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TESTIMONY OF THE HONORABLE DARRELL G. SEKI SR.

CHAIRMAN, RED LAKE BAND OF CHIPPEWA INDIANS

**Before the House Transportation & Infrastructure Subcommittee on Water Resources and
Environment**

February 4, 2022

Aaniin (Hello/Dear) Chairman DeFazio, Chairwoman Napolitano, and Ranking Member David Rouzer,

Chi miigwetch (many thanks) to you and the other distinguished Subcommittee members for this opportunity to testify on behalf of the Red Lake Band of Chippewa Indians (Red Lake or the Band). We are particularly appreciative of your efforts to hold this hearing, which includes a voice often left out of critical conversations surrounding the work of the Army Corps of Engineers (Army Corps) – Indian Country.

While there have been many attempts by the federal government to reduce our homelands, Red Lake is proud to say our 840,000-acre Reservation in Northern Minnesota is held in trust by the United States and has never been broken apart or allotted. For those who are not familiar with the geography of the State of Minnesota, there is a reason people call it the land of 10,000 lakes – nearly 29 percent of Red Lake's Reservation (240,000 acres) is covered by water.

Referred to in early treaties as the Band's "food store," Red Lake Band members have relied on its vast bodies of water and associated wetlands for subsistence fishing and harvesting of animals and plants for food and medicine since time immemorial. As such, each Band Member is charged with the responsibility of sustaining and protecting our pristine environment and natural resources, and carrying on the legacy of our inheritance, our sovereignty, customs, and traditions.

Despite the importance of maintaining the bodies of water within its boundaries for Red Lake Band members, it has taken the Army Corps decades to share and meet Red Lake in its goal of rehabilitating our environment that has been drastically changed due to past Army Corp projects.

History of Red Lake Engagement with the Army Corps of Engineers

The Flood Control Act of 1944 authorized the Army Corps to conduct several activities within the Red Lake reservation for the primary purposes of flood control, pollution abatement, and drinking water supply to downstream communities off the reservation. Project activities included the replacement of a stop log structure at the outlet of Lower Red Lake with a new lift-gate dam, construction of a low-head rock dam several miles downstream from the outlet, as well as the dredging and channelization of significant portions of the Red Lake and Clearwater Rivers.

The Band and the Department of the Interior gave permission to conduct the Red Lake and Clearwater Rivers Project through a series of General Council Resolutions dated Oct 22, 1947, October 28, 1948, and April 17, 1949. Authority was also vested in the U.S. Department of the Army to maintain and operate the dam they were to construct. This permission was granted provisionally, which means that violation of the provisions in the resolutions is a violation of the agreement made between the United States and the Band to conduct the project. Provisions

included the right of the Band to claim damages against the United States arising from the project, and that the Red Lake Marsh (Zah-Gheeng Marsh) was to remain in its natural state.

The project began in 1950 and was largely completed in 1951. Just a few years later, significant desiccation of the marsh was observed, along with the disappearance of waterfowl and furbearer populations that the Band had relied upon for generations for food, cultural, and economic purposes. Fish passage restrictions were also a problem. Prior to channelization of the Red Lake River by the Army Corps, the Zah-Gheeng Marsh, consisting of about 25,000 acres, was considered to be one of the last remaining extensive tracts of pristine marsh in the North Central States. Early reports by visitors to this area spoke on the beauty of the marsh and that it was teeming with wildlife of all kinds. That all changed with the activities of the Army Corps, which resulted in the loss of 25,000 acres of pristine marsh.

In 1957, the U.S. Fish and Wildlife Service issued a report on environmental damages resulting from the flood control project. The report identified, and attempted to quantify, biological and monetary damages that the new dam and channelization of the Red Lake River caused in terms of loss of wildlife, fish passage losses, increased wild fires, and economic losses to the Band. One method suggested in the report was to partially restore the marsh by digging intake channels on either side of the river at the outlet, in an effort to reflood the marsh via gravity flow. This project was subsequently constructed, but never worked. Other activities and works were proposed throughout the decades, with some being implemented, including a fish passageway just below the dam in 2011, but the Zah-Gheeng Marsh remains in the same poor condition today.

Red Lake knows too well that our experience with the Army Corps is not unique to Indian Country. The Band has been supportive of other tribes' efforts for redress concerning the Dakota Access pipeline, the Enbridge Line 5 pipeline, and the Enbridge Line 3 pipeline. Last year the Band was party to a lawsuit against the Army Corps, which permitted construction of the Enbridge Line 3 pipeline in Minnesota. The Band requested a preliminary injunction to stop construction, for alleged inadequacies in the Army Corps' climate change-related analyses. The Court denied the motion without addressing the Plaintiffs' argument concerning inadequacies in the Army Corps' climate change-related analyses. Despite this, Red Lake continues to stand with other Tribes in overcoming Army Corps' lack of regard for our homelands and natural resources.

