

**Statement of Information on Mining Activities
Occurring on Anishinaabeg Territory in the Great Lakes Region of the
United States of America**

**Submitted to the
U.N. Special Rapporteur on the rights of indigenous peoples, S. James
Anaya**

Submitted by the Keweenaw Bay Indian Community

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Prepared with the assistance of:

Jessica Koski, Tribal Member, Keweenaw Bay Indian Community

Philomena Kebec, Staff Attorney, Bad River Band of Lake Superior Ojibwe

Nicole Friederichs, Practitioner-in-Residence, Suffolk University Law School

Introduction

The Keweenaw Bay Indian Community (KBIC), along with other tribes, submit this statement of information describing destructive mining activities impacting our lands and waters. Our community is overwhelmed with prospective mine development in all directions, and within our established reservation homeland. The State of Michigan, with essentially no federal authority, due to regulatory loopholes and delegated programs, has permitted Rio Tinto (through its subsidiary Kennecott) to blast and drill its mine portal directly into our sacred place, *Migi zii wa sin* (Eagle Rock). As we submit this letter, Rio Tinto continues to construct this controversial underground sulfide mine upstream from Lake Superior. Our concerns and rights as a people continue to be ignored, and numerous domestic remedies have proven to be non-protective and discriminatory.

Currently, an aggressive mining boom throughout Anishinaabeg territory, of present-day Michigan, Wisconsin, Minnesota and Ontario, threatens the water quality and ecosystem of almost every sub-watershed of Lake Superior.¹ This is due to our region's valuable geology, increases in global metal market prices and friendly political administrations at state government levels -- whose political representatives are focused primarily on short-term job prospects. Mining, with its potential widespread, destructive and long-term affects to the natural environment that we depend upon, threatens our culture, health and well-being as a people.

We urgently seek your assistance and intervention to promote domestic recognition and protection of our rights as recognized in the United Nations Declaration on the Rights of Indigenous Peoples and stipulated in treaties signed by the United States of America.

Location

The Anishinaabeg people have a long and rich heritage throughout the Great Lakes region. We established a community at Keweenaw Bay prior to the arrival of European fur traders, missionaries and settlers. We originated from the eastern seaboard of North America and followed prophecies to migrate to the place where food grows on water, *Manoomin* (wild rice). This led us down the St. Lawrence waterway and stopping places throughout the Great Lakes

¹ See Attachment A, Map #1: Mines, Mineral Exploration and Mineral Leasing in the Lake Superior Watershed, available at <<http://www.superiorforum.org/wp-content/uploads/2011/11/Mining-Activity-Lake-Superior-2011.pdf>>.

region, where today the Anishinaabeg (also known as the Ojibwa, Ojibway, Ojibwe, Chippewa) continue to live and reach as far west as North Dakota and Saskatchewan.²

Treaties signed by the Anishinaabeg in 1836, 1837, 1842, and 1854 ceded vast tracts of land to the United States in an area that is currently within portions of the states of Wisconsin, Michigan and Minnesota. In return, the Anishinaabeg were guaranteed hunting, fishing and gathering rights in our traditional territories. For the Anishinaabeg, treaties are not merely part of our history. Tribal members depend on the continued ability to exercise their treaty rights in order to continue their way of life to meet subsistence, economic, cultural, spiritual, and medicinal needs. Article 2 of the Treaty with the Chippewa of 1842³ states:

“The Indians stipulate for the right of hunting on the ceded territory, with the other usual privileges of occupancy, until required to remove by the President of the United States, and that the laws of the United States shall be continued in force, in respect to their trade and inter course with the whites, until otherwise ordered by Congress.”

The KBIC is also a signatory of the Treaty with the Chippewa of 1854⁴ which further ensured and established permanent reservations for our people. Today, the KBIC's permanent reservation (also known as the L'Anse Indian Reservation) is located along the southern shores of Lake Superior in the western Upper Peninsula of Michigan, in Baraga County.

