

STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

Case Type: Water Bureau
and Office of
Geological
Survey

HEARING - VOLUME NO. I

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Petitioner's Exhibit 8, slide 1

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NOTE: Full exhibit list will be included in final transcript

1 Lansing, Michigan

2 Monday, April 28, 2008 - 9:51 a.m.

3 JUDGE PATTERSON: Let me open the record by
4 indicating I'm Richard A. Patterson. I'm an Administrative
5 Law Judge with the State Office of Administrative Hearing
6 and Rules. We are here today to commence the hearing on the
7 matter of the petitions of the Keweenaw Bay Indian
8 Community, the Huron Mountain Club, the National Wildlife
9 Federation and Yellow Dog Watershed Preserve, Inc., on the
10 Part 31, Groundwater Discharge, and Part 632, Nonferrous
11 Metallic Mineral Mining permits issued by the --
12 respectively by the Water Bureau and Office of Geological
13 Survey of the Michigan Department of Environmental Quality.
14 I would ask counsel that would be participating in this
15 hearing to identify themselves for the record at this time.

16 MR. EGGAN: Do you want to begin down here, your
17 Honor? I'm Eric J. Egan. I'm an attorney with Honigman
18 Miller, Schwartz and Cohn. I'm here on behalf of the
19 Petitioners.

20 MS. HALLEY: Michelle Halley on behalf of the
21 National Wildlife Federation.

22 JUDGE PATTERSON: You can stay seated. You don't
23 have to stand.

24 MR. HAYNES: I'm Jeff Haynes. I represent the
25 National Wildlife Federation and the Yellow Dog Watershed

1 Preserve.

2 MR. LINDSEY: I'm Sarah Lindsey on behalf of
3 Kennecott Eagle Minerals Company.

4 MR. LEWIS: Rod Lewis also on behalf of Kennecott
5 Eagle Minerals Company. And, your Honor, we may have the
6 following additional attorneys from our firm examine various
7 witnesses: Steve Kohl, Jeff Bracken and Chris Predko. And
8 by the way, your Honor, we have various technical staff back
9 here; Bonnie Shaub, Stacey Wayland and Mary McElheny, who
10 are going to handle the technical equipment for us.

11 MR. REICHEL: Good morning, Judge; Robert Reichel
12 appearing on behalf of the Department.

13 MR. WALLACE: May it please the court; Bruce
14 Wallace on behalf of Huron Mountain Club, additional
15 Petitioner. Peter Dykema and Bill Stapleton will also
16 examine witnesses on behalf of Huron Mountain Club.

17 JUDGE PATTERSON: Okay. Anybody else? Okay. Mr.
18 Egan, did you want to make the first opening statement? Is
19 that what I heard?

20 MR. EGGAN: I think that Mr. Haynes is going to
21 begin.

22 MR. HAYNES: I'll proceed.

23 JUDGE PATTERSON: Oh. Okay. Go ahead.

24 MR. HAYNES: Your Honor, I'll be brief for our
25 opening statement. Petitioners intend to show that the

1 applicant, Kennecott Eagle Minerals Company, failed to
2 disclose data that was required to be disclosed in the Part
3 632 case.; secondly, that the Kennecott studies and reports
4 submitted to the Department improperly characterized the
5 data that was gathered; third, that the data that was
6 gathered was then improperly evaluated by Kennecott in its
7 application and in the environmental impact assessment;
8 fourth, that the data that were gathered was -- were
9 selectively used by Kennecott in their evaluation.

10 In effect, the reports and the studies
11 characterized by Kennecott cherry picked data in order to
12 arrive at conclusions that were scientifically improper.
13 Fifth, Kennecott failed to use best professional practices
14 in evaluating the data. And considering all of those
15 failures, Kennecott , therefore, failed to meet its
16 burden -- its burden as the applicant under Part 632, and
17 that would be MCL 324.632.05(3) to show that the mining
18 operation minimizes adverse effects on the environment;
19 furthermore, these failures include the failure to
20 demonstrate that the technology proposed by Kennecott will
21 be effective for its purposes.

22 And lastly, the evidence will show, based upon the
23 failures as I've outlined, that Kennecott failed to meet its
24 burden under Part 632 to show that its mining operation as
25 proposed will not pollute, impair or destroy the air, water

1 and other natural resources of the state and the public
2 trust in those resources. Thank you.

3 JUDGE PATTERSON: Mr. Eggan?

4 MR. EGGAN: Good morning, your Honor. Again, for
5 the record, Eric J. Eggan, and I am handling the groundwater
6 part of this case. The groundwater discharge permit issues
7 will be primarily my responsibility in this matter, and my
8 opening statement is going to address groundwater-related
9 issues. Your honor, put in its most simple and stark terms,
10 we simply have to get this right. We owe it to all of
11 Michigan citizens, all of us in this room -- Petitioners,
12 Kennebecott, the Michigan Department of Environmental Quality
13 and you -- we all owe it to Michigan citizens to get this
14 right.

15 The company has requested the privilege -- and I
16 stress it is a privilege -- of a groundwater discharge
17 permit for its mining operations. And this permit is
18 critical, because there is a substantial amount of
19 groundwater in the vicinity of this mine, and that
20 groundwater is going to be contaminated by contact with the
21 rock and mining operations at this sulfide mine.

22 Now, our position is that, prior to getting a
23 groundwater discharge permit, the company needs to know
24 exactly how much groundwater is there. They need to know
25 how much groundwater is going to flow into the mine during

1 mining operations and how much they're going to need to
2 treat it. A big part of this groundwater case is a
3 treatment issue. They need to know how contaminated it's
4 going to be when it comes into the treatment facility. They
5 need to know the amount of the groundwater that's going to
6 be discharged back into the system when it has been treated.
7 And what you're going to learn, your Honor, is that,
8 unfortunately, the company in this case -- and when I say
9 "the company," I mean Kennecott -- simply did not do its
10 homework.

11 In fact, from what we've seen in the last few
12 weeks with new exhibits, new reports, new data coming in
13 that has been gathered just in the last few weeks and
14 months, they still don't have it right. They still don't
15 understand the hydraulic system at this location, and the
16 company is basically scrambling around now trying to cover
17 the big holes it left in its data. What you're going to
18 learn is that the company made some critical foundational
19 errors in the analysis about groundwater that really have
20 tainted the entire permit.

21 We're going to show you through expert testimony
22 that the company simply has not characterized the hydrology
23 of this mine site at all. We're going to show you that
24 there's going to be dramatically more water than the company
25 has predicted, and you're going to see from the evidence

1 that the company just doesn't know how much water there's
2 going to be going into the mine, how much water is going to
3 be coming out of the mine and going to the wastewater
4 treatment plant and then pumped back into the hydraulic
5 system.

6 What you're also going to see from our expert
7 witnesses is that the company really doesn't know the
8 direction this water is going to go or how fast it's going
9 to go after they pump it back into the ground. Now, these
10 are critical errors, and these omissions really require them
11 to go back to the drawing board and again, your Honor,
12 simply get this thing right. That's what we are asking, is
13 that the company be ordered to go back to the drawing board
14 and get it right.

15 You're going to hear from one of our expert
16 witnesses, Dr. Ann Maest, a hydrochemist from Denver, who's
17 going to tell you -- and by the way, Ms. Maest has been
18 involved in mining projects in the past and understands the
19 chemistry involved in mining operations. What she's going
20 to tell you is that the company made critical errors in
21 determining the water quality that is going to be -- the
22 quality of the water as it leaves the mining operation and
23 goes to the treatment plant.

24 And again, they've made predictions on treatment
25 that are based on water quality, and they've simply missed

1 the boat. And our position is that they need to go back to
2 the drawing board, reexamine water quality and come to the
3 DEQ with better, more accurate data. That's our position.
4 You're also going to hear from Dr. Glenn Miller, who's an
5 environmental chemist from Reno, and he's going to talk
6 about the treatment system. And what he's going to tell you
7 is that, based on water quality, based on water inflow data,
8 the system that Kennecott has designed is just not big
9 enough.

10 We're going to ask you to -- based on his
11 testimony, to send it back to the drawing board and make him
12 get it right. You're also going to learn in this case,
13 Judge, that the Department of Environmental Quality simply
14 did not hold this company to the stringent standards that
15 are required under the Natural Resources and Environmental
16 Protection Act or the agency's own rules that govern
17 groundwater permits, and we'll be showing you those rules
18 throughout this case.

19 We'll show you that it shouldn't have accepted the
20 company's groundwater discharge application, because that
21 application was administratively incomplete, and we'll also
22 show you a host of critical errors that were made by the
23 agency as it analyzed the permit issues. What you're going
24 to see is that almost -- at almost every critical juncture
25 where the company could have gone in the direction of

1 regulation, it didn't go in the direction of regulation. It
2 went in the direction of simply accepting Kennecott's
3 perspective on the issue and didn't do the critical analysis
4 necessary to really consider this permit application.

5 I won't go through the -- through all of the
6 allegations in our Complaint. I have a few highlights that
7 I'll mention for you in our opening statement to give you a
8 sense of where we're going. But frankly, the MDEQ simply
9 accepted the company's characterization of the
10 hydrogeological conditions there without doing its own
11 modeling or, even worse, without applying critical
12 scientific evaluation of the company's modeling itself.
13 This omission violates the Agency's own rules and taints the
14 entire permit application. And there -- the record is rife
15 with those kinds of errors.

16 At the end of this case, your Honor, we believe
17 that you will be firmly convinced, as we are, that the
18 permit -- the groundwater discharge permit was improperly
19 granted and that it is in violation of Michigan law and that
20 the company should be made to go back to the drawing board
21 and get it right. Thank you.

22 JUDGE PATTERSON: Thank you, Mr. Eggan.

23 MR. WALLACE: Again, your Honor, Bruce Wallace on
24 behalf of Huron Mountain Club. I'm here with Peter Dykema
25 and Bill Stapleton, representing the club. As your Honor is

1 aware from pretrial briefing, the Huron Mountain Club was
2 founded in 1889 as a family retreat and wildlife preserve.
3 The club owns substantial real property, including lakes,
4 streams, rivers and Lake Superior shoreline. This map,
5 which I believe is Exhibit 32, will be entered into evidence
6 without objection.

7 And the Huron Mountain Club is depicted by a
8 yellow boundary line and essentially encompasses the entire
9 northern part -- almost the entire northern section of the
10 map, 11 miles of shoreline, more than 30 square miles of
11 property. The Salmon Trout River, which flows through the
12 property, begins at its headwaters near the site of the
13 mine, which is encompassed in the -- with the red boundary,
14 your Honor. And I think you can see from the map that the
15 mine site itself is less than three and a half miles from
16 the boundary of the Huron Mountain Club property.

17 The Salmon Trout River headwaters are directly
18 vertically above the orebody that Kennecott intends to mine.
19 And the very reasonable concern and the evidence that you'll
20 hear from our witnesses is that this mining operation cannot
21 succeed -- cannot proceed without putting at severe risk the
22 waters of the Salmon Trout River. The Salmon Trout River
23 begins at the mine site -- the mining underneath it. It's a
24 novel and untested type of mining to be going after an
25 orebody this close to the surface and this close to a body

1 of water.

2 The Salmon Trout River is -- as it flows into Lake
3 Superior, is the only breeding ground, spawning ground of
4 the Coaster Brook trout on the south shore of Lake Superior.
5 The Coaster Brook trout is the subject of endangered species
6 proceedings as we speak. And the Department of Interior has
7 announced a 90-day finding under the Endangered Species Act
8 and is now conducting a status review as to the status of
9 the Coaster Brook trout. Coaster Brook trout habitat has
10 been carefully preserved for decades by the members of the
11 Huron Mountain Club.

12 Our first witness will be a former president,
13 board member of the club, Mr. Paul Townsend. He will
14 testify as to his own use as a hunter, fisherman and
15 somebody interested in nature of the club property and the
16 use of all the members of the property. There is no
17 question -- and you will -- we are comfortable be convinced
18 that the opportunity to enjoy this property aesthetically
19 and recreationally will be substantially lessened by the
20 presence and operation of a massive mining project so close
21 to the club property.

22 Other unique features of the club, which I think
23 underscore why we're here today, include nearly 10,000 acres
24 of virgin forest never logged over more than a century, one
25 of the largest stands of virgin forest in the Midwest.

1 There are many lakes, streams and rivers flowing through the
2 property and, because of its unique and pristine nature and
3 the fact that it's been preserved as a nature preserve for
4 many, many years, it has become the subject of some 200
5 different papers; scholarly papers, many peer-reviewed
6 papers. And access has been freely granted by the club to
7 scientists and academicians from local Michigan and national
8 universities to study the biota of the Huron Mountain Club
9 property.

10 Several of these scientists will testify at trial.
11 They include a wetlands expert from Oregon, Dr. Paul Adamus;
12 Professor Kerry Woods, a biologist, who has actually been
13 conducting research in the lands of the Huron Mountain Club
14 for many years and has acted as research director for the
15 Huron Mountain Club -- for the Huron Mountain Club
16 Foundation since 2004; Professor Alec Lindsay, an avian
17 ecologist from the biology department at Northern Michigan
18 University; Dr. David Flaspohler, a conservation biologist
19 and expert in forest fragmentation and restoration ecology;
20 Dr. John Ejnik, also from Michigan Tech, who's a water
21 chemist, who's going to testify to the potential effects of
22 deposition of particulate matter from this site, which will
23 contain heavy metals, nickel, copper and in particular the
24 highly toxic and biocumulative mercury in particulates
25 surrounded by sulfur, all of which amounts in the hundreds

1 and, depending on the time period, reported thousands of
2 pounds, which will be dispersed from the mine site over the
3 entire property of Huron Mountain Club and up into Lake
4 Superior.

5 The testimony of these scientists will be preceded
6 by the testimony of Mr. Sube Val, from Conestoga-Rovers &
7 Associates, who is an expert in air quality and air
8 dispersion, and he will describe to the court quantitatively
9 exactly how the dispersion will occur from the stack from
10 the mine site and deposit these -- this particulate matter
11 over snows in the wintertime, over the land and into the
12 waters in the summertime, affecting and putting at great
13 risk the wildlife of the Huron Mountain Club property.

14 The testimony of these witnesses is intended to be
15 very specifically targeted and indeed brief and to the
16 point. I think that their evidence will be incontestable
17 that the affected area, as that statutory term has been
18 defined, includes the Huron Mountain Club and all its
19 properties. And I guess the real reason why we felt an
20 urgent and compelling need to participate in these
21 proceedings is that, after Kennecott had, starting in the
22 year 2003, come and visited the club, photographed the
23 features of the club, installed water quality testing
24 devices in the waters of the Huron Mountain Club and were
25 taking around to all of the features of the club with the

1 great expectation that the Huron Mountain Club would become
2 a central and protected focus of any mining application, the
3 club members and -- were -- and their leadership were
4 shocked to discover that the mining application made no
5 reference whatsoever to the property between this mining
6 operation and Lake Superior.

7 So not only was this affected area not addressed
8 at all by Kennecott. The studies that were conducted,
9 including the studies of flora and fauna that are required
10 to cover a two-year period -- and there are very good
11 scientific reasons why flora and fauna must be studied over
12 a two-year period -- none of that occurred. Huron Mountain
13 Club is not addressed. Its wildlife is not addressed. The
14 rare and, in some cases, unique species at great risk on the
15 property were not addressed in the application.

16 No naturalist, after the 2003 visit, ever came
17 back to the club or took into consideration in this mining
18 application the risk posed to the club. We believe at the
19 end of this testimony that these complete omissions in the
20 application, including the two-year studies and the
21 definition of the affected area, as being some 92 acres or
22 at most 1300 acres rather than the many square miles that
23 are actually affected, will require that this permit be
24 voided. Thank you, your Honor.

25 JUDGE PATTERSON: Thank you. Who's next? Mr.

1 Lewis?

2 MR. LEWIS: We're going to reserve our opening
3 'til our case begins, your Honor.

4 JUDGE PATTERSON: Okay.

5 MR. REICHEL: Judge, the Department is also going
6 to reserve opening 'til it presents its case.

7 JUDGE PATTERSON: Okay.

8 MR. EGGAN: Your Honor, there's just one small
9 matter I want to bring to your attention. I prepared --
10 having had previous trials, I prepared what I would call a
11 trial brief. I call it a pre-hearing summary for you
12 together with all of the exhibits on the Part 631 case. I
13 have it for you. I'd like to present it to you if it would
14 be helpful?

15 JUDGE PATTERSON: Okay. Yeah.

16 MR. EGGAN: I want to make sure I give you that.
17 Your Honor, here's the pre-hearing summary, and the rest of
18 this is exhibits.

19 JUDGE PATTERSON: Okay.

20 MR. EGGAN: I have provided copies of the
21 pre-hearing -- I call it a pre-hearing summary. It's really
22 a trial brief -- to counsel.

23 JUDGE PATTERSON: Okay.

24 MR. EGGAN: What I didn't give counsel were the
25 exhibits, because I had provided them to them last week.

1 JUDGE PATTERSON: Okay. All right.

2 MR. LEWIS: And just for the record, your Honor,
3 there's been no agreed stipulation on exhibits amongst the
4 parties, so the exhibits you've just been handed, the
5 admissibility of them is -- has to be yet determined in this
6 proceeding.

7 JUDGE PATTERSON: All right.

8 MR. HAYNES: And, your Honor, just by way of
9 housekeeping, for the Part 632 portion of the case, I have
10 hard copies of our exhibits here in binders that at some
11 point we'll put on the table so that you have them at some
12 point to refer to either during the proceeding or afterwards
13 when you're preparing your proposal for decision.

14 JUDGE PATTERSON: Okay. Mr. Haynes, are you ready
15 to proceed?

16 MR. HAYNES: Yes, I am ready to proceed.
17 Petitioners call Rico Torreano.

18 REPORTER: Would you raise your right hand? Do
19 you solemnly swear or affirm the testimony you're about to
20 give will be the whole truth?

21 MR. TORREANO: I do.

22 RICO J. TORREANO
23 having been called by the Petitioners and sworn:
24
25

1 DIRECT EXAMINATION

2 BY MR. HAYNES:

3 Q Would you state your name for the record, please?

4 A My name is Rico J. Torreano.

5 Q Where do you live

6 JUDGE PATTERSON: Can you spell your last name for
7 me, Mr. Torreano?

8 THE WITNESS: T-o-r-r-e-a-n-o.

9 JUDGE PATTERSON: Okay. Thank you.

10 A 1129 Keewaydin Street, Negaunee, Michigan.

11 Q Is that in Marquette County?

12 A Yes, it is.

13 Q What's your occupation, sir?

14 A I'm a corrections officer at Marquette Branch Prison.

15 Q How long have you been there?

16 A It'll be 20 years in August.

17 Q How long have you lived in Marquette County?

18 A Almost all of my life. There's been a few brief absences
19 for school and short jobs.

20 Q Are you a member of the National Wildlife Federation?

21 A Yes, I am.

22 Q Do you own property in Marquette County?

23 A I own several parcels of property in Marquette County.

24 Q And where are they located generally?

25 A My home, and I own three approximately 40-acre parcels, one

1 of which is about a mile north, northeast of the proposed
2 Kennecott Eagle project.

3 Q Is that property in Powell Township?

4 A It's on the south edge of Powell Township. It's right at
5 the junction of Powell Township, Champion Township and
6 Michigamee Township.

7 Q When did you purchase the Powell Township property?

8 A I purchased that in July of 1992.

9 Q Mr. Torreano, I have put up on the screen a picture that's
10 labeled Exhibit 10-A. Did you take this picture?

11 A Yes, I did.

12 Q And what does the picture represent?

13 A This picture is taken from a site to the northwest of the
14 proposed treated water infiltration system from the mine.
15 It's 746 yards, according to my global positioning system,
16 northwest of that treated water infiltration system, which
17 will -- if it's okay with you, I'll call that the TWIS.
18 That's how it's abbreviated in all the literature.

19 Q That's T-W-I-S, sir?

20 A Yes. So this is the head of the stream that flows to my
21 property. This is the head of the valley in which the
22 stream runs, and from here it flows to the northeast about
23 three-quarters of a mile, probably a little bit more, before
24 it enters my property.

25 MR. HAYNES: Move admission of Exhibit 10-A.

1 JUDGE PATTERSON: Any objections?

2 MS. LINDSEY: No objection.

3 JUDGE PATTERSON: No objection. 10-A will be
4 entered.

5 (Petitioner's Exhibit 10-A received)

6 JUDGE PATTERSON: Mr. Torreano, I'm so -- I didn't
7 hear. How -- what was the last distance you stated?

8 THE WITNESS: The length of the stream is about
9 three-quarters of a mile, maybe slightly longer.

10 JUDGE PATTERSON: Okay. Thank you.

11 Q And again, just for the record, Mr. Torreano, you may have
12 already said this, but I want to make sure. The stream is
13 how far from the TWIS?

14 A The head of the stream right there is 746 yards.

15 Q Less than half a mile?

16 A Yes.

17 MR. HAYNES: 10-C.

18 Q Mr. Torreano, I've now put up on the screen a photograph
19 that is labeled Exhibit 10-C. Did you take this photograph?

20 A Yes, I did.

21 Q By the way, when did you take these photographs?

22 A It was about maybe ten days before the deadline for the
23 exhibits, whatever date that was.

24 Q Sometime in March?

25 A It was in March, yes.

1 Q What does 10-C depict?

2 A This is a photo looking across the beaver pond at my log
3 cabin that I built on my property.

4 Q And this is the property in Powell Township; correct?

5 A That is correct.

6 MR. HAYNES: Move admission of Exhibit 10-C.

7 MS. LINDSEY: No objection.

8 MR. REICHEL: No objection.

9 JUDGE PATTERSON: No objection. 10-C will be
10 entered.

11 (Petitioner's Exhibit 10-C received)

12 Q Mr. Torreano, what is the water supply for your cabin?

13 A I have a gravity-fed water system. I -- one of the springs
14 on the north terrace of the Yellow Dog Plains bubbles out of
15 the ground approximately 100 feet above my property. I have
16 a pipe -- a plastic pipe that gathers a portion of that
17 water. It flows into my property -- into my log cabin and
18 then back out again, and it discharges back in the spring
19 from which I took it. There's a restriction on the
20 discharge which provides back pressure but still allows the
21 water to circulate, so I have flowing water all year. It
22 doesn't freeze, and it's delicious water; just the best
23 water I've ever had.

24 Q And, Mr. Torreano, do you use this water and the supply from
25 the stream for the water needs for your cabin?

1 A I use it for drinking. I use it to supply my sauna for
2 bathing. We cook with it, make our coffee, all our washing,
3 everything.

