The Henderson Mine and Mill

Location Empire, CO (mine), Parshall, CO (mill)
Type of Mine Underground Molybdenum Mine with Tailings Area
Tons of Ore 130 million tons of ore mined to date
Size of Mine Over 100 miles of underground workings, mill site and tailings disposal area cover approximately 3,500 acres
Contact Ms. Anne Beierle, Environmental Manager
Climax Molybdenum Company

McLaughlin Mine

Location Lower Lake, CA
Type of Mine Open-Pit Gold Mine with Tailings Area
Tons of Ore Approximately 40 million tons of ore and 130 million tons of waste rock mined, and 2.7 million ounces of gold produced to date
Size of Mine The open pit is approximately one mile long, one-half mile wide, 1,000 feet deep, and covers about 210 acres; the total mine area is approximately 1450 acres, 700 of which are now reclaimed
Contact Mr. Raymond E. Krauss, Environmental Manager
McLaughlin Mine, Homestake Mining Company

Cannon Mine

Location Wenatchee, WA
Type of Mine Underground Gold Mine with Tailings Area
Tons of Ore 4.5 million tons of ore mined to produce 1.25 million ounces of gold and 2 million ounces of silver
Size of Mine Total mine area is approximately 200 acres; the site is now reclaimed
Contact Mr. Gary Bates, Vice President
Selland Construction

Viburnum Mine No. 27

Location Viburnum, MO
Type of Mine Underground Lead, Zinc, and Copper with Tailings Area
Tons of Ore 8,593,390 tons of ore to produce 350,703 tons of lead concentrate, 20,956 tons of zinc concentrate, and 22,702 tons of copper concentrate
Size of Mine The No. 27 mine was one of three mines feeding a central mill. The No. 27 underground workings extended for over a mile to the north and west of the shaft and approximately one-half mile to the south of the shaft
Contact Mr. John E. Carter, Manager Mining Properties
The Doe Run Company

Stillwater Mine

Location Nye, MT
Type of Mine Underground Platinum-Palladium Mine with Tailings Area
Tons of Ore 3.3 million tons of ore and 2.7 million tons of waste rock mined to date, with over 2 million ounces of platinum group metals produced to date
Size of Mine Over 27 miles of underground workings
Contact Mr. Bruce E. Gilbert, Environmental Affairs Manager, Stillwater Mining Company

Flambeau Mine

Location Ladysmith, WI
Type of Mine Open-Pit Copper Mine
Tons of Ore Just under 2 million tons of ore, and 10 million tons of waste rock
Size of Mine The pit is about 550 feet wide, 2,600 feet long, and 225 feet deep, and covers about 35 acres
Contact Tom Myatt, General Manager

For more information about
environmentally responsible mining and the technology, people, science
and regulations that make it possible, please contact:

Executive Director
The Wisconsin Mining Association
P.O. Box 352
Madison, Wisconsin 53701-0352

Crandon Chronicle

PUBLISHED BY Crandon Mining Company AUGUST 1997

Mining and Taxes

Project Offers Major Addition to Local Tax Base

If you live in Forest County and the Crandon School District, you could see significant property tax relief with construction of the proposed Crandon mine.

"The mine's value on the tax rolls will rise when construction starts in the year 2000," says Bob Abel, controller for Crandon Mining Company. "It will peak in 2003 after construction is complete. At that point, the mine will add on an additional $110 million to the tax base to the benefit of the Town of Lincoln, Town of Nashville, Forest County and Crandon School District.

That increase in value will generate a total of nearly $1.6 million in local property tax revenue in that year, based on current tax rates, according to Abel. "The towns, county and schools will be able to use that money to lower tax rates, pay for more services, or some combination, depending on the wishes of local property owners and their elected officials," Abel said.

The accompanying chart shows the anticipated increase to the tax base from now until the mine closes and undergoes reclamation.

Besides property taxes, the mine will contribute a total of about $119 million in Net Proceeds Taxes. The 60 percent local share of those dollars — $72 million — will be shared by local communities and Native American tribes affected by the project based on formulas set by state law.

Crandon Mine Project Property Tax Benefits

Year	Mine Tax Base	Annual Mine Tax Contribution				
		Lincoln	Nashville	Forest County	Crandon Schools	TOTAL
1997	6,039,000	3,500	11,400	32,600	68,900	116,400
2001	36,400,000	46,000	10,000	154,000	326,000	536,000
2003	110,300,000	153,000	10,000	466,000	988,000	1,617,000
2010	93,300,000	129,000	10,000	394,000	836,000	1,369,000
2020	72,200,000	98,000	10,000	305,000	647,000	1,060,000
2030	51,000,000	67,000	10,000	215,000	457,000	749,000

NOTE: This chart assumes mine construction begins in the year 2000 and is completed by the end of 2002.

