do hereby certify that the foregoing Ordinance was duly presented and acted upon by a vote of 4 for, 0 against, a quorum of 4 being present at a special meeting of the Leech Lake Reservation Tribal Council offices at Cass Lake, Minnesota on the 24th day of February, 1995.


Alfred R. Pemberton, Chairman
Leech Lake Tribal Council


Dan Brown, Secretary/Treasurer
Leech Lake Tribal Council

LEECH LAKE BAND OF OJIBWE

JUDICIAL CODE
TITLE I: COURTS

LEECH LAKE BAND OF OJIBWE

JUDICIAL CODE
TITLE 1: COURTS

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LEECH LAKE BAND OF OJIBWE
JUDICIAL CODE

PREAMBLE

THIS CODE OF THE LEECH LAKE BAND OF OJIBWE OF THE LEECH LAKE INDIAN RESERVATION IN THE STATE OF MINNESOTA IS ENACTED FOR THE PURPOSE OF PROTECTING AND PROMOTING TRIBAL SOVEREIGNTY, STRENGTHENING TRIBAL SELF-GOVERNMENT, PROVIDING FOR THE JUDICIAL NEEDS OF THE LEECH LAKE RESERVATION, AND THEREBY ASSURING THE PROTECTION OF TRIBAL RESOURCES AND THE RIGHTS OF THE MEMBERS OF THE LEECH LAKE BAND AND ALL OTHERS WITHIN ITS JURISDICTION.

TITLE 1: COURTS

PART. 1
ESTABLISHMENT AND OPERATION

Section 1. *Establishment of Court.*

The Leech Lake Band of Ojibwe Tribal Court is hereby established. The Tribal Court shall consist of a Trial Division and an Appeals Division. This code supersedes any previously enacted code, ordinance, or resolution that established or organized a court or other judicial body for the Leech Lake Band.

Section 2. *Tribal Designation.*

Wherever the formal designation "Band", "Tribe", or "Tribal", appears in this Code, such designation shall refer to the Leech Lake Band of Ojibwe unless specifically designated otherwise.

Section 3. *Appropriations and Funding*

- A. The Reservation Tribal Council (RTC) shall appropriate and authorize the expenditure of Band funds for the operation of the Tribal Court. The amounts to be appropriated shall be consistent with the needs of the Tribal Court for proper administration of justice within the Reservation and for the Band as determined by the RTC.

- B. To assist the RTC in making appropriations for operation of the court , the Court Administrator, in consultation with the Chief Judge shall submit proposed budgets and reports of expenses and expenditures at such intervals and in such form as may be prescribed by the Tribal Council.
- C. The RTC may prescribe a system of accounting for funds received from any source by the court and the Court Administrator.

Section 4. *Conflict with Other Laws.*

A. Tribal Laws.

To the extent that this code may conflict with tribal laws or ordinances which have been enacted to comply with statutes or regulations of any agency of the United States, such tribal laws or ordinances shall govern over the provisions of this code if they have specific applicability and are clearly in conflict with the provisions of this code.

B. Federal Laws.

Where a conflict may appear between this code and any statute, regulation, or agreement of the United States, the federal law shall govern if it has specific applicability and if it is clearly in conflict with the provisions of this code.

C. State Laws.

To the extent that the laws of any state may be applicable to the subject matter of this code such laws shall be read to be advisory and not directly binding and shall not govern the relations of the parties.

**PART II
JURISDICTION**

Section 1. *Leech Lake Band Tribal Court Jurisdiction.*

A. Territory.

The jurisdiction of the Tribal Court and the effective area of this code shall extend to disputes arising within or concerning all territory within the Leech Lake Indian Reservation boundaries, including, but not limited to, trust lands, fee patent lands, allotments, assignments, roads, waters, bridges, and existing and future lands outside the boundaries owned or controlled by the Band for its benefit, the benefit of its members, the benefit of other enrolled members of the Minnesota Chippewa Tribe, or the benefit of other Indian persons. The territory of the Band to which this code applies shall also include boundary waters of the Leech Lake Reservation which means those lakes, rivers and streams bisected by the exterior boundary of the Leech Lake Reservation, including the portions of which extend outside the exterior boundary line and are identified as follows:

