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Wetland and Public Rights Implications of SB/AB 1
Prepared by Wisconsin Wetlands Association
January 23, 2013

Wisconsin Wetlands Association (WWA) appears before the committees today to register our opposition to SB/AB 1. Proponents of the bill claim that it establishes a more efficient review process without weakening any existing environmental standards. We respectfully disagree on both counts.

The bill contains dozens of provisions which weaken and/or work-around existing protections for Wisconsin's wetlands, lakes, rivers, streams, and groundwater. Examples include, but are not limited to:

1. The bill presumes significant adverse impacts on wetlands are necessary to operate an iron mine (SB 1 - pg 55, ln 23). This is a false presumption.

2. The bill requires DNR to authorize wetland fill as long as compensation is provided (i.e., "*if significant adverse impacts to wetland functional values will remain…the department shall issue the permit if the department determines that the remaining impacts will be compensated for under a mitigation program...*" (SB 1 - pg 149, ln 4-8). This is contrary to current law which states that providing mitigation does not entitle an applicant to receive a permit (Ch. 281.36(3n)(d) of State Statute).

3. The bill encourages wetland impacts by limiting the review of alternatives for wetland impacts associated with iron mines to areas that are on-site or adjacent to the project site. This means that massive amounts of overburden, waste rock, and mine tailings will likely be disposed of across the wetland rich landscape at the base of the Penokee Range. Processing plants, pipelines, and other structures will also be built in wetlands (SB 1 – pg 145, ln 5). This is contrary to the alternatives analysis required under federal law (Jan 14 2013 memo from Corps of Engineers to Senator Cullen).

4. The bill **exempts** new temporary mining roads and irrigation ditches from state wetland permit requirements (pg 154, ln19). These impacts could be extensive. Under current law, these exemptions do not apply for new activities, activities that impair the flow or circulation of a wetland, or activities that reduce the reach of a wetland (Jan 14 2013 Legislative Council memo to Senator Tiffany, pg 25).

5. The bill caps the amount of wetland mitigation to 1.5 acres restored, created, or enhanced for every acre impacted. It also requires that equal credit be given for created wetlands as for restored or enhanced wetlands (Jan 14 Legislative Council memo to Senator Tiffany, pg 25). Current state law requires a minimum of 1.2 acres of mitigation per acre impacted and does not set a cap. Wetland creation is not typically accepted as a

form of wetland mitigation under federal law because it generally fails (Jan 14 2013 memo from Corps of Engineers to Senator Cullen).

6. The bill exempts iron mining operations from state shoreland zoning requirements (pg 157, ln 23) and from local shoreland zoning ordinances (pg 158, ln 3-8). It also exempts iron mining operations from local floodplain zoning ordinances unless a denial is necessary for the municipality to maintain eligibility for participation in the National Flood Insurance Program (pg 158, ln 9-13).

7. The bill limits opportunities for Wisconsin citizens and scientists to provide input during the state's review of permit applications and associated environmental analyses. Early input is essential if it is intended to inform decision-making.

8. The bill establishes a mandatory decision timeline that will prevent the completion of a joint federal/state Environmental Impact Statement (EIS), and caps fees at far lower than is typically required to complete an EIS (Jan 14 2013 memo from Corps of Engineers to Senator Cullen). This will lengthen approval timelines, increase expenses for the applicant, and ensure that DNR has no standing to keep the federal process moving.

Finally, we object to the fact that this bill is essentially the same as last session's AB 426. The legislature heard testimony from thousands of citizens, including many experts, and also received input from representatives of federal agencies and Wisconsin's sovereign tribes. We see little evidence that this input was considered and incorporated into SB/AB 1. The citizens of the state of Wisconsin deserve better from their elected officials.

Questions about this testimony or the wetland implications of SB/AB 1 can be directed to Erin O'Brien, Policy Director at: 608-250-9971/ 608-695-7511 / erin.obrien@wisconsinwetlands.org.

Wisconsin Wetlands Association is dedicated to the protection, restoration and enjoyment of wetlands and associated ecosystems through science-based programs, education and advocacy.
WWA is a non-profit 501(c)(3) organization.
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Mitigation is not a viable option to address the impacts of large-scale mining operations in the upper portions of watersheds in Wisconsin.

AB/SB1 is based on the premise that large-scale, upper watershed wetland impacts can be mitigated. This is misinformed. Wetlands are the great regulators of water within a watershed. They are responsible for maintaining a healthy balance of water movement through the watershed. It is impossible to mitigate the effects of large-scale wetland removal in the upper portions of a watershed.

