Fond du Lac Band of Lake Superior Chippewa
Reservation Business Committee

Chairman Bruce M. Savage **Secretary/Treasurer** Wayne Dupuis
District I Wally J. Dupuis **District II** Michael Murray Jr. **District III** Earl Otis

October 9, 2026

Senator Tina Smith
Hart Senate Office Building
SH-720
Washington, D.C. 20510

Senator Amy Klobuchar
Dirksen Senate Office Building
SD-425
Washington, D.C. 20510

Re: Bipartisan American Affordability and Jobs Act, S. 5653

Dear Senator Smith and Senator Klobuchar,

On behalf of the Fond du Lac Band of Lake Superior Chippewa ("Band"), I write regarding significant concerns with the severe impacts the Bipartisan American Affordability and Jobs Act, S. 5653 ("BAAJA") will have on the government-to-government relationship between Indian tribes and the United States, Indian treaty rights, and the overall trust responsibility related to land, water, and other resources, as well as cultural properties and religious sites. This bill would amend virtually every one of the Nation's major environmental laws, including the National Environmental Policy Act, the Clean Water Act, the Endangered Species Act, the Federal Power Act, and the National Historic Preservation Act. A change to any one of these statutes requires careful and thoughtful consideration of how the change will impact the complex framework of federal, state, and tribal jurisdiction, as well as impacts on the environment and cultural resources. This bill was drafted without input from the Committees of jurisdiction over the changes being made. This includes the Senate Committee on Indian of Affairs, which is charged with overseeing all legislation that will impact Indian country. Instead, this bill was simply introduced and Senate leadership announced it will be considered by the Senate in November. There were no hearings on this bill, and certainly no Senate Committee has approved this bill. This process lacks transparency and is no way to legislate policy of such magnitude, particularly with respect to the special relationship between Indian tribes and the United States.

As a Tribal leader I am charged with protecting my members' interests, including the lands and resources my people have relied upon since the beginning of time. I take this solemn charge seriously, as it requires careful and thoughtful balance of my members' interests given circumstances today and into the future. The BAAJA does not reflect this balance of interests; rather, it reflects an overarching reactionary imbalance toward energy producers, whether that be fossil fuel or renewable producers of energy. I know the impact of high energy prices. Indian country faces some of the highest energy prices in the country and many tribal communities lack any reliable sources of power, with some communities still relying on diesel generators for their power. However, in the zeal to modernize America's electrical grid and energy resources, we cannot sacrifice our waters, our lands, our historic and cultural landscapes and resources, or our treaty protected resources. This is what BAAJA would do. Once these resources are destroyed, we will never get them back. As our elected leaders, you must do better. I urge you to either insist on appropriate amendments to the bill or to vote no on the bill. Below I discuss some of my Tribe's gravest concerns with the bill.

First, the bill amends the National Environmental Policy Act ("NEPA") to exempt certain actions related to energy production, such as natural gas lines and transmission infrastructure, from NEPA review. Much of the nation's energy infrastructure must be upgraded, but not at any cost. NEPA was enacted to consider exactly these kinds of actions. Moreover, none of the exemptions in the bill would benefit Tribes, who again face some of the most significant economic challenges in the country due to the loss of our homelands. If Congress is going to create blanket exemptions to NEPA, then Congress must also amend the law to exempt all land into trust actions pursuant to 25 U.S.C. § 5108, 25 C.F.R. §§ 151 et seq. Tribes should not have to invest significant resources simply to restore land that was, in some cases, unjustly taken from them, while foreign companies get a free pass to use and destroy our public lands for mining or energy production activities.

Moreover, BAAJA disrupts the ability of stakeholders to challenge a federal agency's decision making under NEPA. The bill imposes strict deadlines not only on consultation, but on stakeholders' ability to challenge an agency's decision in court. Significantly, the bill ties the hands of federal courts by prohibiting the judicial branch from vacating an agency's decision. Instead, the bill directs that a court must remand an action to the federal agency that failed to do the job right in the first place. Such an action by Congress is not likely even Constitutional.

With regard to the Clean Water Act ("CWA"), BAAJA would limit the authority of Tribes and States to protect their water resources in accordance with our laws. This is significant for the Band because we have treatment as State ("TAS") status under Section 303 of the CWA. *See* 33 U.S.C. § 1377(e); 40 C.F.R. § 122.2 (definition of "State" includes an Indian tribe with TAS). This means that the Band is a "State" for purposes of the CWA and its implementing regulations. The Band has EPA

approved water quality standards ("WQS") governing its Reservation waters, including the St. Louis River. Among other things, the Band's WQS protect uses of water by Band members exercising their Treaty rights and preserve their way of life. Specifically, the bill would narrow Tribal governments' ability to consider a project's impact on treaty protected resources and species that rely on clean water to survive. Again, the provision limiting the federal court's review of an agency's action under the Clean Water Act is likely unconstitutional.

The bill amends the Endangered Species Act to delegate federal consultation responsibility to states. Tribes have a government-to-government relationship with the United States. Congress cannot delegate this responsibility to states. It certainly should not do it when it involves protecting and restoring treaty-protected species and resources that we depend on for our economic and cultural wellbeing. Moreover, the bill would narrow the definition of "best available science" further eroding the foundation of this hallmark statute.

Finally, the bill makes unprecedented and unnecessary changes to the National Historic Preservation Act. Under BAAJA, Section 106 consultation with Tribal governments would be *optional* and, even if a federal agency engages in consultation, Tribal input would only be considered if submitted within 30 days.

Perhaps most disturbing is that the bill would redefine Tribal sacred places under NHPA, limiting protection to "identifiable" locations where a significant "event" occurred, and would narrow the types of harms that agencies must consider. Finally, the bill creates an unfunded mandate for State Historic Preservation Offices ("SHPO") and Tribal Historic Preservation Offices ("THPOs") by imposing strict timelines without providing any additional resources to do this expedited work. Even worse, under the bill, if a THPO fails to meet the mandated expedited timeline, it could lose federal funding, and the Interior Department could take over their functions entirely. SHPOs do not face these same penalties. This is disparate treatment of tribal governments that Congress should not permit.

We are aware that proponents of this bill will argue that the bill is good for Tribes because it creates yet another authority for Tribes to grant rights-of-way over our Trust land, subject to Interior's approval of tribal regulations. While we appreciate this, under the Indian Tribal Energy Development and Self-Determination Act, Tribes already have this authority. Thus, the provisions of BAAJA are nothing more than window dressing. The authors of this BAAJA may have learned this if they had consulted with the Senate Committee on Indian Affairs.

In short, BAAJA fails to properly consider the potential impact on Indian tribes and Tribal governments, our lands and our Treaty protected rights and resources. We urge you to engage in full consultation with Tribes before you undertake such

massive changes to the Nation's foundational environmental statutes. These changes in the law could result in irreversible damage to our lands, our resources, and our very future.

Again, this is not how Congress should behave in the 21st century.

Sincerely,

Bruce Savage
Chairman