<u>Name</u>	<u>County</u>	<u>Township</u>	<u>Range</u>
Mississippi River	Cass/Itasca	144/145/55	25/26
Leech Lake River	Cass	143/144	26/27/28
Leech Lake	Cass		
Boy Lake	Cass	142	27/28
Boy River	Cass	141/142/143	27
Hazel Lake	Cass	141	29
Steamboat Lake	Cass/Hubbard	144	31/32
Mud Lake	Hubbard	145	32
Wolf Lake	Hubbard/Beltrami	145/146	32
Swenson Lake	Beltrami	146	32
Unnamed	Beltrami	146	32
Pimushe	Beltrami	147/148	30/31
Moose Lake	Beltrami	147	30
Third River	Itasca	147	29
Squaw Lake	Itasca	149	27
Rice Lake	Itasca	149	27
Little Whitefish Lake	Itasca	149	26
Four Town Lake	Itasca	148/149	25/26
Bowstring Lake	Itasca	147	25/26
Taylor Lake	Itasca	147	25

B. Subject Matter.

The jurisdiction of the Tribal Court shall extend to:

1. All persons who reside or are found within the territorial jurisdiction of the Band and are: Band members or eligible for membership in the Band;

members of the Minnesota Chippewa Tribe; members of other Federally recognized Indian tribes; or Indians who are recognized as such by an Indian community or by the Federal government for any purpose.

2. All persons described in Subdivision B. 1., wherever located, while exercising tribal rights pursuant to federal, state or tribal law.
3. All persons outside the exterior boundaries of the Leech Lake Indian Reservation, as defined herein, within the jurisdiction of the Band pursuant to federal or tribal law.
4. All other persons whose actions involve or affect the Band, or its members, through commercial dealings, contracts, leases, or other arrangements. For purposes of this code, person shall mean all natural persons, corporations, joint ventures, partnerships, trusts, trust funds, public or private organizations, or any business entity of whatever kind.

C. Actions.

The judicial power of the Tribal Court shall extend to:

1. All matters and actions within the power and authority of the Leech Lake Band including controversies arising out of the Constitution of the Minnesota Chippewa Tribe, by-laws, statutes, ordinances, resolutions, and codes enacted by the Reservation Tribal Council; and such other matters arising under enactments of the Reservation Tribal Council or the customs and traditions of the Ojibwe people of the Leech Lake Reservaton.
2. All civil causes of action arising at common law including, without limitation, all contract claims (whether the contract at issue is written or oral or existing at law), all tort claims (regardless of the nature), all property claims (regardless of the nature), all insurance claims, and all claims based on commercial dealings with the Band, its agencies, subentities, and corporations chartered pursuant to its laws, and all nuisance claims. The court shall have original jurisdiction whether the common law cause of action is one which has been defined as Band common law, or is one which exists at common law in another jurisdiction and which is brought before the Tribal Court based upon reference to the law of that other jurisdiction. For the purposes of this Code, "common law" shall mean the body of those principles and rules

of action, relating to the government and security of persons and property, which derive their authority solely from the usages and customs, or from the judgments and decrees of courts recognizing and affirming such usages and customs, and as is generally distinguished from statutory law.

3. Other actions arising under the laws of the Band as provided in those laws.

4. Limitation of Actions.

No complaint shall be filed in a civil action unless the events shall have occurred within a six year period prior to the date of filing the complaint: provided, that this general statute of limitations shall not apply to suits filed to recover public moneys or public property intentionally or erroneously misspent, misappropriated, or misused in any way; and further provided that this general statute of limitations shall not apply to any debt owed the Band or any of its agencies, arms, or instrumentalities, whether organized or not under Band law.

D. Concurrent Jurisdiction.

The jurisdiction invoked by this code over any person, cause of action, or subject shall be concurrent with any valid jurisdiction over the same of the courts of the United States, any state, or any political subdivision thereof; *provided, however*, this code does not recognize, grant, or cede jurisdiction to any state or other political or governmental entity in which jurisdiction does not otherwise exist in law.