Indigenous and Tribal Communities Affected

There are about fourteen federally recognized Anishinaabeg bands who, collectively, are threatened by increasing mineral exploration and development, including (but not limited to): the KBIC, the Lac Vieux Desert Band of Lake Superior Chippewa, the Bad River Band of Lake Superior Chippewa Indians, the Red Cliff Band of Lake Superior Chippewa, the Lac du Flambeau Band of Lake Superior Chippewa Indians, the Sokaogon Chippewa Community, the Fond du Lac Band of Lake Superior Chippewa, and the Grand Portage Band of Lake Superior

² See Attachment A, Map #2: Location of present-day Ojibwa reservations and homelands, *available at* <<http://ethnology.files.wordpress.com/2011/06/ojibwe-migration.jpeg>>; Map #3: Metallic Mineral Leases and Exploration Boreholes in the 1837, 1842, and 1854 Ceded Territories, *available at* <http://www.lic.wisc.edu/glifvc/maps/cededlease_expl.pdf>.

³ Treaty with the Chippewa, 1842, *available at* <<http://digital.library.okstate.edu/kappler/Vol2/treaties/chi0542.htm>>.

⁴ Treaty with the Chippewa, 1854, *available at* <<http://digital.library.okstate.edu/kappler/Vol2/treaties/chi0648.htm>>.

Chippewa.⁵ In addition to the Anishinaabeg, Menominee, Potawatomi and Oneida peoples could also be affected by many of the potential mining activities.

Resource extraction, in the form of logging and mining, has already harmed our communities. The non-tribal desire to exploit rich timber and mineral resources immediately following the land cession treaties in the early to mid 1800s led to the theft of our ancestors allotments, with hundreds of thousands of acres of community members land lost forever. Devastation to the natural resources, coupled with the loss of land title, effected a large-scale removal that significantly impacted our nations' ability to carry on our cultural and spiritual traditions, exercise our self-determination rights and remain intact as a people. While our communities have begun to rebound, a new wave of wide-spread mining across our territory threatens to recreate historic devastation by resource extraction.

Mining operations in our territories have generated, and continue to generate, billions of tons of toxic waste that invade our air and waterways, ending up in our ecosystem, and ultimately in our bodies. Destruction of culturally significant areas, including sacred places like Eagle Rock and our historic wild rice beds, along with the poisoning of surface and ground waters, may create irreparable damage to our natural resources that will impact generations yet to come. Pollution arising from mining activities is recognized as the most serious threat to our subsistence and cultural resources, more than over-harvesting, logging, pesticides and chemicals, climate change and other human developments.⁶ Our people depend on uncontaminated deer meat, wild rice, blueberries, walleye and whitefish for subsistence. We need medicinal plants to nourish our spirits and heal from sickness. Our cultural and spiritual existence as an indigenous people, which cannot be separated from the environment in which we live, is at stake by vast prospective mineral development in the Great Lakes region.

Mining Activities

What follows is a summary of some of the key mining activities that are most immediately affecting the Keweenaw Bay Indian Community and other nearby tribes within Anishinaabeg territory ceded to the United States under the Treaty of 1842.

⁵ See Attachment A, Map #4: Ojibwa Ceded Territories & Reservations, available at http://www.glifwc.org/images/Ceded_Territories.jpg.

⁶ Available at <<http://www.glifwc.org/Reports/Project%20Report%2002-01.pdf>>.

Rio Tinto Eagle Project

About 23 miles east of the KBIC reservation, Rio Tinto has started constructing a nickel-copper sulfide mine, on Anishinaabeg lands with reserved rights under the Treaty of 1842.⁷ The Eagle Project has carelessly proceeded to damage our sacred place, Eagle Rock, for the sole purpose of a mine portal,⁸ adversely affecting traditional access and use, and fundamentally destroying the site's serenity and integrity. KBIC has opposed the mine since it was first proposed in 2004, when the Tribal Council adopted a resolution (KB-1301-2004, explained further on page 7) which declared offense of the Eagle Project.

