

Lac du Flambeau Tribe Deserves the Right to Protect Reservation Waters
By Melissa K. Scanlan and Andrew Hanson, Midwest Environmental Advocates
February 13, 2006

This week, on February 15, 2006, the U.S. Environmental Protection Agency will hold a public informational meeting on the Lac du Flambeau Band of Lake Superior Chippewa Indians' request for approval to develop standards for the lakes, rivers, and wetlands within its Reservation. Then on February 17, 2006, the Assembly Natural Resources Committee will hold a hearing in Minocqua.

Water is integral to the economic livelihood, culture and spirit of the Lac du Flambeau Band. With 260 lakes, 71 miles of streams and rivers, and 24,000 acres of wetlands, about half of the surface area of the Reservation is water.

These Reservation waters currently fall into a regulatory void. The State of Wisconsin has been approved by the U.S. EPA to set standards to protect *State* waters, but not Reservation waters. The Lac du Flambeau Band is seeking approval from the U.S. EPA to fill in the management void that currently exists.

The interconnected waters of the Lac du Flambeau Reservation are a shared resource. The problem is that absent the U.S. EPA approval, the Band only has authority over the activities of its members, which make up 60% of the permanent population, rather than everyone on the Reservation. The practical result on the Reservation is that there are no effective standards in place to protect these valuable interconnected waters.

The lack of water protections is disturbing in light of the importance of water to the culture and economy of the Band. But perhaps more unsettling is the opposition to the Band's efforts to protect these valuable waters.

With other Chippewa Bands, Lac du Flambeau members survived decades of disregard of their treaty rights by the State of Wisconsin, eventually to have those rights repeatedly reaffirmed by federal courts in the 1980s. They also survived racially-motivated attacks and violence from non-Indians in the exercise of those rights.

We are concerned that our State's shameful history may be rearing its head again, led by a few radical politicians who have stated their opposition to the Lac du Flambeau's efforts to protect Reservation waters.

Congressman Mark Green opined that the Lac du Flambeau's efforts would have adverse economic impacts on the North. Surprised at the suggestion that clean water could hurt a tourism-based economy, we contacted Congressman Green's office to find out what evidence he had to support that statement. He never returned our call.

State Representative and Speaker of the Assembly, John Gard, stated that the DNR should hold public hearings before it "gives up authority in protecting its natural resources." Gard's statement reveals a fundamental misunderstanding of the law. The State of Wisconsin fought

that battle five years ago and lost when the Seventh Circuit Court of Appeals decided that the State has no authority to set water quality standards for Reservation waters. In fact, the State is giving up nothing by supporting the Lac du Flambeau's efforts to protect Reservation waters because it has no jurisdiction there.

Stephen Willet, a Natural Resources Board member appointed by former Governor Thompson, was paraphrased in a radio interview as stating that he feared that the Lac du Flambeau people lacked the "technical expertise" to develop water standards. On the contrary, the Lac du Flambeau Band has been collecting water quality data and conducting scientific studies since 1991.

Former State Representative Lorraine Serrati is organizing members of the Northern Wisconsin Association of Realtors against the Lac du Flambeau. The Realtors appear to be on a wild goose chase if they think a Tribe that obtains authority to set water quality standards will do anything but increase property values for waterfront residences.

Remarks like these display a short-sighted disrespect for tribal sovereignty and for clean water, and may be driving people to oppose the Lac du Flambeau Band based on fear and ignorance.

However, there is hope that some local officials understand that the Lac du Flambeau's ability to protect their water actually benefits us all. Al Bauman, Chair of the Vilas County's Tribal Concerns Committee, was recently quoted as saying that he believed that the Lac du Flambeau Band was "trying to do a good job for the reservation and the surrounding area." Supervisor Bauman is right to keep an open mind.

We hope others respond in kind at the EPA's informational meeting and the Assembly Natural Resource Committee's hearing this week.

It would be a shame if some politicians used the public meeting and hearing as an opportunity to spread ignorance and fear in order to stir up opposition to the Lac du Flambeau Band's exercise of their sovereign right to clean water. We encourage Wisconsinites of good conscience to attend and remind these politicians that everyone needs clean water, and that the Lac du Flambeau Band is a partner – not an enemy - in that effort.

Melissa K. Scanlan is the Executive Director and Andrew Hanson is a Staff Attorney for Midwest Environmental Advocates, a non-profit environmental law center working for clean air, clean water, and a clean government.