Inclusion of language, definitions, procedure, or other statutory or administrative provisions of the State of Minnesota or other state or federal entities in this code shall not be deemed an adoption of that law by the Band and shall not be deemed an action deferring to state or federal jurisdiction within the Leech Lake Reservation where such state or federal jurisdiction may be concurrent or does not otherwise exist.

Section 2. *Suits Against the Band.*

A. Sovereign Immunity of Band.

The sovereign immunity from suit of the Band and every elected Tribal Council member, or tribal official with respect to any action taken in an official capacity or

in the exercise of the official powers of any such office, in any court, federal, state or tribal is hereby affirmed; nothing in this code shall constitute a waiver of the Band's sovereign immunity. The Tribal Court shall have no jurisdiction over any suit brought against the Band in the absence of an unequivocally expressed waiver of that immunity by the Tribal Council.

B. Tribal Action Not A Waiver of Sovereign Immunity.

No enforcement action taken pursuant to this code, including the filing of an action by the Band or any agency of the Band in the Tribal Court, shall constitute a waiver of sovereign immunity from suit of the Band, or any elected tribal council member or tribal official with respect to any action taken in an official capacity, or in the exercise of the official powers of any such office, either as to any counterclaim, regardless of whether the counterclaim arises out of the same transaction or occurrence, or in any other respect.

C. Resolution Required for Waiver of Sovereign Immunity.

The sovereign immunity of the Band and any elected tribal council member or tribal official with respect to any action taken in an official capacity, or in the exercise of the official powers of any such office, in any action filed in the Tribal Court with respect thereto, may only be waived by a formal resolution of the RTC. All waivers shall be unequivocally expressed in such resolution. No waiver of the Band's sovereign immunity from suit may be implied from any action or document. Waivers of sovereign immunity shall not be general but shall be specific and limited as to the jurisdiction or forum within which an action may be heard, duration, grantee, action, and property or funds, if any, of the Band or any agency, subdivision or governmental or commercial entity of the Band subject thereto. No express waiver of sovereign immunity by resolution of the Tribal Council shall be deemed a consent to the levy of any judgment, lien or attachment upon property of the Band or any agency, subdivision or governmental or commercial entity of the Band other than property specifically pledged or assigned therein.

Section 3. Prior Title I of Judicial Code and Prior Inconsistent Codes and Ordinances Repealed.

Title 1 of the Judicial Code of the Leech Lake Band enacted on 1/06/98 is hereby repealed in its entirety. Any and all other codes and ordinances of the Band which

conflicts in any way with the provisions of this Title are hereby repealed to the extent that they are inconsistent with, or are contrary to, the spirit and/or purpose of this code.

Section 4. Amendments and Revision.

This code may be amended by action of the Reservation Tribal Council. Amendments, additions, and deletions to this code shall become a part hereof for all purposes and shall be codified and incorporated herein in a manner consistent with its numbering and organization. No enactment, ordinance, resolution, or otherwise, shall apply to any pending cases before the Tribal Court at the time action is taken by the Reservation Tribal Council.

Section 5. Code Reviser.

A. Appointment.

The Tribal Court Administrator is hereby appointed Code Reviser for the Band.

B. Duties of Reviser.

The Reviser shall carry out all duties assigned under this Section, including, but not limited to:

1. Certify by signature and date, any and all amendments, corrections, revisions, updates, and expansions to this code, and other codes, ordinances, and statutory laws enacted by the Reservation Tribal Council. Provided however, the Reviser's actions shall be ministerial in nature and the Reviser shall not be empowered to determine whether an action is necessary or sufficient for the lawful enactment into law of any amendment, correction, revision, update, or expansion of this code or other Band laws.
2. Keep an official indexed and written record, which shall be public, of all Certifications made by the Reviser under this section.
3. Provide copies of all certified revisions of the code to any person or agency requesting such copies. The Reviser may establish a reasonable cost for such copies.

C. Certification to Code Reviser.

Upon adoption of any and all amendments, corrections, revisions, updates, or expansions of the code by the Reservation Tribal Council, the Secretary/Treasurer of the Tribal Council shall convey a copy of the amendment, correction, revision, update or expansion of the code together with a copy of the resolution adopting it, to the Reviser.