Eagle Rock is a prominent rock outcrop and distinctive feature on a mostly flat landscape, located along on an ancient overland trail from the Marquette area to L'Anse and Baraga. It is an important ceremonial center. Distinct sacred places used by the Anishinaabeg for fasting and vision quests, such as Eagle Rock, are commonly isolated in private/remote areas, high places, with distinctive landscape features. Eagle Rock has been used for many generations by various tribes in addition to the Anishinaabeg, including the Ho-Chunk and Cheyenne. It is known to be a prehistoric ceremonial and navigation site that correlates to the Bighorn Medicine Wheel and other rock formations and sites in Wisconsin and east of the Mississippi River.⁹ It is also known to some as "The Home of the White Wolf." In addition, a 3D image of the ore body¹⁰ remarkably resembles a baby inside Mother Earth's womb, corroborating ancient Anishinaabeg prophecies of a time when humanity must choose between two paths: technology or spirituality (i.e. mine portal or sacred place).¹¹

The potential for mine collapse and irreversible acid mine drainage makes the Eagle Project further controversial due to its location within a delicate watershed and underneath the Salmon Trout River, which flows directly into Lake Superior -- containing approximately 20% of the world's freshwater. If the mine is allowed to continue, it will further contaminate our traditional lands and waters, including an underground aquifer and nearby freshwater springs where tribal members gather drinking water. The Eagle Project has already destroyed valuable

⁷ See Attachment A, Map #5: Location of the Kennecott Eagle Project, courtesy Keweenaw Bay Indian Community Environmental Mining Specialist.

⁸ See Attachment B, Image #1: Rio Tinto Eagle Project and mine portal construction into Eagle Rock.

⁹ Survey Report for Eagle Rock, Version A, April 4, 2009, James P. Sherz, University of WI Madison: NCAI Resolution for Eagle Rock, *available at* <http://www.ncai.org/fileadmin/resolutions/ABOFinal/ABO-10-078_rev.pdf>.

¹⁰ See Attachment B, Image #2: 3D image of Eagle ore body resembling a baby.

¹¹ Benton-Benai, Edward. *The Mishomis Book*.

wildlife habitat and plant resources, including hunting grounds for deer and abundant blueberry patches where tribal members would seasonally harvest.

In addition to the Eagle Project, Rio Tinto intends to open up six additional mine sites. The company is heavily focused on exploration throughout the western Upper Peninsula of Michigan, specifically within close proximity of Eagle and reaching westward into the KBIC Reservation.

Rio Tinto Humboldt Mill

Rio Tinto plans to process ore from the Eagle Project at a former mill at Humboldt, located about 30 miles south of the mine. This milling site is located within the Escanaba River Watershed of Lake Michigan and on traditional Anishinaabeg territory. The entire length of the Escanaba River and its falls at the mouth of Lake Michigan is considered sacred to the Anishinaabeg, where ceremonies were traditionally held.

The Humboldt Mill site is contaminated from previous disposal of sulfide-bearing tailings from the Ropes Gold Mine from 1983-1991. An aerial photo of the lake on site reveals bright green and orange coloring to the water at the southwest end of the lake, indicative of heavy metal contamination.¹² The State of Michigan has permitted Rio Tinto to slurry over 2 million tons of sulfide bearing tailings into the bottom of this already contaminated lake. When the KBIC learned that 26 hazardous contaminants were leaking off-site affecting reserved treaty resources, it solicited the U.S. EPA to conduct a Superfund investigation, which is currently under review.

Rio Tinto Haul Road/Marquette County Road 595

A proposed mining haul road, connecting the Eagle Project and Humboldt Mill, has been proposed by the Marquette County Road Commission as County Road 595 (CR 595), in the name of “public interest,” but it is really for Rio Tinto to haul ore from Eagle to Humboldt. In fact, this route was initially proposed by Rio Tinto as “Woodland Road,” until it pulled its application in an attempt to circumvent federal review after receiving strong criticism from federal agencies concerned with significant environmental impacts. The federal agencies advised that, because the purpose of the road was to service private activities of the Rio Tinto Eagle Mine and Humboldt Mill, it should be subject to federal review as a “connected action” encompassing the mine, mill and road as one project. CR 595 is currently under review by the DEQ, and it is unclear whether or not federal agencies will assert authority over the entire project. Rio Tinto’s mining project has advanced thus far under the sole regulatory authority of the State of Michigan, with very limited federal oversight.

