

October 17, 2013

Testimony of Maliseet Tribal Representative Henry John Bear

Before the Board of Environmental Protection on Draft Chapter 200 Metallic Mineral Mining Rules
Chairman Foley and Members of the Board of Environmental Protection

Good morning as well. My name is Henry John Bear. I am the elected Maliseet tribal representative to the Maine House of Representatives on behalf of the Houlton Band of Maliseet Indians. These days you can find me living along the Meduxnekeag River, which is well within our Maliseet Tribal Territory also known as the St. John River watershed which, along with it's lakes, tributaries, streams and brooks drains an area comprising about 20 million acres of Maliseet tribal land, including all of present day, northern Maine. I, too, join my leaders in opposition to the draft Chapter 200 Metallic Mineral Mining Rules.

Prior to my having been elected to represent the our Maliseet People to the Maine Legislature, I was in 2001 also elected as a Tribal Councillor to the Maliseet Nation at Tobique, President of the Central Maine Indian Association in Orono in 1984 and President of the New Hampshire Indian Council in 1979, when I was 23 years old. These latter organizations represented hundreds of off-reservation Maliseet, Mi'kmaq, Passamaquoddy and Penobscot in these respective regions.

I am a 15 year veteran of the United States Coast Guard, where I enlisted in order to escape a Maine foster home at the age of 17. On my Vietnam era G. I. education bill, I attended and graduated from the University of Maine in 1987, and then graduated from the University of New Brunswick with my law degree in 1994. UNB, as it is also known, is located at Fredericton, which is also well within that 20 million acres of Maliseet tribal land I previously mentioned.

Following graduation from law school, I was, interestingly, offered as many as 8 jobs by the Department of Indian Affairs in Canada, which I refused. I was, during my year-long internship as a law graduate, trained as a prosecutor by the Director of Public Prosecutions in Fredericton, at their main office there, and in the field at the Woodstock courthouse, by Crown Prosecutor Jeff Mockler and Kevin Connell at the Woodstock Crown Prosecutor's office. It was expected that I would continue as a prosecutor as well, but I didn't.

What I was sent to law school to do was to learn how the white man's law worked, especially when it worked against us to deny us access to our preferred fish ... the atlantic salmon... to deny us access to our preferred food ... moose, deer and wild birds ... and to deny us access to our other preferred resources ... fiddleheads, water, wood and our sacred lands., which I then did.

I specialized in treaty and aboriginal rights law. More specifically, I specialized in Maliseet or St. John River Indian treaties, especially those concluded with the French, English, British and, later, the United States of Anmerica. Treaties that I had already been provided and told about by my Tribal Elders, Chiefs and our tribal story tellers or historians during many tribal gatherings during the 20 plus years I lived on a so-called Maliseet Indian reservation.

Most of the points I would have made on this issue have already be spoken. But, as regards our Maliseet perspective ...our treaty perspective ... I would like all of you to know this.

I stand here in the tradition and practice of my Maliseet ancestors to tell you, once again, that valid and enforceable treaties exist, especially the Watertown Treaty of 1776, which was concluded by one of my ancestors, Chief Ambrose Bear who represented all of the eastern Indian tribes at that time, with one of your ancestors, James Bowdoin who represented the colony of Massachusettes Bay and the Continental Congress and all the other United States of America then assembled at Watertown, Massachusettes, just outside of the City of Boston, which was, at that time, under siege by British troops.

It is my understanding and honest belief and the opinion of legal experts today that this Treaty of Watertown of 1776 was the first treaty the United States signed with any sovereign power, Indian or European. The record of the minutes of this seven day treaty negotiation clearly indicates the British rebels, and you are reminded here that this so-called revolutionary war was, basically, a civil war between and among British subjects and those who no longer wanted to be, and that the British rebels, including James Bowdoin and the other members of the Continental Congress assembled in Watertown were very pleased that, as the Declaration of Independence had been declared in Boston only the day before, that they were very pleased that their very first treaty as the newly declared "United States of America" would be with, as they put it, "the Americans", which meant, "the Indians".