D. Effective Date of Revisions.

Upon receipt of all the necessary documents from the Secretary/Treasurer, the Reviser shall make a written and dated Certification of Amendment which shall be permanently attached to the said documents and kept in the permanent files of the Reviser. All revisions of the Code shall be effective on the date of the written certification required by this Section, and not before.

E. Distribution.

Distribution of new Code provisions shall be at the discretion of the Reviser and may be at a cost established by the him/her.

PART III JUDGES

Section 1. *Trial Division.*

The judiciary of the Tribal Court, Trial Division, shall consist of a Chief Judge and one or more associate judges.

The Reservation Tribal Council by resolution, or the Chief Judge by order, may appoint additional persons to serve as deputy judges or justices. Each such appointment of a deputy judge or justice shall be personal and shall not create an office which survives the death, resignation or removal of the appointee. The appointment of a deputy judge may be for the performance of such specific duties or cases as may be assigned him/her by the Chief Judge or by the Reservation Tribal Council, and she/he shall serve until the cases or duties specifically assigned have been completed, or pursuant to the terms of any contract.

A deputy judge shall perform the duties and functions of a judge of the Tribal Court as may be designated by his/her appointment or contract subject to any restrictions or limitations imposed by law, by resolution of the Reservation Tribal Council, or the Chief Judge, as the case may be. The findings, rulings, opinions and orders of a deputy judge or

justice shall be signed "Judge" or "Justice", as appropriate to the case and shall have the same force and effect as if made by a regular judge or justice of the court.

Section 2. *Appellate Division.*

In any appeal from a final decision of a trial judge, whether chief, associate, or deputy, an appeals tribunal of three justices shall be constituted from the remaining judges of the Tribal Court with the appointment of one or more deputy justices to complete the panel. Such justices of an appeals tribunal so constituted shall serve until cases specially assigned them have been completed. A justice of an appeals tribunal may only be removed prior to completion of assigned matters by the RTC pursuant to the provisions of this code for the removal of a judge of the Tribal Court, Section 10 of this chapter.

Section 3. *Qualifications.*

1). Any person 25 years or older shall be eligible to serve as a Judge of the Tribal Court, except the following:

- A. The Court Administrator, Assistant Clerks, and members of the RTC.
- B. Those who have been convicted by a court of the United States or of any state of the United States for a felony, as a felony is defined by the laws of that jurisdiction or a gross misdemeanor within one year immediately preceding the proposed appointment as judge or justice.

2). All judges or justices of the Tribal Court, whether chief, associate, or deputy, shall be lawyers experienced in the practice of tribal and Federal Indian law and licensed to practice in the highest court of any state.

Section 4. *Evaluation and Selection.*

Candidates for the positions of Chief Judge shall be screened by a committee of five or more Band members selected for that purpose by the Reservation Business Committee. The screening committee may be composed of any combination of the Executive Director for the Band, department heads, elders, or other respected members of the Band. The screening committee shall submit its recommendations for appointments to the Reservation Tribal Council which shall make a final selection. Associate judges shall be selected in the same manner except that the Chief Judge shall participate on the screening committee.

Section 5. *Appointment, Terms, Compensation.*

The Chief Judge and Associate Judge shall be appointed by the Reservation Tribal Council to three (3) year terms under written contracts specifying the compensation and other terms and conditions of the employment of the judge. Ninety days prior to the expiration of the term of office of each judge the Reservation Tribal Council shall consider whether to renew the contract of employment of each Judge for an additional term. If the Reservation Tribal Council determines to not renew the contract it shall so notify the judge in writing at least thirty days prior to the expiration of the judge's current term. Failure of the Reservation Tribal Council to take affirmative action to nonrenew the judge's contract as provided herein shall result in an automatic appointment for an additional three year term and renewal of the existing contract of employment. The compensation of any judge shall not be reduced during his/her term of office.

Section 6. Removal of Judges.

The Reservation Tribal Council may remove any judge or justice of the Tribal Court during the term of his/her office only for cause based upon any of the following grounds:

- A. Serious misconduct or incompetence in the performance of her/his duties as judge.
- B. Personal conduct involving moral turpitude, whether or not related to judicial duties, or conduct which brings the prestige of her/his office or that of the Band into public disrepute.
- C. Habitual neglect of her/his duties as judge or justice.
- D. Persistent illness or other disability which renders her/him incapable or otherwise unable to regularly perform her/his duties as judge or justice.