¹² See Attachment B, Image #3: Southwest end of the Humboldt Pit Lake, courtesy of the Yellow Dog Watershed Preserve.

CR 595 would effect over 25 acres of wetlands; disrupt important wildlife habitat for deer, moose and wolf; destroy aquatic life; introduce pollutants (including chemical contamination, metal loading, diesel truck exhaust and fugitive dust) and invasive species; effect historic properties that may still remain in the Silver Lake basin area; and substantially facilitate industry expansion of additional mining and land-use alteration across one of the last remaining vastly undeveloped areas of our traditional territory. Many traditional plants, used as foods and medicines, only occur in wet areas and wetlands of the northern Great Lakes region,¹³ including the area proposed for CR 595. These plants, that will be destroyed if the road development proceeds, are an essential part of the life-ways of the Anishinaabeg people.

Exploration within the KBIC Reservation

In violation of our community's right to collectively own our territory, the United States government stipulated under Article 3 of the Treaty of 1854 that the President may assign each head of household or single person an eighty acre parcel allotment in the form of a patent to be issued as fast as we would become capable of transacting our own affairs. This ultimately resulted in a devastating loss of about 81% of our initial reservation land-base as numerous individual allotments quickly transferred into non-Indian and corporate title, in which fraud was common.¹⁴

The sole purpose our ancestors signed the Treaty of 1854 was to secure a permanent reservation on our beloved homelands of Lake Superior. We don't believe our ancestors fully understood nor realized the effect such allotment would have on the future generations of today -- in which a significant portion our lands and mineral rights have transferred into the hands of powerful multinational corporations who wish to exploit them.¹⁵

The KBIC Tribal Council passed Resolution (KB-1301-2004) in which the community prohibited any mining activities, and all activities related thereto, within the boundaries of the KBIC Reservation unless and until substantial evidence can be produced to satisfy the community's concerns. Ignoring this resolution, Rio Tinto has been actively investigating for minerals since 2004; acquiring property, constructing roads, and drilling underground. Rio Tinto is especially focused on the prospective "BIC Site" (Bovine Igneous Complex) which consists of similar sulfide mineral composition and acid mine drainage risk as the Eagle

¹³ Great Lakes Indian Fish & Wildlife Commission (GLIFWC), 1993, "Plants Used by the Great Lakes Ojibwa."

¹⁴ Keller, Mark. 1981. "The Chippewa Land of Keweenaw Bay: An Allotment History." For the Inter-Tribal Council of Michigan, Inc.

¹⁵ See Attachment A, Map#6: Mineral Rights Claims within the L'Anse Indian Reservation.

Project. The site is located about six miles southeast of the village of L'Anse, in the headwaters of the Silver River Watershed which drains into Huron Bay, Lake Superior.¹⁶

Water plays an integral role in the lives of KBIC tribal members who have fished and hunted in the Silver River Watershed for generations, and depend on Lake Superior, and Keweenaw and Huron Bays for sustenance. Tribal members depend on the health of the entire watershed and Huron Bay for Whitefish, Sturgeon, Walleye, Coaster Brook Trout, Rainbow Trout and other native fish species. Many tribal members hunt and gather resources in and around the exploration site including Deer, Turkey, Partridge, Birch Bark, Black Ash, White Cedar, and Maple Syrup. The area offers important medicinal plants that are harvested by our traditional religious practitioners, some of which only appear and flourish once every two years. In addition, the exploration site itself consists of a very large and secluded hill with a remarkable view of Keweenaw Bay to the northwest, distinctly characteristic of a traditional cultural site.

