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Grand Portage Band of Lake Superior Chippewa
RESERVATION TRIBAL COUNCIL
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November 8, 2026

The Honorable Tina Smith
309 Hart Senate Office Building
Washington DC 20510
via email only

The Honorable Amy Klobuchar
425 Dirksen Senate Office Building
Washington DC 20510
via email only

Re: Grand Portage Band urges a NO vote on cloture and passage of the Bipartisan American Affordability and Jobs Act (S. 5653) and the November 7 substitute amendment

Dear Senator Smith and Senator Klobuchar:

The Grand Portage Band of Lake Superior Chippewa urges you to vote **NO** on the motion to invoke cloture on Monday, November 9, 2026, and **NO** on final passage of the Bipartisan American Affordability and Jobs Act (BAAJA). The substitute amendment released yesterday, November 7, leaves the bill's most harmful provisions intact. It still constitutes the most damaging rollback of tribal sovereignty and cultural resource protections in recent history, and it remains wholly unacceptable to the Band.

The substitute amendment would strip the Band of the authorities we rely on to protect our cultural and treaty-reserved resources throughout the 1854 ceded territory. Under the 1854 Treaty of LaPointe,[1] Grand Portage, along with the Fond du Lac Band of Lake Superior Chippewa and the Bois Forte Band of Chippewa—retain the right to hunt, fish and harvest within the entire northeast portion of the state of Minnesota (the "1854 Ceded Territory"), including the Boundary Waters Canoe Area Wilderness (BWCAW). Our treaty rights sustain our families, our culture and our ceremonies, and they are integral to our identity as Anishinaabe people. Manoomin is sacred to the Band and has sustained our people for generations. It cannot survive in polluted waters. By eliminating the Band's existing authorities under Section 106, this bill would open the door to that pollution.

Manoomin is not the only resource at risk. The 1854 Ceded Territory also contains cedar and sugar maple stands of profound cultural importance, including the sugar bush where our members harvest maple sap. These include some of the largest such stands in the region, and they are significant not only to Minnesota but to the entire Midwest. They are both historic cultural resources, used by our ancestors for generations, and present-day cultural resources our members continue to rely upon. We must retain access to and use of these areas. If poorly permitted industrial development continues to destroy these historic and present-day

[1] Treaty with the Chippewa, 1854, 10 Stat. 1109 (Sept. 30, 1854); *see also Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 184 (1999) (noting "the 1854 Treaty established new hunting and fishing rights in the territory ceded by the Treaty"); *Fond du Lac v. Carlson*, Civ. No. 5-92-159 (D.Minn. March 18, 1996) (unpubl. op.) (holding that Fond du Lac retains usufructuary rights in the 1854 Ceded Territory); *Grand Portage Band of Chippewas, et al. v. State of Minnesota, et al*., Civ. No. 4-85-1090 (settling suit to enforce 1854 Treaty as to Grand Portage and Bois Forte Bands against state as reflected in Minn. Stat. § 97A.157); *United States v. Bresette*, 761 F. Supp. 658, 661 (D. Minn. 1991) (citing *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Voigt,* 700 F.2d 341, 348 (7th Cir.1983)) (noting "Seventh Circuit has interpreted the 1837, 1842, and the 1854 treaties as reserving full usufructuary rights for the Chippewa on the ceded territories.").

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cultural resources, further loss is certain. Mitigation is essential to prevent loss and degradation, which requires government-to-government consultation about the site-specific loss of cultural resources and the continued use of the affected areas. BAAJA would gut our rights to tribal consultation.

Most projects that threaten these resources are located on off-reservation lands but within our 1854 territory. Section 106 of the National Historic Preservation Act is one of the few legal mechanisms that guarantees the Band a meaningful role in those decisions. Through Section 106, the Band's Tribal Historic Preservation Office identifies sacred places, wild rice waters, cedar and maple stands, and cultural landscapes that federal agencies would otherwise overlook, including both historic cultural resources and the present-day cultural resources on which our members continue to rely. It requires agencies to consider and avoid harm before a project is approved. Where an agency fails to fulfill those obligations, Section 106 enables the Band to seek judicial relief before irreparable damage occurs. BAAJA would eliminate each of these protections.

