



Little Traverse Bay Bands of Odawa Indians  
Natural Resource Department  
7500 Odawa Circle  
Harbor Springs, MI 49740  
Phone: (231)242-1670  
Fax: (231)242-1690



July 18<sup>th</sup>, 2025

Ms. Debbie-Anne A. Reese, Secretary  
Federal Energy Regulatory Commission  
888 First Street NE  
Washington, DC 20426

**Re: Little Traverse Bay Bands of Odawa Indians comments on Boyne River Hydroelectric Project EA following consultation**

Dear Secretary Reese,

On behalf of the Little Traverse Bay Bands of Odawa Indians (LTBB), please accept this letter as a follow-up to our consultation with the Federal Energy Regulatory Commission (FERC) regarding the Boyne River Hydroelectric Project (Project No. 3409) on June 5<sup>th</sup>, 2025. During the consultation, LTBB was encouraged to file comments on the record regarding the Environmental Assessment (EA) for the Boyne River Hydroelectric Project. As such, LTBB has reviewed the EA, as well as, the applicant's Final License Application (FLA) and would like to submit comments and recommendations related to re-licensing of the Boyne River Hydroelectric Project (P-3409).

**Recreation and Land Use**

One of LTBB's primary concerns with this project is how the public access, including to LTBB citizens, has been restricted to just the tailwater area within the project area under the previous license. As previously stated in our request for consultation, the Boyne River meets the criteria of a navigable river as established in *Moore v. Sanborne*<sup>1</sup>. Furthermore, the construction of the dam does not alter the navigability of the waterway. As Boyne USA notes in their response to our request for consultation, the river can be accessed upstream at the M-75 Dam in Boyne Falls. Should a citizen launch a watercraft and float down into the project reservoir, the boater would need to access the riparian lands along the reservoir to either portage around the dam or end their trip at the dam. This necessitates that public access is provided in the form of a boat/canoe launch and/or a portage route around the dam.

LTBB concurs with FERC's analysis regarding public access to the project reservoir and further would add that as a public trust resource, any restriction of public access to the reservoir would infringe LTBB's traditional way of life and rights to hunt, fish, and gather in the 1836 Ceded Territory as 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 would also add that as Boyne USA plans to develop significant private lodging and other amenities along the reservoir and that any public access and parking additions would be a comparatively minimal investment.

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

## **Fish Stocking Downstream**

As mentioned in our consultation letter, LTBB citizens frequently utilize the Boyne River downstream of the dam for fishing. Unfortunately, due to release of warm water from the reservoir, the Boyne River is no longer able to support many coldwater species that were historically present in the lower portion of the river such as brook trout and arctic grayling. It also inhibits the passage of migratory species that historically spawned in the Boyne River, such as lake trout, lake whitefish, and lake sturgeon. All of these species are tribally-significant species that are struggling to recover within waters of the 1836 Ceded Territory. While some migratory lake trout are caught in the Boyne River downstream of the dam, the warming effects of the dam inhibit successful natural reproduction. While FERC staff recommend the stocking of brown trout and steelhead below the dam, these stocking efforts do not adequately address the impact to aforementioned tribally-significant species. As FERC states within section 5.2 Unavoidable Impacts, the proposed stocking efforts, “would help protect the downstream recreational fishery:” However, these efforts do nothing to address the impacts to LTBB’s treaty-protected fisheries. As such, we suggest that additional mitigation efforts are included to address these issues, including establishing rehabilitation efforts for the aforementioned native species within the Boyne River Watershed (12 Digit HUC: 040601050205).

## **Dam Safety**

As mentioned in the consultation, LTBB is concerned about safety around the Boyne River Hydroelectric Project as any failure would have major effects on downstream waterbodies of significance to our community, including both the downstream portions of the Boyne River, Lake Charlevoix, and ultimately, Lake Michigan. While FERC staff provided a general overview of the repairs made to the dam and discovery of the penstock leaks, there was no mention of how long the leak may have been ongoing and of any damage the leak may have done to the internal integrity of the dam. Unfortunately, it is difficult to impossible for the public or external agencies to fully review and provide meaningful comment on the aspects related to the geotechnical or reports on remediation efforts as they are considered “Critical Energy Infrastructure Information (CEII).”

Thus, we must address our concerns based on observations we can readily observe from visits to the tailwater area. These observations include visible signs of erosion on the downstream side of the right (north) embankment. Additionally, there are curved trees along the northern shore of the tailwater area, immediately downstream of the right (north) embankment that may be indicative of slow earthflow or creep.<sup>2</sup>This slow earthflow may be caused by a number of factors, including leaking pipes. While the movement of this earthflow may be slow, it has the potential to slowly pull apart infrastructure, in this case the dam and ultimately “can lead to more drastic ground failures that are more destructive and faster moving.”<sup>3</sup> As such, LTBB has major concerns about potential dam failure along the right embankment and we maintain that further study of the integrity of the dam is necessary prior to any relicensing decision.

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<sup>2</sup> U.S. Geological Survey. 2008. The Landslide Handbook—A Guide to Understanding Landslides (Circular 1325). <https://doi.org/10.3133>.

<sup>3</sup> *Id*

LTBB appreciates the opportunity to consult on the project and provide comment. We believe that a weighed and judicious account of these concerns will help protect LTBB's treaty reserved rights.

In a good way,

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

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