

GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION

P. O. Box 9 • Odanah, WI 54861 • 715/682-6619 • FAX 715/682-9294



• MEMBER TRIBES •

MICHIGAN

Bay Mills Community
Keweenaw Bay Community
Lac Vieux Desert Band

WISCONSIN

Bad River Band
Lac Courte Oreilles Band
Lac du Flambeau Band
Red Cliff Band
St. Croix Chippewa
Sokaogon Chippewa

MINNESOTA

Fond du Lac Band
Mille Lacs Band

TESTIMONY

of

JAMES E. ZORN

EXECUTIVE ADMINISTRATOR

GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION

on

ASSEMBLY BILL 426

and

LRB-4045/1

**RELATING TO REGULATION OF FERROUS METALLIC MINING AND RELATED
ACTIVITIES, MAKING AN APPROPRIATION, AND PROVIDING PENALTIES**

before the

JOINT COMMITTEE ON FINANCE

February 17, 2012

**WRITTEN TESTIMONY
OF
JAMES ZORN
EXECUTIVE ADMINISTRATOR
GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION**

Chairpersons and Members of the Committee, my name is James Zorn and I am the Executive Administrator of the Great Lakes Indian Fish and Wildlife Commission (Commission or GLIFWC). Thank you for the opportunity to submit written testimony on Assembly Bill 426 and LRB-4045/1, the Senate's companion bill to AB 426.

Our message today is clear – the State proceeds at its own risk by passing this legislation in the face of legal uncertainty about the bill's impact on the tribes' treaty reserved rights to hunt, fish and gather in the Ojibwe treaty ceded territory. AB 426 and its companion bill do not adequately account for or afford adequate protections to the ceded territory, or the natural resources or habitats therein. The Commission is gravely concerned about the process by which this legislation has proceeded through the legislature as well as the substantive provisions contained in the two bills.

As a party to the *Lac Courte Oreilles v. Wisconsin* case, commonly known as the *Voigt* case, the State of Wisconsin must not exercise its authority to the detriment of the tribes' treaty rights and in ways that would be contrary to the requirements of the *Voigt* case. The State may not legislate away the tribes' treaty rights; similarly, legislating the destruction of treaty resources through destruction of habitat may not be used to accomplish the same end.

The Commission is concerned about both the process for mine permitting contemplated in the bill and in its substantive environmental provisions. For example, 360 days is insufficient to allow regulators or potentially affected communities to develop a full understanding of the potential impacts of a large, complex proposal like an open pit iron mine in the ceded territories. In addition, the presumptive approval of a permit after 360 days flies in face of the careful scrutiny and considered decision making that is required of the State when it takes actions that have the potential to impact the tribes' treaty reserved rights and resources.

The substantive provisions of the legislation are equally troubling. Under current law, the DNR must deny a mining permit if substantial deposition in streams cannot be avoided or if a lakebed would be destroyed or filled. The legislation allows the DNR to permit a mine that would result in filling lakes and streams. The wholesale elimination of waters that are held in trust for the citizens of the state, as well as waters that constitute treaty reserved resources, is extremely troubling, even if mitigation were required.

Attached please find a copy of the Commission's testimony on LRB-3520/1, the precursor to AB 426. I would note that none of the amendments to AB 426 before it passed the Assembly addressed the Commission's comments on the bill. In fact, it is worth noting that the amendment requiring the notification of any tribe within 20 miles of a proposed project fails to recognize the shared ceded territory rights of the six tribes that were plaintiffs in the *Voigt* case.

This provision seems only to underscore a lack of understanding of the tribes' rights and shared responsibility for ceded territory natural resource management.

As we have testified previously, GLIFWC's Board of Commissioners and Voigt Intertribal Task Force are opposed to any legislation that would weaken the environmental review and permitting processes currently in place for mining in the ceded territories. This bill does just that. In addition, it creates uncertainty with regard to *Voigt* case mandates that constrain state action in the face of the tribes' treaty reserved rights. For these reasons, the Commission opposes this legislation.