Orvana Copperwood Project

Orvana Resources US Corp. (a subsidiary of Toronto-based Orvana Resources) seeks to mine within 200 feet of Lake Superior on traditional Anishinaabeg lands located about 70 miles west of the KBIC Reservation, and about 45 miles from the community's Ontonagon Reservation.¹⁷ The State of Michigan, through its Department of Environmental Quality (DEQ), has quickly proposed to permit the Copperwood Project despite significant environmental destruction and degradation it poses, including intentional mine collapse and inadequate disposal of poisonous tailings on site.¹⁸

Orvana proposes to build a permanent tailings basin that would reach 14 stories high and directly fill in 8,000 feet of streams and about 60 acres of wetlands, destroying at least two local watersheds of Lake Superior. Unnecessary and inadequate surface disposal of the tailings poses a significant perpetual care risk, as heavy metals and other contaminants would leach into area soils, creeks and waters of Lake Superior for centuries. Reserved treaty resources would be destroyed and degraded, such as culturally-significant plant resources: habitat for fish and wildlife including an abundant beaver community whose homes would be completely eradicated; and nearby Black River Harbor of Lake Superior which is used by Anishinaabeg tribal members for subsistence and commercial fishing.

¹⁶ See Attachment A, Map #7: Location of the Kennecott "BIC" Site within the L'Anse Indian Reservation and Silver River Watershed of Lake Superior.

¹⁷ See Attachment A, Map #8: Mining Activity in the Upper Peninsula of Michigan, courtesy of the Great Lakes Indian Fish & Wildlife Commission.

¹⁸ DEQ - Orvana Copperwood Project. Available at <http://www.michigan.gov/deq/0,4561,7-135-3311_4111_18442-262826--00.html>. See "proposed decision to grant a Mining Permit" available at <www.michigan.gov/documents/deq/2012_02_17_PROPOSED_DECISION_377255_7.pdf>.

Negative impacts to vital freshwater resources and Lake Superior, such as proposed by the Copperwood Project, are of significant general widespread concern among the Anishinaabeg and other indigenous peoples of the region who recognize a shared and sacred obligation to protect the waters of the Great Lakes for future generations.¹⁹

Gogebic Taconite Mine in the Penokee Mountains

The Cline Group, a coal mining giant based in Florida, has purchased an option to lease a 22-mile strip of land in the Penokee Mountain Range, immediately south of the Bad River Indian Reservation near Mellen, Wisconsin. Its stated intention is to develop an open-pit strip mine and processing plant to export taconite (iron-ore) pellets. The potential waste rock, containing as much as 20% pyrite, will produce sulfuric acid. A mine in the Penokees could produce billions of gallons of sulfuric acid and cause irreversible acid mine drainage.²⁰ Pollution, in the form acid mine drainage, kills fish and aquatic wildlife and acts as a magnet for heavy metals. It would likely result in uncontrolled discharges to surface and groundwater that are toxic to wildlife and human beings.

The area proposed for open pit mining is at the headwaters of the Bad River, the largest and most pristine Wisconsin watershed draining into Lake Superior.²¹ The Kakagon Slough and Bad River Slough complex were recently recognized by the Ramsar Convention as wetlands of international significance. Home to 72 species of rare plants and animals and the Anishinaabeg people of Bad River, some of the best *Manoomin*, wild rice, in the world comes from these wetlands. Bad River tribal members depend on wild rice and fish harvested from the rivers and sloughs for their subsistence needs and to practice their culture and spirituality. These wetlands feature prominently in the oral tradition of the Anishinaabeg and are considered sacred sites. Native peoples have been harvesting wild rice and fishing here for more than 500 years.

Bad River has taken a position against the proposed mine, based in part because mine pollution can devastate wild rice stands and increase the heavy metal loads in fish. Ultimately, the cumulative and disproportionate risk to the resources and culture of Bad River is an unconscionable burden to the Tribe. The company has spent hundreds of thousands of dollars

¹⁹ Dale, Jennifer. 2004 "Tribes sign Great Lakes Water Accord." Newsletter of the Chippewa Ottawa Resource Authority, Vol. 8(1). Available at <www.1836cora.org/documents/Tribal_FishingV8No1.pdf>.

²⁰ *Hearing on Assembly Bill 426/Senate Bill 488, relating to regulation of ferrous metallic mining and related activities: Hearing Before the Wisconsin Joint Finance Comm.*, (Feb. 12, 2012) (statements of Jason Huberty, Ph.D candidate in Geoscience, and Joseph Skulan, Ph.D) available at <http://www.wiseye.org/Programming/VideoArchive/ArchiveList.aspx?cm=217> (between 4:06 and 4:13).