4 MR. HAYNES: 10-M.

5 Q Mr. Torreano, I've not put up on the screen Exhibit 10-M,
6 which is a photograph that you took; is that correct?

7 A Yes, it is.

8 Q And what does this photograph depict?

9 A This photograph, I am standing on the beaver dam that runs
10 on the west edge of my property. I'm looking upstream
11 towards the head of the valley, which was the first picture
12 that we examined. This is the other end of that
13 three-quarter-mile-long run of stream. If you could see
14 over the tree line, you'd see the Yellow Dog Plains, and
15 you'd see the site of the proposed mine.

16 MR. HAYNES: Move admission of Exhibit 10-M.

17 MS. LINDSEY: No objection.

18 MR. REICHEL: No objection.

19 JUDGE PATTERSON: Okay. No objection. It'll be
20 entered.

21 (Petitioner's Exhibit 10-M received)

22 Q Mr. Torreano, you said that, if you were to be able to see
23 over the line of trees in the center of the picture at the
24 head of the valley, you would see the proposed mine site; is
25 that correct?

1 A Yes.

2 Q And about -- what's the distance from where you took the
3 picture to the proposed mine site?

4 A It's approximately three-quarters of a mile. Well, it's
5 three-quarters of -- excuse me. It's three-quarters of a
6 mile to the head of the stream. It's another quarter mile
7 to the mine site itself.

8 Q Does this stream flow year-round?

9 A It does.

10 Q And does it -- have you observed any wildlife in the stream?

11 A This stream is incredibly dense with wildlife. There's --
12 it's full of brook trout. It's -- it has ducks and geese
13 and fishers and racoons, and bear and deer come to it, and I
14 have the highest density of woodpeckers on the property I've
15 ever seen anywhere. There's so much wildlife there it
16 would -- it's a long list. There's a lot of wildlife.

17 Q For those of us who live in the southern part of the state
18 and may not know what a fisher is, what's a fisher?

19 A A fisher is a rodent-like animal that's in the same family
20 as a weasel or -- but much, much larger -- or a pine martin,
21 both of which are also present on the property.

22 Q Mr. Torreano, I've now put up on the screen Exhibit 10-N.

23 A Uh-huh (affirmative).

24 Q Is this a picture that you took?

25 A Yes. That's a photograph I took of my log cabin. I took it

1 to highlight the water system entering the wall. It's just
2 to the viewer's left of the window that's in the center of
3 the photo. It's --

4 Q Perhaps, if you could, get down from the stand and point out
5 what you're talking about.

6 A It's difficult to see, but it's this pipe running right here
7 (indicating).

8 Q Thank you.

9 MR. HAYNES: Move admission of Exhibit 10-N.

10 MS. LINDSEY: Not objection.

11 MR. REICHEL: No objection.

12 JUDGE PATTERSON: Thank you. No objection. It
13 will be entered.

14 (Petitioner's Exhibit 10-N received)

15 Q Mr. Torreano, again, the water pipe, is that the water
16 supply for the cabin from the stream that you earlier
17 testified about?

18 A That's the water supply that comes from the spring at the
19 head of that stream, yes.

20 Q Mr. Torreano, I've now put on the screen Exhibit 10-O. Is
21 this the picture that you took?

22 A Yes, it is.

23 Q And what does this picture depict?

24 A That is the picture of the pickup point for my water system.
25 That's the actual spring where the water discharges out of

1 the north terrace. It's difficult to see the pipe. Can I
2 get up and point that out?

3 Q Of course.

4 A Okay. The pipe -- you can just see the sheen on the pipe
5 right here (indicating). It runs up -- there's a board
6 across right here that kind of dams up the water enough that
7 it'll pick up into the pipe.

8 MR. HAYNES: Move admission of Exhibit 10-0.

9 MS. LINDSEY: No objection.

10 MR. REICHEL: No objection.

11 JUDGE PATTERSON: No objection. 10-0 will be
12 entered.

13 (Petitioner's Exhibit 10-0 received)

14 Q Mr. Torreano, do you fish in the streams?

15 A I fish in them a little bit. I try not to use the streams
16 too much, 'cause I predominantly save that for my children
17 and guests and the children of my guests and my nieces and
18 nephews that come a lot to the camp.

19 Q So your family and guests fish in the streams?

20 A Very often, yes.

21 Q And do you use your Powell Township property -- can I use it
22 the camp? Is that --

23 A Yes, that's how we refer to it.

24 Q All right. How often do you use the camp?

25 A I'm there part of three days of just about every week. I go

1 there immediately after work on my last day to work, and I
2 stay there until the morning before I have to report for my
3 next shift.

4 Q Is that true in the winter?

5 A Yes.

6 Q And do you intend to continue your use of the camp?

7 A Yes, I do.

8 Q And when you're at the camp, what activities do you and your
9 family partake in besides the fishing that we already talked
10 about?

11 A Well, we hunt. We ride four-wheelers. We go blueberry
12 picking. We just spend time in the woods. We ride
13 snowmobiles. There's a vast amount of public land in the
14 area of the camp, and it's like a big playground. It's a
15 recreational property.

16 Q Do you observe wildlife there?

17 A Yes, we do. There's a great deal of wildlife unless we're
18 thickly snowbound. If we're thickly snowbound, obviously
19 most of the wildlife migrates out of that area, 'cause the
20 snow gets deeper than this (indicating).

21 Q And for the surrounding area around your camp, including the
22 proposed mine site, do you also use those areas for some of
23 these activities?

24 A Yes. The camp is completely surrounded by lands that are
25 enrolled in the Commercial Forest Act, so they're open to

1 the public. Legally they're just open for hunting and
2 fishing, but the timber companies that own them don't object
3 to people snowmobiling as long as they're not damaging
4 trees. They don't object to hiking and other recreational
5 pursuits.

6 Q Mr. Torreano, I have put on the screen an exhibit marked
7 Petitioner's Exhibit 8. Is this a -- excuse me. Did you
8 prepare this exhibit?

9 A No. That was prepared by Scott Bouma of Save the Wild UP.

10 Q And what is it taken from? Can you tell us?

11 A Well, it is a compilation of a map that was in the
12 application, showing the particle tracking for -- as an
13 example of how the effluent from the proposed mine will
14 travel through the ground. And the orange-red square
15 towards the top of the map is my property.

16 MR. HAYNES: Move admission of Exhibit --
17 Plaintiff's Exhibit 8 -- excuse me -- Petitioner's Exhibit
18 8.

19 MS. LINDSEY: Objection; foundation.

20 MR. HAYNES: Your Honor, this is a map that was
21 prepared -- it's taken from the application, and all that
22 the witnesses have done is put his property on it. So it's
23 their map that we've just put on his property to indicate
24 where it is.

25 JUDGE PATTERSON: And that map was part of the

1 application?

2 MR. HAYNES: Yes.

3 JUDGE PATTERSON: Mr. Torreano, all you did was
4 indicate your property on that; is that correct?

5 THE WITNESS: That's correct.

6 JUDGE PATTERSON: I'll overrule the objection.
7 P-8 will be entered.

8 (Petitioner's Exhibit 8 received)

9 Q Mr. Torreano, could you approach the exhibit, please?

10 A Yes, I will.

11 Q And I want you to point out for the judge where the proposed
12 TWIS is. Can you indicate that?

13 A Yes.

14 MS. LINDSEY: Objection; foundation, your Honor.

15 MR. HAYNES: All right. Fine. We'll back up.

16 Q Have you studied the application, Mr. Torreano?

17 A Yes, I have studied the application extensively.

18 Q Have you spent time looking at the application in relation
19 to the impacts that you believe the mining operation may
20 have on your property?

21 A I've spent a great amount of time studying this application
22 and how it will affect me and my family and my property.

23 Q And for purposes of this exhibit, Mr. Torreano, have you
24 studied the features on the exhibit that relate to the
25 proposed mine operation as it may affect your property?

1 A I have studied them, yes.

2 Q Then I would like you to approach the map to point out where
3 the TWIS is, if you have studied the application enough to
4 know where the TWIS is on this map.

5 A The TWIS, as indicated in the application by Kennecott as
6 they prepared this map, is this (indicating) blue line which
7 shows the infiltration line for effluent as it enters the
8 ground beneath the TWIS. These lines going upward at a
9 45-degree angle are -- indicated particle tracks.

10 Q And just for the record, these lines are colored blue; is
11 that right?

12 A That's correct.

13 Q Okay. Go ahead.

14 A These particle tracks propose to explain how the effluent
15 will travel through the groundwater.

16 MS. LINDSEY: Your Honor, I'm going to object to
17 foundation on this.

18 MR. HAYNES: Your Honor, again, this is their map.
19 It just shows lines on a map showing their -- this is what
20 they expect to happen to the groundwater. All I'm going to
21 have the witness do is testify that the lines intersect his
22 property.

23 JUDGE PATTERSON: Okay. I'll overrule the
24 objection.

25 Q Mr. Torreano, again, the blue lines?

1 A The blue lines travel to the northeast directly towards my
2 property. As you can see, the entire south side of my
3 property and the west side and the stream flowing into my
4 property will be intersected by the flow lines of effluent
5 from the TWIS.

6 Q All right. Thank you. Mr. Torreano, I've now put on the
7 screen what's been labeled Petitioner's Exhibit 9.

8 MR. HAYNES: Oh, I'm sorry. This -- pardon me.
9 Your Honor, I'm sorry. I'm so used to dealing with binders
10 that this electronic stuff is going to be a little bit --
11 we're going to have to go through this piece by piece.

12 JUDGE PATTERSON: Okay.

13 MR. HAYNES: This -- the first Exhibit 08 was the
14 first picture of 08, the first slide of 08. This is the
15 second slide of Petitioner's Exhibit 8.

16 Q Mr. Torreano, this second slide is -- what does it depict?

17 A Well, that one depicts essentially the same thing, the --

18 Q And it says, "Higher Aquifer Conductivity Case"?

19 A That is correct. And --

20 Q And before you start, this is a map that you pulled out of
21 the application; is that correct?

22 A That is correct.

23 Q And this map in the application purports to show what, as
24 your understanding of it anyway?

25 A It purports to show the particle tracks under the assumption

1 that the transmisivity of effluent through the water is to a
2 higher degree. In other words, it's -- the ground doesn't
3 hold the water back as much as it did in the first track.

4 Q And again, Mr. Torreano, as with the first slide in Exhibit
5 8, the red square denotes your property; is that right?

6 A That is correct.

7 Q And you had that placed on this map?

8 A That is correct.

9 MR. HAYNES: Move admission of Exhibit 8, the
10 second slide.

11 MS. LINDSEY: Same objection to foundation.

12 MR. REICHEL: Same -- I have the same --

13 JUDGE PATTERSON: From -- I'm sorry.

14 MR. REICHEL: No objection to the -- this exhibit
15 to the extent that it depicts the locations of this witness'
16 property in connection to the area depicted in the
17 application.

18 JUDGE PATTERSON: I'll overrule the foundation.
19 That -- it's -- we're describing a slide 2 of Petitioner's
20 8; is that right?

21 MR. HAYNES: Yes. Thank you.

22 (Petitioner's Exhibit 8, slide 2 received)

23 Q Mr. Torreano, I cut you off when you were describing what
24 this exhibit depicts. Would you again tell us based upon
25 your study of the application?

1 A Well, the application has two models for transmisivity
2 through the ground. Depending on soil conditions, the
3 effluent will either flow very fast or not as fast. This
4 one depicts the particle tracks if the effluent flows
5 quickly through the ground.

6 Q And again, Mr. Torreano, the blue lines in this slide show
7 what, to your understanding?

8 A They show --

9 MS. LINDSEY: Your Honor, again I'm going to
10 object to foundation and his qualifications to interpret the
11 application and materials. I don't believe that's been
12 laid.

13 MR. HAYNES: Your Honor, we went through this with
14 the other slide; that this is a figure from the application.
15 It shows particle tracks based upon Kennecott studies, and
16 the only purpose of this slide and the only purpose of this
17 testimony is to show that those particle tracks intersect
18 Mr. Torreano's property.

19 MS. LINDSEY: Right.

20 MR. HAYNES: It's a very basic point.

21 MS. LINDSEY: He's asking for interpretation of
22 what this means, which was -- whether it was prepared by
23 Kennecott, he's asking for interpretation going beyond just
24 the identification of his property.

25 MR. REICHEL: I join in the objection, your Honor,

1 to the extent that the witness is being asked to do anything
2 other than to testify as to the location of his property in
3 relation to the area depicted on the exhibit. I don't
4 believe there's a foundation that he's qualified to
5 interpret any other information on there.

6 MR. HAYNES: Your Honor, again, we have a limited
7 purpose for this exhibit, and that is to show that the
8 particle tracks intersect the witness' property based upon
9 their application. This is their model, not ours.

10 JUDGE PATTERSON: What was the question again?
11 I -- my impression was it did go beyond a basic description
12 of the position of the --

13 MR. HAYNES: The question was, does the exhibit
14 show the particle tracks, as illustrated by Kennecott,
15 intersecting the witness' property?

16 MS. LINDSEY: That would not be objectionable.

17 JUDGE PATTERSON: Okay. You can answer.

18 A Yes.

19 Q Thank you, after all of that. Mr. Torreano, we've had
20 extracted from the application page 16. This is from the
21 Department's Exhibit 148, the Groundwater Permit Application
22 Appendix E-3. And is this a figure that you've studied?

23 A Yes, it is.

24 Q And tell us what it represents before we move its admission.

25 A Well, this is an exhibit that depicts the mounding of

1 effluent beneath the TWIS.

2 Q And by "mounding of effluent," what is your understanding of
3 that?

4 MS. LINDSEY: Objection as to his foundation and
5 qualifications to --

6 MR. HAYNES: I'm simply asking for the witness'
7 understanding. He says he's reviewed the application. He's
8 studied it. I haven't qualified him as an expert. I don't
9 intend to. But he certainly can testify as to his
10 understanding of what the application says.

11 JUDGE PATTERSON: As far as that's limited to his
12 understanding, I'll permit it.

13 A Very well. My understanding is that this depicts the
14 contour lines of the mound of effluent that will build in
15 the soil beneath the TWIS.

16 MR. HAYNES: All right. For the record limited
17 purpose of this page of the Department's Exhibit 148, I'm
18 going to move the admission -- I don't know that I can move
19 the admission.

20 Q But if you could, approach the exhibit, Mr. Torreano, and on
21 this map, point out where your property is, and describe it
22 as you're pointing that out.

23 A Very well. My property is at the point where Powell
24 Township to the north, Champion Township and Michigamme
25 Township come together, which is this point right here

1 (indicating) directly beneath this number "2." And I'm
2 within the contour line of the 2-foot rise and groundwater
3 caused by the effluent.

4 Q And could you point out, when you say the number "2," where
5 your property is in relation to the number "2"?

6 A My property starts here (indicating) on the south edge of
7 Powell Township. It goes up 1320 feet. It will go easterly
8 1320 feet, back south 320 (sic) feet and then back to the
9 west 1320 feet to form a 40-acre parcel.

10 Q So the line depicted on this map that says "2" intersects
11 your property?

12 A It intersects it, and it covers it about 50 percent of the
13 property.

14 Q All right. Thank you. Mr. Torreano, we've now put up on
15 the screen another slide from Department Exhibit 148,
16 Appendix E-3. And can you tell us what this -- what your
17 understanding is of what this depicts?

18 MR. REICHEL: Excuse me. Counsel, could you
19 clarify for the record which figure in this exhibit you're
20 specifically referring to?

21 MR. HAYNES: It's the infiltration figure, and
22 this is page 14.

23 MR. REICHEL: Thank you.

24 Q Mr. Torreano, what's your understanding of what this slide
25 depicts?

1 A Well, this is a second model for the mounding that will
2 occur underneath the TWIS depending on the transmissivity of
3 the soil for the effluent. If the soil does not allow the
4 effluent to travel as quickly, the mound will be higher, and
5 these contours will result.

6 Q All right. Mr. Torreano, could you then approach the screen
7 and outline again for the judge where your property is?

8 A My property is right here (indicating), and it's -- the
9 four-foot contour line hits my southwest corner, and I have
10 between four and three feet of groundwater rise throughout
11 my property.

12 Q Based upon this exhibit?

13 A Based upon this exhibit.

14 Q Mr. Torreano, have you in the past tried to determine what
15 the level of -- what the height of the groundwater is on
16 your property?

17 A Well, my property is about one-third wetlands. My camp is
18 right on the edge of the wetland, and I believe any
19 groundwater rise will flood my property.

20 Q Mr. Torreano, have you ever invited Kennecott or its agents
21 to come on your property to study it?

22 A Yes, I have.

23 Q And did they?

24 A Yes, they did.

25 Q And what did they do on your property?

1 A Well, I had e-mailed Jon Cherry, and I told him in the
2 e-mail that I didn't think they could do a complete
3 hydrologic study of the area without accessing my property,
4 and I invited him to come out. And he sent the North
5 Jackson Company, specifically Mr. Dan Wiitala and two
6 assistants. They came out and installed a piezometer.

7 Q Just for the record, what's your understanding of what a
8 piezometer is?

9 A It measures flow data from a stream.

10 Q Thank you.

11 A So their installed this in the main stream coming down from
12 the proposed mine site. They also took surface water
13 samples, and they went up and visited my water pickup. They
14 took water samples there. They told me that they'd send me
15 the results. They never did. They visited my property at
16 least three times.

17 Q And again, Mr. Torreano, you said that you've reviewed the
18 application several times in detail; is that correct?

19 A That is correct.

20 Q Do you recall in your review of the application any mention
21 of your property in the application or the environmental
22 impact --

23 A None.

24 Q -- assessment?

25 A There was no mention anywhere in the environmental impact

1 assessment of my property.

2 Q Now, do you have some concerns about the -- your
3 understanding of the effect of the proposed mining site on
4 your property?

5 A Yes, I do.

6 Q What are those concerns?

7 A The valley that my stream runs in will gather all the
8 fugitive dust that settles out to the -- when there's a
9 south wind. It will gather all of the effluent. 504,000
10 gallons a day of effluent is predicted to be pumped into
11 this treated water infiltration system. The models show
12 it's all coming directly to me. In fact, 16 of 20 particle
13 tracks will intersect my property. It'll pollute my surface
14 water. It'll pollute my groundwater. It'll raise my water
15 table, which will flood my privy pit. Common to all the
16 camps in the area, we have earth pit privies. It will flood
17 that.

18 It'll destabilize the soils of my driveway, which
19 is over half of my lawn, and I don't know that I'll be able
20 to manage it to keep it in repair if there's four additional
21 feet of groundwater. It'll kill my trees. It'll affect all
22 the wildlife. It'll flood areas of my property. I can't
23 imagine that my property will even be usable. I don't know
24 if my foundation for my camp will hold up in hydrated soils
25 with the winter freeze. I can't explain all the things that

1 it's going to do to harm me, but it's going to do a lot.

2 MR. HAYNES: Thank you, Mr. Torreano. I have no
3 further questions at this time.

4 MR. WALLACE: May I ask one question?

5 JUDGE PATTERSON: Sure.

6 MR. WALLACE: Actually, it's a request. Mr.
7 Torreano, could you point out on the larger map, which is
8 going to be Exhibit 32, where your property is, sir?

9 THE WITNESS: Certainly. Okay. Let's see. Let
10 me figure out the direction while I'm here.

11 MR. WALLACE: And I'll just -- the mine site is
12 the red border in the center of the map?

13 THE WITNESS: Yes. I want to get my bearings and
14 get this right. Right here (indicating). This is the
15 division between Champion and Michigamee Townships. This is
16 where it intersects Powell Township, and I'm right on top of
17 the "D" here, just slightly to the left.

18 MR. WALLACE: Could you step back so the Court can
19 see exactly where you're pointing, sir?

20 THE WITNESS: Right here (indicating). This is
21 the proposed mine site right here.

22 MR. WALLACE: Thank you, Sir.

23 MR. LEWIS: Your Honor, may I say something?

24 JUDGE PATTERSON: Sure.

25 MR. LEWIS: I do hope and assume that Petitioners

1 do not intend to, in their direct examinations, have
2 multiple attorneys from various parties ask their witnesses
3 questions. If this is just an isolated exception, I have no
4 objection. But certainly I think that would be improper in
5 this forum to have multiple sets of attorneys over there
6 asking a witness on direct examination a four -- three or
7 four different sets of direct examination questions. And
8 it's not my understanding that the proceeding ought to
9 operate that way.

10 MR. HAYNES: In response, I don't think we're
11 going to have multiple extended examination of a witness by
12 any of the three attorneys for the Petitioners, but we have
13 different parties here. We're not -- the Petitioners are
14 not all represented by one attorney. So we have the right
15 to ask questions -- each of us has the right to ask
16 questions, but I don't think we intend to duplicate
17 questions. Certainly --

18 JUDGE PATTERSON: That would be my concern, is
19 duplication.

20 MR. HAYNES: Right. I don't think that's going to
21 happen, your Honor. But certainly we have the right to ask
22 questions of a witness -- of any witness, depending on who's
23 asking the questions.

24 JUDGE PATTERSON: Yeah. I mean --

25 MR. WALLACE: It was our intent to -- as to some

1 witnesses from the perspective of Huron Mountain Club, pose
2 some questions but not to duplicate and not to question at
3 any great length.

4 JUDGE PATTERSON: All right.

5 MR. HAYNES: And also, I would point out, your
6 Honor, as this proceeding goes forward, there are two
7 petitions here. One is under Part 31; one is under Part
8 632. And so as Mr. Eggan indicated before, he's primarily
9 handling the Part 31 case. So there will be witnesses that
10 will be questioned extensively by me and by Mr. Wallace and
11 then extensively again by Mr. Eggan related to the different
12 parts of this case, because they have been consolidated, so
13 we have that ability.

14 JUDGE PATTERSON: I agree. Mr. Eggan, do you have
15 any questions of this witness?

16 MR. EGGAN: I do have a question or two of Mr.
17 Torreano.

18 CROSS-EXAMINATION

19 BY MR. EGGAN:

20 Q Mr. Torreano, are you familiar with a parcel of property
21 that is owned by the Keweenaw Bay Indian Community in the
22 vicinity of the mine?

23 A Yes, I am.

24 Q And where is that property in relationship to yours?

25 A It is north and west.

1 Q Can you show on the contour map approximately where the
2 Keweenaw Bay Indian Community property is on that map?

3 A Yes, I can. Okay. This (indicating) is my parcel, and then
4 the Keweenaw Bay Indian Community parcel is right here.

5 Q Very good. And so applying the contour map circle where it
6 shows a two-foot groundwater head caused by infiltration,
7 does that line intersect the Keweenaw Bay Indian Community
8 property as you understand it?

