GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION
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● MEMBER TRIBES ●

MICHIGAN	WISCONSIN		MINNESOTA
Bay Mills Community	Bad River Band	Red Cliff Band	Fond du Lac Band
Keweenaw Bay Community	Lac Courte Oreilles Band	St. Croix Chippewa	Mille Lacs Band
Lac Vieux Desert Band	Lac du Flambeau Band	Sokaogon Chippewa	

TESTIMONY

of

JAMES E. ZORN

EXECUTIVE ADMINISTRATOR
GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION

on

2013 ASSEMBLY BILL 1
and
2013 SENATE BILL 1

RELATING TO REGULATION OF FERROUS METALLIC MINING AND RELATED ACTIVITIES

before the

ASSEMBLY COMMITTEE ON JOBS, ECONOMY AND MINING
and the
SENATE COMMITTEE ON WORKFORCE DEVELOPMENT, FORESTRY, MINING, AND REVENUE

January 23, 2013

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

Chairpersons and Members of the Committees, 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 AB 1/SB 1.

As I testified during the last legislative session, 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. By authorizing the destruction of treaty resources and weakening the existing law, this legislation tramples on the tribes' treaty rights, and the Commission opposes it.

I. GLIFWC – BACKGROUND AND ROLE WITH RESPECT TO ACTIVITIES IN THE CEDED TERRITORIES AFFECTED BY AB 1/SB 1

GLIFWC was founded in 1984 as a natural resources management agency exercising delegated authority from its 11 federally-recognized Ojibwe[1] 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 ten of those tribes.[2] GLIFWC and the Task Force were established by the tribes to protect and regulate the use of off-reservation 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.

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[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, Keweenaw Bay Indian Community; 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, Fond du Lac Chippewa Tribe, Mille Lacs Band of Chippewa Indians, and Lac Vieux Desert Band of Lake Superior Chippewa Indians.

II. AB 1/SB 1 CANNOT UNDERMINE THE CONSULTATION REQUIRED UNDER *VOIGT* CASE STIPULATIONS

Whatever timeframes are contained in the bill, the Wisconsin Department of Natural Resources (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 COMMISSION AND ITS MEMBER TRIBES DISAGREE WITH THE PREMISE THAT CURRENT LAW MUST BE CHANGED

As the Commission has testified before, the legislature should not be quick to concede that changes to the mining law are needed. To eliminate existing requirements that protect public health and the environment in the name of jobs would be akin to the FDA changing pharmaceutical standards for short term expediency. Similarly, although society needs housing, we do not change building codes in ways that would lessen fire safety or structural soundness requirements, simply to promote faster or cheaper construction. These would be unwise and improper trade offs given the values society places on protecting its citizens. Wisconsin should uphold these same values in protecting its citizens and the environment from the potential harm that results from inadequate oversight of mineral development or when that development is poorly conducted.

During last year's debate of these issues, some suggested that federal law would provide sufficient environmental and human health protections, regardless of what mining regulations the state might enact. To take such an approach would be an abdication of this state's public trust doctrine and its governmental responsibility to provide a healthy environment for its citizens. It would be like a parent saying that the ultimate responsibility for their child lies with a neighbor or teacher and not at home.

The proponents of this and last year's bills have repeatedly asserted that the bills do not change environmental standards. If that statement refers to numeric standards set by the state under the authority of the Clean Water Act and the Clean Air Act, then it is a true statement. In fact, changing those standards would be beyond the power of the legislature without sufficient scientific justification. However, no one should think for a moment that this bill provides adequate or equivalent protection of the environment as compared with current law. The bill undermines existing law both procedurally and substantively.

A. PROCEDURAL CHANGES

Procedurally, increasing the deadline for a mining permit decision by two months over last year's 360 days (or four months under certain circumstances) does not increase confidence that decision making will be significantly improved. The timeframe remains insufficient to allow a thorough review and reasoned decisions.

As an example, a mining application contains a great deal of information, including a mining plan and a detailed reclamation plan. Under this bill, the applicant must now also submit a feasibility report for mine waste handling as well as a full Environmental Impact Report describing the environmental impacts of the proposal. These documents can each be hundreds of pages long, yet the bill provides only 30 days for the DNR to evaluate whether the application is complete, including an evaluation of data quality. While it is admirable that the drafters of this bill restored the ability of the DNR to examine data quality, the drafters simultaneously undermined the State's ability to perform that task by inundating it with paper and holding it to a 30 day deadline.

B. SUBSTANTIVE CHANGES

Separating iron ore mining regulations from non-ferrous, sulfide ore regulations does not account for the reality found in nature and is poor policy. Ferrous and non-ferrous ore are not found in neat, segregated ore bodies. In fact, sulfate discharges are a problem at a number of taconite mines in Minnesota. Geologic studies of the Penokee Range show that sulfur-bearing minerals are intermingled with and adjacent to the iron ore body. A responsible statutory framework presumes that sulfur will be present and makes provisions to handle it, as does current Wisconsin law.

There are three major ways that this bill undermines environmental protections without changing numeric standards.

1. The bill changes where standards apply and where mine activities can take place, and so allows increased pollution within those areas.

   Current law and the bill allow groundwater pollution in an area extending 1,200 feet from the edge of the mine or tailings area. However, the bill provides that if a company can't prevent pollution of that area, the DNR may allow the area of pollution to be extended another 1,200 feet. In addition, under the bill groundwater standards would only apply vertically to 1,000 feet. Below that level, no standards would apply, allowing a company to discharge to deep aquifers 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 between deep and shallow aquifers could result in pollution of drinking water supplies.

   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

problematic, even if mitigation were required.

2. This bill undermines or eliminates common sense precautions that try to anticipate and avoid problems *before* they result in the violation of a standard.

   This bill removes many of the precautions that apply to the siting of waste disposal areas. Setbacks from waterways are removed and tailing pipelines would be permitted to cross major watercourses or pass through wetlands. The bill eliminates a requirement that high priority be given to siting waste disposal sites in areas that minimize the risk of pollution. In fact, even if the DNR determines that there is a reasonable probability that the waste will result in a violation of surface water or groundwater standards, it can no longer deny a permit on that basis.

3. This bill limits the ability of the DNR to ensure adequate regulation of a project, and puts the mining company firmly in the driver's seat in deciding whether it wants to comply with the law.

   Current law requires that before the DNR issues a permit, it must be satisfied that the proposed mine will comply with applicable environmental protection requirements. Under the bill, this determination no longer rests with the state. So long as the mining applicant has *committed* to conduct its operation in compliance with its permit, the DNR must issue the permit. The bill undermines the DNR's ability to verify whether that promise has any likelihood of being fulfilled.

   If a company doesn't keep its promises, the bill provides for exemptions from any requirement of the permit. The DNR must act on an exemption request within 15 days and must issue the exemption, even if there are adverse impacts, as long as they are mitigated. The bill does not provide for public notice of an exemption request or any opportunity for the public to review a proposed exemption, nor does it provide for consultation with the tribes as required by the *Lac Courte Oreilles v. Wisconsin* decision.

IV. CONCLUSION

No mining law should prejudge an outcome – to do so would render such a law meaningless. The purpose of any mining law should be to afford sufficient opportunity for the proposed site "to speak for itself" as to whether it is an appropriate place for mining to occur. This bill's proposed changes to current law will not allow that to happen. They will result in poor decisions that place this state's natural resources at unnecessary risk. The Commission opposes AB 1 and SB 1.