²¹ See Attachment A, Map #9: Potential Penokee Mine in the Bad River Watershed of Lake Superior.

lobbying the Wisconsin legislature to secure passage of a ferrous mining bill, intended to circumvent Wisconsin's strong environmental laws and bypass public participation in the permitting process. The legislature has not consulted with Bad River or the other Anishinaabeg tribes who would be impacted.

Nowhere do the implications of the project and power divide resonate more clearly than in the words of Bad River's Tribal Chairman:

"Changes to the natural hydrological fluctuations in a very sensitive area - the sloughs at Bad River and the Bay - will have huge and catastrophic repercussions for my tribe, for my people. Don't tell me my people aren't going to die out from this..." -- Mike Wiggins Jr., Tribal Chairman of the Bad River Tribe.

Domestic Remedies

Michigan's Sulfide Mining Law Failed to Address KBIC Concerns

In 2004, soon after Rio Tinto discovered the Eagle deposit and the State of Michigan realized that it did not have a sulfide mining law on the books, former Michigan Governor Jennifer Granholm asked the DEQ to convene a task force to draft a new mining law. The task force consisted of a number of mining companies, environmental groups, trade unions, academics, local and state legislators, and the KBIC. The KBIC quickly observed during the task force process that the real decisions on the mining law were made outside of the meetings and in private between the State and mining companies. The KBIC was the only entity to formally oppose adoption of the state mining law due to twelve issues of concern that were not addressed. The Tribe did not believe the law would adequately protect the environment from the effects of sulfide mining. Former KBIC Tribal Chairwoman Susan LaFornier stated:

"Without giving significant considerations to the concerns expressed by the Tribe in the press release and in testimony before the House and Senate committees that held hearings on the proposed legislation, the Michigan legislature adopted the mining legislation which is referred to as the Sulfide Mining Act."

Today, State and mining officials use the new legislation as an excuse to allow metallic sulfide mining in Michigan, even though it has serious flaws. There are no siting requirements to prevent a sulfide mine from being exploited within a delicate watershed and underneath a tributary of Lake Superior; no independent environmental assessments were required, only an inherently biased company assessment that is less stringent than federal standards; no recognition of indigenous land-based religions and non-Christian places of worship worthy of mitigation; and no "moratorium" that a company must prove first that it can mine a highly reactive sulfide ore body in a water rich environment without generating harmful pollution.

The KBIC and its tribal members have expressed concern and opposition to the mining law and Eagle Project in many ways, including resolutions, legislative testimony, letters to the Governor and U.S. Bureau of Indian Affairs, annual Tribal/State meetings, public comment opportunities at hearings, meetings with state and federal officials, consultation with Michigan agencies and the EPA, a National Ocean Policy Inter-Agency Task Force meeting and public listening session, a citizen/tribal member meeting with EPA Headquarters, testimony during court cases, speeches to Rio Tinto executives at their shareholder meetings in London, and a meeting with British officials concerning the OECD Guidelines for Multinational Enterprises.

Federal Regulatory Authority Delegated to Michigan

Michigan is one of only two states with delegated authority under both the Clean Water Act and Clean Air Act, eliminating tribal consultation requirements that cannot be delegated to states. As KBIC President Chris Swartz recently explained to the U.S. EPA Region 5 Administrator Susan Hedman "The lack of federal programs for mining in Michigan leaves tribes vulnerable to the interpretation of Michigan laws by Michigan agencies alone."²²

The unique situation of Michigan, coupled with no federal mining law regulating lands east of the Mississippi River, has allowed mining companies to take advantage of very limited federal oversight. With most environmental programs delegated to Michigan, the following federal legal protections have subsequently been negated:

- Tribal Historic Preservation Act and Section 106 Assessments to assess tribal traditional cultural properties.
- National Environmental Policy Act and Environmental Impact Statements (a requirement for every proposed mine in Wisconsin and Michigan, but not Michigan).
- U.S. Army Corp. of Engineers Section 404 Wetlands Permits and enforcement.