Crandon, Lincoln, Approve Local Agreements

The Crandon City Council and the Town of Lincoln Board of Supervisors have approved Local Agreements with Crandon Mining Company. The Crandon council approved its agreement unanimously on June 30 and the Lincoln board did likewise on July 17.

The two communities join the Town of Nashville and Forest County in adopting agreements that establish financial and other benefits the localities will receive from the mine and formally establish local hiring preferences, environmental monitoring provisions and other conditions of mine operation.

The agreements also establish a Citizens Advisory Committee that gives local residents another channel for monitoring mine-related activities, asking questions and voicing concerns about the mine.. The committee held its third meeting at Crandon City Hall on July 22 and will meet monthly at rotating sites around the area during the mine permitting process.

After the permitting process, the committee will meet quarterly, providing a forum for addressing citizen concerns about mine construction or operation and for monitoring compliance with the Local Agreements. All committee meetings will be open to the public and will be announced in local newspapers.

"I would encourage local residents to be familiar with their Local Agreements and to bring any questions or concerns to the committee," said Dick Diotte, CMC's director of community relations. Citizens Advisory Committee members are:

- Forest County: Ron Henkel and Paul Millan.
- Town of Nashville: Jim Stormer and Dave Anderson.
- Town of Lincoln: To be appointed.
- City of Crandon: Bill Nickel and Dave Wilson.
- CMC: Dick Diotte and Don Moe.

Your Questions Are Always Welcome

When we go to public meetings or speak to local groups, people ask questions. When we run ads in the newspaper, people clip out our coupons and send them back — with questions. That's a good thing. As far as I'm concerned, every question we get is a good one. Here are a few we get often.

Q. How long will the mine last and what will happen to Crandon when the mine is gone?

A. The mine will take three years to build; it will operate for 28 years and require four years to reclaim. Tax dollars from the mine will help Crandon and its neighbors plan for a strong economy after the mine closes. It's happening in Ladysmith, where the Flambeau mine has helped finance an industrial park, which is already providing new, long-term jobs.

Q. What is the advantage of a Local Agreement?

A. It allows the mining company and the community to address local zoning issues in a more comprehensive manner than the alternative of applying for a conditional use permit. Through the Local Agreement, the community can establish a binding legal contract covering financial guarantees, local hiring preferences, environmental monitoring, and much more.

Comment

by Rodney Harrill
President, Crandon Mining Company

Q. Will the mine cause a population boom in Crandon?

A. No, because about 70 percent of the people who will work in the mine already live in the tri-county area. Based on our socioeconomic studies, the mine is expected to add a total of about 700 people to Forest, Oneida and Langlade counties -- just over one percent more than if the mine were not built. Local communities can easily handle that modest growth.

Q. How many people will work at the mine?

A. The mine construction work force will start at about 175 the first year, then gradually increase to a peak of nearly 550 workers by about the third year. Contractors will be encouraged to hire workers from the local area.

The permanent workforce needed to operate the mine will be about 400. Hiring preference will be given to local residents. People employed at the mine will spend money throughout the tri-county area, stimulating the economy and helping create more new jobs. For every 10 jobs at the mine, approximately 8 jobs will be created in related businesses, adding about 300 jobs in the local communities in addition to the base workforce at the mine.

Q. What is the Master Hearing?

A. It is the last step in the mine permitting process. During the Master Hearing, an administrative law judge who acts as the hearing examiner will listen to sworn testimony in a court-like atmosphere. There will be two phases, one for testimony from the general public, and one for testimony from experts from the DNR, CMC and other parties for and against the mine. After the hearing comes a decision on whether the mine should be allowed, and if so, under what conditions.

What questions do you have? Mail them, phone them, fax them. We'll get you an answer.

Crandon Chronicle

Crandon Chronicle is published by Crandon Mining Company to keep you up-to-date on the mine permitting process. Submit questions, comments, suggestions, news items or photos to:

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P.O. Box 336
Crandon, WI 54520-0336
715/478-3393

Rhinelander Office
7 N. Brown St., Third Floor
Rhinelander, WI 54501-3161
715/365-1450

Crandon Mining Company

• **Environmentally Responsible** •

www.crandonmine.com

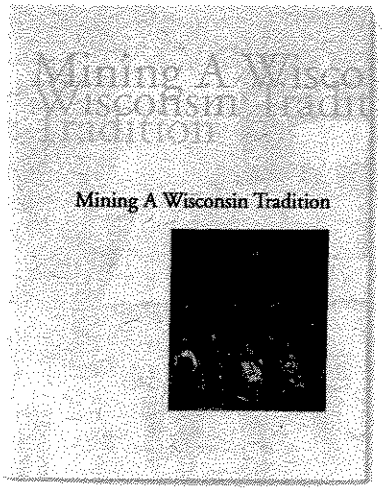
Booklet Traces History of Mining in Wisconsin

During its history, Wisconsin has been a major producer of lead and zinc.

The first major influx of settlers to the state consisted of lead prospectors and miners.