Such removal shall be by an affirmative vote of two-thirds of the RTC at a valid meeting called for the purpose of considering such removal, provided that the subject judge or justice shall be given a full hearing and fair opportunity to present testimony and evidence in her/his behalf, and to cross-examine and rebut all witnesses and evidence considered by the RTC in support of removal. The subject judge or justice shall be given not less than twenty days written notice in advance of the hearing, which notice shall include an itemization of the charges or grounds for removal which are to be considered. Such notice shall be served by registered or certified mail, or delivered personally to her/him by a party duly authorized by the RTC.

Section 7. *Conflicts of Interest.*

No judge or appellate justice shall officiate in any proceeding in which she/he has any personal interest, or in which any party, witness or counsel is related to her/him by blood or marriage, within the third degree, or in which any party, witness or counsel stands or has previously stood in relationship to the judge of ward, attorney, client, employer, employee, landlord, tenant, business associate, creditor or debtor.

Any party may bring a motion for disqualification of a judge or appellate justice on the grounds set forth herein or on the grounds of personal bias or prejudice towards any party to the proceeding. A motion for disqualification shall be supported by an affidavit of the party bringing the motion setting forth the grounds therefore. If the judge grants the motion he/she shall appoint another judge to preside over the case. If the judge denies the motion, she/he shall do so by written order setting forth the reasons for denial.

Section 8. *Oath of Office.*

Prior to assuming any judicial office of the Tribal Court, the appointee shall take the following oath:

"I swear (or affirm) that I will support and defend the Constitution of the Minnesota Chippewa Tribe, the By-laws of the Minnesota Chippewa Tribe and the Leech Lake Band, and the laws of the Leech Lake Band of Ojibwe, and that I will faithfully and diligently perform the duties of (Chief Judge, Associate Judge, Deputy Judge, Appellate Justice, as applicable) of the Tribal Court, to the utmost of my ability, with impartiality and without improper favor, to the end that justice may be fully served."

The Chief Judge and Associate Judge shall take the prescribed oath before the Chairperson of the Reservation Tribal Council. Deputy judges and justices may take the prescribed oath by affidavit, before the Chief Judge, or before any member of the Reservation Tribal Council.

PART IV COURT ADMINISTRATOR

Section 1. *Appointment, Salary, Discharge.*

The Court Administrator shall be appointed by the Tribal Council. The Tribal Council may appoint such clerks and assistants for the Court Administrator as may be needed for operation of the court. The Reservation Tribal Council shall prescribe the salary to be

paid the Administrator and his/her assistants which shall be paid by the Band. Any person serving as Court Administrator, clerk or as an assistant may be discharged from that position pursuant to a two-thirds vote of the Tribal Council.

Wherever the formal designation "Clerk" or "Clerk of Court" appears in this code, such designation shall also refer to the Court Administrator. The terms Clerk of Court and Court Administrator shall be interchangeable.

Section 2. *Duties.*

The Court Administrator shall be responsible for the administration of the Tribal Court, and for such other administrative and ministerial duties as may be prescribed by this code or assigned to her/him by the Reservation Tribal Council or the Chief Judge. The duties of the Court Administrator shall include but shall not be limited to the following:

- A. Maintaining records of all court proceedings to include identification of the title and nature of all cases, the names of the parties, the substance of the complaints, the names and addresses of all witnesses, the dates of hearings and trials, names and addresses of all parties and witnesses appearing at all hearings and trials, all court rulings and decisions, findings, orders and judgments, and any other facts or circumstances decided by the judges or deemed of importance by the Court Administrator.
- B. Maintaining all pleadings, documents, and other materials filed with the Court.
- C. Maintaining all evidentiary materials, transcripts, and records of testimony filed with the court.
- D. Collecting and accounting for fines, fees, and other monies and properties taken into custody by the Tribal Court, and transmitting them to the accounting department of the Band. Funds received from the office of the Court Administrator by the accounting department shall be designated as Tribal Court funds and shall be used only for expenses incurred by the Tribal Court, or for training of Leech Lake Band police officers, at the discretion of the Court Administrator with the approval of the Chief Judge.
- E. Preparing and serving notices, summons, subpoenas, warrants, rulings, findings, opinions, and orders as prescribed by this Code and as may be designated by the Judges of the court.