This has been a primary concern of the KBIC, expressed numerous times to the EPA. Significant federal oversight actions under the Clean Water Act and Clean Air Act are yet to be fully taken in order to address our concerns and ultimately uphold federal treaty obligations.

Lack of Consultation

We have not been meaningfully consulted as affected indigenous peoples throughout state mine permitting processes for the Eagle Project. Our concerns are merely relegated to general public review and comment periods. Even when our natural resource and mining technical staff comprehensively review and comment on mine proposals, the State does not meaningfully consider nor address our concerns. The KBIC did however, engage in previous

²² Available at <<http://keweenawnow.blogspot.com/2012/02/headwaters-news-epa-talks-jobs-and.html>>.

consultation opportunities with the federal EPA, including conference calls and in-person meetings, in which Tribal Historic Preservation Officers, from KBIC and other affected tribes, submitted supporting documentation of Eagle Rock's significance.²³ However, such consultation ended when the EPA claimed that it no longer had jurisdiction and legal authority over the Eagle Project.

In April 2010, Rio Tinto began Eagle Mine preparation work on the mine site although it still did not have the necessary federal Underground Injection Control (UIC) Permit from the EPA for wastewater disposal. In June 2010, immediately following the arrest and removal of two KBIC tribal members who were occupying the site conducting prayer and ceremony, Rio Tinto began further construction of surface facilities for the mine project.

On July 1, 2010, the U.S. EPA notified Rio Tinto that it no longer needed a UIC permit, due to a technical modification, and the efforts of Rio Tinto lobbyists in Washington, DC. This letter effectively extinguished all federal jurisdiction and consultation with affected tribes, including processes under the National Historic Preservation Act. In an act of turning its back on the Tribe and assuming tribal interests would be protected by Rio Tinto, the EPA Assistant Administrator for Water stated in the letter:

"I understand that because of the significant community and tribal interests involved in the Kennecott Eagle Minerals Project, EPA Region 5 recently held meetings with you and the Keweenaw Bay Indian Community in an attempt to resolve some of the issues associated with the proposed mine. I encourage you to continue this dialogue. It is EPA's expectation that Kennecott will follow through on efforts to consider all viewpoints, and consider any appropriate environmentally beneficial changes to the Project."²⁴

Permitting of the Eagle Project Failed to Address KBIC Concerns

When the mine permit process began for the Eagle Project, the KBIC had a meeting with the State and numerous officials of the DEQ to extensively describe the Tribe's technical, environmental, cultural and spiritual concerns. We hired numerous experts and thoroughly commented on the mine application. However, despite all of our experts and comments, the DEQ went ahead and permitted the Eagle Project with no conditions with regard to our concerns. We protested in Lansing and our people voiced concerns at every opportunity.

²³ U.S. EPA Region 5 Water. "Kennecott Eagle Mine Project: Related Documents and Correspondence." Available at <www.epa.gov/r5water/uic/kennecott/kennecott_correspondence.htm#historic>.

²⁴ U.S. EPA Office of Water, Washington, DC, July 1, 2012, Letter to Jonathan C. Cherry, Manager Environment & Governmental Affairs, Kennecott Eagle Minerals Company. Available at <www.epa.gov/r5water/uic/kennecott/pdf/2010/2010-07-01_silva_to_cherry.pdf>.

including public hearings on the mine permit. When the DEQ decided to permit the mine, we initiated a contested case with partner organizations, as described in more detail below. We have since appealed that contested case hearing in which we were further denied an injunction and recognition of our concerns. Currently, we are awaiting a possible Michigan Court of Appeals case.

Today, similar scenarios are playing out with regard to the Tribe's expressed concerns on another proposed mine, the Orvana Copperwood Project, which is currently undergoing permit review by the State of Michigan. The company has failed to reconsider its mine design to reduce environmental impacts and the DEQ has failed to ask the company to adequately consider more protective alternatives, particularly regarding tailings management. The DEQ has not consulted with, nor even adequately notified, the KBIC and other impacted tribes in Michigan and Wisconsin. Meanwhile, Tribes have attempted to get the EPA involved, but the EPA says it cannot until the company actually submits a federal permit application for other aspects of the Copperwood Project such as a Lake Superior water-intake system.