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TESTIMONY

of

ANN McCAMMON SOLTIS

**DIRECTOR, DIVISION OF INTERGOVERNMENTAL AFFAIRS
GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION**

on

LRB-3520/1

**RELATING TO REGULATION OF FERROUS METALLIC MINING AND RELATED
ACTIVITIES**

before the

**ASSEMBLY COMMITTEE
ON JOBS, ECONOMY & SMALL BUSINESS**

December 14, 2011

**WRITTEN TESTIMONY
OF
ANN McCAMMON SOLTIS
DIRECTOR, DIVISION OF INTERGOVERNMENTAL AFFAIRS
GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION**

Madam Chairman and Members of the Committee, my name is Ann McCammon Soltis. I am the Director of the Division of Intergovernmental Affairs with the Great Lakes Indian Fish and Wildlife Commission (Commission or GLIFWC). Thank you for the opportunity to submit written testimony on LRB-3520/1, the recently released Assembly Mining bill.

Our message today is clear – tribal members depend on clean, healthy and abundant natural resources to meet their physical, social, cultural, economic and spiritual needs. Any activity, mining or otherwise, that threatens those resources must be the subject of careful and thorough scrutiny, and deliberate and informed decision-making. GLIFWC's Board of Commissioners, its Voigt Intertribal Task Force and its member tribes have been and will continue to be vigilant in their efforts to ensure that strong environmental laws are in place and are fully implemented so that natural resources are protected. This bill significantly undermines environmental protections and compromises this State's ability to maintain a high quality environment to pass on to future generations.

As you are aware, the State does not have unfettered discretion to exercise its management prerogatives to the detriment of the tribes' treaty rights and in ways that would be contrary to the requirements of the *Lac Courte Oreilles v. Wisconsin*, commonly known as the *Voigt* case. The State may not legislate away the tribes' treaty rights; similarly, legislating the destruction of treaty resources through destruction of habitat may not be used to accomplish the same end. Whatever legislation the State may consider, it may not trample on the tribes' treaty rights, and the tribes will be watchful in ensuring that they are protected.

I. GLIFWC – BACKGROUND AND ROLE WITH RESPECT TO ACTIVITIES IN THE CEDED TERRITORIES AFFECTED BY LRB-3520/1

GLIFWC was founded in 1984 as a natural resources management agency exercising delegated authority from its 11 federally-recognized Ojibwe¹ member tribes in Wisconsin, Michigan and Minnesota. Those tribes have reserved hunting, fishing and gathering rights in territories ceded to the United States in treaties with the United States.

GLIFWC's Voigt Intertribal Task Force comprises nine of those tribes.² GLIFWC and the Task Force were established by the tribes to protect and regulate the use of off-reservation

¹ The tribes also are referred to as Chippewa, or, in their own language, Anishinaabe.

² GLIFWC's Voigt Task Force member tribes are: the Bad River Band of the Lake Superior Tribe of Chippewa Indians, Lac du Flambeau Band of Lake Superior Chippewa Indians, Lac Courte Oreilles Band of Lake Superior Chippewa Indians, St. Croix Chippewa Indians of Wisconsin, Sokaogon Chippewa Community of the Mole Lake Band, Red Cliff Band of Lake Superior Chippewa Indians, Mille Lacs Band of Chippewa Indians, Keweenaw Bay Indian Community and Lac Vieux Desert Band of Lake Superior Chippewa Indians.

natural resources. They serve the tribes by conserving and managing off-reservation fish, wildlife, and other resources, helping in the development and enhancement of institutions for tribal self-regulation of natural resources, and protecting the habitats and ecosystems that support those resources.

