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of the derailment is under investigation.

Dupuis said the band's police chief and emergency management director were not notified of the derailment until 5 p.m. Saturday, five hours later.

Dupuis and some other FDL officials were allowed on the site early Sunday morning, but since then they have been allowed only to monitor things from the water. Even that "permission" rankled the chairman.

"This is our home, this is our land," he said, in a comment he said was directed to the band members. "You all know as well as I do, to have another agency tell us where we can or can't go within the confines of our own reservation, specifically using statements like 'you can use the water, we give you permission go on the water,' nobody's going to give us permission. That's the problem that we're sitting with right now."

BNSF spokesperson Amy McBeth said the railway initiated the 911 notification of the derailment within 30 minutes of the incident occurring Saturday and then several subsequent communications occurred throughout the day.

Dispatch records at the St. Louis County Sheriff's Department confirmed that they received a call from BNSF at 11:51 a.m. Saturday, and notified law enforcement there at 11:54 a.m. However, FDL Emergency Management director Cassie Diver said it was almost dark by the time she heard about the derailment just before 5 p.m. Saturday. She immediately began contacting staff and taking steps to open the band's Emergency Operations Center (EOC) in the Natural Resources Building.

"I had such limited information about what was going on and how, that I made the decision very quickly to open the EOC so we could start getting in contact with these agencies and getting a better handle on what was happening," Diver told the Pine Knot News.

Cloquet Area Fire District chief Kevin Schroeder said they were informed at

around 5:30 p.m. Saturday — although the accident site is in St. Louis County, CAFD provides emergency response services for the reservation. FDL police chief Herb Fineday said he heard about the derailment about the same time, from a railroad liaison in Texas. Schroeder, Fineday, Dupuis and Diver expressed concern that there had been no planning in case of injury on the work site, even three days later.

McBeth sent a BNSF Railway statement in response to the Pine Knot News:

"We've been working with the Fond du Lac leaders, providing regular briefings and safe access to the site since the derailment as our crews have been responding to the incident. As work continues there to remove the derailed cars and the spilled coal, we will continue these efforts. We'll be assessing the quickest and safest way to remove coal in the river and will be working with the Fond du Lac officials on that plan as it is developed."

"For safety, we are escorting officials and leaders in because it's an active site," McBeth added.

Although no official figure has been released regarding the amount of coal spilled in the derailment, CAFD officials estimated the number at close to 5,000 tons. CAFD officials also said approximately six of the derailed cars were on the ice. Band officials expressed concern that the coal might leach heavy metals or even mercury into the water.

Diver said FDL has been using an airboat and a drone to monitor what's going on, courtesy of the St. Louis County emergency management team.

"Since we weren't getting any information, I took it upon myself to get updates myself," Diver said.

Lack of collaboration

The easement that allows the railroad to use the land appears to be the crux of the issue.

FDL band attorney Sean Copeland said the railroad easement was created by the United States Congress in 1888, explain-



By early Sunday morning, a massive response to Saturday's BNSF train derailment was already underway, with more than 20 semi-trucks loaded with construction equipment, railroad ties and more, lined up along Broadway Avenue and Avenue B in Cloquet. *Photos by Jana Peterson/ Pine Knot News*

ing that Congress stated that the railroad had to be operated "with due regard for the rights of Indians, and we're concerned that's not being done."

The attorney said the band has made two primary demands of BNSF. One is site access, so the band can exercise regulatory authority including water quality standards that are federally recognized as well as the band's employment laws and emergency operations.

"When band staff have gone on site they've been denied access," Copeland said. "Recently we've had conversations with Burlington Northern staff who said we're able to access



Fond du Lac Band attorney Sean Copeland explains how railroad easements were created by Congress in the 1880s and how the Band believes the railroad is violating the easements by not responding to the band's requests.



Fond du Lac Chair Kevin Dupuis addresses partner agencies and media Tuesday morning at a press conference about the BNSF derailment and lack of collaboration by the railroad.

the water to do our own water sampling on the river, so that's progress."

Copeland said the band has also been asking BNSF to cooperate with FDL emergency management staff and to work with the band to provide information about what they're doing and to recognize FDL as the lead agency.

"We haven't had much success with that," the attorney said. "We're asking Burlington Northern to meet those demands. It's been 72 hours and that's too long."

Dupuis said he and

other FDL officials would continue trying to work something out with the railroad and the band's partners, including the CAFD, Cloquet police, and emergency responders from both Carlton and St. Louis Counties.

"If it isn't [worked out], I believe there are several options that could go with this," Dupuis said. "One of them may be completely shutting this project down to ensure that the right things are taken care of, and that the right approaches are done and complete collaboration with all of these agencies," he said, indicating the representatives of the various local agencies who also attended Tuesday's press conference.

"We can't do this without them and they need to be part of this, because it affects their neighborhood also," Dupuis added.

Tribal officials posted a letter from Chairman Dupuis to the vice president of government affairs for BNSF Railway on the

Reservation website later Tuesday.

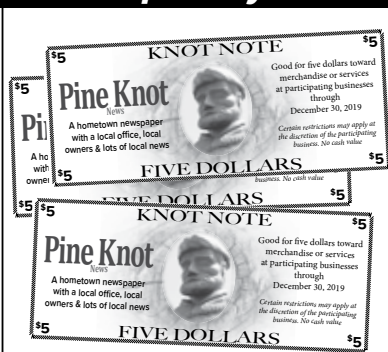
In it, he expressed "continuing concerns and deep disappointment with BNSF's intentional disregard of the band's sovereign, regulatory authority" and its Emergency Operations Plan for disaster responses on the reservation.

"In no way, shape or form should an organization or company — even if there is an easement — have complete jurisdiction or authority over something," Dupuis said at the press conference. "These are things we have to work out. It is a big concern. We have to have eyes on target and boots on the ground to ensure the environment is cleaned up the right way."

Dupuis encouraged people to check the FDL website for updates. Diver said safety is still a big concern, pointing out that no one should be going to the accident site except for the proper personnel, as it is still an active incident.

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