We acknowledge that the amendment removes the provision that allowed the Secretary of the Interior to assume the functions of a Tribal Historic Preservation Office. It also extends from 30 to 45 days the period in which tribes may object to an agency's findings, and it strikes a narrow statutory definition of sacred and cultural places. **Applauding these changes, however, would be akin to applauding a polluter for destroying most of our manoomin rather than all of it**. The core of Title III remains untouched:

- **Federal agencies, not Tribal Nations, would determine what is protected.** Agencies alone would define the area of review, identify which historic properties exist and determine whether harm will occur. Tribes would have only 30 days to submit information before formal consultation begins, and consultation would then be limited to findings the agency has already made. A tribe that does not respond within 30 days may be excluded from the process entirely.
- **The harms of greatest concern to the Band would be excluded by definition.** Only effects that "directly alter" a property and are "proximately caused" by the project would be considered. Visual, atmospheric and audible impacts are excluded unless direct and significant, as are effects associated with future projects. Pollution that migrates downstream into wild rice waters over time, industrial noise and light at the edge of a wilderness, and the cumulative impacts of an entire mining district could all fall outside the scope of review.
- **Agencies could disregard tribal concerns at their discretion.** Even where harm is identified, an agency may determine in its "sole discretion" that "other considerations" outweigh the protection of sacred places, and courts would be required to give that determination "substantial deference."
- **Tribes would lose meaningful judicial remedies.** A court that finds a violation could only remand the decision to the agency, without vacatur or injunctive relief. Preliminary injunctions for Section 106 violations would be barred, allowing a project to proceed while litigation is pending. Tribes would have only 150 days to file suit and could not enforce programmatic agreements to which they are not signatories.
- **Tribal Historic Preservation Offices would be penalized for inadequate resources.** A tribal program could still be found deficient, and its funding suspended, for failing to "regularly" meet federal timelines or undefined "required metrics." At the same time, the substitute amendment makes the proposed increase to the Historic Preservation Fund subject to annual appropriations.

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- **Other provisions eliminate Section 106 review for entire categories of projects.** These include the reissuance of Clean Water Act nationwide permits that authorize the filling of wetlands and waters, as well as many pipeline and transmission projects within existing corridors.

These provisions were developed without government-to-government consultation and are being advanced during a lame-duck session. This is inconsistent with the United States' trust responsibility and its obligations to its treaty partners.

Earlier this year, Congress overturned the 20-year mineral withdrawal that protected the federal lands upstream of the Boundary Waters Canoe Area Wilderness. We fully expect the Administration to reinstate federal leases for Twin Metals to pursue its proposed copper-nickel sulfide mine in our 1854 Treaty territory. With the withdrawal rescinded, the federal review of that project is one of the last remaining avenues through which the Band can defend these waters.

BAAJA would fundamentally undermine that review. Mine facilities on state or private land could be excluded from it entirely. Downstream sulfide pollution of wild rice waters and industrial intrusion into the wilderness would not be considered adverse effects. An agency could conclude that demand for critical minerals outweighs all other considerations, and no court could halt construction while the Band sought relief. The same would hold true for every other mine, pipeline, transmission line and industrial activity that threatens manoomin and the Band's treaty resources anywhere in the Ceded Territory.

This harm is not hypothetical. Industrial mining is already putting irreversible holes in Mesabe Widjiu, the Sleeping Giant of the Mesabi Range, forever severing a geologic formation that is central to the stories carried by the Anishinaabeg, the Ojibwe people, who are represented by sovereign Tribal Nations throughout our ceded territories. Because BAAJA would exclude from review any effects related to prior, existing or future projects, federal agencies would be even less likely to account for this kind of permanent, landscape-scale loss.

The Grand Portage Band respectfully and urgently requests that you:

1. Vote **NO** on the motion to invoke cloture on Monday, November 9, and **NO** on final passage of BAAJA.
2. Inform Senator Heinrich and the other sponsors that the substitute amendment is unacceptable to the Grand Portage Band, and that Title III (Historic Preservation) must be removed from the bill.
3. Insist on meaningful government-to-government consultation with Tribal Nations before Congress enacts any changes to Section 106.

The Grand Portage Band thanks you for your past positions standing with us in defense of our 1854 Treaty territory, and we respectfully request that you continue to stand strong on Monday.
Sincerely,

Robert Deschampe
Robert Deschampe
Chairman

Cc: Chairman Carlos Hernandez, Bois Forte; Chairman Bruce Savage, Fond du Lac; 1854 Treaty Authority; Grand Portage Reservation Tribal Council