

Appendix D: EPA Record of Meetings with the Band

Consultation with the Fond du Lac Band of Lake Superior Chippewa regarding their Objection to CWA 404 Permit for PolyMet Mine

Meeting Notes January 25, 2022

Meeting Date: 1/25/2022 2:00 PM

Location: Microsoft Teams Meeting

Link to Outlook Item:

Invitation Message

Microsoft Teams meeting

Join on your computer or mobile app

Join with a video conferencing device

sip:teams@video.epa.gov

Video Conference ID:

Alternate VTC instructions

Or call in (audio only)

United States, Chicago

Phone Conference ID:

For all EPA meetings, there is no expectation of privacy regarding any communications.

Participation in a recorded meeting will be deemed as consent to be recorded. Information on EPA systems is the property of the Agency and may become official records.

Invited Participants

[Shore, Debra](#) (Meeting Organizer)

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[Frazer, Brian](#)
[Gude, Karen](#)
[Walts, Alan](#)
[Fong, Tera](#)
[Kaplan, Robert](#)
[Pfeifer, David](#)
[Rzeznik, Dana](#)
[Burdick, Melanie](#)
[Bishlawi, Randa](#)
[Wester, Barbara](#)
[Rountree, Jillian](#)
[Saucedo, Alfred](#)
[Kasperek, Lauren](#)
[Curtin, James](#)
[Priest, Andrea](#)
[Harmon, Darrel](#)
[Olson, Erik](#)

Debra Shore, Regional Administrator for Region 5, EPA, welcomed participants and introduced those representatives from EPA. She noted that the Band has treatment in a similar manner as a state for Sections 303 and 401 of the Clean Water Act (CWA) and has EPA approved Water Quality Standards (WQS). She noted the Band's judicially affirmed rights to hunt, fish and gather throughout ceded territories of Minnesota. She noted that the Band has been actively engaged with the Corps regarding the process for the hearing and the roles of different parties in this matter and that EPA recognizes that the Band has raised concerns in a meeting with representatives of the White House that EPA has finalized information that it would present at the Corps Hearing. We have not finalized material that EPA is preparing to present at the hearing.

Other EPA participants introduced themselves.

Tribal Chairman Kevin DuPuis, members of the Reservation Business Committee, and tribal representatives introduced themselves.

Tera Fong, Director of Water Division, Region 5, and other Water Division staff stated that the purpose of this consultation is to provide an opportunity for the Band to present its views on its objection to the CWA Section 404 permit for the proposed mine project, described the roles set out in CWA Section 401(a)(2), and brief history of this consultation.

Band representatives noted that the Band has invested time and resources into evaluating and analyzing the project, including its impact to reservation waters and the Band has significant water quality concerns in addition to environmental justice and treaty rights concerns. EPA should coordinate with the Band in preparing for the hearing. Band Leadership stated that the federal government has a treaty commitment to the tribes – these are not only the tribes' treaties, but those of the United States as well. Band Leadership stated that their focus is on protecting treaty reserved resources including fish and wild rice, aquatic dependent resources, and water quality. Band representatives stated that the mine will discharge millions of gallons of water

containing mercury, sulfates, conductivity and organics to waters that already exceed the Band's WQS. The Embarras and Partridge rivers are directly connected to the St. Louis River. There are extensive riparian wetlands along the St. Louis River that will enhance methylation of mercury. The contaminated discharges from the mine will be transported to the riparian wetlands and seasonal flooding will back up water onto the waters the reservation and adjacent wetlands exacerbating the mercury issues. Fish and wildlife resources that use these water resources will be exposed to additional mercury, that will bioaccumulate and eventually impact people who consume the exposed wildlife. Contaminated discharges will contribute to violations of the Band's water quality criteria and antidegradation standards. Band representatives stated that the project will lead to methyl mercury contamination and bioaccumulation of mercury in fish and other aquatic-dependent species. Band Leadership stated that EPA should be working in partnership with the Band in engaging in the CWA Section 401(a)(2) process and that EPA should share information with the Band. For too long the federal government has spoken on behalf of tribes without allowing them to give voice to their concerns.

EPA leadership acknowledged the Band's concerns and proposed having two further calls to discuss issues raised in today's consultation. One call would be a lawyer' call and one call would be a technical call in which Band representatives would have an opportunity to provide further information and be available to answer any technical questions that EPA might have regarding the materials that the Band provided.

Lawyers' Meeting - EPA and Fond du Lac Band Representatives regarding the Band's Objection for the CWA 404 Permit for the PolyMet Mine Meeting Notes March 17, 2022

Meeting Date: 3/17/2022 9:00 AM

Location: Microsoft Teams Meeting

Link to Outlook Item:

Invitation Message

Participants

[Rountree, Jillian](#) (Meeting Organizer)

[Vanessa Ray-Hodge](#) (Accepted in Outlook) - outside counsel

[Matt Murdock](#) (Accepted in Outlook) - outside counsel

[Allison J. Mitchell](#)

[Kaplan, Robert](#) (Accepted in Outlook)

[Frazer, Brian](#)

[Priest, Andrea](#)

[Curtin, James](#) (Accepted in Outlook)

[Wester, Barbara](#) (Accepted in Outlook)

[Kasperek, Lauren](#)