Red Lake's Current Efforts to Partner with the Army Corps of Engineers for Habitat Rehabilitation

While Red Lake cannot say our relationship with the Army Corps has been cordial at all times, there are three particular moments in Red Lake's history where the Band's relationship with the Army Corps has made headway – (1) restoration of the walleye population; (2) construction of the fish passage in 2011; and (3) current efforts to rehabilitate marsh lands surrounding the dam.

1. **Restoration of the Walleye Population.** In 1917, the Band began operation of the Red Lake Fishery to combat a regional food shortage during World War I. Subsequently, the Secretary of the Department of Interior established regulations at 25 CFR Part 242 authorizing the Band to engage in commercial fishing.

Today, the tribally owned and operated Fishery continues to play an important role in the life of the Band by maintaining local food sources and contributing to the local economy. During the

peak fishing season, the Band supports 75 full time employees and over 700 fishermen-and-women, distributing \$60,000 to \$120,000 weekly to its fishermen-and-women. In 2021, the Fishery caught nearly half a million pounds of walleye for commercial distribution. This was the 15th year of fishing after the walleye population was restored and the Band remains committed to being a good steward of their lands. In 2006 and 2013, the Band was recognized by the Harvard Project on American Indian Economic Development for its multi-pronged plan to monitor, restore, and maintain the walleye population in which its livelihood depends.

2. Construction of the Fish Bypass in 2011. In 2011, the Band and Army Corps worked successfully on constructing a fish bypass around the Red Lake Dam, after 60 years of expressed concerns over the fish outmigration problem at the dam. There has always been distrust between the Band and the Army Corps. Red Lake Band members strongly believe the dam was only constructed for downstream agricultural and flood control interest off the reservation. Not for the interest of the Red Lake people. The construction of the fish bypass was thus an important first step in rebuilding trust between the Band and the Army Corps.

3. Current Efforts to Rehabilitate Marsh Lands Surrounding the Dam. In 2020, the Red Lake Band started the process of gathering support for a multi-agency effort to address the fish passage and Zah-Gheeng marsh degradation on the Red Lake Reservation as a result of past Army Corps channelization of the Red Lake River. Over the past year we have been able to build momentum for this project and have had meetings, and gained support and expertise from the Army Corps, U.S Fish and Wildlife Service, and the Minnesota Department of Natural Resources. As such, the Army Corps has secured funds to conduct a current feasibility study to address fish passage and Zah-Gheeng marsh degradation, which is expected to be completed by September of 2022.

The Band will then begin pursuing construction dollars to implement a two phased restoration approach. Phase one will address the fish migration barrier constructed by the Army Corps in 1958. This 80-foot concrete structure will be altered to allow native fish species to ascend past this structure and continue their migration toward Red Lake. The Band has been cooperatively working to restore the lake sturgeon population of the Red Lakes for the past 15 years. The Lake Sturgeon is an historically important species to the Band, but they were extirpated from Red Lake by 1950. This was likely a direct result of Army Corps' project activities, with sturgeon not being able to return to the Red Lakes on their spawning migrations. Sturgeon use rivers, as we use highways, for seasonal movements. The construction of dams in the Red River of the North Watershed was a major factor causing this species to become extinct in the watershed. If funding can be secured, alterations to this structure should be completed by the end of 2024.

The second phase of this project will focus on restoring the marsh that remains in a degraded, unproductive state, since the channelization of this section of the river in 1951 by the Army Corps. The marsh restoration is being studied as part of the same feasibility study with a draft to be completed by September of 2022. This phase will be much larger and more complex than phase one and will require additional time to implement. To restore a functional marsh, the levees will have to be breached and the original river channel will have to be reestablished. This will allow for seasonal flooding of this wetland, which will make it more productive for fish, waterfowl, and furbearers which are important to the way of life of the Red Lake people. The restoration of the marsh will also help with downstream flooding issues, because wetlands are very effective at holding water during high water periods. Funding for this phase will likely be asked for in the 2024 Water Resources Development Act.

To document the impact and effectiveness of these restoration efforts, pre- and post-biological surveys should be conducted as part of this effort. This will include fish and mussel surveys in the river above and below the dam, before and after our restoration efforts in phase one. Furbearer and waterfowl monitoring should also be conducted in the marsh area pre- and post-restoration during phase two. These surveys will document the success of our efforts and can be used as a model for future restoration effort in the United States.

