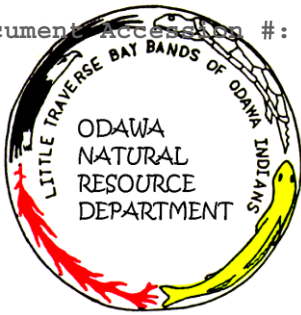




Little Traverse Bay Bands of Odawa Indians  
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May 5<sup>th</sup>, 2025

Michael Davis  
Archeologist  
Federal Energy Regulatory Commission, Hydropower Licensing  
888 First St NE  
Washington, DC 20426

**Re: Consultation Request for re-licensing of Boyne River Hydroelectric Project under P-3409**

Dear Mr. Davis,

On behalf of the Little Traverse Bay Bands of Odawa Indians (LTBB), please accept this notice regarding our request for Government-to-Government Consultation with the Federal Energy Regulatory Commission (FERC) regarding the Boyne River Hydroelectric Project (Project No. 3409).

LTBB's traditional way of life and rights to hunt, fish, and gather in the 1836 Ceded Territory were reserved in the 1836 Treaty of Washington and reaffirmed by Federal Court in the case of *United States v. Michigan* (WD MI Case 2: 73 CV 26). LTBB is party to the 2023 Great Lakes and 2007 Inland Consent Decrees entered in that case. The Boyne River Hydroelectric Project is within the 1836 Ceded Territory and directly impacts treaty reserved rights including native species fishing via degraded habitat.

The Boyne River is a popular fishery for LTBB citizens as indicated in the Final License Application (FLA) prepared by J.E. Tiffany and Sons, LLC. LTBB citizens fish the river year-round, but particularly during the spawning migrations of coldwater species, such as Pacific salmon and steelhead. Other species of interest to LTBB include spawning migrations of sucker species and resident brook trout populations. Occasionally, lake trout are also caught in the Boyne River during fall spawning migrations and it is likely that the river once contained a spawning population prior to the construction of the dam and introduction of sea lamprey. Aside from the Boyne River itself, Lake Charlevoix, which is approximately four miles downstream of the dam, is one of the ten most utilized waterbodies by LTBB citizens as indicated by a recent survey of citizens.

LTBB believes there are several issues surrounding the Boyne River Hydroelectric Project. First, there appears to be information lacking regarding the erodibility and potential for mass soil movement based on the FLA prepared by J.E. Tiffany and Sons, LLC. Exhibit E, Section 1.4.3 of the FLA states:

There is no mass soil movement, slumping, other forms of instability or significant erosion along the reservoir shorelines or stream banks in the project vicinity with the exception of the two following cases:

- Some erosion of the upstream slope of the left embankment has occurred because of the relatively steep slope combined with wind-driven wave action.
- Historically, there has been some erosion of the left stream bank downstream of the spillway discharge presumably caused by spillway discharge and/or heavy foot traffic from fishing activity during some seasons of the year.

There are readily observed signs of erosion and mass soil movement on both the downstream side of embankment and reach immediately downstream of dam, particularly on the northern side of the embankment and river. The FLA failed to accurately document these, and thus the application should be considered incomplete. LTBB would suggest an independent, third-party geological/engineering study to determine the safety of the dam.

The other issue of note, is accessibility for LTBB citizens seeking to exercise treaty rights on the Boyne River. Aside from impacts to water quality and fisheries below the dam, the Boyne River Hydroelectric Project prevents citizens from accessing and fishing the Boyne River within the impoundment and upstream waters. The Boyne River was historically used to float logs to lumber mills in Boyne City, thus, the Boyne River meets the criteria of a navigable river as established in *Moore v. Sanborne*<sup>1</sup>. Thus, by limiting access to the impoundment and upstream waters of the Boyne River, LTBB treaty rights have been infringed upon for over 40 years. This is an issue that must be addressed by any potential future license of the Boyne River Hydroelectric Project.

LTBB is also concerned with the trend of mis-management of the dam over the past few years. Throughout the re-licensing period, the Boyne Hydroelectric Project has negatively impacted the Boyne River through several instances of high turbidity, as well as, a recent incident of withholding water despite the dam being ordered to operate in run-of-river mode. The recurrence of these issues has led to the further degradation of this important fishery for LTBB citizens seeking to exercise treaty rights.

As a result of these oversights and mismanagement, LTBB requests consultation with FERC regarding the issues of dam safety, access to the project area, and harm to LTBB treaty-reserved rights. We look forward to the opportunity for further discussion of P-3409 with FERC.

In a good way,

Douglas Craven  
Natural Resources Department, Director  
Little Traverse Bay Bands of Odawa Indians

CC:  
Elizabeth Malloy  
Patrick Ely  
Janet Hutzell

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<sup>1</sup> *Moore v. Sanborne*, 2 Mich. 519, 523-24 (Mich. 1853)

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