9 A Yes, it does.

10 Q Okay. What does that mean, as far as you know?

11 A As far as I understand it, there will be two feet of
12 additional head in the ground which will cause the water
13 table to be higher.

14 MR. EGGAN: Very good. Nothing further, your
15 Honor.

16 JUDGE PATTERSON: Mr. Lewis or Ms. Lindsey?

17 MS. LINDSEY: Good morning, Mr. Torreano.

18 THE WITNESS: Good morning.

19 MS. LINDSEY: My name is Sarah Lindsey. I'm an
20 attorney for Kennecott.

21 CROSS-EXAMINATION

22 BY MS. LINDSEY:

23 Q When did you join National Wildlife Federation?

24 A In 2007.

25 Q And you were approached to -- by somebody to join?

1 A Yes.

2 Q Who approached you?

3 A Michelle Halley.

4 Q And that was in 2007. Was that right before you signed your
5 affidavit?

6 A Three or four weeks.

7 Q Did you pay anything to join National Wildlife Federation?

8 A Yes, I did.

9 Q How much?

10 A \$20.

11 Q And have you recently expressed a desire possibly to sell
12 your property?

13 A No.

14 Q Okay. Have you retained an attorney on your behalf or
15 spoken with an attorney on your behalf --

16 A Yes.

17 Q -- that you've asked to contact Kennecott counsel?

18 A I did, yes.

19 Q And are you aware of generally what that attorney might have
20 said to Kennecott counsel?

21 A Yes.

22 Q Are you aware that that attorney has proposed that you may
23 be willing to sell your property?

24 A No. The attorney was supposed to ask you if you would be
25 interested in opening a dialogue.

1 Q And specifically the dialogue would be relating to possibly
2 you withdrawing your affidavit in exchange for some monetary
3 payment?

4 A Yes.

5 MS. LINDSEY: I have nothing further.

6 MR. REICHEL: Good morning, Mr. Torreano. My name
7 is Robert Reichel. I represent the Department of
8 Environmental Quality in this proceeding. I have what I
9 hope is just a few questions.

10 CROSS-EXAMINATION

11 BY MR. REICHEL:

12 Q You testified about what you've identified as your camp.

13 A That's true.

14 Q And when you constructed the camp, did you require -- did
15 you acquire any sort of building permit from a local
16 government?

17 A Yes, I did.

18 Q And did you, as a part of that, get approval for
19 installation of your drinking water system?

20 A No, I did not.

21 Q Do you know whether or not the County Health Department or
22 any other local agency has approved your use of the spring
23 water that you describe as a source of drinking water for
24 human consumption?

25 A No, they have not.

1 Q Sir, you testified about -- in connection with some of the
2 exhibits that have been put up here that were contained in
3 the application submitted by Kennecott Eagle Minerals
4 Company about these model predictions of mounding in the
5 groundwater; is that correct?

6 A That's correct.

7 Q Now, sir, you're not trained, are you, as a geologist, are
8 you?

9 A I am not.

10 Q Or as a hydrologist?

11 A I am not.

12 Q Would it be fair to say that you do not have any particular
13 specialized knowledge about the effect of predicted mounding
14 on the presence or absence of water on the surface of your
15 property?

16 A Well, I don't believe that you need specialized knowledge to
17 know that water that's four feet higher is four feet higher.
18 I don't believe there's any reasonable person that couldn't
19 understand that deeper water is deeper.

20 Q But again, sir, do you have knowledge that -- assuming for
21 purposes of discussion, that this model accurately predicts
22 mounding in the groundwater precisely where -- if and where
23 there would be any flooding on your property, do you, sir?

24 A Are you asking me if the modeling is accurate?

25 Q No, not at all. I'm saying, assume, as you have earlier in

1 the questions asked by your counsel, that this modeling is
2 accurate. I'm asking you, sir, whether you have any
3 scientifically based knowledge apart from this projection
4 that, in fact, some portion of your property would be
5 flooded on the surface under this modeled condition. You
6 don't have that scientific knowledge, do you, sir?

7 A Well, I have seeps on the surface of my property. The water
8 is already coming out. If you put four more feet of head,
9 then more water is going to come out. The muddy areas will
10 become larger. It doesn't take technical knowledge to
11 understand that. But I do have an associate's degree in
12 electromechanical engineering technology from Michigan
13 Technological University. I have had scientific academic
14 pursuits. I don't have work experience in the field.

15 MR. REICHEL: I have nothing further. Thank you.

16 JUDGE PATTERSON: Mr. Haynes?

17 MR. HAYNES: thank you.

18 REDIRECT EXAMINATION

19 BY MR. HAYNES:

20 Q Mr. Torreano, when Ms. Lindsey was talking to you about this
21 potential purchase by Kennecott of your property, that
22 purchase has not been consummated, has it?

23 A No, it has not been consummated.

24 Q And the dialogue, in fact, has not been opened, has it?

25 A No.

1 Q And in terms of the affidavit that you filed -- that was
2 filed on your behalf with the petition in the Part 632 case,
3 you have no intention now of fulfilling that affidavit, do
4 you?

5 A I do not.

6 MR. HAYNES: No further questions. Thank you.

7 JUDGE PATTERSON: Anything else? Thank you, sir.
8 We'll take a ten-minute break.

9 (Off the record)

10 JUDGE PATTERSON: Mr. Haynes, you ready?

11 MR. HAYNES: Yes. Petitioners call Cynthia Pryor.

12 REPORTER: Do you solemnly swear or affirm the
13 testimony you're about to give will be the whole truth?

14 MS. PRYOR: Yes.

15 CYNTHIA PRYOR

16 having been called by the Petitioner and sworn:

17 DIRECT EXAMINATION

18 BY MR. HAYNES:

19 Q Would you state your name for the record and spell your last
20 name, please?

21 A Cynthia Pryor, P-r-y-o-r.

22 Q And considering what the Judge just said, you're going to
23 have to raise your voice just a little bit --

24 A Oh, okay.

25 Q -- so that people in the room can hear you.

1 A Cynthia Pryor, P-r-y-o-r.

2 Q Ms. Pryor, where do you live?

3 A I live off County Road 510 in Champion Township.

4 Q And just for the record, I'm going to now have you get up

5 from where now you're sitting and look at the large map

6 which will be admitted as Petitioner's Exhibit 32. And on

7 that map, can you point out approximately where your

8 property is?

9 A Yes. We are located right here (indicating).

10 Q Which is on the right side of the map about in the center

11 right?

12 A This -- I'm sorry. This is located at the juncture of AAA

13 heading out to the Yellow Dog Plains and 510 heading south.

14 And we have ten acres there.

15 Q Thank you. And how long have you lived at that location?

16 A 14-1/2 years.

17 Q Do you have a position with the Yellow Dog Watershed

18 Preserve?

19 A Yes, I do.

20 Q What is your position?

21 A I am the executive director.

22 Q And would you describe for the Judge what your duties are as

23 executive director of the Yellow Dog Watershed Preserve?

24 A The executive director is responsible for funding, raising

25 money via grants or other means to promote our programs and

1 projects. We are a public advocacy group and also a land
2 conservancy. We are a nonprofit 501(c)(3) organization.

3 Q Do you know when the Yellow Dog Watershed Preserve was
4 formed?

5 A In 1995.

6 Q And have the activities that you described for the Yellow
7 Dog Watershed Preserve been performed since it was formed?

8 A Yes. Well, I take that back. We have not had an executive
9 director until the year 2003.

10 Q And what, to your understanding, is the purpose of the
11 Yellow Dog Watershed Preserve?

12 A The Yellow Dog Watershed Preserve -- our mission statement
13 is to preserve the Yellow Dog Watershed Preserve in its most
14 natural state now and for future generations. And we work
15 with landowners and other interested groups to promote water
16 quality and preservation of the watershed area.

17 Q Now, on the map that is on the easel which would be
18 Petitioner's Exhibit 32, could you point out for the Judge
19 where the Yellow Dog River is and, after that, where the
20 Yellow Dog Plains are?

21 A Certainly. The Yellow Dog River starts at Bulldog Lake and
22 McCormick Wilderness and it's a wild and scenic river that
23 starts -- well, here's Bulldog. Okay. Here's Bulldog Lake.
24 It starts here. We have the west branch out into McCormick
25 Wilderness, the main branch coming out, and it flows down

1 across the Yellow Dog Plains in this direction, comes up
2 into Lake Independence and then into Lake Superior via a
3 river called the Iron River.

4 Q And you just briefly passed over the Yellow Dog Plains. For
5 the benefit of the hearing, could you point out on this map
6 generally -- well, let me ask. Are you familiar where the
7 Yellow Dog Plains are?

8 A Yes, I am.

9 Q And could you point out on the map where the Yellow Dog
10 Plains are?

11 A This whole region is a high plateau of wetlands and jack
12 pine forest and its located.

13 Q And the reason that you're looking at -- by the way, you've
14 studied contour maps, haven't you?

15 A Yes, I have.

16 Q Have you walked the Yellow Dog Plains?

17 A Yes, I have.

18 Q Do you recreate there?

19 A Yes, I do.

20 Q And how do you recreate there?

21 A In many different ways. I spend a lot of time driving
22 through the region on a lot of the back roads. I spend a
23 great share of my time hiking, birding, just being familiar
24 with the Yellow Dog, blueberry picking, skiing. I've been
25 on a snowmobile on the Yellow Dog Plains.

1 Q Thank you. And for purposes of the record, the Yellow Dog
2 Plains as you've outlined it, seems to be mostly green as
3 opposed to brown on this map. What do you understand that
4 to mean and how would you describe the Yellow Dog Plains'
5 topography?

6 A It depicts more of a flattened area where you see different
7 rises. For example, this whole northern tier of -- rim
8 depicts a very strong decline down into the area. So this
9 is an elevation map, and this is relatively flat. One meter
10 is different, for example, between what flows into the
11 Salmon Trout and what flow into the Yellow Dog River, and
12 this would be right here (indicating).

13 Q Thank you. You can take your seat. Can you describe any
14 other activities that the Yellow Dog Watershed Preserve
15 conducts concerning its mission and in this area?

16 A Not only working with landowners talking about their land
17 use, proposals and purposes, we work with timber companies
18 talking about their forest plans. We conduct tours. I
19 wouldn't call them tours, but they're tours -- ski tours,
20 hiking tours up into the region, inviting the general public
21 to participate and showing them different aspects of the
22 Yellow Dog Plains, of the McCormick Wilderness and
23 properties that the Yellow Dog owns. We do public education
24 forums with school children taking them out onto the river,
25 looking at macro invertebrates. We have citizen training

1 with folks also being involved in volunteer water quality
2 monitoring aspects up on the Yellow Dog Plains.

3 Q Are you familiar with a place on the Yellow Dog Plains
4 called -- it's sometimes called Eagle Rock?

5 A Yes, I am.

6 Q And do some of these activities that you've described take
7 place on or around Eagle Rock?

8 A Yes, they do.

9 Q And, Ms. Pryor, have you read the mining application
10 submitted by Kennecott in this matter?

11 A Yes, I have.

12 Q Have you read the environmental impact statement?

13 A Yes, I have.

14 Q Excuse me. The environmental impact assessment.

15 A Assessment.

16 Q And have you read all the appendices for those documents?

17 A I have looked through them, yes.

18 Q Now, the activities that you describe, do those take place
19 near or on the proposed mining site?

20 A Yes, they do.

21 Q And do you have an understanding of where the orebody is
22 that Kennecott proposed to mine?

23 A Yes, I do.

24 Q And do the activities that you described for the Yellow Dog
25 Watershed Preserve take place over or near the orebody?

1 A In many aspects, yes.

2 Q In which aspects?

3 A Basically taking, you know, folks to take a look at the
4 Salmon Trout River as it rides over the orebody.

5 Q Thank you. Ms. Pryor, we put up on the screen a photograph
6 that is Petitioner's Exhibit 11. And this is photograph 5.
7 Did you take this photograph?

8 A Actually Chauncey Morgan of our organization did.

9 Q But does this photograph depict something with which you are
10 familiar?

11 A Yes, it does.

12 Q And what does it depict?

13 A This is Bentley Lake. And Bentley Lake is on the Reed home
14 property. And the Bentley Trail, which traverses from the
15 McCormick Wilderness passes alongside of this lake. And
16 I've spent a fair amount of time in that region looking for
17 the Bentley Trail and finding parts of it. And so I'm very
18 familiar with this lake.

19 Q And how does this lake relate, at all, to the mining
20 application that we're contesting here?

21 A It is generally one to two miles to the west of the current
22 proposed mine site.

23 MR. HAYNES: Move admission of Petitioner's
24 Exhibit 11, slide number 5.

25 MS. LINDSEY: No objection.

1 MR. REICHEL: No objection.

2 JUDGE PATTERSON: No objection, it'll be entered.

3 (Petitioner's Exhibit 11, slide 5, received)

4 Q Ms. Pryor, could you point out on the large map where
5 Bentley Lake is?

6 A Here (indicating).

7 Q When you say "here" --

8 A I'm sorry. This is located in a wetlands arena that is
9 southwest of the Salmon Trout River and in a generally
10 westerly to southwesterly direction from the proposed mine
11 area.

12 Q Thank you. Ms. Pryor, I've now put up a slide which is
13 slide 6 of Petitioner's Exhibit 11. Can you describe what's
14 in this picture?

15 A This is the Yellow Dog River.

16 Q Did you take this picture?

17 A Yes, I did.

18 Q When did you take it?

19 A Oh, gosh. 2003 or '04, somewhere around in the 2000's.

20 MR. HAYNES: Move admission of slide number 6.

21 MS. LINDSEY: No objection.

22 MR. REICHEL: No objection.

23 JUDGE PATTERSON: No objection --

24 MR. HAYNES: Your Honor, to shorten this up, I'm
25 going to have Ms. Pryor go through a series of slides on

1 Exhibit 11, which she either took or can testify as to the
2 authenticity. And perhaps it would shorten up the
3 proceeding just by offering Exhibit 11.

4 JUDGE PATTERSON: Counsel, I assume this has been
5 exchanged?

6 MR. REICHEL: It has, your Honor. Although
7 without this witness' testimony, I have no way of -- no idea
8 where these photographs were taken. Assuming the witness is
9 prepared to testify that she took all of the photographs in
10 Exhibit 11.

11 MR. HAYNES: Or can testify that she has seen
12 what's depicted in the photograph, yes.

13 MR. REICHEL: Yeah. I don't have a problem with
14 that. It was simply a matter of establishing the foundation
15 for it. If the witness has knowledge that all of the
16 photographs contained in Exhibit 11 accurately depict the
17 areas indicated, I have no objection with respect to that.

18 MR. HAYNES: And just for the record, we're going
19 to be asking the witness to identify all the photographs.
20 About half of them will be used and half of them won't.

21 MS. LINDSEY: I have no objection.

22 JUDGE PATTERSON: Okay. Thank you. So what we're
23 doing is admitting --

24 MR. HAYNES: And I'll identify the sides as we go
25 through them.

1 JUDGE PATTERSON: Okay. All right.

2 Q Ms. Pryor, we put up slide number 8. What does this depict?

3 A This is actually a picture taken from a rock overlooking our
4 property. And it's a depiction of the night sky looking
5 west towards the proposed mine site.

6 Q Okay. What do you believe is the significance of this
7 picture in relation to these proceedings?

8 A Well, to me, this really denotes a -- the starlit sky and
9 the quietude that we now enjoy in that region.

10 Q And do you have a concern about the maintenance of the
11 solitude of the night sky?

12 A Absolutely. We are -- we personally -- I personally live
13 six air miles away from the mine site. And the noise and
14 the dust and the light that will be emitted from that mine
15 will significantly change our solitude there, quietude.

16 Q Ms. Pryor, I put up slide number 9. What does this depict?

17 A This is a aerial photograph that was taken by Chauncey Moran
18 at the face of Eagle Rock.

19 Q We've now put up slide number 12. What does this depict?

20 A This depicts the area around Eagle Rock denoting all of the
21 new roads that have been put in and all of the new timbering
22 that taken place since about 1998 in that region.

23 Q And for the purpose to assist the Judge, where in this is
24 Eagle Rock?

25 A Eagle Rock is center to the photograph.

1 Q And which direction does the photograph face?

2 A This would be an easterly direction.

3 Q So west to east?

4 A Yes, west to east.

5 Q Ms. Pryor, we put up slide number 13. And as soon as we

6 enlarge it, can you tell us what slide 13 depicts?

7 A Yes. This is an aerial photograph again taken by Chauncey.

8 He has done most of the aerial work.

9 Q Excuse me. Just for purposes of foundation, but you have

10 seen these -- these areas from --

11 A I've seen this myself. I was --

12 Q Wait; wait; stop. Slow down.

13 A I'm sorry.

14 Q For their benefit, you have to wait until I finish talking

15 before you start.

16 A Yes.

17 Q I want going to ask, you have seen these areas from the air?

18 A Yes.

19 Q And in reviewing these photographs, do they accurately

20 depict what you have seen from the air?

21 A Yes.

22 Q All right. Back to the slide, what does this depict?

23 A This is a depiction of the Salmon Trout River as it comes

24 out of a wetlands and moves in a westerly direction. This

25 is directly over the orebody.

1 Q When you say "this," you were --

2 A I'm pointing to this section of the Salmon Trout River. In

3 the center here where you have a ponding area is directly

4 over the orebody as I understand.

5 Q And which direction does this photograph face?

6 A This is facing again a west to east. And this location up

7 here (indicating) is the arena of silo and aggregate area

8 proposed in the mine proposal

9 Q Ms. Pryor, we've put up slide number 14. And can you tell

10 us what that depicts?

11 A This is the a depiction of that section of the river which

12 is our understanding lies directly over then orebody.

13 Q When you say "the river," which river?

14 A The Salmon Trout River, sir.

15 Q Ms. Pryor, the next slide is slide number 15. Can you tell

16 us what that slide depicts?

17 A This again is an aerial taken Chauncey Morgan. This depicts

18 that wetlands we were talking about. In the upper

19 right-hand corner is Eagle Rock. This is that wetlands that

20 moves down from Eagle Rock in a southerly direction into the

21 Yellow Dog River here (indicating).

22 Q When you say "here"?

23 A In the southeast corner of this -- or southwest corner of

24 this picture.

25 Q Which way does the picture face?

1 A Generally into a northeasterly direction or north -- north
2 to northeast. AAA Road runs from -- through the center of
3 this picture and the Salmon Trout River is located over
4 here.

5 Q When you say "here," what do you mean?

6 A I'm sorry. The Salmon Trout River is located in the
7 northwest corner of this photo.

8 Q We have now put on the screen slide number 20. Can you tell
9 us what this slide depicts?

10 A This slide is of the Yellow Dog River as it winds its way
11 through the Yellow Dog Plains and very close to a road
12 crossing called the Clowery Road. It is a snowmobile trail
13 in the winter that comes from the south. And it is a --
14 it's very close to that road crossing.

15 Q Do you know approximately how far from the proposed mine
16 site this picture shows?

17 A I would say that this picture is very much in this arena.
18 So it'd be within a mile or so from the proposed mine.

19 Q South of the proposed mine site?

20 A South of the proposed mine.

21 Q Ms. Pryor, we've had put up on the screen now slide number
22 26. Just for foundation purposes, can you tell us what this
23 slide is from?

24 A This is from a organization called the Central Lake Superior
25 Watershed Council. It's a group of watershed groups that

1 belong to this. It's a 501(c)(3) nonprofit organization
2 that does watershed work throughout the Upper Peninsula.

3 Q And is this an organization that the Yellow Dog Watershed
4 Preserve has organization to --

5 A We are a member.

6 Q You're a member of it.

7 A Uh-huh (affirmative).

8 Q And what does this slide depict?

9 A This is a depiction of the boundary of the Salmon Trout
10 Watershed.

11 Q And on this slide, can you depict where the proposed mine
12 site is?

13 A The orebody would be located here (indicating). The Eagle
14 Rock and facilities is located here (indicating).

15 Q Ms. Pryor, you're going to --

16 A I'm sorry.

17 Q Wait; wait. Two things. You're going to have to step back
18 a bit so the Judge can see what you're pointing at. And
19 you're going to have to raise your voice so the microphones
20 can pick up what you're saying.

21 A All right. The proposed mine site is located here where the
22 AAA passes through the watershed and crosses the Salmon
23 Trout. The orebody is located underneath the Salmon Trout
24 here (indicating). Eagle Rock is located to the north and
25 west of the AAA Road.

1 Q Ms. Pryor, we've had put up slide number 27. Can you
2 identify what this depicts?

3 A Yes. This is the Salmon Trout River as it passes through
4 Kennecott property and heading into the location of the
5 ponded area over the proposed -- over the orebody.

6 Q Ms. Pryor, we put slide number 31. And can you tell us what
7 this depicts?

8 A This is a the depiction of the mouth of the Salmon Trout as
9 it comes into Lake Superior.

10 Q Ms. Pryor, now we've put up slide number 32. And for
11 foundational purposes, can you tell us what this -- where
12 this comes from?

13 A The foundation of this map was taken from the Central Lake
14 Superior Watershed website depicting the Yellow Dog
15 Watershed area.

16 Q So this is the same group that prepared slide number 26 --

17 A Yes.

18 Q -- for the Salmon Trout River?

19 A Yes.

20 Q And again does this slide depict the Yellow Dog Watershed?

21 A Yes.

22 Q And would you approach, please? I see that there's a red
23 circle on -- or a red oval on this slide. Can you tell us
24 what that is?

25 A This is depicting the general area of the proposed mine

1 site, which is located north of the boundary of the Yellow
2 Dog Watershed.

3 Q And just so the record is clear, because when you were
4 looking at Exhibit 32 before, it wasn't exactly clear to me.
5 Could you -- on this slide, could you trace the Yellow Dog
6 to Lake Independence and then into Lake Superior just so the
7 record is clear?

8 A Bulldog Lake, which is its source, the west branch coming
9 and joining together, going along through the middle of the
10 Yellow Dog Plains through Pinnacle Falls, through several
11 townships ending up into Lake Independence and then
12 continuing on into Lake Superior via the Iron River outlet
13 from Lake Independence.

14 Q Thank you. Ms. Pryor, I also noticed on this slide that
15 there is a square. It looks to be south of the proposed
16 mine site. Can you describe what that square is?

17 A That square is property that the Yellow Dog Watershed
18 Preserve owns 160 acres in that location south of the
19 proposed mine site.

20 Q And when did the Yellow Dog Watershed Preserve acquire this
21 property?

22 A We obtained it through a NAWCA, North American Wetlands
23 Conservation Act, grant in 2003.

24 Q And what was the purpose of the preserve's purchasing this
25 property?

1 A We were -- Yellow Dog Watershed Preserve was in a
2 partnership with a consortium of organizations looking to
3 purchase properties or obtain properties through the
4 Wetlands Grant enabling us to preserve properties in our
5 region.