Recommendations

As the House Subcommittee on Water Resources and Environment begins to prepare its Water Resources Development Act (WRDA) of 2022, we encourage the Subcommittee to include funding for innovative projects that the Army Corps is undertaking with tribal governments, like Red Lake's – one of partnership, collaboration, and focused on rehabilitating, sustaining, and protecting our natural resources. More specifically, we encourage the Subcommittee to:

- 1. Provide the Army Corps with \$950,000 in Construction Funds to Support Phase One of Red Lake's Fish Migration/Zah-Gheeng Marsh Rehabilitation Project.** These funds will be used to alter the current concrete low head dam to facilitate fish movement over this structure. We will be using a pool riffle design, which has been shown to be very effective in accomplishing this objective with very little environmental impact. This project will help the Band in its lake sturgeon restoration efforts and repair the negative impacts on the fish and mussel communities associated with the current structure. This phase of the project should be completed in 2024.
- 2. Provide the Army Corps with \$100,000 for a reimbursable agreement with the Band to Perform Biological Surveys Before and After Phase One of Red Lake's Fish Migration/Zah-Gheeng Marsh Rehabilitation Project to Show the Impact and Effectiveness**

of the Army Corps' Investment. Comprehensive fishery and mussel surveys will be conducted before and after the alteration of the dam to show the impacts and effectiveness of this project. A comprehensive fisheries survey will be conducted on the 12 miles of the Red Lake River within the boundaries of the Red Lake Reservation. This survey will be repeated once the modification of the dam is complete to show the positive results of this project. A comprehensive mussel survey will be conducted below and above the dam before and after the dam is modified. Fish are the main way that larval fresh water mussels are transported upstream, and this project should have positive effects on this community. The project site contains one of the densest concentrations of native freshwater mussels in the state of Minnesota, and so it is an area of special concern.

3. In order to fulfill its Trust Responsibility, the Army Corp should staff a dedicated Tribal Liaison for each District to increase government to government consultation and to ensure that tribal concerns are addressed in a timely manner. This liaison should, at a minimum, contact designated tribal staff monthly to address any ongoing concerns and to keep communications open and regular. Communications with Army Corps staff vary widely from very straight forward and cordial to nearly non-existent. The Army Corps, as a large bureaucracy, can be extremely challenging to navigate with respect to appropriate contacts on various issues. Examples of challenges for the Red Lake Band include the 404 permit process and dam operations planning. Clean Water Act (CWA) Section 404 permitting is a necessary and important part of many projects as it ensures the protection of valuable natural resources and prevent projects from violating the complicated requirements of the CWA. However, the time between application and approval can be extremely detrimental to tribal goals and objectives. In some cases, permits are taking in excess of 18 months. When projects are funded through grants with deadlines for expenditures this is unacceptable and can result in project cancellation. There

is no clear line of communication to deal with these issues. A tribal liaison would provide this direct line of communication ensuring that both the proper tribal staff and Army Corps staff are in close contact resulting in accountability and timely responses from both parties. A liaison would also benefit both entities when cooperative projects occur, such as the restoration the Band is currently working on with the Army Corps or a new dam operations plan which will need to be discussed in the near future. The cost of a liaison would be minimal, requiring primarily monthly telephone check-ins and in person meetings only in the case of actual projects. This would be more than made up for by the potential improvement in Army Corps-Indian Country relationship.

Conclusion

Throughout the years, the relationship between the Band and the Army Corps may be described as one of misunderstanding and conflict. It has not helped matters that the Army Corps has a policy of rotating out its District Engineer Colonel every few years. Since the beginning of the Red Lake project in 1950, Red Lake Band leadership has changed five times and the Army Corps St. Paul District leadership has changed nearly two dozen times. The result of this frequent turnover is frustrating and results in the Band repeatedly meeting with and restarting our education process on the damage the Army Corp did to our land, effectively thwarting the government to government consultation process. So here we are today, with the current Army Corps feasibility study to examine yet again, ways that the Zah-Gheeng Marsh might be restored, and fish passage improvements be made.

We are excited about the current national leadership of the Army Corps. Assistant Secretary Michael Connor, and Deputy Assistant Secretary Jaime Pinkham, both tribal citizens, have extensive experience in working with Indian Country. We anticipate they will make improvements

to help ensure the Army Corps honors its trust responsibility to tribes and works to improve the government to government relationship. We also acknowledge and appreciate the efforts of your Subcommittee to do the same, as partially evidenced by your invitation for me to testify today.

Miigwetch (thank you) for allowing me the opportunity to inform the Subcommittee about Indian Country's engagement with the Army Corps of Engineers and to identify opportunities to support improved collaboration between the Army Corps of Engineers and Indian Country. We look forward to working with your Subcommittee to guide the Army Corps into a new direction.

Miigwetch,

Darrell G. Seki, Sr.