How a healthy Watershed Works: Upper watershed wetlands are responsible for catching snowmelt and rainfall, allowing it to soak into the ground. Over the course of days or months, this cool water is slowly released into the creeks, streams and rivers providing much-needed, well-regulated flow to areas downstream in the watershed.

Effects of wetland removal: If upper watershed wetlands are removed, as would happen in a large mining operation, snowmelt and rainfall will immediately enter creeks, streams, and rivers, causing large, short duration floods and high water events. After these events pass, the upper watershed water is spent and the creeks, streams, and rivers experience lower than normal flows, harming fish and wildlife habitat. Abnormally high water events also cause damage to the creeks, streams and rivers by flushing more water through them than they can handle. This causes erosion and incision, increasing the movement of sediment into areas, such as estuaries, in the lower watershed. The increased sediment overwhelms the estuaries, causing loss of vegetation, weed invasion, loss of spawning habitat, and loss of the ability of the estuary wetlands to buffer floods, clean the water, and remove sediment. These unnatural fluctuations can especially damage wild rice beds as they are vulnerable to sharp water level increases during the floating leaf stage of their development in early summer. There are many examples of Lake Superior estuaries damaged by upper watershed wetland removal in Wisconsin.

Why mitigation won't work in these situations: Removal of upper watershed wetlands cannot be mitigated by restoring or creating wetlands elsewhere. These wetlands are responsible for the health and water balance of the watershed because of their location within the watershed. Their services cannot be provided by wetlands located in other areas. These seemingly small, seasonal wetlands play a critical role in the water balance of the whole watershed. Their removal will not only create significant impacts to the area within which they are located, but will also create significant impacts to the creeks, streams, rivers, wetlands, and estuaries throughout the entire watershed.

Decision-making process: Any decision-making process involving large-scale removal of upper watershed wetlands must be made in a manner that examines the effects of this loss on the whole watershed. In most cases, the loss of these wetlands will have permanent, wholesale impacts on the water balance throughout the entire watershed. A decision to approve a large-scale upper watershed mining operation will involve a sacrifice of the water resources of the entire watershed.

Questions about the wetland implications of SB/AB 1 or the proposed iron mine should be directed to Wisconsin Wetlands Association's Policy Director, Erin O'Brien at 608-250-9971 / erin.obrien@wisconsinwetlands.org.

What are the potential wetlands impacts of the proposed Gogebic Taconite mine?

With no information on the proposed project footprint we cannot estimate the wetland impacts of this bill, but we presume they will be many hundreds, if not thousands, of acres. The project will impact wetlands in Iron and Ashland Counties. According to the Wisconsin Wetland Inventory, 52% of the 151,065 wetland acres in Iron County are isolated and not *currently* subject to regulation under Section 404 of the Clean Water Act. But wetland mapping in this region is highly inaccurate due to the quantity of forested and isolated wetlands on the landscape. The extent of wetlands in the project area may be significantly larger than the inventory reflects.

About the Penokee Range and potential project impacts:
The mine has the potential to impact a large portion of the headwaters of the Bad River watershed. Fifty-six miles of perennial, and 15 miles of intermittent waterways flow through the proposed mining land.

The Penokees range averages over 200 inches of snow a year. The quantity, temperature, and nutrients of this water have significant impacts on water resources downstream including the Bad River, the Kakagon/Bad River sloughs and Lake Superior. These systems are highly dependent on surface and ground water that originates in the Penokee Range.

The Bad River provides important spawning habitat for the lake sturgeon and many game fish. At the mouth of the Bad River are some of the largest and highest quality coastal wetlands in the Great Lakes, the 16,000-acre Kakagon and Bad River Sloughs. This impressive wetland complex was designated as a National Natural Landmark by the U.S. Dept. of the Interior in 1983, a *Wetland Gem*™ by the Wisconsin Wetlands Association in 2009, and a Wetland of International Importance, by the International Ramsar Convention on Wetlands.

The Kakagon-Bad River Sloughs are home to many threatened and endangered species such as the Piping Plover, Trumpeter Swan, Yellow Rail, Bald Eagle, wood turtle, and the ram's-head lady-slipper orchid. The Sloughs also contain extensive wild rice beds that are traditionally harvested by the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

More detailed information is needed on the ecology of the wetlands in the project area but we presume many bogs, including the rare plants therein, will be impacted.