6 Q Does the preserve own other properties in the region?

7 A Yes.

8 Q And can you describe generally where they are and what their
9 purpose is?

10 A Yes. We own four parcels; one at the mouth of the Yellow
11 Dog 160 acres as it enters into Lake Independence, 12 acres
12 that are located -- and that is in Powell Township -- 12
13 acres in Ishpeming Township along a stretch of waterfall
14 arenas, Pinnacle Falls, which is located in Champion
15 Township, which is a 40-acre parcel surrounding the Pinnacle
16 Falls on the Yellow Dog River.

17 Q Do these parcels all -- are they all located within the
18 Yellow Dog Watershed?

19 A They are.

20 Q Ms. Pryor, we've had put up on the screen slide number 33.
21 Can you describe what this is?

22 A This is an aerial photograph of the property owned by the
23 Yellow Dog Watershed Preserved obtained in 2003 from a NAWCA
24 grant, a partial picture of that land?

25 Q So this relates to the 160-acre square parcel that was shown

1 on the previous slide?

2 A Correct.

3 Q And can you -- have you visited this portion of the area?

4 A Many times.

5 Q Can you describe the flora that exists there in general
6 terms?

7 A Certainly. Entering into the property is an old road that
8 follows a -- kind of a humpback scenario with old growth
9 pine, red pine, white pine. And on either side of that are
10 wetlands, bogs heading off to the east and a huge wetlands
11 arena that you see of tamarack, of black spruce and other
12 type of species. And then as you come to the ponding area,
13 there is a old beaver dam that has been created there. And
14 there's been -- it's an archival beaver dam. As you cross
15 that beaver dam arena, then you get into an upland all the
16 way to the Yellow Dog River which consists of large growth
17 white pine and other species.

18 Q And what is the approximate distance between this property
19 and the proposed mine site?

20 A I think it's 1.3 miles. I believe it's 1.3 miles.

21 Q Okay. We've put up slide number 35. And can you describe
22 what this is?

23 A This is another shot of that property indicating the whole
24 wetlands arena that is located in the main portion of that
25 property. That then flows directly north to create the

1 Salmon Trout River.

2 Q Ms. Pryor, we put up slide number 38. Can you tell us what
3 this depicts?

4 A This is a depiction of -- do you need the person who that
5 is? But it's a scientist working with us to study the water
6 depth and penetration in that wetlands on our property.

7 Q We've put up on the screen slide number 39. Can you tell us
8 what this depicts?

9 A This is the depiction of water being drawn actually from the
10 seeps. But we have a program that's been ongoing for the
11 last three years taking water samples for water chemistry
12 work, developed a baseline of the Yellow Dog Plains.

13 Q And what is the purpose for the preserves developing a
14 baseline for the watershed?

15 A To obtain a good baseline understanding of the current water
16 quality that exists on the Yellow Dog Plains, as it exists
17 on the Yellow Dog River, on the Salmon Trout and its
18 tributaries and many of the groundwater areas and springs.

19 Q Mr. Pryor, we put up slide number 40. Can you describe what
20 this slide shows?

21 A This is a water bug. This is stonefly larvae that exists in
22 many of the rivers. It's very, very common. This is a
23 picture that Chauncey Morgan took depicting the type of
24 macro invertebrates that exist in the region.

25 Q And I think you testified, but I just want to clear it up,

1 that the macro invertebrates are part of the fauna that you
2 study in the area?

3 A Yes. It's an indicator of water quality.

4 Q Ms. Pryor, we put up slide number 45. Can you tell us what
5 this depicts?

6 A This is a depiction of an outing that took place to Pinnacle
7 Falls a couple springs ago, one of our normal hikes to the
8 Pinnacle Falls area which is our property, and an indication
9 of the folks that participated and on the Yellow Dog River.

10 Q Does the Yellow Dog Watershed Preserve have any concerns
11 about its ability to carry out its various functions if the
12 proposed mine is, in fact, allowed to be operated?

13 A If the mine is allowed to be operated, we will be absolutely
14 shifting our functions to more monitoring than we are doing
15 now. Currently we have 22 sites on the Yellow Dog River.
16 We have monitoring sites on the north rim. We would have to
17 extensively increase our monitoring of that area if this
18 mine would go in.

19 Q Why is that?

20 A We have established a baseline. We would then be monitoring
21 for any contamination or any change in that baseline.

22 Q And if the proposed mine were, in fact, permitted and its
23 activities watched, would that affect in any way the -- any
24 other functions of the Yellow Dog Watershed Preserve and
25 using the Yellow Dog Plains?

1 A I would think that all of our work would intensity in terms
2 of public education, in terms of taking more people out than
3 we probably do to see an arena that is being changed.

4 Q And would it affect the use of the area by preserve members?

5 A Absolutely. The --

6 Q How is that?

7 A Yes. The arena that is currently -- the Yellow Dog
8 properties that we own do represent the quiet arena that we
9 value on the Yellow Dog Plains. Pinnacle Falls, for
10 example, is a -- is a waterfall that is visited by many.
11 Our land that is located just south of the mine is an area
12 that is full of migrating birds and other creatures,
13 wildlife. We have moose on that property. That is going to
14 change given our proximity to that mining site.

15 MR. HAYNES: Ms. Pryor, thank you very much. I
16 have no further questions at this time.

17 MR. WALLACE: May I please go?

18 CROSS-EXAMINATION

19 BY MR. WALLACE:

20 Q I have a version of my last question. And would you mind,
21 Ms. Pryor, pointing out from the headwaters to Lake Superior
22 the flow of the Salmon Trout of Exhibit 32?

23 A Yes. The headwaters of the Salmon Trout is part of this
24 large wetlands. Like I say, there's one meter's difference
25 between what goes to the Yellow Dog and what's come up to

1 the Salmon Trout. The Salmon Trout then moves in a
2 northeasterly direction. All of these tributaries then come
3 out of the groundwater springs located on the northern rim,
4 join together here and then move on up and come out at
5 Salmon Trout Bay in Lake Superior.

6 Q And would you mind pointing out to the Court the boundary of
7 the Huron Mountain Club which is depicted in yellow there?

8 A That boundary (indicating).

9 MR. WALLACE: Thank you.

10 MS. LINDSEY: We have no questions, your Honor.

11 MR. REICHEL: No questions.

12 JUDGE PATTERSON: Mr. Eggan?

13 MR. EGGAN: None, your Honor.

14 JUDGE PATTERSON: Do you want to break for lunch a
15 little early? It's ten to 12:00.

16 MR. HAYNES: Sure. We can do that.

17 JUDGE PATTERSON: As long as we're between
18 witnesses.

19 MR. HAYNES: All right. That's fine.

20 JUDGE PATTERSON: Okay.

21 (Off the record)

22 MS. HALLEY: Petitioners call Gale Hausfeld.

23 REPORTER: Do you solemnly swear or affirm the
24 testimony you're about to give will be the whole truth?

25 MS. HAUSFELD: Yes.

DIRECT EXAMINATION

BY MS. HALLEY:

Q Could you state your name and spell your last name for the record?

A Gale Hausfeld, H-a-u-s-f-e-l-d.

Q How old are you?

A 49.

Q What is your physical address?

A 348 County Road 550.

Q What is that commonly known as?

JUDGE PATTERSON: Could you speak up a little bit?

I don't think they can hear you in the back.

A 348 County Road 550.

Q And what is that location commonly known as?

A Picture Bay Motel.

Q This is Exhibit 12, photo 3. Are you familiar with this location?

A Yes.

Q What is it?

A Picture Bay Motel and my residence.

Q And your residence?

A Uh-huh (affirmative).

MS. HALLEY: Move to admit Exhibit 12, number 3, slide 3.

MS. LINDSEY: No, objection.

1 MR. REICHEL: No, objection.

2 JUDGE PATTERSON: No objection, they will be
3 entered.

4 Q Where is Big Bay located?

5 A About 25 miles north of Marquette.

6 Q How many people live there?

7 A Probably between 150 and 200 people.

8 Q How long have you lived in Big Bay?

9 A Almost seven years.

10 Q And do you run the Picture Bay Motel?

11 A Yes.

12 Q How long have you ran the motel?

13 A Almost seven years.

14 Q What is it that brings guests to your hotel?

15 A The area, the fishing, the hunting, the hiking, the lake,
16 the swimming, the park in the area. Waterfalls, it's just a
17 beautiful area of mountains.

18 Q Do you advertise access to recreation as a selling point for
19 your hotel?

20 A Yes.

21 Q Do you have any other occupation?

22 A I'm a realtor also, at Huron Mountain Realty on Big Bay.

23 Q And what vicinity do you typically list and sell land?

24 A Just pretty much in the area within a probably 15 mile
25 radius.

1 Q 15 mile radius?

2 A 15/20 miles.

3 Q Of what?

4 A Of Big Bay.

5 Q Have you made any sales this year?

6 A No.

7 Q How about in 2007?

8 A No.

9 Q Before 2007 what was the average number of sales you made
10 per year?

11 A Between three and five, three and six.

12 Q To what do you attribute the drop in sales?

13 A The economy for one thing and the other would be a lot of --
14 well, people when they call the number one of the things
15 that they ask is about the mine and that.

16 Q What do they ask?

17 A They ask if the mine is going in and what's going with it
18 and that they will not buy in the area until they find out
19 what is going to happen in it. And if it does go in they
20 won't buy.

21 Q And what has that done to your earnings as a realtor?

22 A There is no earnings.

23 Q In addition to the Picture Bay Motel do you own other
24 properties in Marquette County?

25 A Yes.

1 Q Where are they?

2 A They are both in Ishpeming Township.

3 Q Can you describe the vicinity of those properties? Where
4 are they generally speaking?

5 JUDGE PATTERSON: Is there a number on that
6 exhibit?

7 MS. HALLEY: This is DEQ Exhibit 25, figure 21.

8 A Okay. This is Bear Lake; we have property just north of the
9 Yellow Dog there.

10 Q Gale, could you move to the other side so that he can see.
11 Thank you.

12 A Bear Lake, which is right on 550 just north of the Yellow
13 Dog. And this is Johnson Creek and we have property right
14 there, right on the creek and there are beaver ponds also
15 back in the pines.

16 Q Okay. Thank you. To which water shed does the Johnson
17 Creek belong?

18 A Yellow Dog.

19 Q And how many acres do you own on Johnson Creek?

20 A 40.

21 Q And how many at the parcel north of the Yellow Dog?

22 A Ten.

23 Q About how far are your properties from the proposed mine
24 site?

25 A As a crow flies probably less than 10 miles.

1 Q Do you access those properties by public roadways?

2 A Yes.

3 Q Which ones?

4 A The ten acres is on 550 and than the Wilson Truck Trail,
5 that's how we access the 40.

6 Q And what does the Wilson Truck Trail connect up to?

7 A 510, it runs from all the way to 510.

8 Q And is it your understanding that the roadways you use would
9 also be used as the haul route for the proposed mine?

10 A Yes.

11 Q Do you believe that having those roadways used as the haul
12 route would impact your ability to use and enjoy your
13 property?

14 MS. LINDSEY: I'm gong to object to leading.

15 JUDGE PATTERSON: I sustain it; can you rephrase.

16 Q What do you believe the impact of the use of those roadways
17 as a haul route would be?

18 A It would be an incredible amount of traffic and noise,
19 vibration, it would just be terrible, it would.

20 Q And I have to ask you to speak up again.

21 A Okay.

22 Q And what do you use these two properties for?

23 A The 40 acres we're building a log home, we intend to live
24 there someday, it's our camp.

25 Q This is Petitioners Exhibit 12, slide five; are you familiar

1 with this scene?

2 A Yes.

3 Q What is it?

4 A It's the log home that my husband and I are building.

5 Q And why did you choose this site to build your log home?

6 A The creek is right down about 60 feet and we can see Lake
7 Superior to the east and we own almost to the top of the
8 mountain on the other side. It's just a beautiful,
9 beautiful, loss of wildlife.

10 MS. HALLEY: Move to admit Exhibit 12, photo five.

11 MS. LINDSEY: No objection.

12 MR. REICHEL: No objection.

13 JUDGE PATTERSON: No objection, it'll be entered.

14 Q This is Exhibit 12 slide six; are you familiar with this
15 location?

16 A Yes.

17 Q What is it?

18 A That's the beaver pond and the Johnson Creek actually runs
19 right through there.

20 Q Is this near the site that you're building the log cabin?

21 A Yes.

22 Q How far away from there is it?

23 A Oh, it'll be 600 feet maybe, 5-/600 feet.

24 Q And do you use this are for any recreational purposes?

25 A Yes. I hunt just right up from there, I have my hunting

1 blind, I look out over there and my dog. I take him down
2 there, he swims in the pond and I'll throw him stick and
3 hiking, I hike all around there.

4 Q Are you a member of the Yellow Dog Watershed Preserve?

5 A Yes.

6 Q How long have you been a member?

7 A I think about five, six years.

8 Q What is the purpose of the Yellow Dog Watershed Preserve?

9 A It works with landowners and timber companies and does, to
10 protect the water.

11 Q Any water in particular that it tries to protect?

12 A The Yellow Dog but I think pretty much the whole watershed,
13 I believe.

14 Q And do you have a particular role at the Preserve?

15 A I'm a director.

16 Q What does that mean; what do your duties include?

17 A There's five directors and we vote on whatever is brought to
18 the table and just make a decision on what we do.

19 Q Have you been to the Yellow Dog Plains in the vicinity of
20 the proposed mine?

21 A Yes.

22 Q How often do you go there?

23 A In the summer at least 20 times and in the winter probably
24 about the same. I snowmobile, so I go up there
25 snowmobiling.

1 Q Do you go with other people?

2 A Yes.

3 Q Like who?

4 A Friends, family and people from the Yellow Dog, from the --

5 from the Yellow Dog.

6 Q And what are the activities that you commonly do there?

7 A I pick berries, we ride our Ranger up there, we go hiking,

8 go to the waterfalls, just -- it's just a beautiful area.

9 To be up there at night is, especially on a full moon, it's

10 just beautiful, it's like you can touch it.

11 Q Do you visit the site in the winter?

12 A The --?

13 Q The Plains in the vicinity of the mine?

14 A Yes; yes.

15 Q And what do you do there in the wintertime?

16 A I ride my snowmobile and there's several camps up there that

17 we visit camps on our sleds.

18 Q Do you believe that your ability to use that area would be

19 affected if the mine is indeed constructed and operates?

20 A Yes.

21 Q How?

22 A It already is affected with all the trucks up there, there's

23 way more dust, the blueberries are covered in dust. A lot

24 of it, the traffic, the noise, the security, you know. They

25 can be stopping you up there, it's very -- will be very

1 affected.

2 Q Do you plan to continue using the Yellow Dog Plains in that

3 vicinity?

4 A Yes.

5 Q And would you do so if the mine were operating there?

6 A Probably not.

7 Q Why not?

8 A Because I believe that it'll be, it just won't be the same

9 there, it'll be -- you won't be able to trust it. It would

10 be contaminated, the air, the soil, the water, everything is

11 going to be contaminated.

12 Q Do you use the Salmon Trout River?

13 A The mouth of the Salmon Trout.

14 Q This photograph has already been admitted, it is Exhibit 11,

15 slide 31; can you tell us what this is a photograph of?

16 A The Salmon Trout.

17 Q Can you go over and explain where the Salmon Trout is in

18 this picture?

19 A It comes out right here.

20 Q Out into what?

21 A Out into Lake Superior. We have a cabin cruiser boat and we

22 anchor out here, this is on the -- just hang out here.

23 There's a nesting pair of eagles that we watch every year.

24 Q This is Exhibit 18-I; can you describe what this is a

25 photograph of?

1 A That's the eagles right at the mouth of the Salmon Trout,
2 one of them.

3 Q How do you know it's at the mouth of the Salmon Trout?

4 A Well, I've been watching them for six years.

5 Q Watching them do what?

6 A They have their babies and we watch their -- we watch them
7 feed their babies. They come in, they'll go to Conway Lake
8 or which ever lake in the club and than they'll come in
9 carrying a fish, come in to feed their babies.

10 MS. HALLEY: Move to admit 18-I.

11 MS. LINDSEY: I'm not sure I've heard a foundation
12 for what this picture is? She said she recognized eagles
13 but I'm not sure we've heard the foundation for where this
14 is taking or who took it or anything like that.

15 Q Do you know who took this picture?

16 A No, I don't.

17 Q But you can testify that it is a picture of the eagles nest
18 at the mouth of the Salmon Trout River?

19 A The two trees right there, that is -- it's pretty
20 distinctive.

21 Q And that's based on what?

22 A Based on what, me seeing them, being there and seeing them,
23 watching through binoculars and.

24 MS. LINDSEY: No objection.

25 JUDGE PATTERSON: Okay. Thank you.

1 MR. REICHEL: No objection.

2 JUDGE PATTERSON: No objection, as 18-I.

3 MS. HALLEY: 18-I.

4 JUDGE PATTERSON: It'll be admitted.

5 Q Are you planning to continue these activities at the mouth
6 of the Salmon Trout River, the snorkeling, swimming,
7 fishing?

8 A Yes; yes.

9 Q And would you do that if the mine were operating?

10 A Probably not.

11 Q Why not?

12 A Because I don't think the water will be what it is now, I
13 think it would be contaminated and it won't be clean. It'll
14 be polluted.

15 Q Are you concerned about the proposed mine on the Picture Bay
16 Motels business?

17 A Yes. Our business is at least 95/97 percent tourism and if
18 the area is destroyed the people are not going to come. In
19 Big Bay that's what it survives on is tourism, the whole
20 town.

21 Q And are you concerned about the impacts of the proposed mine
22 on your business as a realtor?

23 A Yes, it already has impacted it.

24 Q And why?

25 A Because I, there just isn't anybody calling knowing, when

1 they do they ask about what's going on with the mine.

2 People down here get bits and pieces of what is happening
3 and with the permit being granted they think that it's all
4 over, that it's happening and.

5 Q If the mine were to proceed would that impact the Yellow Dog
6 Watershed Preserves ability to carry out its mission?

7 A Yes, they would -- it would be probably a 100 percent of the
8 time just about would be spent monitoring and watching
9 what's happening.

10 MS. HALLEY: No further questions.

11 CROSS-EXAMINATION

12 BY MS. LINDSEY:

13 Q Ms. Hausfeld, your property is about 15 miles from the
14 proposed mine?

15 A About -- which?

16 Q Well, you have, let's start with there's the ten acre
17 property -- ten acre property Ishpeming County or township.

18 A Uh-huh (affirmative).

19 Q Is that about 15 miles from?

20 A That's probably about ten miles, the motel is probably about
21 five mile -- 15 miles.

22 Q So is that just a correction from the affidavit that you
23 submitted where you said it was 15 miles?

24 A Well, she asked me about the two properties, the 40 acres
25 and the ten acres.

1 Q Correct. So the Picture Bay Motel is 15 miles but did you
2 not also say in your affidavit that the ten acre property
3 was also 15 miles?

4 A I might have but it's, I probably was thinking the motel. I
5 don't know.

6 Q And you were talking about real estate; you obviously
7 recognize the economy has changed a lot in the last couple
8 of years and that affects real estate purchasing?

9 A Yes.

10 MS. LINDSEY: I have nothing further.

11 MR. REICHEL: I have no questions.

12 MS. HALLEY: Just one clarification.

13 RE-DIRECT EXAMINATION

14 BY MS. HALLEY:

15 Q The parcel on which you're building your home; how far away
16 from that is the proposed mine site?

17 A Ten miles or less, it would closer than the ten acres.

18 MS. HALLEY: No further questions.

19 JUDGE PATTERSON: Thank you.

20 MR. HAYNES: Your Honor, We're going to do the
21 promised switch now.

22 JUDGE PATTERSON: Okay.

23 MR. WALLACE: Petitioners call Mr. Paul Townsend,
24 your Honor.

25 REPORTER: Do you solemnly swear or affirm the

1 testimony you are about to give will be the whole truth?

2 MR. TOWNSEND: Yes, I do.

3 DIRECT EXAMINATION

4 BY MR. WALLACE:

5 Q Please state your name and address for the record, sir.

6 A My name is Paul Townsend; I live at 518 Lakeland Avenue in
7 the City of Gross Point, Michigan.

8 Q And what is your occupation, sir?

9 A I'm retired.

10 Q What are you retired from?

11 A I was a practicing attorney for 39 years and nine or ten
12 months with the Dykema Gossett Law Firm. I was a labor law
13 specialist.

14 Q Sir, what is your connection to the Huron Mountain Club?

15 A My wife's family had been members there for a long time; she
16 was herself a member from the 1960's. In 1973 I became a
17 member when we bought the McMath cabin at the club.

18 Q Have you served in various positions with respect to the
19 club, sir?

20 A Yes.

21 Q And what are those?

22 A In 1972 just a year before I bought the McMath cabin I went
23 on the board of directors and was expected to become the
24 clubs secretary. As it turned out he died right away in a
25 plane crash in Illinois and I became the secretary almost

1 immediately at that point. I served for 12 years as the
2 clubs secretary and than more recently in 2001 I became the
3 clubs president and I served for three years as the
4 president of the Huron Mountain Club. I've served on the
5 finance committee and the land and forest committee during
6 the time that I was on the board, this most recent period.

7 Q Have you yourself taken advantage of the property
8 encompassed by the Huron Mountain Club?

9 A Yes.

10 Q And how have you done that, sir?

11 A It's primarily a recreational club organized around hunting
12 and fishing, hiking, birding, swimming, all kinds of outdoor
13 activities. And I have engaged in all of those for the
14 entire time.

15 Q How about your family?

16 A And they have also, our children are also associate members.

17 Q How about other members of the club; do they hunt and fish
18 there?

19 A Yes. A lot of them fish, a lot less are hunters. I would
20 venture to say there are only a handful of deer hunters
21 among out members. All of our employees who live there are
22 ardent deer hunters. Quite a lot of us are grouse hunters;
23 I would venture to say that at least half of the members,
24 half to three-quarters of the members fish. And a lot of
25 them bird, a lot of them enjoy gathering mushrooms,

1 observing wild flowers, all the things you -- hiking,
2 climbing mountains, that sort of activities.

3 Q What does the Huron Mountain Club consist of in terms of
4 property?

5 A In terms of property?

6 Q Yes, sir?

7 A Well, it's the yellow boundary on this map; it shows the
8 northern yellow boundary. The McCormick tract is also in
9 yellow on the lower left side but our property is the
10 northern, bounded by the northern yellow lines. It includes
11 19,400 acres of land and ten inland lakes which have an area
12 in the aggregate of about 2,477 acres. We have several
13 rivers, several trout streams, I said ten inland lakes.