- F. Assisting persons in the drafting and execution of complaints, petitions, answers, motions and other pleadings and documents for Tribal Court proceedings; provided, however, the Clerk and her/his assistants shall not give advice on questions of law, nor shall they appear or act on behalf of any person in any Tribal Court proceedings.
- G. Administering oaths and witnessing execution of documents.
- H. Maintaining a supply of blank forms to be prescribed by the court for use by all persons having business before the Tribal Court.

PART V. COUNSEL

Section 1. Legal Representation.

Any person who is a party in any trial or other proceeding before the court may represent himself or herself, or be represented by lay counsel, or a professional attorney, who is licensed to practice law before the court.

Section 2. Licensing of Professional Attorneys.

Professional attorneys may appear on behalf of any party in any proceeding before the court, provided they are licensed to practice. A license to practice may be issued by the Tribal Court upon compliance with the following:

- A. Filing with the Court Administrator an affidavit attesting that the applicant is licensed to practice law before the highest court of any state. A photocopy of said license shall be submitted with the affidavit.
- B. Filing an affidavit that the applicant has studied and is familiar with the Constitution of the Minnesota Chippewa Tribe, the by-laws of the Minnesota Chippewa Tribe and the Leech Lake Band, this code, all other ordinances or codes of the Band, Title 25 of the United States Code and Title 25 of the Code of Federal Regulations.
- C. Paying an annual license fee of one hundred dollars (\$100). The annual license fee may be reduced to twenty-five dollars (\$25) in the discretion of the Chief Judge for any attorney who is employed by a not-for-profit legal services program or otherwise seeks to represent clients on a pro-bono or reduced fee basis.

D. Taking the following oath before the Court Administrator or the Chief Judge, by affidavit or in person:

"I do solemnly swear (or affirm) that I will support the Constitution of the Minnesota Chippewa Tribe and By-laws of the Leech Lake Band;

I will maintain the respect due to the Tribal Court and its judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly valid or debatable under the law; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and I will never seek to mislead any judge or jury by any artifice, or by false statement or misrepresentation of fact or law;

I will employ in the conduct of my duties the highest degree of ethics and moral standards with which my profession is charged, and I will be guided at all times by the quest for truth in justice;

In the conduct of my duties as an attorney I will not impugn the morals, character, honesty, good faith, or competence of any person, nor advance any fact prejudicial to the honor or reputation of any person, unless required by the justice of the cause with which I am charged."

Section 3. Licensing of Advocates.

A member of the Band or a member of another Band affiliated with the Minnesota Chippewa Tribe may be licensed to practice in the Tribal Court. To qualify for licensure as an advocate the applicant must be at least 21 years old; of good moral character; have never been convicted of a felony and not had his/her civil rights restored; have never been convicted of a crime against the Band or any other Indian tribe; and must be familiar with the Constitution of the Minnesota Chippewa Tribe, the by-laws of the Band, and the codes, statutes and ordinances of the Band.

No fee shall be assessed for licensing as an advocate.

An applicant seeking licensure as an advocate shall subscribe to the oath set forth in Section 2 for professional attorneys, substituting the term "advocate" for "attorney therein.

Section 4. Revocation or Suspension of License.

A license issued pursuant to this Part V. may be revoked or suspended by the Tribal Court. Such action may be taken on its own motion or upon sworn complaint by any member of the Band or on motion of the court. Revocation or suspension shall be ordered only after written notice to the licensee of the motion or complaint and after a hearing before all judges of the court unless a conflict of interest prohibits such participation. Following a hearing, the court may revoke or suspend the license upon a finding that the licensee has been disbarred or suspended from the practice of law by any court of the United States, any state, or a tribal court or has filed a false affidavit to obtain his/her license, or has violated his/her oath, or has engaged in misconduct or unethical behavior in the performance of his/her duties as an attorney or lay advocate or has been found in contempt of court by the Tribal Court.

Section 5. Implied Consent to Jurisdiction of the Court.