II. LRB-3520/1 CANNOT UNDERMINE THE CONSULTATION REQUIRED UNDER *VOIGT* CASE STIPULATIONS

Whatever timeframes are contained in the bill, the DNR must consult with the Voigt Intertribal Task Force, as required by the *Voigt* case, before issuing any permit that would impact wild rice or other wild plants in the ceded territory.

III. THE VOIGT INTERTRIBAL TASK FORCE HAS GONE ON RECORD IN OPPOSITION TO CHANGES THAT WOULD WEAKEN WISCONSIN'S MINING LAWS

As we testified during this Committee's October 27, 2011 hearing in Hurley, Wisconsin, the legislature should not be quick to concede that changes to the mining law are necessary. Current law provides a framework for the regulation of mining activity in the state, and two mines have been permitted in recent history. Despite more recent claims, Gogebic Taconite has publicly stated that it does not need changes in the mining law for it to proceed. It is clear that this bill would change both the process and the substance of Wisconsin law in ways that will undermine the protection of natural resources and habitats.

A. PROCESS CHANGES

Imposing a 360-day deadline for review of a mining proposal will lead to bad decisions. Each mine proposal must be evaluated on its own merits and enough time must be provided for regulators to address the particular complexities that each proposal presents. A rush to meet arbitrary deadlines makes it more likely that we will have to live with a devastating mistake.

For example, under the bill the DNR is not allowed to consider data quality when determining the completeness of an application and thus the start of the 360-day clock. Should additional studies or data collection be necessary, the DNR may not know it until well into the 360-day period. At that point there may not be time to gather the necessary data that would lead to an informed decision. This is particularly true for data that is only seasonally available, such as water quantity, animal activity, or recreational use.

This bill limits the State's ability to allocate adequate time to fairly assess impacts to the resources that don't have their own voice – the water, the fish, the animals and plants.

B. SUBSTANTIVE CHANGES

Separating iron ore mining regulations from non-ferrous ore regulation does not account for the reality found in nature. Ferrous and non-ferrous ore are not found in neat, segregated ore bodies. This situation is common in Minnesota, where sulfate discharges are a problem at a number of taconite mines. A responsible statutory framework presumes that sulfur will be present and makes provisions to handle it, as does current Wisconsin law. In fact, geologic studies of the Penokee Range show that sulfur-bearing minerals are intermingled with and adjacent to the iron ore body. While the exact quantity of those sulphur bearing minerals is unknown at the Penokee site, the acid-generating potential of any rock removed as part of a mining operation must be calculated so that it can be appropriately handled. The current regulatory framework does this.

The bill also allows groundwater pollution in an area extending 1200 feet from the edge of the mine or tailings area. If a company can't prevent pollution of that area, the bill allows the area of pollution to be extended another 1200 feet. In addition, groundwater standards would only apply vertically to 1000 feet. Below that level, no standards would apply, allowing a company to discharge without limitation. The bill does not appear to consider the effect that mining projects can have on deep groundwater and the subsequent effect as that water rises to the surface to replenish shallow aquifers and surface waters. A scheme that fails to scientifically test and account for this connection could result in water pollution for miles.

There are many instances in which environmental standards are loosened in this bill, in fact, it appears to subordinate virtually all other interests to those of the iron mining industry. Existing protections for areas of special natural resource interest, wetlands, lakes and streams, groundwater, and threatened and endangered species – all are significantly undermined for the advantage of one industry.

IV. CONCLUSION

GLIFWC's Board of Commissioners and Voigt Intertribal Task Force have gone on record as opposing any legislation that would weaken the environmental review and permitting processes currently in place for mining in the ceded territories. This opposition stems from deeply held commitments to the protection of tribal lifeways that depend on high quality and abundant natural resources.

Iron mining can have serious and long-lasting impacts. Unfortunately, this bill makes it more likely that we will see these sorts of impacts here in Wisconsin. The legislature should do everything in its power to ensure that natural resources and ecosystems are protected, not compromised. This bill would be a step in precisely the wrong direction.