14 We have about 11 miles of Lake Superior shoreline.
15 The central core of the club is what we call our preserved
16 area, it is an area that is, was never cut before we bought
17 it, before we acquired it. And the club has never done any
18 logging in that preserved area. So that you have as I say a
19 preserved area of a little under 10,000 acres in total
20 including the water surface of the lakes that are in that
21 area.

22 Q And if you would sir, if you could step up to Exhibit 32 for
23 just a moment and trace the boundary of the club and point
24 out the preserved area?

25 A Well, I'll do my best. Let's see what I can do here. The

1 yellow boundary starts out here (indicating), comes down
2 around the Cedar Creek area. Then goes back down around the
3 Salmon Trout so that we own within that yellow area a total
4 acreage of about a little less than 22,000 acres. The lakes
5 that you see here Howe Lake, Rush Lake, Ann Lake, Mountain
6 Lake, the three Pine lakes, Trout Lake, Ives Lake, Candy
7 Lake. It's this little bitty sliver of a lake in here; it's
8 in a deep canyon.

9 MR. WALLACE: For the record we'd like to offer
10 Exhibit 32 and without objection is it?

11 MS. LINDSEY: No objection.

12 MR. REICHEL: No objection.

13 JUDGE PATTERSON: Without any objection Exhibit 32
14 will be admitted.

15 Q And can you tell us sir, what part of Exhibit 32 and the
16 Huron Mountain property constitutes the preserved area.

17 A I better go back.

18 Q I'm sorry.

19 A When it started out there was only about 5,000 acres in the
20 preserved area and we amended the by-laws four times since
21 than to add additional property to it. The most recent
22 addition resulted in everything south of the road north of
23 the Howe and Rush lakes and the Pine lakes. In that block
24 be included except for the area around Cedar Creek and
25 except for some of the area around Eyes Lake where there was

1 once a farm.

2 It has never been preserved as the central core
3 area had. Now, we than also added a big block of land in an
4 amendment to the by-laws down at the mouth of the Salmon
5 Trout. That area that you saw in the photographs that to,
6 it showed you, the swale land at the bottom of the Salmon
7 Trout. And the woods down there, about a thousand acres of
8 that went into the preserved area.

9 Q Mr. Townsend, did you collect for the purposes for this
10 proceeding a collection of photographs that depict the lands
11 and waters of the Huron Mountain Club?

12 A Yes, I did.

13 MR. WALLACE: What I'd like to do is, with Mr.
14 Townsend run through these photographs and offer them as a
15 composite exhibit. The purpose of it being to kind of give
16 a virtual tour of the club property. If you could start
17 with Exhibit 33, number 1 please?

18 THE WITNESS: What happened to the power point?

19 MR. WALLACE: We're going to do it by --

20 THE WITNESS: Well, there we go, now we're there.

21 All right.

22 Q We're going to run through these photos Mr. Townsend and if
23 you could tell the Court what is depicted in each
24 photograph?

25 A This photograph is taken from the -- very near the very top

1 of Huron Mountain. It's on a shoulder right near the top of
2 the mountain looking in a southeasterly direction. The
3 bottom of Huron Mountain is Ann Lake and then over the
4 little ridge of land there you'll see the northern part of
5 Mountain Lake which is the very long, three-mile long lake
6 in the map up there. Across the lake is Mt. Homer and in
7 the distance on the horizon are the Yellow Dog Plains.

8 Q Can you identify what's depicted in slide number two, sir?

9 A This shot is taken from the Breakfast Roll, another
10 mountain, looking in a westerly direction and it depicts on
11 the left side of the photograph is Ives Lake. And then the
12 two lakes that you see on the right side are Third Pine Lake
13 and then Second Pine Lake. And in the far side part of
14 Second Pine Lake you can see the narrows that leads into
15 First Pine Lake. In the distance the nearest of the large
16 mountains in the distance is Mt. Ives and then to its right
17 and farther off in the distance is Huron Mountain.

18 Q Number three?

19 A Ives Lake you'll see is quite a light, high elevation
20 compared to the other two lakes down below. It flows down
21 through a long rocky gorge to get down to the Pine lakes.
22 This is a view from the Fortress Mountain looking in a
23 northeasterly direction, with First Pine Lake in the
24 foreground, Lake Superior out beyond the beach and First
25 Pine Lake just appearing around the narrows over to the

1 right side.

2 Q Sir, do you and other members of the club fish these inland
3 lakes?

4 A Oh, yes.

5 Q What are some of the fish populations that you know exist
6 there?

7 A Pine Lake has the greatest variety of fish in it, small
8 mouth bass, northern pike, lake trout and rainbow trout.
9 Rainbow trout that we didn't put there; they came up out of
10 Lake Superior and populated the lake. They live in the
11 lake; they go up Mountain Stream to spawn. Second Pine Lake
12 has small mouth bass and pike basically. It's not deep
13 enough to have lake trout in it. Sailing; Pine Lake is also
14 where our fleet of sailboats is berthed. There are sailing
15 races in the summertime two days a week, Flying Juniors and
16 Sunfish classes of sail boats.

17 Q What's depicted in slide number four, sir?

18 A This is Ives Mountain which is a mountain to the east of
19 Ives Lake. You can pick it out of the map there. It's the
20 big block of mountain just southeast of Ives Lake. On the
21 far side of it is the valley of the Salmon Trout.

22 Q Number five just coming up?

23 A This is just a close-up view of the earlier photo that from
24 the Breakfast Roll you can see Second Pine Lake in the
25 foreground -- I'm sorry -- Third Pine in the foreground, and

1 then Second Pine Lake in the narrows leading the First Pine.

2 Out in the distance are the Huron Islands on Lake Superior.

3 Q And what is shown in number six, sir?

4 A We're now down to the Salmon Trout River. You've seen --

5 your Honor, you've seen most of our lakes now; now we're on

6 the rivers. This is a piece of the Salmon Trout River

7 upstream from the middle falls. It's within the Huron

8 Mountain Club property but not as far up as where the river

9 first enters. When the river first enters our property it

10 comes down over what's called the upper falls and it's just

11 a long rocky slope where the waters just running down this

12 long slope. This lower falls we'll come to in a minute.

13 This is the pool -- a couple of pools right above the middle

14 falls.

15 Q The next one?

16 A Trout in this stream. This is going to be a view of the

17 middle falls and the pool below the middle falls when we get

18 there. There it is.

19 Q And this is still the Salmon Trout?

20 A Salmon Trout River.

21 Q You may have said this sir but about how many miles of the

22 Salmon Trout flow through the Huron Mountain Club property?

23 A The best estimate I can make and this is not as the crow

24 flies but if you walk it with all it's meanderings it works

25 out to be about 11 miles.

1 Q The next one?

2 A This is just downstream from the middle falls pool, there's
3 actually a foot bridge that crosses the river right there
4 and this is right below the foot bridge. Right here the
5 river has flattened out, it's out of that rocky gorge and
6 it's in a more plateau like area for a mile and a half, two
7 miles.

8 Q Next. What do we see in slide number six, sir?

9 A Well, that's an uncut, absolutely virgin hemlock forest and
10 that's in the vicinity of the Salmon Trout River. That
11 piece of land is not in the preserved area believe it or
12 not. It was not thought by Aldo Leopold to be large enough
13 and contiguous enough with the rest of the preserved area to
14 include it. I believe it will be in some day as the members
15 realize its unique value.

16 Q Do you have a sense of over what period of time it has not
17 been logged?

18 A Never. You don't find a tree stump in there.

19 Q And the principle trees in this stand?

20 A Well, whenever you find a forest like with nothing growing
21 on the ground, that's a hemlock forest. If that were a
22 maple forest there would be maple seedlings that
23 (indicating) high, maybe 15 years old. But in a hemlock
24 forest that's what you get; there's nothing there. And from
25 a game standpoint most people would not like to see that

1 condition but the beauty to it is that we can keep it as a
2 really uncut place and scientists can use it to measure
3 other forest conditions by it.

4 Q And has scientists in fact studied the old growth portion of
5 the Huron Mountain Club property?

6 A Yup.

7 Q Next.

8 A This is just further down from the last scene we saw of the
9 Salmon Trout River, still in the fairly flat area before we
10 start down another precipitous drop.

11 Q What's shown in number eleven, sir?

12 A More of the same but a little, still a little farther down
13 stream in what we call the meadows area. It's really very
14 flat, very sandy in there and this is Joe Pyeweed on the
15 lower left corner, Snake Creek comes up into the river from
16 the east side at the very top of the picture up there.

17 Q What about number 12?

18 A Now, we're farther down the stream and this is a pool just
19 above the lower falls. And right from here on down, once we
20 get down below the lower falls you're in water that the
21 coaster brook trout cannot get to. The rainbow trout can
22 jump the lower falls but the brook trout can't. So from
23 here on down is where you're going to be in the coaster
24 spawning habitat.

25 Q And approximately how many miles at this point are we

1 looking from Lake Superior in Exhibit 12?

2 A Oh, I'd say five miles.

3 Q Thirteen.

4 A Yeah, that's about right. Now, this is the lower river,
5 this is ideal coaster spawning country. It's pretty sandy
6 in there but they know how to get their reds dug over a
7 little springs that come up.

8 Q So you're saying Exhibit 13 shows an area in which the
9 coasters spawn?

10 A Yes; yup.

11 Q How about number fourteen, sir?

12 A This is a suspension bridge at Murphy's a little farther
13 downstream from where we were. It allows the
14 fishermen if they don't want to get in the river to get from
15 one side to the other, halfway down to the road bridge.

16 Q And what do we see in slide 15?

17 A A coaster. You see him right in the middle of the -- well,
18 you see his shadow underneath him or her. The only thing
19 that's really unusual about that is that they rarely are out
20 in the open like that. They usually are skulking along the
21 banks underneath the alders and stuff but that fish was just
22 sitting out in the open just below the road bridge at County
23 Road KK. That's probably a three to four pound fish.

24 Q Number 16?

25 A A brook trout. We're on a different river now, this is

1 Mountain Stream, Mountain Lake drains down a rocky stream,
2 this is all sandstone, the base of that waterfall. And
3 below it, it's all granite and slowly that sandstone is
4 getting eroded back but it's about, I'd say it's a 30 foot
5 high waterfall and maybe 60 to 70 feet across this way. And
6 once it gets below that we'll see a picture from up by the
7 side of it in a minutes.

8 Q And what tributary is this falls occur?

9 A This is Mountain Stream.

10 Q Next?

11 A Now, you're in the trail up along side the very top of the
12 waterfall looking down to the pool.

13 Q Number 18; what's shown in number 18, sir?

14 A The kids like to swim and get underneath that waterfall.
15 This is farther down in the gorge on Mountain Stream, it's
16 very rocky and this picture and the next picture you'll see
17 we're now going over the granite coming down farther.

18 Q Number 19; what do you see in slide 19?

19 A This is just farther down Mountain Stream, that's a long
20 rocky slope there.

21 Q And approximately where are we on the map, Exhibit 32 at
22 this point?

23 A Right about in here (indicating), right here.

24 Q So does --

25 A Mountain stream goes down into Pine Lake like that.

1 Q Are there fish populations in Mountain Stream, sir?

2 A There are brook trout and some small mouth bass, they wash
3 over the waterfall and if they survive you may find a bass
4 in there. Rainbow trout come up into that stream down below
5 this spot; they can't get above here to spawn. They come up
6 out of Pine Lake, come up and spawn in this stream.

7 Q Are these waters fish able?

8 A Oh, yeah. Well --

9 Q It looks challenging that's why I ask?

10 A I've had some disasters in there. Every rainbow trout I've
11 hooked in there has gone downstream and said goodbye. I've
12 never been able to land one. You get a little bit bigger
13 open water in the Salmon Trout River and that's, the
14 steelhead fishing in there is very popular with the ardent
15 fisherman.

16 Q 20?

17 A Now, we're going to take a look at some of the lakes. This
18 is Ives Lake, the building is called the stone house, it was
19 John M. Longyear summer residence and he also had a dairy
20 farm located right there. Which is, really it's an amazing
21 place, there's so much variety of flora in that area that
22 has nothing to do with our area. They planed all kinds of
23 things. Some years ago Howard Paul who was a descendant
24 wanted to sell it so the club bought it; we bought the lake
25 and about 400 acres of land around the lake from him. The

1 Huron Mountain Wildlife Foundation now owns that building,
2 we gave it to them. And they use it as a residence for
3 visiting scientists, they have their laboratories in there
4 to keep specimens and microscopes and stuff. And they
5 operate out of the stone house for the various research
6 projects that go on over there. Ives Lake is a very deep
7 lake, it has lake trout, it has brown trout, it has some
8 warm water fish in it but I've never caught a bass out of
9 there.

10 Q Is there anything unusual about the lake trout population of
11 Ives Lake?

12 A Yeah. The lake trout, we have a rule that all lake trout
13 taken out of these lakes have to go back into them because
14 they're becoming less numerous.

15 Q How deep is this lake, Ives Lake?

16 A I'm trying to remember, I think it's about a 100 feet.

17 Q How about slide 21?

18 A You skipped one. This is Mountain Lake; we're on the trail
19 at the north end of Mountain Lake, up a little high from the
20 lake looking south. You're seeing the top half of the lake,
21 the upper, the northern half of the lake.

22 Q Okay. And 22?

23 A Now, you're down at the shore of the lake right below right
24 we were. The boats you see are the only form of locomotion
25 we allow on the lakes, no motors, so you row or you paddle a

1 canoe where ever you're going.

2 Q And is that the general rule for all of your lakes, sir?

3 A Yes.

4 Q Number 23?

5 A This is a beach at a camping spot known as the Iliad by
6 Homer on Mountain Lake and the typical forest along the
7 edge, that's very typical of what it is in the preserved
8 area along these lakes.

9 Q And 24, sir?

10 A Rush Lake, the boathouse on Rush Lake. Rush Lake is 280
11 feet deep and it has huge pike in it, very big bass and two
12 species of lake trout, one of which is unique to this lake
13 and it's called the Rush Lake Trout.

14 Q Unique in what sense?

15 A It isn't found anywhere else?

16 Q Anywhere else in?

17 A In the world. It's leftover from glacial days, it's a small
18 lake trout, I think they're about two pounds. Whereas the
19 big ones get a lot bigger than that and these fellas live in
20 the trench at the bottom of the lake.

21 Q And the name of this lake trout?

22 A Rush Lake Trout.

23 Q What's the general culture of fishing in terms of catch and
24 release, killing, eating of club members?

25 A I would venture to say that 90 percent of the fish that are

1 caught are put back in the water. If you get a real trophy
2 you might bring it home, we have an eight pound rainbow on
3 the wall of our cabin that my granddaughter caught. But
4 everything else basically goes back; the bass almost always
5 go back. You might keep a bass and cook it at a camp site,
6 on the Salmon Trout River if you've got a like a 12 inch
7 brook trout up in that rocky area that I showed you there.
8 You might take that home and have it for breakfast but most
9 of the fish you get go back in.

10 Q How about coasters or Rush Lake Trout?

11 A I have never known anybody to bring back a Rush Lake Trout;
12 they'll catch the big lake trout out of the lake and maybe
13 bring one home. Coasters, we put the kibosh on catching
14 them oh, 15/20 years ago as we saw them dwindling in number.
15 And the state at our urging has closed the river to fishing,
16 all fishing at a time during the spawning season for the
17 coasters.

18 Q Exhibit 25, slide 25; please?

19 A Howe Lake, this is the south shore of Howe Lake, it's the
20 western most of our lakes. It is managed as a trout lake.

21 Q And when you say managed as a trout lake; what does that
22 mean, sir?

23 A We plant trout, brook trout -- I mean, brown trout mostly.
24 There's no stream or anything for them to spawn in. We used
25 to think, there's a little -- there's a spring right along

1 this shore and it was rumored that they could spawn in there
2 but they don't. So there's no spawning area for these fish.
3 And once again, most of the go back in and people don't
4 bring them back very often. It's all fly fish -- well, I
5 won't say that. It's all fly fishing except --

6 Q Except for one guy?

7 A No. Except for late in the summer when it really gets hot
8 and they go down deep, some people will put a plug on and
9 try to fish for them that way. But you can still catch them
10 on flies down deep.

11 Q What's slide 26 show, sir?

12 A This is Trout Lake and the little structure in the distance
13 is the boathouses. These smaller lakes we have two
14 boathouse on them so people can go up there and take a boat
15 out and fish.

16 Q Slide 27?

17 A Ann Lake, same kind of thing. Ann Lake you can't see the
18 boathouse here; it's around off to the left. But it's a
19 small lake with nice bass fishing in it but also we've
20 introduced some rainbow trout into it.

21 Q 28?

22 A First Pine Lake, this is, we're at the extreme west end of
23 First Pine Lake where Rush Creek coming out of Rush Lake
24 comes down, comes into the lake here. And the next slide
25 will be around this point that you're looking at here on the

1 other side but still in the west end of. Right here you're
2 in Pickerel Bay on First Pine Lake looking in a
3 southeasterly direction.

4 Q How about number 30, sir?

5 A This is a view of Pine Lake which shows you the exotic fish
6 barrier that we built. After the Eurasian Ruffe and the
7 Round Goby got into Lake Superior gobbling up everything
8 that they can find. We got permission from the DNR to build
9 this structure which allows about a three foot drop of water
10 straight down. Before this there was an old logging dam
11 consisting of just logs and rocks, very porous and fish
12 could swim up through it. And we were concerned that those
13 fish would get up into these lakes and eat up everything in
14 sight, so we got permission from the DNR to build this
15 thing. And it looks like its going to be working very well
16 because those foreign fish they can't jump this thing. The
17 steelhead trout jump right over that and continue to do so.

18 Q So has this managed to keep Goby and Ruffe out of your lake
19 system?

20 A Well, we have -- that's probably because they haven't got as
21 far east as us yet. The last rumor, the last reports we had
22 were that they were through the ship channel in the Keweenaw
23 but had not yet come farther east to get us yet. This is
24 preventive for that.

25 Q And tell us what's in the slide 31?

1 A Okay. This is, now you're standing right next to that
2 exotic fish barrier looking across Pine Lake in a generally
3 easterly direction.

4 Q How about 32?

5 A Well, as you can see it's a winter scene, it's on Pine
6 River. Once the water comes over that split -- by the way
7 all the water of these lakes is coming out now down this
8 river. It drains over that exotic fish barrier and flows on
9 down through Pine River and this is a shot taken by John
10 Dykema this past February.

11 Q Is there one tributary or river that feeds this lake system?

12 A Several.

13 Q Several and what are they?

14 A Cedar Creek at the south end of Mountain Lake, feeds into
15 Mountain Lake, Elm Creek feeds into Ives Lake, the Fisher
16 Creek comes down from Trout Lake into Second Pine Lake. So
17 there's a bunch of little streams that are fished but it all
18 comes down and goes out. Now, the Salmon Trout River is a
19 separate water shed completely.

20 Q And where are the headwaters of Cedar Creek?

21 A Right here (indicating). This is Cedar Creek. Here's the
22 mining area. This is Cedar Creek headwaters. The Cliff
23 River comes down from here and joins up to this river.

24 Q And do recall from the testimony; do you know where Mr.
25 Torreano's house is with respect to Cedar Creek?

1 A No, he's not over here; he's over on this side here.

2 Q He's over --

3 A He's over near these seeps which are the headwaters of the

4 Salmon Trout.

5 Q Okay. Number 33, sir?

6 A Well, this is going to be again a little farther downstream

7 on Pine River. Once you're down in this area it's running

8 again through a sandy plain coming out to Lake Superior.

9 Q 34?

10 A It's the same bend just a little farther upstream from it.

11 Q 35?

12 A Here it comes out now at Lake Superior, Pine River.

13 Q 36 look familiar?

14 A Yeah, we've seen that one before. This is the eagles nest

15 at the mouth of the Salmon Trout River, our cook Fred Koski

16 took that picture; he's a very good photographer as well as

17 being a good cook. He had another photograph of it with the

18 eagle and the baby eagle up on the side.

19 Q Now, have you personally seen this eagle family and seen it

20 nesting?

21 A They've been there for years, that nest is a very old, old

22 nest.

23 Q What do we see on 37, sir?

24 A Five otters swimming on the Salmon -- it's upside down.

25 There they are, otters swimming in the lower Salmon Trout

1 River, this is down below the road bridge. Otters will be
2 seen on Howe Lake, Second Pine Lake, Pine River, the Salmon
3 Trout River, they're fairly common.

4 Q 38?

5 A That's a goose and three of its babies on Ives Lake, Canada
6 Goose.

7 Q Okay. 39?

8 A A moose, the gentleman next to you, his wife took that
9 picture after they almost hit that moose.

10 Q Are moose, is your mountain part --

11 A They're seen every summer now that they've come back into
12 the area, they're seen every year.

13 Q 40, sir?

14 A A sandhill crane, sandhill cranes nest at the club and
15 almost every year they have a successful nesting and raise a
16 young bird. This is one of the young birds.

17 Q And finally number 41?

18 A This is a young bald eagle, immature bald eagle dining on a
19 goose at the mouth of Pine River. Now that gives you a
20 chance to see four mountains, several of the rivers and all
21 but one of the lakes, all but the smallest of the lakes.

22 Q Let's take one more look at slide one for just a moment,
23 sir. Now, what can you see from that elevation in shown in
24 slide one?

25 A Well, I told you before in the distance what you're looking

1 at is the Yellow Dog Plains, this flat business back here
2 where the -- and it's a straight shot. Cynthia showed you a
3 picture from the Yellow Dog Plains in which you could see
4 Huron Mountain. Now, we're back on top of Huron Mountain
5 looking back at the Yellow Dog Plains.

6 Q Okay.

7 A And right in here is where that mine ventilation air raise
8 is going to be.

9 Q Okay. That's slide one and you're pointing just to the left
10 of the tree on the right side?

11 A Trees to the right, yup.

12 Q What's the relative elevation of the Yellow Dog Plains with
13 respect to lets say your lake system at Huron Mountain Club?

14 A My memory is that the plains are at about 1500, 1600 feet
15 elevation and the top of Huron Mountain is about -- I'm
16 trying to remember, it's about 900 to a 1,000 feet.

17 MR. WALLACE: We would offer Exhibit 33 as a
18 composite.

19 MS. LINDSEY: No objection.

20 MR. REICHEL: No objection.

21 JUDGE PATTERSON: With no objection it'll be
22 entered.

23 Q Sir, tell us what Exhibit 30 shows? While we're waiting for
24 it let me ask you this. Did the concept of the preserved
25 area become formalized in the by-laws of Huron Mountain

1 Club?

2 A Yes.

3 Q And in what fashion, sir?

4 A Well, when we get there. This is the, an excerpt from the
5 clubs by-laws that layout the restrictions on land use for
6 our preserved area, the managed area and the residential
7 area. And then with some provisions applicable to all the
8 clubs land.

