

**Comments of Kevin R. Dupuis,
Chairman of the Fond du Lac Band of Lake Superior Chippewa
at the November 15, 2016 Federal Consultation with Tribes on
Federal Infrastructure Decision-making**

My name is Kevin Dupuis. I am the Chairman of the Fond du Lac Band of Lake Superior Chippewa. On behalf of the Fond du Lac Band, I would like to thank you for holding these consultations with Tribes. We plan to submit more detailed written comments by November 30. Today we wanted to highlight some of our major concerns.

I had an opportunity to go to Standing Rock in September and to visit the Sacred Stone Camp. I was very moved by what I saw. Indian tribes nationwide have come together to support each other in a way that is extraordinary and unprecedented. All Tribes are working together to make sure that tribal voices are heard and that tribal rights and interests are protected whenever projects are being developed that put at risk our water, land, natural resources and sacred sites.

Fond du Lac is proud to stand with Standing Rock.

Fond du Lac also appreciates the work that this Administration has done to improve government-to-government consultation with Indian tribes. Under President Obama's leadership, this Administration has worked to put in place policies to protect tribal interests. A lot of good work has been done on these policies.

One of the problems we see is that good policies are not always followed. Another problem is that even when we have consultation with federal agencies, the final decisions that are made too often do not include protection of tribal interests. Consultation needs to mean more than just checking-off a box. Consultation should result in decisions that include protection of tribal rights and interests.

I want to mention a few examples from our experience.

One example concerns the proposed Sandpiper oil pipeline.

- Sandpiper has two parts. One is a new crude oil pipeline that would be about 600 miles long. The other part is a proposal to replace and possibly expand an existing pipeline, known as Line 3.
- In 2014, the Army Corps wrote to us to ask if we wanted to consult on Sandpiper. We immediately wrote a letter to say yes – we wanted to consult. In our response, we also asked for information about the project, so that we could prepare for consultation. We never received any information. A year later, we got a phone call from the Corps to ask about where we might want to meet. But nothing else happened. No meeting was set, and there hasn't been consultation.
- What we know about the project is based on what we read in the newspapers. We saw that, this summer the company – Enbridge – announced that it would no longer seek

permits for the main Sandpaper pipeline. But there is still a proposal to do work to replace and possibly expand Line 3. Part of Line 3 crosses our Reservation. We are concerned that the Corps hasn't started consultation with us on Line 3, because the Corps may be waiting until the company gets state permits. But at that point, consultation with us will be too late. Our concerns about the possible replacement or expansion of this line need to be considered *before* decisions are made about the line, not after.

Another example involved the U.S. Geological Survey.

- This spring, the USGS did aerial surveys of mineral resources in northern Minnesota, Wisconsin and Michigan. These surveys covered our Reservation as well as the areas where Fond du Lac and other Chippewa tribes hold Treaty rights to hunt, fish and gather. When these surveys are done, the data becomes available to mining companies.
- We are very concerned that the work the USGS is doing will simply lead to increased pressure for more mining development – all of which would happen without considering the impacts of increased mining on our Reservation, or our reliance on natural resources outside our Reservation.
- The USGS did these surveys without any advance notice to the tribes. We were not consulted. USGS did this work from their Denver office, and that office didn't even know the location of our Reservations, much less our Treaty rights. Work is now being done to improve consultation with USGS. But USGS is part of the Department of the Interior, and should have known to get information about the Tribes before they started work.

A third example involves the federal government's review of the proposed PolyMet mine.

- This is an open-pit copper mine. It would be the first of its kind in Minnesota. The mine would be located on land that is now within the Superior National Forest. For the mine to be developed, the Forest Service would transfer a tract of 6,500 acres of Forest Service lands to the company, in exchange for several scattered tracts of land elsewhere in the state. The mine would operate for 20 years, and would require wastewater treatment for 200 to 500 years after the mine is closed.
- This mine would also lie within the territory where we hold Treaty rights to hunt, fish and gather. The mine's effect on wetlands and water quality puts at risk the fish and wild rice that are so central to our people. In addition, the proposed mine is crossed by two large rivers that flow downstream into the St Louis River – which runs through our Reservation.
- We have participated in the environmental review for PolyMet. In that process we provided detailed scientific analysis of the potential impacts of the mine to the environment and identified reasons why further study and additional measures are needed before final decisions can be made regarding the mine.

- But we have seen that consultation does not translate into decisions which take into account our concerns. For example, we explained why the mine would put our Treaty rights at risk because of harm to water, fish and wild rice. But the Forest Service, in a draft decision, decided that we won't be harmed because the new lands that the Forest Service will get from the company have roads and boat ramps. We didn't ask for more roads or boat ramps. What we need and asked for is clean water – so that wild rice is not destroyed and fish are safe to eat. The Forest Service didn't listen to what we said, but decided for itself what would be good for us.
- In our work on PolyMet, we have also seen that the federal agencies do not implement many other important federal policies.
 - For example, the environmental review on PolyMet did not include the kind of analysis of global warming that this Administration has repeatedly urged be done. Tribes are disproportionately hurt by climate change. So careful consideration of climate change is essential in reviewing proposed mining projects, especially when they affect tribal rights and interests.
 - In addition, the PolyMet mine will destroy nearly 1000 acres of high quality, undisturbed wetlands. An additional 7,000 acres of other wetlands not permanently lost would be indirectly damaged. This Administration adopted policies that give priority to avoiding loss of wetlands. Under those policies, if loss of wetlands can't be avoided, the next priority is to mitigate the loss by developing other wetlands in the same watershed. But none of this will happen if PolyMet is built. Even though the mine will destroy thousands of acres of wetlands, almost all of the proposed mitigation would occur outside the St Louis Watershed, and outside the area where our reservation is located and outside where we hold Treaty rights. Developing wetlands outside this watershed won't mitigate the serious damage to the resources on which we depend.

We think there are steps that the Administration can take to fix these problems.

- One step is to make sure that the good policies which this Administration has developed are actually followed. These policies need to be enforceable. We know that this Administration has only 65 days left. But in this time, we hope that the President might issue an Executive Order which provides more detail on what is required for proper tribal consultation, and directs the federal agencies to comply with these consultation policies. Also, an Executive Order should state that, where agencies have discretion in decision-making, they must exercise their discretion in ways that protect tribal rights and interests. In the long term, work should be done to add these requirements to regulations or statutes.
- Some of the problems may be fixed by making sure that federal employees are trained so that they know about tribes, and understand Indian treaty rights.

- We also join with many other Tribes in asking this Administration to improve the ways in which Section 106 of the National Historic Preservation Act is implemented. One important step is for the Army Corps to eliminate its Appendix C, which is inconsistent with the 1992 Amendments to the Act as well as the regulations adopted by the Advisory Council on Historic Preservation. Another step is to adopt a policy so that federal agencies offer Tribes status as signatories whenever a traditional cultural property or sacred site would be affected by a project – including sites that are located outside tribal lands.
- Finally, we join with other Tribes in asking that the Corps' Nationwide Permit 12 be revised so that it does not apply to oil pipelines. Nationwide Permit 12 is intended to streamline the process for Clean Water Act permits for those projects that have a minimal impact on waters. But major pipelines that transport crude oil and which cross waters do not fall within this category.
- Improving the federal decision-making process as it relates to tribal interests is important. It is also sound policy. Timely and proper consideration of tribal interests reduces the risk of disputes and litigation, and results in better designed, developed and implemented projects.

We have additional recommendations which we will provide to you in more detail in written comments submitted by November 30, 2016.

Thank you again for holding this consultation, and for giving us an opportunity to raise our concerns.