Robert Kaplan, Regional Counsel for Region 5, EPA welcomed participants and noted EPA's commitment during the January 25, 2022 consultation call to holding a lawyers' call with Band representatives that can establish a basis for a follow up consultation/conference call that includes the Band and EPA's involved technical and policy offices, including the Office of Water and the Office of International and Tribal Affairs. He explained that EPA's role pursuant to Clean Water Act (CWA) Section 401(a)(2) includes providing scientifically-grounded, technical input to the Corps in the context of the hearing the Corps will hold on the Band's objection to the CWA Section 404 permit. EPA has an obligation to consult with federally recognized tribes and consultation is an opportunity for EPA to seek further clarifying information from the Band regarding their concerns. Ultimately, if a stakeholder disagrees with EPA's evaluation and recommendations presented at the hearing held by a licensing or permitting agency, such stakeholder would have an opportunity to provide additional information and comment directly to the federal agency for its consideration.

Band legal representatives noted that the Band believes it is important to be able provide input to EPA on the Agency's role under CWA Section 401(a)(2) so that the Band can have clarity regarding EPA's role in making an evaluation and recommendations to the Corps. The Corps must ensure that the CWA 404 permit will meet the Band's water quality standards and if the Corps cannot ensure this outcome then the permit should not issue. They stated that the legislative history of CWA Section 401 supports the protection of downstream water quality requirements. Band representatives stated that they would like the upcoming technical call to include an opportunity for EPA to hear from the Band's scientific and technical representatives and an opportunity for EPA to ask any questions.

Consultation and Fond Du Lac Technical Presentation to EPA April 8, 2022

Friday, April 08, 2022

1:01 PM

Meeting Date: 4/8/2022 1:00 PM

Location: Microsoft Teams Meeting

Link to Outlook Item:

Invitation Message

Participants

[Kaplan, Robert](#) (Meeting Organizer)
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[McKim, Krista](#) (Accepted in Outlook)
[Pfeifer, David](#) (Accepted in Outlook)
[Wester, Barbara](#) (Accepted in Outlook)
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[Kasperek, Lauren](#)
[Vaught, Daniel](#)
[Maschal, Emma](#)
[Gude, Karen](#)
[Marko, Katharine](#) (Accepted in Outlook)
[John Coleman](#) (Accepted in Outlook)

Robert Kaplan, Regional Counsel for Region 5, EPA welcomed participants and noted EPA's commitment during the January 25, 2022 consultation call to holding a lawyers' call with Band, which has now taken place, to be followed by this technical call with Band representatives.

Following brief introductions, Tribal Chairman Kevin DuPuis stated that it would be very important for the Band to receive EPA's evaluation and recommendations in advance of the Corps' hearing. EPA committed to taking this request back to Agency leadership and providing a response.

Band technical and scientific representatives provided overviews of the analyses that the Band has presented to the Corps, and which builds upon decades of information already provided to the Co-Lead Agencies for the Environmental Impact Statement process, the State of Minnesota, and PolyMet.

One set of concerns included the hydrological connection between the mine project and the St. Louis River, including anticipated wetlands impacts, loss of wetlands, and the release of mercury that will result from discharges from cycles of repeated wetting and drying of peat. A potential new source of water quality concerns is the deposit of metallurgical tailings that is projected to be deposited in area that would go from unnamed creek to Rice Farm Creek. Wetlands throughout the one-hundred year flood plain of the Partridge River will be significantly impacted by drawdowns resulting from the project. The Band is concerned with the scope of the PolyMet Cross Media Analysis. It is limited to air emissions and dust and a "wetland of interest" – which would not be impacted. This scope and modeling was so limited that it led to a determination that there would be no effects. There was no analysis of impacts to proximal wetlands. So the conclusion that there would be no observable downstream impacts is not supported by the science.

A second set of concerns involved the interaction among changes in sulfate, mercury, and methyl mercury that are expected to result from the mine project and will specifically impact surface waters. The area of the mine site is already high in methyl mercury and the mine is expected to result in significant mercury loading downstream of the project site, as well as significantly increased methyl mercury production. The project, as permitted, includes a discharge limit for mercury that is set at the State's mercury WQS and that already exceeds the Band's mercury WQS. Projected increases in mercury loading to the St. Louis River could exceed the State's mercury WQS by 600%, while the Band's WQS for mercury would be exceeded by 1,300%. There is no scientific basis to say that there will be no change (or even a decrease) in mercury concentrations.

Another set of concerns involved potential impacts of increased mercury and mercury methylation in the bioaccumulation of fish and aquatic-dependent species throughout the watershed. The project has seriously underestimated the number of acres of wetlands that would be impacted by the project and the resulting impact on fish and other aquatic-dependent species. Increased mercury loading will result in the violation of the Band's downstream water quality requirements. These concerns also relate to the Band's suppressed consumption of treaty-reserved resources. Mercury is a concern throughout the watershed. This is especially important to the Band because of the importance of fish to Band members, including the Band's Lake

Sturgeon hatchery program, which is a multi-decade project. Mercury and specific conductance are of primary concern to the Band because of impact to fish and aquatic-dependent species.

Band Leadership stated that EPA should be evaluating carefully all the statements made by stakeholders. There have been changes to watershed hydrology over recent years that exacerbate the effects that are expected from development of this mine. Climate change is an important factor in changing weather patterns and in annual flooding patterns. EPA should take a hard look at the science underlying the assumptions being put forward for this project.