9 Q And while we're waiting for electricity to move. How did
10 the Huron Mountain Club come to decide on this concept of a
11 formal preserved area?

12 A Well, backing up. When the club was founded it was a group
13 of people who recognized it was not just only good for good
14 hunting and fishing but it had a lot of uncut timber that
15 could be preserved as a wilderness area. And so from early
16 on when the club acquired it, they didn't do much logging
17 and no logging at all in the area that eventually became the
18 preserved area.

19 Back in the 1930's the board retained Professor
20 Aldo Leopold from the University of Wisconsin, the School of
21 Forestry to come in and survey this whole situation and make
22 some recommendations to the club. For how to preserve and
23 how to use and make available from modern science its uncut
24 preserved lands. And in 1938 Professor Leopold rendered a
25 written report to the club with a series of recommendations

that called for a preserved area, I think he called it the "reserved area".

Surrounded by managed areas as a buffer and recommended that the club recognize, there were two aspects to it. One is the value of the land as a base datum for scientists to use in evaluating and learning how to care for other forestry lands. But the other was for wildlife management, before he came in to take a look at it the than members were so ardent about fishing that they thought it was a good idea to kill off all of the predators of the fish.

And he woke them up to the fact that you don't really want to do that, you would have gotten rid of all those otters if you had been doing that. And he made them understand and recognize the value of not continuing to trap supposed predators. The place was overrun with deer but and sometimes enough members and employees hunt deer but they do cause significant damage to some of the forestry.

He recommended that we adopt a sensible program of selectively managing the lands that were in the managed area but absolutely preserving the preserved area. And encouraging scientists to avail themselves of its potential for scientific research, that's where this whole thing started?

MR. WALLACE: We would offer Exhibit 30.

1 MS. LINDSEY: This is Exhibit 30?

2 MR. WALLACE: Yes, the by-laws.

3 MS. LINDSEY: This is just one, it's an excerpt of
4 the by-laws than?

5 MR. WALLACE: It's an excerpt of the by-laws.

6 MS. LINDSEY: I object as to relevance and that
7 it's not a complete document.

8 MR. WALLACE: Well, we can offer the whole by-laws
9 but the entire balance of the text would be inapplicable to
10 this proceeding. I don't object to doing that but as to
11 relevance, I mean, I think that this document and the
12 testimony of Mr. Townsend --.

13 THE WITNESS: We can make them available to you --

14 MR. WALLACE: Mr. Townsend establishes --

15 THE WITNESS: But they cover such items as how the
16 board gets elected, how the meetings are conducted, various
17 things you would see in corporate by-laws. This is the one
18 that seemed to me to have some relevance to this proceeding.

19 MR. WALLACE: The point is that it's at the heart
20 of the esthetic of the members of this organization that
21 their property be preserved in a pristine state for
22 scientific and for scientific research and for their own use
23 and recreation. And it goes to the core of the importance
24 of this to them, their standing, the importance of this as
25 an affected area when we demonstrate that it will be

1 profoundly affected.

2 MR. REICHEL: For the limited purpose of
3 establishing the, that portion of the clubs mission which is
4 preservation of certain areas I have no objection to this.

5 JUDGE PATTERSON: I'll overrule the objection. I
6 think for the limited purpose it's relevant.

7 (Petitioner's Exhibit 632-30 received)

8 Q And in that same regard, could we look at Exhibit 21 please?
9 Mr. Townsend, is Exhibit 21 the report from Aldo Leopold
10 of --

11 A Yes, it is. It's a copy of it. At the time I gave you the
12 exhibits I didn't have the original. There's only one copy
13 of the original left. Peter's got it with him today. This
14 is a reprint of it that the club made for its members.

15 Q And who is Aldo Leopold?

16 A Well, he was a recognized pioneer in conservation ethics,
17 forestry management and wildlife management practices. He
18 was also the author of Sand County Almanac, which most
19 people who are interested in conservation ethic have read it
20 at one time or another.

21 Q So the author of this exhibit is the Aldo Leopold?

22 A Yes. Yes.

23 MR. WALLACE: We would offer Exhibit 21.

24 MS. LINDSEY: We would make the same relevancy
25 objection.

1 MR. REICHEL: I join in the relevance objection.

2 It's one thing to establish that the interest of the Huron
3 Mountain Club and the preservation of its property; it's
4 another altogether to offer into substantive evidence a
5 report compiled 70 years ago.

6 MR. WALLACE: Well, I think that -- I mean, I
7 think it's significant that it's 70 years old. This goes to
8 the heart of the significance to this petitioner of the
9 preservation of the property that they've been responsible
10 for over the years. So this exhibit and a couple of
11 exhibits that are -- will succeed it all demonstrate a
12 tremendous commitment to a kind of land use that is unusual;
13 that's not unique to Huron Mountain Club but is unusual.
14 And they have put their money and their hearts where their
15 mouth is for decades now and that's why they're here. And
16 that goes to an issue that I'm sure is going to be raised.

17 JUDGE PATTERSON: I'll overrule the objection.
18 What was the number again?

19 MR. WALLACE: That's 21.

20 JUDGE PATTERSON: 21.

21 (Petitioner's Exhibit 21 received)

22 Q Could we have 22, please?

23 A When you get a chance to take a look at it, look at his
24 comment about the otters. It's fascinating.

25 Q Oh, I am sorry. We've jumped up here. 19. Now, Mr.

1 Townsend, in the aftermath of Aldo Leopold's report to the
2 membership has the Huron Mountain Club had a special
3 relationship to scientists and naturalists?

4 A Yes. The club members formed a separate organization called
5 the Huron Mountain Wildlife Foundation; it's a 501(c)(3)
6 organization devoted to studying wildlife and living things
7 in the Lake Superior region. And that stone house, which is
8 this same building you see on the cover of this pamphlet, is
9 now owned by the wildlife foundation and it's used as the
10 dormitory residence where the visiting scientists stay. The
11 foundation has sponsored all kinds of research projects.
12 Periodically it comes out with what's called an occasional
13 paper, which is a particularly significant piece of
14 research. This is occasional paper number 3, which deals
15 with the vegetation and flora of the area. There are two
16 more that -- I would show you numbers 4 and 5; they're also
17 very, very unusual.

18 MR. WALLACE: Offer Exhibit 19.

19 MS. LINDSEY: Again, I object as to relevance.

20 MR. REICHEL: Same objection.

21 JUDGE PATTERSON: Same ruling. The number of that
22 again is what? I didn't write that down.

23 MR. REICHEL: That was 19.

24 JUDGE PATTERSON: 19. 19 will be received.

25 (Petitioner's Exhibit 19 received)

1 Q Exhibit 20, please. And what's Exhibit 20, sir?

2 A This is another occasional paper in which an extensive
3 mapping and research project was conducted to identify the
4 different landscape ecosystems and cover types within the
5 club's property.

6 Q Approximately how many papers, presentations, scholarly
7 works have been -- have resulted from research done at the
8 Huron Mountain Club?

9 A More than 200.

10 Q And is Exhibit 20 a representative example of --

11 A Well, these occasional papers are significant enough that
12 they were actually printed up for members to get copies of;
13 not just published in journals and stuff like that. The
14 next one that you see is going to be a really unusual one.
15 It has just been compiled.

16 MR. WALLACE: Let me offer Exhibit 21 -- I mean --
17 excuse me -- Exhibit 20.

18 MS. LINDSEY: Objection as to relevance.

19 MR. REICHEL: Same objection.

20 JUDGE PATTERSON: I will admit it over objection.

21 (Petitioner's Exhibit 21 received)

22 Q Exhibit 24, please.

23 A This is occasional paper number 5. It is an all taxa
24 biodiversity inventory of the club, 120 pages, single-spaced
25 listing all of the flora and fauna found to exist on the

1 club property.

2 Q Okay. Why don't we slow? We're not going to look at every
3 page, but let's see some representative examples of the
4 contents of this exhibit.

5 A There will be another witness tomorrow who can tell you a
6 good deal more about this than I can. I just learned how to
7 download it.

8 Q And are you saying that this covers insects, amphibians,
9 reptiles, birds?

10 A Yes.

11 Q Okay. And --

12 A Plants, mosses, liverworts, fungi.

13 Q And who compiled this, sir?

14 A The compiler was Kerry Woods doing so from the various
15 research studies that have been done at the property
16 including members' collections. Several of our members are
17 recognized experts in certain fields of scientific endeavor.

18 Q And is this the consequence of recent research and work?

19 A Yes, some of it. This paper itself, the codification of
20 this paper was just this last year.

21 MR. WALLACE: We'd offer Exhibit 24 as well, your
22 Honor.

23 MS. LINDSEY: Your Honor, I'm going to object as
24 to foundation for this witness. I believe he's told us that
25 the witness who may be able to lay the foundation for this

1 will testify tomorrow. I don't think he has the foundation
2 as he's just looked at this exhibit.

3 MR. REICHEL: I would join in that objection and
4 note, you know, certainly we would stipulate that this --
5 based on the witness's testimony that this document was
6 prepared at the request of the Huron Mountain Club
7 consistent with its mission, but --

8 A You'll have another witness tomorrow; you can hold it back
9 if you want.

10 MR. WALLACE: Well, I'd like to offer it for the
11 limited purpose of reflecting the club and the club members'
12 commitment to a certain culture and preservation that is at
13 the heart of our case. It'll be offered for a broader
14 purpose tomorrow with its author.

15 JUDGE PATTERSON: Oh, the author is going to
16 testify?

17 MR. WALLACE: Yes, sir.

18 JUDGE PATTERSON: All right. I'll admit it for
19 that limited purpose.

20 (Petitioner's Exhibit 632-24 received)

21 Q Let me shift gears here for a moment, Mr. Townsend. Did you
22 have occasion to come in contact with representatives of
23 Kennecott in connection with the proximity of the Huron
24 Mountain Club for this proposed mine?

25 A Yes.

1 Q And when did that first occur, sir?

2 A August of 2003.

3 Q Tell the Court what happened.

4 A Well, Cynthia Pryor had invited me to -- I was then the
5 president of the club and Cynthia invited me to attend a
6 meeting in Big Bay, an informational meeting at which,
7 according to the flyer for the meeting, Kennecott
8 representatives were to attend, and representatives of the
9 DNR and the DEQ would attend. And at that point I didn't
10 know very much about this at all. I knew that there'd been
11 some exploratory work going on in the area, but that's all I
12 knew. So I went to the meeting in Big Bay at the hotel in
13 Big Bay and Kennecott had elected not to participate at the
14 meeting, so Cynthia gave the overview and then a
15 representative from the DNR spoke and a representative from
16 the DEQ spoke, and I learned a lot at that meeting. The
17 most significant thing I learned was that there was no --
18 that none of the existing laws governing permitting for
19 mines applied to an underground mine. And Mr. Maki from the
20 DEQ was the one who explained that to us. So I knew right
21 then that something had to take place in terms of filling
22 that gap.

23 The following week I had a contact from Mr. Andrew
24 Ware of Kennecott Exploration Company who asked for an
25 opportunity to meet with us. I had the impression from what

1 he said -- I can't remember exactly what he said, but they
2 had chosen to go that route rather than attend the big
3 meeting in Big Bay and he would like to come and explain to
4 us what Kennecott had in mind for this mine site.

5 Q To come out to the Huron Mountain Club property?

6 A Well, we invited them to come. It was late August; it was
7 the last week of August. I still had several members of the
8 board present at the club after our annual meeting. And so
9 I set it up that he would come out to the club and meet with
10 us and make his presentation to us to explain what they were
11 thinking of doing. When the meeting was to take place I
12 arranged to meet them at the gate. Our end of the club
13 property you come across the Salmon Trout River and right
14 away you're at a gate with a security guard at the gate.
15 And so I met them right there and I said, "Look. Before we
16 have this meeting why don't you come with me and we'll go
17 up -- I want to show you the Salmon Trout River inside the
18 club property." I didn't suspect they'd ever seen it. They
19 might have been familiar with it in the plains area but not
20 within our property. So we did. We took -- Mr. Ware had
21 somebody with him from the North Jackson Company and I can't
22 remember the individual's name.

23 Q What did you understand that company to be?

24 A They had been doing some consulting work or engineering
25 work, something of that sort, for Kennecott Exploration

1 Company. So anyhow, we -- they welcomed that opportunity.
2 So we went in two vehicles up to the area that I first
3 showed you on the Salmon Trout where we're up above the
4 middle falls and that rocky stretch up in there. And we got
5 out and we walked for maybe a half hour up in that area.
6 And they were interested in taking photographs and asked if
7 they could take photographs and I said, "Yes, please do. I
8 hope you do." I explained to them about the fishing and
9 what kind of fish we had up in that area and what our
10 concern about them was. We went from there then down to the
11 dam, parked the Jeeps vehicles there and walked on down to
12 the lower falls and, once again, I explained to them the
13 different fishing activities, the -- where the coasters
14 could spawn, where they couldn't spawn, where the steelhead
15 came up to and they took more photographs in there.

16 We then went from there back to the club. By then
17 I'd kept the rest of my board waiting for about an hour and
18 a half. And then he did make a presentation, a PowerPoint
19 type presentation to us to tell us about what they had so
20 far discovered and what they were working on, developing a
21 feasibility study.

22 Q Did they ask you questions about the wildlife and features
23 of the Huron Mountain Club on this tour?

24 A No, not more than that. No.

25 Q Did they --

1 A I mean, I explained about the river and about the fish
2 populations of the river too. And I explained about --

3 Q Did they install any equipment?

4 A I explained about our concerns about that. Well, later we
5 did get a request from -- and I think is after Kennecott
6 Minerals came on the scene. They wanted -- they asked
7 permission to come on the property and install a water
8 quality monitoring device in the Salmon Trout River in the
9 vicinity of the road bridge and we granted that permission
10 to them.

11 Q Did you ever meet with Kennecott representatives
12 subsequently?

13 A I had one meeting with Jon Cherry and Bill Rusten.

14 Q Where did that occur, sir?

15 A Pardon me?

16 Q Where did that meeting occur?

17 A Detroit Metropolitan Airport.

18 Q And what was the purpose of that meeting?

19 A Not entirely clear. It was more just get acquainted. Mr.
20 Rusten was interested if we could work out some kind of --
21 get together and work out some kind of an agreement. Mr.
22 Cherry was more informative to me. He told me a little bit
23 more about what they were going to be doing and showed me a
24 specimen of the core about maybe as thick as hockey puck but
25 not as big around. And I remember being very impressed at

1 the density and metallic nature of that material.

2 Q Did Mr. Rusten suggest what kind of agreement they were
3 seeking?

4 A It wasn't clear.

5 Q Did you pursue it; did you have any interest in the
6 agreement?

7 A No.

8 Q Did Huron Mountain Club participate in any way in the
9 development subsequently of this statute and regulations
10 governing sulfide mining?

11 A Yes; yes. Phil Power, one of our members, volunteered to
12 serve on the working group which was assembled. It was
13 fairly well recognized by everybody, the people in the
14 industry and the people in the environmental groups and by
15 the agencies themselves that we needed to -- because of the
16 unique nature of sulfide mining we needed to work out a new
17 set of regulations to permit -- for permitting for those
18 mines. And Phillip served on that committee.

19 Q Did there come a time when the permit application became
20 available to you?

21 A One, yeah.

22 Q And did you read through the application?

23 A Yes, I did.

24 Q And what did you note about it, sir?

25 A Well, the first thing I noticed -- I kept looking for

1 some -- the words "Huron Mountain Club" somewhere in there.
2 I thought, I fully expected that -- because of the
3 requirement to define the affected area and to do an EIA of
4 the affected area I fully expected after our visits with
5 them that we would have been recognized as a potentially
6 affected area, but there wasn't any. That was the first
7 thing I noticed.

8 Q Did you scrutinize the environmental impact assessment
9 yourself, sir?

10 A I did. I won't say I read every word. The thing was four
11 volumes. The impact assessment was two volumes in my
12 notebooks, and the application itself was two more volumes.
13 I read most of it.

14 Q And did you find references to the flora and fauna of the
15 Huron Mountain Club?

16 A No.

17 Q Let's look at Exhibit 25. Sir, do you recognize Exhibit 25?

18 A Michelle Halley sent me that. I think the governor must
19 have released it because I didn't get it directly; I got it
20 from Michelle.

21 Q And what is Exhibit 25?

22 A A letter from the governor to Director Chester.

23 Q And what does it convey?

24 A Well, I was very impressed with the last paragraph of the
25 letter. It sounded to me as though the governor was going

1 to -- had told him directly to be very careful to -- "I'm
2 now directing that you give rigorous and thorough review to
3 Kennecott's permit applications" -- plural -- "and ensure
4 that they meet each and every aspect of the new regulations
5 and that any authorized activity does not harm or impair our
6 public trust resources." That gave me some comfort. I
7 thought that that would be helpful to have the governor make
8 that sort of statement to Director Chester.

9 MR. WALLACE: We would offer Exhibit 25, I believe
10 without objection.

11 MR. REICHEL: No objection.

12 MS. LINDSEY: No objection.

13 JUDGE PATTERSON: No objection, it will be
14 entered.

15 (Petitioner's Exhibit 632-25 received)

16 Q Mr. Townsend, has the Huron Mountain Club participated in
17 pursuing endangered species status with the coaster brook
18 trout?

19 A Yes.

20 Q Let's look at Exhibit 35. Can you identify Exhibit 35 for
21 us, sir?

22 A This is a document recently issued by the U.S. Fish and
23 Wildlife Service containing their 90-day finding on our
24 petition for a declaration of endangered status for the
25 coasters.

1 Q Do you know what's going to happen next with that
2 application, sir?

3 A My understanding is that sometime between now and the end of
4 the year they're going to be working to make a definitive
5 decision on the question. This is just a preliminary
6 finding that it's worth looking at.

7 MR. WALLACE: Move the admission of Exhibit 35.

8 MS. LINDSEY: No objection.

9 MR. REICHEL: No objection.

10 JUDGE PATTERSON: No objection, it will be
11 entered.

12 (Petitioner's Exhibit 632-35 received)

13 Q Mr. Townsend, tell the Court, if you would, sir, by way of
14 summary why does Huron Mountain Club -- is opposing the
15 issuance of the mining permit?

16 A Well, the statute is a good statute; there's no doubt about
17 it. It was done as a product of compromise and a working
18 group put it together and it should have worked. But when I
19 see the permits that have been issued, particularly the Part
20 632 permit, and the ways in which it appears to me at least
21 that it fails to live up to the requirements of the statute,
22 I just don't think the governor's letter has been followed.
23 I'm not against mining, but I hoped that this statute was
24 going to be enforced. And it doesn't seem to be working out
25 that way and I see some potential danger to the club's

1 assets resulting.

2 Q Let's take a look at Exhibit 22 for a second. Mr. Townsend,
3 what's shown in Exhibit 22?

4 A That is a photo I picked up off the Internet by a man named
5 Brum; a series of photographs he took of the collapse of the
6 Ropes gold mine outside of Negaunee.

7 Q Does the mine collapse shown in this photograph play a role
8 in the Huron Mountain Club's feelings about this mine and
9 concerns about it?

10 A Absolutely.

11 Q And in what respect, sir?

12 A You saw the photograph that Cynthia showed you this morning
13 of the Salmon Trout River where it's right over the ore
14 body. This is not a dinky little stream; that's a very
15 substantial pond of water right there. If there were a
16 collapse like this, that water would go right down the mine
17 and it would permanently alter the Salmon Trout River.

18 Q And were that to occur, sir, would that affect the
19 recreational and esthetic value of the Huron Mountain Club
20 property for you?

21 A Absolutely. Absolutely.

22 MR. WALLACE: Your witness.

23 MS. LINDSEY: Just so I'm clear, this has not been
24 offered? It's not an exhibit?

25 MR. WALLACE: It's going to be offered later.

1 This is really an illustration.

2 MS. LINDSEY: Okay.

3 CROSS-EXAMINATION

4 BY MS. LINDSEY:

5 Q Mr. Townsend, how many members are there at the Huron
6 Mountain Club?

7 A A total of about 250.

8 Q And how many acres did you say the Huron Mountain Club
9 property consists of?

10 A The entire area, 21,877.

11 Q And how many of those 250 members are permanent residents?

12 A Permanent residents of the club?

13 Q Sure.

14 A None of them.

15 Q Do you have any paid staff for the club?

16 A Yes.

17 Q How many?

18 A Well, it's seasonal; it fluctuates. In summertime we employ
19 about 250 people. Our year-around staff is about -- I'm
20 trying to remember. Our year-around staff is probably about
21 a dozen.

22 Q And none of them live on the Huron Mountain Club property?

23 A You're wrong, they do.

24 Q Okay. How many of them do?

25 A My recollection is there are six families that live there

1 and then a couple of individual people, single people who
2 live in apartments. So there's about probably less than ten
3 that are year-around residents living at the club.

4 Q The property -- Huron Mountain Club property is not open to
5 the public; correct?

6 A That's correct.

7 Q It's gated?

8 A It's private property.

9 Q And aside from opening it up for science, there aren't tours
10 of the property offered to the public, other than for
11 scientific research?

12 A I think I've answered that question.

13 Q I don't believe I -- you've answered that question?

14 A Would you ask your question again? I thought you asked is
15 it open to the public.

16 Q Right. And my question is --

17 A And I said no.

18 Q Okay. So no tours either at all?

19 A Oh, well, we do have tours. We have the school kids come
20 out. We have occasional parties given for the Big Bay, the
21 Powell Township fighting -- firefighting force, that kind of
22 thing.

23 Q Okay. And the distance of the Huron Mountain Club to the
24 Kennecott mine proposed site?

25 A I'm sorry. I'm having trouble hearing you.

1 Q Okay. Did you tell us the distance of the Huron Mountain
2 Club property to the proposed mine site?

3 MR. WALLACE: She's asking the distance between
4 the boundary of the mine site -- proposed mine site and
5 Huron Mountain Club.

6 THE WITNESS: Oh.

7 MR. WALLACE: Mr. Townsend and I both have hearing
8 deficiencies. We discovered we have almost the exact same
9 one, so when we --

10 THE WITNESS: My field artillery days are
11 bothering me now.

12 A The nearest distance between us and the mine site is little
13 less than four miles, about three, three and a fraction
14 miles. And that's between the place where the Salmon Trout
15 River enters our property and the mine site.