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WETLAND GEMS

KAKAGON-BAD RIVER SLOUGHS

ASHLAND COUNTY

Property Owner: Bad River Band of Lake Superior Chippewa

Recognitions & Designations: Ramsar Convention Wetland of International Importance WI Land Legacy Place, WI Coastal Wetland Inventory Primary Site, The Nature Conservancy Priority Conservation Area, National Park Service National Natural Landmark

Funding for this project provided by the Wisconsin Coastal Management Program and the National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management under the Coastal Zone Management Act, Grant #NA07NOS4190064.

Wisconsin Wetlands Association

wisconsinwetlands.org

T. Cline

KAKAGON-BAD RIVER SLOUGHS WETLAND TYPES

Marsh, sedge meadow, alder thicket, shrub carr, fen, coniferous swamp, coniferous bog, floodplain forest, interdunal wetland

ECOLOGY & SIGNIFICANCE

At the mouths of the Kakagon and Bad Rivers along Lake Superior in Ashland County lie some of the most extensive and highest quality coastal wetlands in the Great Lakes. These rivers and other streams that flow into the sloughs cut through a lacustrine clay plain deposited during the last glaciation. The associated wetland complex, including an intricate arrangement of sloughs and coastal lagoons, comprises more than 16,000 acres of dynamic and diverse wetland habitats that support many species of rare plants and animals. The complex is sheltered from Lake Superior wave action by a long coastal barrier spit. This vast wetland complex is an important spawning and nursery area for many fish species as well as critical stopover habitat for migratory birds. These wetlands also have cultural significance – the site supports the largest natural wild rice bed in the Great Lakes basin and members of the Bad River Band have harvested wild rice here for centuries. The Kakagon-Bad River Sloughs are wetlands with regional, national, and international significance.

FLORA & FAUNA

The river corridor leading to the sloughs is enclosed by steep clay banks and includes sinuous meanders, oxbow lakes, floodplain forest and coniferous swamp habitats that support many rare plants and animals. As it flows north to Lake Superior, the river spreads out into a diverse wetland complex including fen habitat and coniferous swamp characterized by stands of tamarack, white cedar and black ash. In the downstream reaches of the rivers, a series of coastal lagoons support extensive marshes with many submergent and floating-leaved aquatic plants. Common plants in this coastal wetland complex include red osier dogwood, cranberry, bluejoint grass, tussock sedge, lake sedge, bur-reed, spikerushes and bulrushes.

Kakagon-Bad River Sloughs is outstanding migratory stopover habitat in both fall and spring; these diverse wetlands host tens of thousands of passerines, raptors, shorebirds and waterbirds. Species that use the site for breeding habitat include yellow rail, Virginia rail, northern harrier, sedge wren, Le Conte's sparrow, northern waterthrush, Blackburnian warbler and golden-winged warbler. The forested river corridors flowing into the sloughs are particularly important for breeding neotropical migrants such as ovenbird, Canada warbler, Nashville warbler, and mourning warbler. The sloughs also provide spawning and nursery habitat for a rich assemblage of native fishes and sport fishes including lake sturgeon, walleye and yellow perch.

Wild rice harvest — Bad River Band

THREATS

The exceptional health of these wetlands is owed to the stewardship and protection provided by the Bad River Band. Despite this protection, the sloughs are still vulnerable to external threats, most notably mining in the Penokee Hills at the top of the watershed, which could irreparably alter hydrology, water quality, and wildlife habitat. Other watershed threats include logging, agriculture, and invasive species. Heavy deer browsing pressure threatens the regeneration of the site's conifer trees. Future invasion by the emerald ash borer beetle threatens the site's ash stands. Declining Lake Superior water levels have altered these and other coastal wetlands in recent years and may continue to do so if this pattern continues with global climate change.

ACCESS

This site is located on the Bad River Reservation and is not open to public access. All requests for visitation must go through the tribal offices in Odanah (715-682-7111).

Sources:

Coastal Wetlands of Wisconsin's Great Lakes (WDNR)
Priority Wetland Sites of Wisconsin's Lake Superior Basin (WDNR)
Wisconsin Land Legacy Report (WDNR)
Wisconsin's Strategy for Wildlife Species of Greatest Conservation Need (WDNR)
Great Lakes Ecoregional Plan (TNC)
Wisconsin Important Bird Areas (WBCI)
Bad River Band of Lake Superior Chippewa Natural Resources Department