Michigan Court & Administrative Decisions Ignored KBIC Concerns

In addition to the lack of federal involvement and the inadequate consultations, the KBIC has challenged the legality of the Eagle Rock permit, first in an administrative hearing and then later in state court. In 2009, after weeks of testimony, an administrative judge recommended that Eagle Rock be protected as a place of worship subject to mitigation under Michigan's sulfide mining regulations known as "Part 632." However, the Director of the DEQ at the time ignored this recommendation and approved Rio Tinto's mining permit alleging that Eagle Rock is not legally a place of worship because it does not consist of any "built structures."

Subsequent to the administrative hearing, the KBIC filed suit in Michigan state court appealing the DEQ's decision to grant the Part 632 permit and a Part 31 groundwater discharge permit. In November 2011, Michigan Circuit Court Judge Paula Manderfield affirmed both the mining permit and groundwater discharge permit. Every aspect of the decision ruled in favor of the mining company and state. In regards to Chester's discriminatory agency decision regarding Eagle Rock, Manderfield stated:

"Accordingly, the final decision-maker found that Kennecott was not required to assess Eagle rock as a place of worship or to provide measures that would reasonably minimize adverse effects of mining on Eagle Rock, and therefore that the MDEQ had not erred in granting a permit without requiring Kennecott to do those things in its EIA."²⁵

The court further found the DEQ's interpretation of the definition of a "place of worship" to be persuasive and not applicable to "any feature" or "place" -- only to "buildings."

²⁵ Manderfield Decision, November 21, 2011.

Currently, there are appeals of Judge Manderfield's decisions pending in the Michigan Court of Appeals. The appeals court has discretion to whether it hears the appeals, and there is no date by which the court must make its decision. If the Court of Appeals denies our appeal, we can ask them to reconsider. In the meantime, with no injunction in place preventing the mining activities from moving forward during the appeals process, Kennecott is currently drilling its mine portal deeper towards the ore body, reaching about 1,000 feet so far with intentions to reach the ore body within a year.

Conclusion

We recognize that the United States has recently endorsed the UN Declaration on the Rights of Indigenous Peoples and that this document is an expression of global consensus with strong moral authority. Thus, the United States must recognize and implement its obligation to uphold and advance our rights as indigenous peoples.

Unfortunately, this is currently not the case and multinational mining corporations have been able to take advantage of very limited federal oversight and jurisdiction over our traditional territories within the State of Michigan. We have engaged in state and federal processes in an attempt to prevent substantial and irreparable harm to our lands and waters, but we continue to be ignored and experience discrimination. In addition, our community cannot afford to legally fight all of the many mining projects threatening our lands and waters.

We expect meaningful protection and consultation regarding impacts to our reserved treaty resources, sacred sites, access to cultural resources and rights to exercise self-determination with respect to our lands, territories and natural resources, including our reserved right to off-reservation resources and water. Our community wishes to invoke internationally recognized principles of free, prior, and informed consent, prior to any continued mineral exploration and development activities on our traditional lands, especially those in which we retain treaty rights and within our permanent reservation homeland.

Contact Information

Jessica Koski, Tribal Member, Keweenaw Bay Indian Community: (715) 550-0124;
jlkoski@gmail.com

Philomena Kebec, Staff Attorney, Bad River Band of Lake Superior Ojibwe: (715) 682-7107;
staffattorney@badriver-nsn.gov

Nicole Friederichs, Independent Legal Consultant: (617) 305-1682; nfriederichs@suffolk.edu

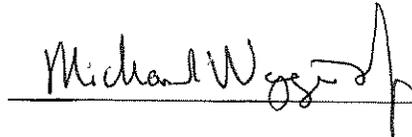
Thank you.

Approval Signatures

 30 APR 2012

Warren C. Swartz Jr., President, Keweenaw Bay Indian Community

Date

 _____

Mike Wiggins Jr., Chairman, Bad River Band of Lake Superior Ojibwe

APR 20 2012

Date