16 Q And how much is a membership in Huron Mountain Club? How
17 much does it cost?

18 A How much does it cost?

19 Q Yes. What does it cost to have a membership?

20 A The cost of a membership, \$1,000.

21 Q That's the cost of a membership there?

22 A A membership certificate; that's the cost of a membership
23 certificate.

24 Q Are there annual dues or fees?

25 A Yes, there are.

1 Q And how much are those?

2 A I don't know the current amount; I haven't got my bill yet
3 for this year.

4 Q What was it for last year?

5 A I don't even remember that.

6 Q For the latest year you can remember what was it?

7 A I'm trying to remember. The regular members; there are only
8 50 regular members, then there are about 200 plus associate
9 members and they scale down. The regular member pays X; the
10 associate members pay fractions of X depending on their age.
11 And I haven't got the whole schedule in mind, but I'm sure
12 that the regular members' dues are currently in excess of
13 \$10,000 a year. I don't -- I cannot give you an accurate
14 figure; I just don't remember it.

15 Q And can just anybody become a member by coming up with the
16 money, or does there have to be an invitation or some
17 other --

18 A You have to be proposed by existing members. You have to
19 meet the board. And then you get voted on not by -- the
20 members find out who's up for membership and can comment to
21 the board, but the board makes the decision.

22 MS. LINDSEY: All right. Thank you. That's all I
23 have.

24 MR. REICHEL: I have no questions.

25 JUDGE PATTERSON: Mr. Eggan, any questions?

1 MR. EGGAN: No, your Honor.

2 MR. WALLACE: One follow-up.

3 REDIRECT EXAMINATION

4 BY MR. WALLACE:

5 Q Mr. Townsend, could you approach Exhibit 32 again and show
6 us the point -- the closest point between the two boundaries
7 of the mind site --

8 A That would be help -- I get the number for you correct.
9 It's on the map, I think. It's right here (indicating).
10 This is where our boundary is and there's the boundary of
11 Kennecott's site, and that's 3.38 miles.

12 Q 3.38, sir?

13 A 3.38. Actually the mine site itself, to my understanding --
14 I'm trying to find it. The ore body's about in here. This
15 is where the processing's going to go on over here. So the
16 distance I gave you is from this corner of the Kennecott
17 owned property to the corner of our property.

18 Q Okay. And where the mine and your property are closest,
19 where is the Salmon Trout River at that point?

20 A The Salmon Trout River is right here (indicating). The
21 Salmon Trout River comes out of here, picks up these other
22 tributaries, enters our property here and remains in the
23 club property all the way up.

24 MR. WALLACE: Thank you. I have no further
25 questions.

1 JUDGE PATTERSON: Thank you, Mr. Townsend. We'll
2 take about a ten-minute break.

3 (Off the record)

4 MR. EGGAN: We are ready, your Honor.

5 JUDGE PATTERSON: Okay.

6 MR. EGGAN: Call Mr. Jason Ayres to the stand.

7 REPORTER: Do you solemnly swear or affirm the
8 testimony you're about to give will be the whole truth?

9 MR. AYRES: I do.

10 JASON ALLEN AYRES

11 having been called by the Petitioners and sworn:

12 DIRECT EXAMINATION

13 BY MR. EGGAN:

14 Q Good afternoon, Mr. Ayres. Can you give your full name for
15 the record, please, and spell your last name?

16 A Yes, Jason Allen Ayres, A-y-r-e-s.

17 Q And what do you do for a living, Mr. Ayres?

18 A I am the tribal real estate officer for the Keweenaw Bay
19 Indian Community.

20 Q How long have you been the tribal real estate officer at
21 Keweenaw Bay?

22 A Twelve years.

23 Q What is your educational level?

24 A In 1993 I earned a Bachelor's of Science in biology from
25 Northland College in Ashland, Wisconsin.

- 1 Q How did you end up at the Keweenaw Bay Indian Community?
- 2 A I worked an internship with the Michigan DNR in fisheries
3 for a couple of summers during college and decided to stay
4 in the area and subsequently began employment with the
5 tribe.
- 6 Q What are the duties of a tribal real estate officer?
- 7 A I'm responsible for the acquisition of real property for the
8 tribe, leasing that property back to its members and
9 sometimes non-members, as well as management of the land
10 records of the tribe and management of the tribe's
11 transportation facilities, similar to a county road
12 commission.
- 13 Q I see. Are you a member of the Keweenaw Bay Indian
14 Community yourself?
- 15 A No.
- 16 Q Are any members of your family members?
- 17 A Yes, my wife is a member as well as my two children.
- 18 Q All right. I'd like to focus on the community's real
19 property holdings and its relationship to real property in
20 the Upper Peninsula. But first of all, we know that this
21 tribe has a reservation, but apparently it has land holdings
22 that are not on the reservation but throughout the Upper
23 Peninsula?
- 24 A Yes.
- 25 Q Are you familiar with the proposed Kennecott mine project in

1 Marquette County?

2 A Somewhat, yes.

3 Q Okay. Does the community hold any real property in the

4 vicinity of the proposed mine project?

5 A We do own 40 acres located in Powell Township, section 33

6 township 51 north, range 28 west.

7 Q And you have that memorized?

8 A I know most of the parcels off reservation by heart.

9 Q I see.

10 A There's just a few of them, so --

11 Q Okay. Well, let me show you what we have pre-marked as

12 Exhibit -- Petitioner's Exhibit Number 19. I'm going to ask

13 you if you know -- well, let me handle it this way. This is

14 a warranty deed for a parcel owned by the community?

15 A Yes.

16 Q All right. And this warranty deed proposes to transfer the

17 property from a Mr. Richard Uren, U-r-e-n, to the Keweenaw

18 Bay Indian Community?

19 A Yes.

20 Q Okay. And it looks like the transaction occurred on May 8th

21 of 2006?

22 A Yes.

23 Q Very good.

24 MR. EGGAN: Can I get you to cull up the first

25 part of the document for me, please?

1 Q Can you read that okay?

2 A Yes.

3 Q All right. And that indicates that this transaction
4 occurred -- I think it's May 8th of 2006 and it looks like
5 the tribe acquired this property for \$60,000?

6 A Yes.

7 Q Okay. Now, down below it at the bottom --

8 MR. EGGAN: And again, what we've done, your
9 Honor, is pulled out a part of this deed.

10 Q At the bottom it talks about a parcel of land to the
11 southwest quarter of the northwest quarter -- I'm not sure
12 why we did that -- the southwest quarter of the northwest
13 quarter of section 33, Powell Township, Marquette County,
14 Michigan; is that right?

15 A Yes.

16 Q And this document bears the seal or the notification from
17 the register of deeds in Marquette County that it was
18 recorded with the register of deeds on May the 8th of 2006,
19 doesn't it?

20 A Yes.

21 MR. EGGAN: Your Honor, at this point we would
22 offer Exhibit 19 into evidence.

23 MS. LINDSEY: No objection.

24 MR. REICHEL: No objection.

25 JUDGE PATTERSON: Okay. No objection it will be

1 entered.

2 (Petitioner's Exhibit 31-19 received)

3 Q What is the size of this parcel?

4 A Forty acres.

5 Q Is the -- is this parcel on or near any body of water?

6 A Yes. There is a tributary to the east branch of the Salmon
7 Trout River that flows across the southerly part of the
8 parcel.

9 Q Very good. Are you familiar with the term "riparian"?

10 A Yes.

11 Q All right. Is this a so-called riparian parcel?

12 A Yes.

13 Q Okay. Now, to give our hearing officer some context, is
14 this parcel within the Yellow Dog Plain?

15 A Yes.

16 Q Okay. I wonder if you could get up and show us on the map
17 that has marked as Exhibit 32 where our parcel is.

18 A Yes.

19 Q I have to count, of course, backwards because these sections
20 are not labeled. It would be located right here
21 (indicating), just south of the label dot.

22 A Very good. Now, were you here this morning when Mr.
23 Torreano testified?

24 Q Yes.

25 A All right. And when Mr. Torreano testified he identified

1 where the Keweenaw Bay Indian Community parcel was?

2 Q Yes.

3 A Was he correct in his identification?

4 Q Yes, he was.

5 A Okay. You can have a seat again.

6 Q I may not have asked you this. What is the size of the

7 parcel that is owned by the Keweenaw Bay Indian Community?

8 A The parcel is 40 acres, 1,320 feet square.

9 Q Now, if I talk about the so-called "Ceded Territories," do

10 you know what I'm talking about?

11 A Yes, I do.

12 Q Okay. Is this parcel within the Ceded Territories?

13 A Yes, it is.

14 Q Do you know how far this parcel is from the Kennecott mine

15 site, from the treated water infiltration system there?

16 A The southwest corner of the property is one and a half miles

17 from the TWIS.

18 Q Have you ever visited this parcel yourself?

19 A Yes, I have.

20 Q Do members of the community use the parcel?

21 A Yes, they do.

22 Q What do they use it for, if you know?

23 A Hunting, and we had an individual that lived on the

24 property, as well as gathering.

25 Q Are you familiar with a feature in the Yellow Dog Plain

1 known as Eagle Rock?

2 A Yes.

3 Q Okay. Do you know how far the parcel is from Eagle Rock?

4 A The southwest corner is approximately 1.8 miles from Eagle
5 Rock.

6 Q Have you visited the area near the mine for non-business
7 purposes unrelated to your duties?

8 A Yes; yes.

9 Q Okay. Based on your observation, do members of the
10 community use the so-called Ceded Territories near the mine?

11 A Yes, they do.

12 Q What have you seen? What have you seen members of the
13 community utilizing that area for?

14 A I have observed members of the community hunting and
15 gathering in the Ceded Territory in the Yellow Dog Plains.

16 Q All right.

17 MR. EGGAN: May I have Exhibit 18 shown, please?

18 Q Mr. Ayres, are you familiar with the boundary lines, the so-
19 called Ceded Territories for the 1842 treaty?

20 A Yes, I am.

21 Q Very good. And how are you familiar with that?

22 A It is part of my job responsibility to know where those
23 boundaries are for the purposes of mapping.

24 Q Looking at Exhibit 18; does Exhibit 18 accurately depict the
25 area of the 1842 treaty boundaries?

1 A Yes.

2 MR. EGGAN: Jan, can you blow the part of the map
3 up that is the Upper Peninsula, please? Very good.

4 Q Now, Mr. Ayres, if you can point for the judge's benefit the
5 general area of the Kennecott mine area on this area -- on
6 the map?

7 A Yes. It'd be approximately located in -- somewhere in the
8 vicinity of the small outcrop of Baraga County that juts out
9 into Marquette County.

10 Q Okay. And that area, the area of the mine, is within the
11 so-called Ceded Territories?

12 A Yes, it is.

13 Q Very good.

14 MR. EGGAN: Your Honor, we'll talk about the Ceded
15 Territories with the next witness.

16 JUDGE PATTERSON: Okay.

17 Q Are you as a non-tribal member, Mr. Ayres, permitted to
18 exercise treaty rights within the Ceded Territories?

19 A No.

20 Q What about your relatives?

21 A Yes, they are.

22 Q Have you made any observations about the community's use of
23 the Yellow Dog Plain and that area of the Ceded Territories
24 that is in the vicinity of the mine?

25 A Could you repeat the question?

1 Q Yes. Have you had an opportunity to make any observations
2 about community members and their use of the Ceded
3 Territories in the vicinity of the mine?

4 A Yes, I have.

5 Q And you said that you saw -- a minute ago you told us that
6 you saw people utilizing it for hunting, fishing and
7 gathering?

8 A Hunting and gathering.

9 Q Okay. Is there anything about the Yellow Dog Plain in your
10 observation that is unique to the tribe's culture?

11 A The uniqueness of the Yellow Dog Plain for the tribe in the
12 sense that it's unique to me and others in the community,
13 not just non-members, would be that it is an area that is
14 well traveled, well visited and used frequently by both
15 tribal members and non-tribal members.

16 Q If the area in the Yellow Dog Plain near the mine were
17 impacted by mining operations, do you have an opinion as to
18 whether members of the tribe would utilize that area or the
19 recreational hunting, gathering activities that you've seen?

20 A It would definitely have an impact on those uses,
21 particularly if the groundwater did become contaminated. It
22 would be less likely that people would use that area and it
23 would also be likely that the community would close certain
24 areas because of that contamination to the exercise of
25 treaty rights.

1 Q Why do you think that?

2 A The community has in the past closed certain lakes in the
3 Ceded Territory to tribal fishing because of mercury
4 contamination.

5 Q What about the -- what about the community's use of the 40-
6 acre parcel that we have described? Do you have a sense
7 that the community's use of that parcel would be impacted if
8 there were an impact by mining operations?

9 A Absolutely, not only in the hunting and gathering and
10 potentially fishing, but also economically. It would
11 definitely impact the timber resource value as well as the
12 value of the stream that runs through the property. It
13 would impact our ability to lease that property to members
14 and non-members.

15 Q Is that true if there was an impact by groundwater
16 contamination?

17 A Yes.

18 MR. EGGAN: I have nothing further.

19 CROSS-EXAMINATION

20 BY MS. LINDSEY:

21 Q Mr. Ayres, you mentioned that the parcel -- the 40-acre
22 parcel that you've talked about there was an individual who
23 lived there no longer lives there; is that correct?

24 A Not to my knowledge.

25 Q And the parcel was purchased in -- is it May of 2006?

1 A Yes.

2 Q And you understand that the mine application was submitted
3 in February of 2006?

4 A I am not familiar with those dates.

5 Q Okay.

6 MS. LINDSEY: I have nothing further. Thank you.

7 CROSS-EXAMINATION

8 BY MR. REICHEL:

9 Q Mr. Ayres, do you know why the Keweenaw Bay Indian Community
10 purchased this 40-acre parcel?

11 A I have not been told directly why we have purchased the
12 property. We have purchased other properties outside of the
13 reservation boundaries that are within the Ceded
14 Territories.

15 Q I believe you testified on direct examination though that in
16 your -- based on your knowledge there are relatively few
17 properties outside the exterior boundaries of the
18 reservation; correct?

19 A That is correct.

20 Q And so do you know whether there was any relationship
21 between the tribe's decision to purchase this 40-acre parcel
22 and Kennecott Eagle Minerals Company proposal to construct
23 the mine in the vicinity?

24 A I would have to assume so, yes.

25 Q So it's your understanding that the KBIC acquired this

1 parcel in -- because it understood that a mine was going to
2 be built in the vicinity?

3 A I would have to assume that, yes.

4 MR. EGGAN: I guess I'm going to object to
5 relevancy on that issue, your Honor. It really doesn't
6 matter why they acquired the property. They have the --
7 they have the property, they have the rights.

8 JUDGE PATTERSON: I'll let the answer stand. I'll
9 overrule the objection.

10 MR. REICHEL: I've nothing further. Thank you,
11 sir.

12 MR. EGGAN: I have nothing further. Thank you,
13 Mr. Ayres.

14 THE WITNESS: Thank you.

15 (Witness excused)

16 MR. EGGAN: Our next witness, yeah, is Ms. Susan
17 LaFernier. Ms. LaFernier.

18 REPORTER: Do you solemnly swear or affirm the
19 testimony you're about to give will be the whole truth?

20 MS. LAFERNIER: I do.

21 SUSAN LAFERNIER

22 having been called by the Petitioners and sworn:

23 DIRECT EXAMINATION

24 BY MR. EGGAN:

25 Q Good afternoon, Ms. LaFernier.

1 A Good afternoon.

2 Q Can you tell the Hearing Officer your name and spell it,
3 please?

4 A My name is Susan J. LaFernier, L-a-F-e-r-n-i-e-r.

5 Q And are you member of the Keweenaw Bay Indian Community?

6 A Yes, I am.

7 Q How long have you been a member of the Keweenaw Bay tribe?

8 A I have been a member all of my life.

9 Q Are you a member of the tribal council of the Keweenaw Bay
10 Indian Community?

11 A Yes, I am.

12 Q And how long have you been on the tribal council?

13 A Since 1998.

14 Q About ten years?

15 A Uh-huh (affirmative). Correct.

16 Q And do you presently hold an official position on -- in
17 addition to being a member of the tribal council? Do you
18 hold a position as an officer?

19 A Yes, I do. I'm currently the vice president.

20 Q And how long have you been the vice president of the tribe?

21 A Since February of 2008. And I also was vice president in
22 2004.

23 Q What are the duties of the vice president generally?

24 A The vice president will preside at tribal council meetings
25 and also will attend to matters that pertain to the general

1 welfare of the committee when the president is absent.

2 Q Have you held other official positions within the community

3 itself?

4 A Yes, I have.

5 Q What are the other positions you've held?

6 A I held the position of chief executive officer in 2000 and

7 2006. I was the secretary of the council in 2002 and 2003.

8 And I was the president of the council from 2005 through

9 2007. And I also have held an accounting position for

10 approximately 20-some years.

11 Q Are you an accountant?

12 A Yes.

13 Q Do you live on the reservation at the community?

14 A Yes, I do.

15 Q Where -- for the Judge's benefit, where is the Keweenaw Bay

16 Indian Community? Where is the reservation?

17 A The reservation is located on land in Baraga, L'Anse and

18 Arvon Townships in Baraga County.

19 Q Do all of the community's members lives in its reservation?

20 A No, they don't.

21 Q How many members are on the reservation itself?

22 A Approximately 900.

23 Q And do you know an approximate total of the number of

24 community members that there are?

25 A Yes, I do. There are approximately 3,450 members.

1 Q Say that again. 3,400?

2 A And 50.

3 Q Now, I've been using the term "tribe" and "community"
4 interchangeably. Is that a fair thing to do? Is the
5 Keweenaw Bay Indian Community a Native American tribe?

6 A Yes, it is.

7 Q Is the community a part of any larger Native American nation
8 within the United States?

9 A Yes, we are. We part of the Ojibwe Nation.

10 Q Can you tell the Hearing Officer a little bit about how the
11 community itself came into existence?

12 A It's quite a long and detailed story. I know there are
13 datings back to the 1500's when the Ojibwe Nation would
14 travel from the Atlantic seaboard across the various lands
15 that are shown today. There are approximately right now 11
16 Ojibwe tribes that have signed the 1836, '37, '42 and '54
17 treaties across Wisconsin, Michigan and Minnesota.

18 Q How long has the community -- the Keweenaw Bay Indian
19 Community been in existence in the Upper Peninsula, if you
20 know?

21 A I want to say for several hundreds of years, yes. I want to
22 say from the 1500's also, yes.

23 Q So members of your community have been in the Upper
24 Peninsula in the area of L'Anse and in this area of the
25 Upper Peninsula for hundreds of years?

1 A Right.

2 Q Does the tribe have so-called federal recognition?

3 A Yes, we do.

4 Q What does it mean to be a federally recognized Native
5 American tribe?

6 A We are recognized by the U.S. government as a sovereign
7 government. We are able to self regulate our members
8 independent. We are an independent nation, and the
9 government recognize that.

10 Q The federal government recognizes that?

11 A Yes.

12 Q What about the community's relationship with the State of
13 Michigan? Is there a relationship between your tribe and
14 Michigan government?

15 A Yes, there is.

16 Q What is that relationship?

17 A We have a government-to-government also with the state as we
18 do with the federal government. In the past we have had
19 meetings with the Department of Natural Resources, the
20 Department of Environmental Quality, Department of
21 Transportation and most recently in the past, I want to say,
22 three or four years, we have had annual meetings with the
23 governor with the 12 recognized tribes of Michigan.

24 Q Let's about the community government in general. And I
25 don't want to take a long time with this, but I think it's

1 important for the Hearing Officer to have a sense of
2 government operations. What is the structure or the form of
3 government that the tribe uses?

4 A The tribe has a 12-member tribal council that is elected by
5 its members who live on the reservation. And that is guided
6 by our 1936 constitution.

7 Q Does the tribe have a tribal code that it utilizes and
8 applies to members of the tribe?

9 A Yes, we do.

10 Q I think that you may have already answered this. But are
11 tribal council members elected by members of the community?

12 A Yes.

13 Q What kind of services does tribal government provide to
14 members of the community?

15 A We provide a number of services. We have a law enforcement
16 department, a conservation department, a natural resource
17 department, social services department, health clinic,
18 medical and dental, realty, of course. We do issue our own
19 license plates.

20 Q Does the tribe issue licenses to people who -- for hunting,
21 fishing, that sort of thing?

22 A To our members.

23 Q And are those governed by this tribal code that we just
24 mentioned?

25 A Yes, they are.

1 Q Let's talk about a term that I used Mr. Ayres, the so-called
2 ceded territories. In the context of the community, what
3 are we talking about when we refer to the ceded territories?

4 A The land included in the ceded territory are lands that were
5 ceded to the U.S. government. But in that treaty we
6 retained the right to hunt, fish and gather on those lands.
7 Those are rights that were not given to us. Those are the
8 rights that we were -- we always had as first owners of the
9 land.

10 Q Okay. So those were not rights that were given to you.
11 Those were rights that you reserved?

12 A Right.

13 Q Okay. Now, you mentioned a treaty. Are we talking about
14 the treaty of 1842?

15 A Yes.

16 Q Okay. Let's, if we can, call up Exhibit Number 19.

17 MR. EGGAN: I'm sorry. It is 17. Yes. Your
18 Honor, this is Exhibit 17.

19 Q Do you recognize this document?

20 A Yes, I do.

21 Q And is this the treaty with the Chippewa dated 1842?

22 A Yes, it is.

23 Q The signatories to this treaty are the United States
24 government and the leaders of the various Native American
25 tribes in the Ojibwe Nation in 1842, I take it?

1 A Correct.

2 Q Okay. And those leaders are listed there at the top of the
3 document and I think they're also listed within the document
4 itself as signatories?

5 A Yes, they are.

6 MR. EGGAN: Your Honor, at this point, I would
7 like to offer the Treaty of 1842 into evidence. It would be
8 Exhibit 17.

9 MS. LINDSEY: No objection.

10 MR. REICHEL: Your Honor, I do have an objection
11 that goes to relevance. I don't think the issue before this
12 tribunal -- or this tribunal is competent to make any
13 determination of the extent or nature of legal -- of the
14 rights reserved by the signatories to the treaty. That
15 really isn't germane here. Without going into detail and
16 not trying to be confrontational, there have been and
17 continues to be disagreements between the State of Michigan
18 and the Keweenaw Bay Indian Community about the extent and
19 nature of those rights. My purpose is not to be
20 confrontational but simply to note that, in the context of
21 this proceeding, I understand that the purpose of this
22 witness' testimony is to establish the standing of the
23 Keweenaw Bay Indian Community with respect to challenge to
24 the permitting. I can say on behalf of the DEQ, the DEQ
25 does not contest the Keweenaw Bay Indian Community's

1 standing to bring this proceeding. In so doing, I'm not
2 conceding any issue of the legal effect of the treaty. We
3 will stipulate on behalf of the DEQ that the Keweenaw Bay
4 Indian Community has proper standing as a party to this
5 proceeding. So with that stipulation, I don't believe that
6 it's either -- I mean, the treaty is a public document. It
7 exists as a matter law.