Any person who submits an application for licensure as a professional attorney under this code gives implied consent to the assertion of jurisdiction of the court over him/her for all purposes relating to his/her practice of law before the court, whether or not, the court would otherwise have such jurisdiction.

PART VI CONTEMPT OF COURT

Section 1. Definition.

Willful behavior by any person which disrupts, obstructs, or otherwise interferes with the conduct of any proceeding by the court, which obstructs or interferes with the administration of justice, or which constitutes disobedience or resistance to or interference with any lawful summons, subpoena, process, order, rule, decree or command of the Tribal Court shall constitute contempt. The willful failure of a party to comply with the terms of a judgment directed against him/her, with which she/he is able to comply, shall be contempt of court which shall be punished in the manner prescribed by this code.

Section 2. Contempt in Presence of Court.

When contempt of court is committed in the presence of a Tribal Judge it may be punished summarily by that judge. In such case an order shall then be made reciting the facts constituting the contempt, adjudging the person guilty of contempt, and prescribing the punishment therefore in accordance with Section 4 of this Part. Failure to appear in response to any citation of an enforcement officer of the Band on any matter, or to a subpoena, summons, order or other notice, *duly issued by the court, shall constitute*

contempt in the presence of the court and may be summarily punished by the court without further notice.

Section 3. Contempt Outside Presence of Court.

When it appears to the court that a contempt may have been committed out of the presence of the court, it may issue a summons to the person so charged directing her/him to appear at a time and place designated for a hearing and show cause why he/she should not be held in contempt. If such person served with the summons fails to appear at the time and place so designated, the Tribal Court shall conduct a hearing, and if it finds him/her guilty of contempt, an order shall then be made reciting the facts constituting the contempt, adjudging the person guilty of contempt, and prescribing the punishment therefore in accord with Section 4 of this Part VI.

Section 4. Punishment for Contempt.

Any person found in contempt of court shall be subject to a fine not to exceed five hundred dollars (\$500.) and imprisonment not to exceed ninety days, as may be determined by a judge of the court. The person charged or found in contempt shall be notified of the finding of the court and the prescribed punishment by any means permitted in this code for service of process and the penalty may be enforced by the means provided in this section or for the execution and enforcement of judgments as provided in Title 2 of this code.

If the court determines to impose a penalty of imprisonment it is authorized to issue a warrant commanding a law enforcement officer of the Band to arrest the person and detain him/her pending a hearing before the court. The warrant issued shall provide for release on cash bail in an amount set by the court not to exceed the amount of fines or restitution for any underlying offense(s) together with the contempt penalty which has been or could be imposed.

PART VII GENERAL COURT PROCEDURES

Section 1. Assignment of Cases.

The Chief Judge shall be responsible for assignment of cases and other matters for determination or disposition to the respective judges or justices of the court.

Section 2. Court Rules and Procedures.

The Chief and Associate Judges of the court may promulgate rules of procedure for the conduct of its proceedings which are not inconsistent with this Code or other governing and applicable law.

Section 3. Sessions of Court.

The Tribal Court may hold such sessions of court as deemed necessary, commencing at such time as designated by the Court Administrator in consultation with presiding judges for a particular case. Special sessions of the Tribal Court may be called by the Chief Judge at any time, or, in her/his absence by an Associate Judge. Judges may conduct trials or other proceedings for individual cases assigned to them at such times as they may designate, and such trials or proceedings may be recessed and reconvened from time to time until they are completed.

Section 4. Jury Trials.

All cases before the Tribal Court shall be tried to a judge sitting without a jury, unless a jury trial, is otherwise required by applicable law.

Section 5. Means to Carry Jurisdiction Into Effect.

Where jurisdiction over any matter is vested in the court, all the means necessary to carry such jurisdiction into effect are also included; and in the exercise of its jurisdiction, if the means are not specified in this code or the rules promulgated by the court, the court may adopt any suitable process or mode of proceeding which appears to the court to be fair and just and most consistent with the spirit of Band law.

Section 6. Law Applicable in Civil Actions.

