



MINNESOTA DEER HUNTERS ASSOCIATION

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November 18, 2013

To: Lessard Sams Outdoor Heritage Council

Re: Project #FA-2 (“Preventing Forest Fragmentation and Protecting and Restoring Lake and Stream Habitat in the St. Louis River Watershed”) submitted by the Fond du Lac Band of Lake Superior Chippewa

Dear Chairman Hartwell and Council Members:

Before the Council’s recommendations enter the legislative process of the 2014 Session, I wish to share a few concerns regarding Project #FA-2 (“Preventing Forest Fragmentation and Protecting and Restoring Lake and Stream Habitat in the St. Louis River Watershed”) submitted by the Fond du Lac Band of Lake Superior Chippewa. I should also add that I very much appreciate the opportunity to contribute to the Band and Council’s discussions of potential areas of controversy within the proposal.

After review of project proposal FA-2, it is my professional opinion that there are four distinct areas of concern within the proposal that are cause for further consideration; Fee vs Trust ownership, Public Access, Hunting and Guarantees.

First, the Fond du Lac Band’s documented intent to transfer the 956 acres from “fee land” to “trust land” in essence places the land into the ownership of the Department of the Interior (DOI) where it is held “in trust” for the Band. As such, you should be aware that the DOI’s fiduciary responsibility is strictly to manage the property “to the highest and best benefit of the Band,” not the citizens of the State of Minnesota. This also means that if the DOI were to decide that there was a “higher or better use” for the property, the State of Minnesota would be placed into the nearly impossible position of negotiating with the Federal Government. In this situation the State would have little or no authority, influence or bargaining power. Additionally, many if not most Minnesota citizens will view the transfer to “trust” status as defacto use of public tax dollars to increase Tribal lands held by the Feds. A potential solution could be that the land remains as “fee land” under County, State or even the Band ownership along with a binding written agreement, enforceable outside of Tribal Courts to ensure public access and public use in perpetuity by Band members and non-Band members alike. Another less probable option may be DOI agreeing in writing to hold the land “in trust” for the Band and the citizens of Minnesota. This option would probably have to be viewed as a pilot program for DOI and could potentially lead to future collaborative conservation benefits and working relationships between tribal and non-tribal entities.

Second, with DOI “trust land” designation there will be no PILT (Payment in lieu of Taxes) or comparable compensation to the County or State. As “trust land” the DOI has no obligation or liability for taxes to local governmental entities. A solution could be retaining the land under County or State ownership with the Band as the designated forest manager. In this case, timber harvest and land management proceeds could be used to pay PILT-type liabilities as well as other management expenses. Or, the Band could hold the land in “fee” as mentioned previously with a binding written agreement enforceable outside of Tribal Courts.

Third, is the Band's documented intent to restrict hunting upon the property. Yes, under certain circumstances, some LSOHC acquired lands have in the past been designated non-hunting or limited hunting. In each case DNR has agreed because of justified existing limitations such as local land use constraints, human population density, etc. In this case the Band's restrictions are based upon religious/cultural consideration and if approved would set severe precedence to an extremely slippery slope. For example, let's imagine that an anti-hunting nonprofit group presents to LSOHC an acquisition proposal with intent to restore habitat and, by the way, they oppose hunting for religious/cultural reasons so they intend to prohibit all hunting. Regardless of the applicant's identity or ethnicity, the point is that limiting or prohibiting hunting must be validated at the very least with DNR approval. Banning any hunting due to religious/cultural reasons is simply not acceptable and may well lead to a situation of excessive entanglement. Hunting must be allowed for Band and non-Band members alike and congruent with DNR's wildlife management plans and objectives. To allow any less would be to undercut the authority vested in DNR to manage Minnesota's natural resources for all of Minnesota's citizens.

Fourth, since this proposal (FA-2) will be funded with taxpayer dollars, the guarantee of public access and public use for Band and non-Band members must be a non-negotiable requirement protecting the rights of all. Once again, this consideration can be validated and ensured through a binding written agreement enforceable outside of Tribal Courts.

In summary, without significant legal assurances this proposal has great potential for setting bad precedence. Placing taxpayer purchased land into Federal Government ownership is unwise especially when the Federal Government's primary interest will not include the best interests of the citizens of Minnesota. Likewise, to not guarantee public access and use in perpetuity would be a severe dereliction of duty. And lastly, to allow any entity other than the Minnesota Department of Natural Resources to dictate hunting parameters upon land purchased with taxpayer dollars would set precedence for the undermining of DNR wildlife management authority with potential replication in the future.

Allow me to suggest that the Band be asked to return to the Council with solutions as to how we can address these needs, rights and expectations of the citizens of the state of Minnesota as well as ensure protection in perpetuity for Band and non-Band members alike.

I thank you for your time and consideration, and I strongly recommend that you do not approve or recommend FA-2 for funding without considerable legal assurance for the aforementioned factors.

Respectfully,



Mark Wm. Johnson
Executive Director
Minnesota Deer Hunters Association

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