8 MR. EGGAN: It is, yes.

9 MR. REICHEL: To the extent it's germane, the
10 parties are free to argue as to its effect and legal
11 significance. But I don't think it needs to be a part of
12 the evidence in this record.

13 MR. EGGAN: Do we have a stipulation from the
14 Kennecott Eagle Minerals Company that we have standing in
15 this matter?

16 JUDGE PATTERSON: I haven't heard one.

17 MS. LINDSEY: No. We are not making that
18 stipulation.

19 MR. EGGAN: Well, then in that case, your Honor,
20 we would offer the treaty. And I would like to have the
21 witness testify just a little bit with respect to this -- to
22 this document.

23 JUDGE PATTERSON: Well, it is a public document
24 and I think a matter of record. So I will admit it on that
25 basis.

1 MR. EGGAN: Thank you.

2 (Exhibit P-31-17 received)

3 Q Let's look at Article I of the treaty. And if we could have
4 the first -- maybe the first part of that. Yeah, that'd be
5 great. That'd be fine. Okay. And let's look at this
6 together. "The Chippewa Indians of the Mississippi and Lake
7 Superior cede to the United States all the country within
8 the following boundaries." And it gives a set of boundaries
9 that we would call the ceded territories?

10 A Yes.

11 Q Okay. By the way, does this Treaty of 1842 -- does it apply
12 only to members of the community or does it apply to other
13 Native American peoples within the United States?

14 A It applies to the tribe that signed the treaty.

15 MR. EGGAN: Let's to Article II, if we could,
16 please, Jan. And that's on page 2. And if you could blow
17 up Article II for me, please.

18 Q Let's take a look at this together. I want to read this
19 article and make sure that my reading is correct.

20 "The Indians stipulate for the right of hunting on
21 the ceded territory, with the other usual privileges of
22 occupancy until required to remove by the President of
23 the United States, and that the laws of the United
24 States shall be continued in force, in respect to their
25 trade and intercourse with the whites until otherwise

1 ordered by Congress."

2 What do you understand this particular provision of the
3 treaty to allow you to do?

4 MR. REICHEL: Excuse me. Counsel, just for the
5 record, I'm not trying to disrupt this, but I'd like to have
6 a continuing objection to any inquiry which goes to the
7 issue of the legal effect of this treaty. I'll just leave
8 that for the record.

9 MS. LINDSEY: And we would join in that objection
10 as well.

11 Q Go ahead, Ms. LaFernier. What do you understand Article II
12 to do?

13 A This gives us the right to hunt, fish and gather.

14 MR. EGGAN: Your Honor, with respect to Article
15 II, there have been federal court holding at least one of
16 which has been acknowledged by the Kennecott side of this
17 case that define the second line there where it says "with
18 the other usual privileges of occupancy" to mean fishing and
19 gathering. So while it says the Indians stipulate for the
20 right of hunting on the ceded territories, the second
21 provision which says "the other usual privileges of
22 occupancy" mean fishing and gathering. And we can provide
23 the Court with a cite and, at the appropriate time, will do
24 so. So essentially from our perspective, Article II means
25 the right to hunt, fish and gather on the so-called ceded

1 territories.

2 MS. LINDSEY: I'd object to the testimony from
3 counsel at this time.

4 MR. REICHEL: I join in the objection. I mean,
5 again I think that, quite frankly, the issue of the legal
6 effect, to the extent it is at all relevant, which I submit
7 it is not -- but to the extent it is relevant, I think
8 that's the proper subject for briefly as opposed to
9 characterization by counsel.

10 MR. EGGAN: And I don't mind doing that. I just
11 don't want the Hearing Officer to have a hole in what we're
12 talking about when it says "hunting." There is case law
13 admitted to by the other side that says that means hunting,
14 fishing and gathering. That's all I was trying to do with
15 that, Judge.

16 JUDGE PATTERSON: All right.

17 Q Is this treaty still in effect?

18 A Yes, it is.

19 Q To your knowledge, has it been -- has it been withdrawn by
20 Congress or by the President of the United States?

21 A No.

22 MR. EGGAN: Can we pull up Exhibit 18 again,
23 please? And show me again the Upper Peninsula.

24 Q Ms. LaFernier, this is a map that was admitted into evidence
25 with Mr. Ayres. But I want to confirm with you. Can you

1 show the Judge on this map where the reservations -- where
2 the tribe's reservation is initially?

3 A This.

4 Q Okay. And can you also show the Judge where the Kennecott
5 mine is proposed to be -- the approximately area? I realize
6 this is a small map.

7 A It's a small map. It's right along in this area here
8 (indicating). It's right around in this area right in here
9 (indicating).

10 Q And are you familiar with the location of the mine proposed
11 by the Kennecott Eagle Minerals Company?

12 A Yes.

13 Q Can you show the Hearing Officer that area? And maybe you
14 just did.

15 A (Indicating)

16 Q Okay. Just to make it clear, is the mine itself within the
17 ceded territories?

18 A Yes, it is.

19 Q And the area surrounding the mine is within the ceded
20 territory?

21 A Yes, it is.

22 Q You can sit down. Do community members continue to exercise
23 the rights granted in the 1842 treaty; that is to say, to
24 hunt, fish and gather within the ceded territories to this
25 day?

1 A Yes, we do.

2 Q And are these rights to hunt, fish and gather -- have these
3 rights, to your knowledge, been recognized by the
4 Michigan -- by Michigan government?

5 A Yes, they have.

6 Q Have you personally exercised those rights?

7 A Yes, I have.

8 Q How?

9 A I have been gathering on the Yellow Dog Plains since I was a
10 little girl with my parents. We gather blueberries, we
11 gather raspberries, thimbleberries along the way. It's a
12 wonderful road to travel. It's been well traveled. And I
13 can remember from since I was just a little girl.

14 Q Have you observed other tribe members -- tribal community
15 members exercising their rights within the ceded
16 territories? And again this is near the area of the mine
17 project.

18 A Yes, I have.

19 Q What have you seen people doing?

20 A Hunting. They hunt for deer, they hunt for partridge.

21 Q Okay. Now, a question about the Yellow Dog Plain itself.
22 Does the Yellow Dog Plain have any particular significance
23 to tribal members? And we're talking about the area of the
24 Yellow Dog Plain near the tribal -- excuse me -- near the
25 Kennecott mine project. Okay? Does that area have any

1 particular significance?

2 A Yes, it does. Many people gather there to socialize on the
3 plains. It is -- someone else testified it is a quiet
4 place. It's a serene place. The Chippewa people are called
5 nature's people. So, of course, that's the perfect place
6 for them -- the native people to gather.

7 Q When we were discussing this -- your testimony last night,
8 you mentioned that there has recently or that the tribe has
9 recently taken some steps to plant wild rice in the vicinity
10 of the mine project. Can you talk about that a little bit?

11 A Our natural resource department planted wild rice there a
12 few years ago and I was there last summer and it is growing
13 quite abundantly. I was very surprised to see it. And it's
14 right near the mine site right in the Salmon Trout River.

15 Q It's in the Salmon Trout River in the vicinity of the mine.
16 Any idea how far it would be from, say, the mine site -- the
17 proposed mine site itself?

18 A It's about maybe the length -- a little longer than this
19 room.

20 Q So it's -- it would be within 30 feet?

21 A Well, you have to travel across the road and go down a hill
22 to get to the river.

23 Q I see. Now, Ms. LaFernier, there is an outcropping in the
24 Yellow Dog Plain called Eagle Rock. Are you familiar with
25 that?

1 A Yes, I am.

2 Q And does Eagle Rock have a name that has been given to it in
3 your tribal language?

4 A Yes, it has.

5 Q What is that name?

6 A Migi zii wa sin.

7 Q Can you spell Migi zii wa sin for the court reporter,
8 please?

9 A It's M-i-g-i z-i-i w-a s-i-n.

10 Q I'm showing you, Ms. LaFernier, a photograph that has been,
11 I believe, previously admitted.

12 MR. EGGAN: Am I right? Has this been previously
13 admitted?

14 MR. HAYNES: Yes.

15 Q Okay. And it is Exhibit 11. Do you recognize that
16 photograph?

17 A Yes, I do.

18 Q What is that?

19 A That is Migi zii wa sin; Eagle Rock.

20 Q Does this outcropping, Eagle Rock, have any particular
21 significance to members of the community?

22 A Yes, it does.

23 Q What is that significance?

24 A It is a place of worship for our members. It has been for a
25 long, long time. It is a sacred place. It has its own

1 spirit. It's a place --

2 Q When you say that it has its own spirit, what does that mean
3 to you?

4 A You'd have to understand the way of the ojibwe regarding
5 spirit -- spirits. Animate and inanimate objects have
6 spirits.

7 Q And what is it about this outcropping that is attractive to
8 members of the community? Can you explain that?

9 A It's a place where many tribal members over hundreds of
10 years have, I believe, done their ceremonies. They've done
11 their fasts. They feast there. They pray there. And this
12 has happened, we know, when, as I mentioned earlier, with
13 the tribes that migrated from the Atlantic seaboard would
14 come here also to worship.

15 Q Have you personally worshiped at that site?

16 A Yes.

17 Q Would you mind telling our Hearing Officer about that, what
18 you do when you go there and what your -- what your worship
19 is?

20 A My worship is a -- is a prayer. I go there to pray. The
21 tribal council also went up to the rock last summer and
22 prayed also. We also had a feast there.

23 Q Now, I think when we were talking -- it's okay. I think
24 when we were talking last night, you talked about a spring
25 that is near Eagle Rock that has -- that has some

1 significance in your memory. What is the significance?

2 A There is actually a spring down -- just down from the road

3 from that area that I also remember going to all of the time

4 when I was a little girl with my parents. And we would

5 always go there for a drink of water, fresh water. And it's

6 still there.

7 Q Can you give us some direction of the -- of travel from this

8 photograph of Eagle Rock, would it be to the north, to the

9 west?

10 A To the west.

11 Q Any idea how far?

12 A Oh, it may be a mile or two.

13 Q Now, I think you were here for Mr. Ayres' testimony about

14 the parcel of land that is owned by the tribe in that area.

15 And he talked about the tribe's use of that particular

16 parcel. Do you have -- do you have any recollection of

17 tribal use of that parcel yourself?

18 A Yes, I do. Along with Jason, there was a tribal member that

19 was living there last year and practicing his traditional

20 ways, yes.

21 Q You need to speak up so that they can hear you.

22 A Oh, I'm sorry.

23 Q You said practicing this traditional ways?

24 A Yes.

25 Q What does that mean?

1 A Well, he lived off the land there. He built a lodge there.
2 He had a sweat lodge there. He stayed most of the summer is
3 what I'm aware of.

4 Q Does the tribe have any plans to sink a well on that
5 property?

6 A We don't have immediate plans, but that would definitely be
7 an option, yes, to provide water for tribal members if they
8 wanted to go there, yes.

9 Q If activities from this mine contaminated the groundwater in
10 that area, would the tribe be likely to sink a well?

11 A No.

12 Q What impact would a change in the groundwater there -- a
13 negative change have on the tribe's use of that 40-acre
14 parcel, if you know?

15 A Well, as Jason testified, the river is close there. Of
16 course, that would impact the fishing there. And it
17 probably would impact the fishing all the way to Lake
18 Superior and Lake Superior itself.

19 Q What about tribal just casual use of that 40? Drinking
20 water from the tributary, would that be affected?

21 A Correct; yes, it would.

22 Q In what way?

23 A I would believe that it would be contaminated. We would not
24 be able to drink it.

25 Q If the proposed mine is approved, will members of the

1 community continue to use the area in the vicinity of the
2 mine for hunting, fishing, gathering?

3 A I would have to say that they would not. I would believe
4 that the entire area would be contaminated. If that would
5 happen, certainly that will threaten the survival of our
6 people.

7 Q Will tribal members continue to use Eagle Rock if this mine
8 project is there?

9 A Most definitely not. I don't believe that, once the
10 drilling and the blasting started on Eagle Rock, that there
11 will even be a rock left. And on top of it, I understand
12 that it's going to be fenced off for 42 years.

13 Q That Eagle Rock in accordance with their current plan is
14 going to fenced off?

15 A Correct.

16 Q What is the tribe's -- or the community's position vis-a-vis
17 this mine, please?

18 A The tribal council has been opposed to this proposed mine
19 since July 2004 when they passed a resolution stating that
20 we did not believe that the short-term gain of this mine was
21 worth the environmental contamination or the risks to human
22 health, and it deeply offended our traditional and spiritual
23 beliefs.

24 MR. EGGAN: Thank you. I have nothing else.

25 MR. HAYNES: No questions.

CROSS-EXAMINATION

BY MS. LINDSEY:

Q Can you tell us the first time that you went to Eagle Rock to pray?

A I was there a few years after 2004, maybe in '05 and '06 I've been in there, also in 2007, last year.

Q So you didn't visit it before you learned of the mine project?

A We did visit it. My mother, at that time, when I was just little, she would visit. I'm not totally sure, you know, that --

MS. LINDSEY: I have nothing further.

MR. REICHEL: I have no questions.

MR. EGGAN: Just a question to follow up on a question asked by Ms. Lindsey.

REDIRECT EXAMINATION

BY MR. EGGAN:

Q If someone were to suggest that members of the tribe are making up their view of Eagle Rock as a religious site to foster this lawsuit, what would your -- what would you say to that?

A That they were making it up?

Q Is the tribe making up this idea of spiritual use of Eagle Rock just to have standing in this lawsuit?

A No, they are not.

1 Q Why -- explain your view on that.

2 A We have actual written documentation that can prove that.

3 Q Can prove what?

4 A That people have been visiting the rock and worshipping
5 there.

6 Q For how long?

7 A For hundreds of years.

8 MR. EGGAN: I have nothing further.

9 MS. LINDSEY: Nothing further.

10 MR. REICHEL: No questions.

11 MR. EGGAN: Thank you, Ms. LaFernier. Thank you
12 very much.

13 JUDGE PATTERSON: Thank you, ma'am.

14 MR. GRAVES: Your Honor, call Dale Goodreau to the
15 stand.

16 REPORTER: Do you solemnly swear or affirm the
17 testimony you're about to give will be the whole truth?

18 MR. GOODREAU: Yes.

19 DALE GOODREAU

20 having been called by the Petitioners and sworn:

21 DIRECT EXAMINATION

22 BY MR. EGGAN:

23 Q Mr. Goodreau, can you give your full name for the record and
24 spell your last name for us, please?

25 A Dale Frances Goodreau, G-o-o-d-r-e-a-u.

- 1 Q And where do you live, sir?
- 2 A Baraga.
- 3 Q Are you a member of the Keweenaw Bay Indian Community?
- 4 A Yes, I am.
- 5 Q What do you do for a living there?
- 6 A I'm a sergeant with Keweenaw Bay Conservation Department.
- 7 Q And how long have you been a conservation officer at
- 8 Keweenaw Bay Indian Community?
- 9 A This will be my eleventh year.
- 10 Q What are your duties in that job?
- 11 A To protect the natural resources of the Keweenaw Bay Indian
- 12 Community.
- 13 Q How many tribal conservation officers does the tribe have?
- 14 A Including myself, four.
- 15 Q And what is your patrol area?
- 16 A We patrol Ontonagon, Baraga, Keweenaw, Houghton, Marquette
- 17 Counties.
- 18 Q Does your patrol area consist of the area that we've been
- 19 talking about the so-called ceded territories?
- 20 A Yes, it does.
- 21 Q Can you tell the Hearing Officer what your understanding is
- 22 of the ceded territories?
- 23 A Ceded territories are usual and custom hunting, fishing and
- 24 gathering areas.
- 25 Q And are they -- are they in the counties that you've just

1 described?

2 A Yes, they are.

3 Q Okay. Are you familiar with the so-call Kennecott Eagle
4 Mine project that is proposed for the area in Marquette
5 County?

6 A Yes, I am.

7 Q Do you know where the mine area is?

8 A Yes.

9 Q Are you familiar with a structure as -- a natural structure
10 known as Eagle Rock?

11 A Yes.

12 Q Is Eagle Rock and the area surrounding Eagle Rock within the
13 ceded territory?

14 A Yes, it is.

15 Q Okay. And your patrol area consists of at least that part
16 of Marquette County?

17 A Yes.

18 Q How often do you think you're in the vicinity of Eagle Rock
19 as part of your duties as a conservation officer?

20 A Depending on the time of year, we try to get through there
21 at least once a week, but at least once a month we go
22 through.

23 Q I want to ask you some questions about observations that you
24 made as a conservation officer. Have you observed members
25 of the Keweenaw Bay Indian Community exercising their treaty

1 rights; that is, to hunt, fish and gather in that vicinity?

2 A Yes, I have.

3 Q In the vicinity of Eagle Rock?

4 A Yes.

5 Q What specifically have you seen them doing?

6 A Gathering berries, gathering medicines.

7 Q Anything else? Hunting, fishing?

8 A Hunting. They've hunted through there.

9 Q Okay. How often do you see people exercising those rights?

10 A Most of the time I go through there somebody is around.

11 Q okay. How recently?

12 A I haven't been out there yet this year because of the

13 weather. Last fall.

14 Q Okay. During the tradition of deer hunting season?

15 A Yes.

16 Q I didn't ask you how long you've been a member of the

17 conservation corps at the Keweenaw Bay. How many years have

18 you been the conservation officer?

19 A My eleventh year.

20 Q Eleventh year. Okay. Have you seen people exercising those

21 rights during that entire 11-year period?

22 A Yes.

23 Q How about you personally? Have you personally exercised

24 your treaty rights in the ceded territories?

25 A Yes, I have.

1 Q In the vicinity of Eagle Rock?

2 A Yes.

3 Q What specifically have you done?

4 A I've help gather medicines, picked blueberries, hunting

5 occasionally through there.

6 Q Have you participated in any activities related to fishing

7 in the area of the proposed Kennecott Mine project?

8 A Not personally have not fished.

9 Q Is there a -- is there a fish hatchery somewhere in the

10 vicinity of the mine?

11 A Fish hatchery?

12 Q Yes. The Coaster Brook?

13 A Coaster Brook trout?

14 Q Yes.

15 A They have a natural habitat in the Salmon Trout.

16 Q When you and I were talking -- I think it was yesterday we

17 talked about a fish hatchery that you had observed. And

18 maybe I'm wrong. Maybe it wasn't the Coaster Brook.

19 A We raise Coaster Brook trout.

20 Q The tribe does?

21 A The tribe does.

22 Q Okay. Where do you do that?

23 A We do that on the reservation of Keweenaw.

24 Q I see. Okay. So that really is not in the vicinity of the

25 Keweenaw --

- 1 A No.
- 2 Q -- or the Kennecott Mine? Okay. Now, let me ask you a
3 question about the spiritual use of Eagle Rock itself. Have
4 you seen members of the community utilizing Eagle Rock for
5 spiritual purposes?
- 6 A Yes, I have.
- 7 Q Do you know -- you know what a church is. How does Eagle
8 Rock compare to a church or something that we might
9 understand?
- 10 A It's the same thing. It's a spiritual gathering area.
- 11 Q Would you mind discussing your own practices at Eagle Rock
12 and what you personally have done at Eagle Rock?
- 13 A When we first come in, we'll have a song and drum, and we
14 light a fire. We feed the spirits. We'll smudge and we'll
15 take --
- 16 Q When you say you'll "smudge," what does that mean?
- 17 A We take the smoke -- tobacco and we each and take smudge,
18 purify our bodies and our souls and our spirit. And then
19 we'll take an offering of tobacco tied in red and bring it
20 up. And wherever we sit to pray, we'll tie that above us,
21 offer that to the spirits. And then we'll pray, meditate.
22 Things come to us.
- 23 Q How often do you use Eagle Rock for this purpose?
- 24 A Once a year.
- 25 Q Have you seen others utilizing Eagle Rock -- others within

1 the Keweenaw Bay Indian Community utilizing Eagle Rock for
2 this purpose?

3 A Yes.

4 Q How often?

5 A They'll use it at least three times a year that I've
6 noticed.

7 Q If there were a mining operation in the vicinity of Eagle
8 Rock, would you utilize Eagle Rock for spiritual purposes?

9 A No.

10 Q Why not?

11 A It'd be fenced off. It'd probably kill the spirits there.

12 Q If the groundwater in the vicinity of Eagle Rock were
13 degraded, would there be any change in your use of the area?

14 A Yes.

15 Q In what way?

16 A Would be able to go fish in them streams that are abundant
17 with fish that some of the others use, drinking water.

18 Because we stop there and get a drink every so often.

19 MR. EGGAN: I don't think I have any other
20 questions.

21 MR. HAYNES: No questions.

22 CROSS-EXAMINATION

23 BY MS. LINDSEY:

24 Q You've talked about hunting, that you occasionally hunt in
25 the vicinity of the mine site -- proposed mine site; is that

1 right?

2 A Yes, ma'am.

3 Q You hunt elsewhere in the ceded territories as well?

4 A Yes, ma'am.

5 Q Can the same be said for fishing and gathering?

6 A Yes, ma'am.

7 Q Okay. So you can -- you do the fishing and gathering in
8 areas outside of just that mine site. You do it throughout
9 the ceded territories?

10 A Yes, ma'am.

11 MS. LINDSEY: Thank you. I have nothing further.

12 CROSS-EXAMINATION

13 BY MR. REICHEL:

14 Q Mr. Goodreau, just so the record is clear, there's not a
15 building at Eagle Rock, is there?

16 A No, sir.

17 Q So the practices that you described, the spiritual
18 practices, do not occur inside a building, do they?

19 A No, sir.

20 MR. REICHEL: Nothing further.

21 MR. EGGAN: Nothing further, your Honor.

22 JUDGE PATTERSON: Thank you, sir.

23 MR. EGGAN: Thank you, Mr. Goodreau.

24 MR. HAYNES: Your Honor, I hesitate to say that we
25 have no more witnesses for today through a scheduling --

1 JUDGE PATTERSON: Okay. That's fine.

2 MR. HAYNES: And I think perhaps off the record if
3 we could confer with counsel about actually tomorrow because
4 of travel times for some of our other witnesses who we plan
5 to call on Wednesday?

6 JUDGE PATTERSON: So what you're saying is we're
7 done for today?

8 MR. HAYNES: I think so, yes.

9 JUDGE PATTERSON: Okay. That's good. That'll
10 give me a chance to read the motions. We can go off the
11 record. Do you want to discuss it off the record?

12 MR. HAYNES: I'd like to.

13 JUDGE PATTERSON: Okay. Close the record for the
14 day.

15 (Hearing adjourned at 3:41 p.m.)

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