Fond du Lac Band of Lake Superior Chippewa

Reservation Business Committee

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October 26, 2015

Susan Hedman
Regional Administrator
Environmental Protection Agency
77 West Jackson Blvd.
Chicago, IL 60604

Dear Administrator Hedman,

The Fond du Lac Band of Lake Superior Chippewa (the Band) writes to request technical assistance from the USEPA with regards to establishing a clear understanding of the hydrology of the proposed PolyMet NorthMet mine project located in northeastern Minnesota. As you know, the Band is a federally recognized Indian tribe that retained hunting, fishing, and other usufructuary rights in a land cession treaty with the United States in 1854, the Treaty of LaPointe. The proposed PolyMet NorthMet project is located entirely within the 1854 Ceded Territory and the Band is concerned about not only the potential impacts of the mine, but also the Environmental Impact Statement (EIS) process currently underway to explore, evaluate and document those impacts. The Band is a cooperating agency in the development of the joint state/federal EIS, and has been assisted by staff from the Great Lakes Indian Fish and Wildlife Commission (GLIFWC). The Minnesota Department of Natural Resources is the lead state agency for the EIS; the U.S. Army Corps of Engineers and the U.S. Forest Service serve as the federal lead agencies.

The attached communications describe some of the concerns that our staff have repeatedly raised regarding the hydrologic characterization of the project mine site, but which we do not feel have ever been adequately addressed by the lead agencies, the applicant or the EIS contractor. This project will be precedent-setting, as it is the first sulfide mine proposed in the State of Minnesota. We wish to ensure that robust analyses are used so that the EIS can predict potential impacts with as much confidence as possible, appropriate avoidance and mitigation can be developed, targeted monitoring and permitting can be implemented, and sufficient financial assurance be obtained. We are concerned that the hydrologic analysis of the groundwater at the mine site developed thus far is inadequate to identify the affected environment or assess the impacts to the environment, steps that are rudimentary to producing an adequate EIS.

We would like to engage the EPA in a discussion about how it can assist the Band in ensuring that the concerns in the attached memoranda are adequately evaluated, addressed and resolved. To that end, the Band requests that the EPA secure expertise in the field of groundwater hydrology and modeling necessary to fully and independently evaluate the analyses reported in the attached communications. Should the issues raised in the letters be substantiated, as the Band believes they will be, those issues will have significant impacts on the identification of surface waters that may be impacted, the magnitude of impacts to those waters, and predictions of the likelihood of compliance with surface water standards.

While the Band feels that the issues raised in the attached letters are based on solid science, it is essential that the EPA provide assistance in verifying the assumptions and methods used in drawing those conclusions. To take the required "hard look" at a proposed project's effects, an agency may not rely on incorrect assumptions or data in an EIS. *40 C.F.R. ß 1500.1(b).* The agency is required to "insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements." *40 C.F.R. ß 1502.24.* It is only with the assistance of credible, independent expertise in the area of groundwater hydrology that the critical questions of contaminant flow directions, flow quantities, surface water impacts and surface water compliance points can be identified and appropriate avoidance and mitigation measures be implemented.

As the release of the final EIS is imminent, we would appreciate hearing from you in writing as soon as possible to identify how the EPA can provide the technical assistance needed to independently evaluate the issues raised in the attached letters.

Sincerely,

Karen R. Diver
Chairwoman

Attachment

cc w/att:

Kestutis Ambutis, Acting Director, American Indian Environmental Office, USEPA Region 5
Tinka Hyde, Director, Water Division, USEPA Region 5
Alan Walts, Director, Office of Enforcement and Compliance Assurance, USEPA Region 5
Ken Westlake, Chief, NEPA Implementation Section, USEPA Region 5
Peter Swenson, Chief, Watersheds and Wetlands Branch, USEPA Region 5
Kevin Pierard, Chief, NPDES Program Branch, USEPA Region 5
JoAnn Chase, Director, American Indian Environmental Office, USEPA
Michael Shapiro, Deputy Assistant Administrator, Office of Water, USEPA
Shahid Mahmud, Team Leader, EPA Abandoned Mines Land Team, USEPA
John Coleman and Ann McCammon Soltis, GLIFWC