I point this out because the Watertown Treaty of 1776, which, incidentally, was, just a few months ago, recently and unanimously recognized by the Maine Senate and House of Representatives as still honored by the Representatives of the State of Maine, ...this treaty, which is still honored today, established friendly, government to government and Nation to Nation relations between the Maliseets and the United States of America. Yes. It first established a critical wartime alliance that was, perhaps, the most important component of both the American victory and securing the southern portion of the Maine district to the United States. But, the Watertown Treaty of July 17th, 1776, also established a means for economic trade between the United States and the Maliseets, based on the freedom of Maliseets to use and access natural resources within our tribal territory, which was recognized by the United States as including all of the northerly portion of present day Maine. Maliseet access and use of our tribal lands was not to be interfered with by any outside, non-tribal entity, including the United States. Most importantly, the Watertown Treaty acknowledged the sovereignty of the Maliseets as masters of our own domain; and the United States treated us as co-equals, land not as a subordinate Indian tribe as was the case with all subsequent Indian treaties.

The record of these treaty negotiations between our Maliseet Chiefs and the United States of America leaves no doubt that, Chief Amrose Bear conducted negotiations under the assumption that nothing resulting from a treaty with the United States of America would compromise their sovereignty or their lands. The July 10th, 1776, historical record indicates that Ambrose Bear made it clear to the United States that compromising the integrity of Maliseet territory would absolutely not be considered. In fact, he demanded that the United States assist with the removal of some errant settlers who had attempted

to appropriate Maliseet territory for their own purposes, which they then promised to do. Otherwise, he would not have signed any treaty; a treaty that may have been forgotten to too many, but is still honored, as it was intended to be, well beyond the duration of the revolutionary war of some 240 years ago.

Today, there are powerful interests with dubious, large claims to lands in northern Maine, which we challenge. They propose, as others have before them, to appropriate such lands for their own purposes, which many consider improper and dangerous.

The Irving Corporation is resisting any changes that will prevent them from accessing metallic minerals in such lands or would raise the cost of accessing or processing metallic mineral supplies in the short term.

But it is clear that, in the many examples given or that are available about open pit mining of metallic minerals in other jurisdictions, that it is not too late to learn from the mistakes of others by adopting ecologically-sustainable methods of accessing or preserving the land from the impacts of such short term thinking.

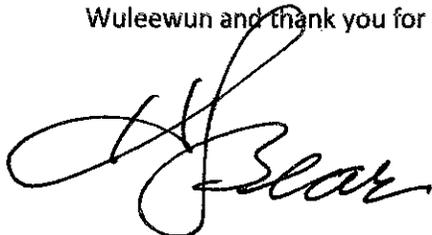
In my view, and in the interest of my People and all the People of the Great State of Maine and of these United States of America, we should skip the intensive, short term accessing of open-pit extracted metallic minerals in our lands, which has been tried and found wanting in other parts of the world ...including West Virginia and Europe.

Instead, we should unite to preserve as many of the remnant open spaces and portions of watershed as possible, despite the promise of 50, 70 or 700 jobs that might be created for a very short period of time, relative to the many, many thousands of years of permanent watershed pollution and habitat destruction that will certainly occur, which will certainly be the consequence if we do not roll back the mineral mining rules, specifically, and stop such proposed land use behavior, generally, by anyone, Indian or Corporate.

Instead, we need to modify the rules and all land use practices so that they are as respectful and as soft as possible, which is our tribal practice, as you have already heard. To us, unlike yourselves, there are no uncertainties and there is no debate about the consequences of the proposed open-pit mining of metallic minerals.

I will provide copies of the Watertown Treaty and the minutes I mentioned in relation to that treaty upon request.

Wuleewun and thank you for this opportunity to speak with you.

A handwritten signature in black ink, appearing to read "Wuleewun". The signature is fluid and cursive, with a large initial letter.