- A. In all civil actions the court shall first apply such written laws of the Band which have been enacted by the Reservation Tribal Council.
- B. Where there are no superseding written laws the court shall apply tribal customary and traditional law if such exists. Tribal customary or traditional law shall mean those traditional values and practices of the Leech Lake Ojibwe handed down, through the generations, either orally or through writing. In the event any doubt arises as to the customs and usage's of the Band, the court may request the advice and assistance of elders who are knowledgeable about such matters.
- C. Where an issue arises in an action which is not addressed by written laws or

custom and traditional law, the court may apply the laws of any tribe, the federal government, or any state. Application of such law shall not be deemed an adoption of such law or deference to the jurisdiction from which that law originates.

Section 7. Bureau of Indian Affairs Relations.

No employee of the Bureau of Indian Affairs, or the Department of Interior shall obstruct, interfere with, or control the functions of the court, nor shall she/he seek to influence such functions in any manner.

LLBO Water Resources Staff – Programmatic Capability

- Levi Brown, Environmental Department Director, LLBO-DRM since 2008
 - BA Political Science and BS Ethnic Studies
- Jeff Harper, Water resources Program Manager, LLBO-DRM since 1995
 - MN State Erosion and storm water certified installer and Inspection,
 - MN State trained Septic Inspection/Site eval
- Sam Malloy Water resources Tech, LLBO-DRM since 2008
 - BS Biochemistry, MS Environmental Science (abt)
- Ryan Anderson GIS Specialist, LLBO-DRM since 2010
 - BS Wildlife Biology and BS Geography, emphasis GIS

More information is available upon request.

Leech Lake Band of Ojibwe

Position Description: Water Resource ISTS Technician

Division: Resource Management

Reports to: Environmental Director

Worksite: Division of Resource Management

Work Hours: M-F, 8:00am – 4:30pm

LLBO Status: Non-Exempt

Safety Sensitive: Yes

License/Certification Requirements: Valid MN Drivers License, current insurance or be insurable is preferred.

Summary: To assist the Environmental Department in implementing the Individual Septic Treatment System Project.

Education Requirements and Experience:

High School Diploma or General Education Diploma (G.E.D).

Additional Qualifications and Skills:

Strong oral communication skills

Customer service skills.

A desire to work in environmental protection field

Willingness to learn to use computers and software such as Word and Arc View GIS Software.

Be willing to learn the use and maintenance of environmental monitoring equipment.

Self motivated and willing to learn

Pre-employment drug testing is mandatory for all Leech Lake Band of Ojibwe positions.

Supervisory Duties:

None

Duties/Responsibilities:

Inspect 120 Individual Septic Treatment Systems (ISTS) until all ISTS on Tribal, Allotted, Band and Fee land owned by the Band have been inspected. Additional information will be collected during site inspections, including distance from ISTS to well and any surface water or wetland, site information on well including construction, depth, date installed, installer, noting any other environmental concerns: junk cars, unsafe fuel tank cradles, etc.

Collect records of all known ISTS on Tribal, Allotted, Band and Fee land owned by the Band and Tribal members.

Provide records to the Contractor for incorporation into the Web Based Management System.

Upgrade CCGIS data set with pertinent environmental data collected while on annual ISTS inspections or collected during site visits discussed in task three (1) above.

SEE ATTACHED EPA APPROVED WORK PLAN AND TIME TABLE.

Leech Lake Band of Ojibwe

Position Description: Water Resource ISTS Technician - page 2

Duties/Responsibilities (continued):

Attend and or conduct all mandatory meetings and trainings as required.
Maintain confidentiality and professional ethics at all times.
Travel in and out of the state on a possibly regular basis.
Understanding and sensitivity to Native American culture.
Adhere to policies governing staff conduct.
All other related duties as assigned.

Physical Requirements:

Ability to work outdoors under adverse temperature conditions.
Sedentary work.
Subject to internal working conditions.
Non-smoking environment.

I understand the job description for the Water Resource ISTS Technician position. I am capable and agree to perform the job duties and responsibilities assigned to me. I also understand that the duties and responsibilities and other working conditions may change from time to time with or without notice. I further understand that this job description is not a contract and does not guarantee employment for any specific period or amount of time. This job description will be revised periodically or as needed. Job Description Revised: 01-04-07

Employee – print – sign - date

Supervisor – print – sign – date

Division Director – print – sign – date

Human Resources Representative – print – sign – date