You can find these and other facts in "Mining A Wisconsin Tradition," an 8-page booklet available from the Wisconsin Mining Association.

The booklet traces the state's lead, zinc, and iron mining heritage from the early 1800s to the present and addresses the relationship between mining and the environment. Copies of the booklet are available at CMC offices.



At Home in the Wilderness

Stillwater Mine Protects and Enhances Its Surroundings

While Bruce Gilbert was preparing for a career in mining, no one told him his job might one day include the care and feeding of bighorn sheep. As it turns out, that's part of his responsibility as environmental affairs manager for the Stillwater Mine at Nye, Montana.

Stillwater, an underground platinum-palladium sulfide mine that has produced more the 3 million tons of ore and 2 million ounces of platinum group metals since 1987, lies about 30 miles north of Yellowstone National Park in the Beartooth Mountains.

"We operate in a fishbowl," says Gilbert. "People drive right through here on their way to the Absaroka-Beartooth Wilderness. We have to look and be our best, and that has been our goal since this mine opened."

Gilbert considers the mine's 100 percent environmental compliance record an achievement, but only the beginning. Stillwater has gone beyond the regulations in numerous ways.

The mine's 65-acre tailings area, two miles from the wilderness area, is the first in the state to include a liner system, which is not required by state law. The mine's water treatment system discharges to groundwater adjacent to the Stillwater River, a prime trout fishery. The system is so effective that nitrogen nutrient entering the river is one-tenth the amount

(cont'd on page 4)

> **"We operate in a fishbowl. People drive right through here on their way to the Absaroka-Beartooth Wilderness. We have to look and be our best."**
>
> Bruce Gilbert
> Stillwater Mine

Stillwater Mine Facts

Location:
Nye, Montana

Type of Mine:
Underground Platinum-Palladium Mine with Tailings Area

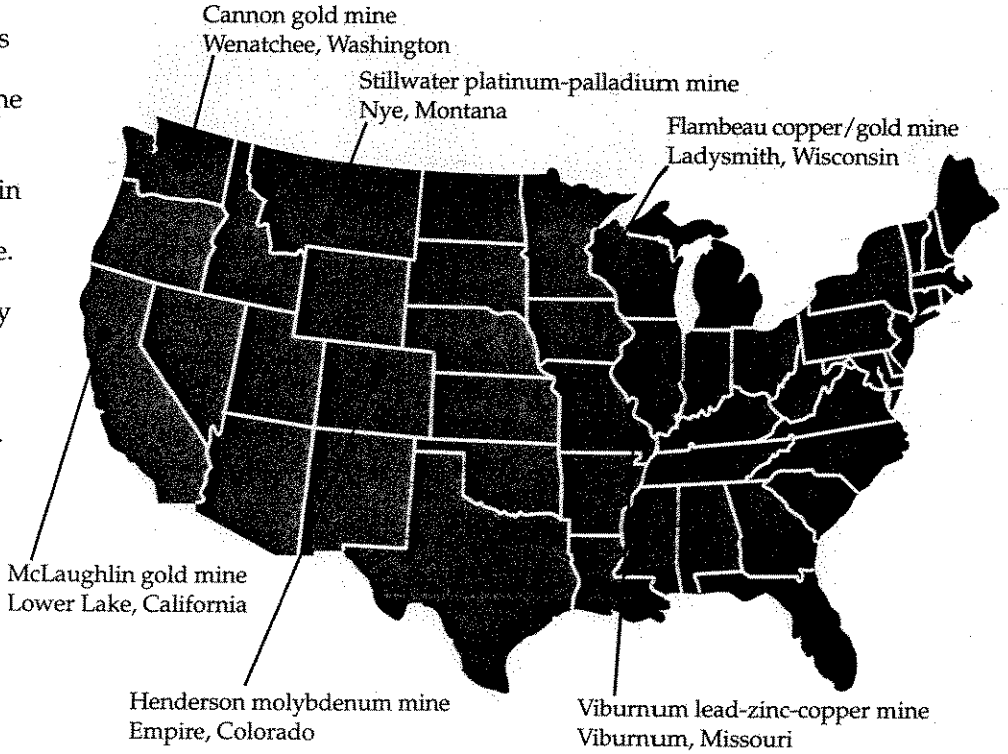
Tons of Ore:
3.3 million tons of ore and 2.7 million tons of waste rock mined to date, with over 2 million ounces of platinum group metals produced to date

Size of Mine:
Over 27 miles of underground workings

A Look At Modern Sulfide Mining

Modern technology and regulations make mines far different today than they were years ago. A report from the Society for Mining, Metallurgy and Exploration (SME), released in January, describes six sulfide mines in the United States that have had no environmental law violations to date.

These six mines ranked best in a study of more than 150 environmentally responsible mines in North America. This issue of the Chronicle looks at one of the six mines, the Stillwater platinum-palladium mine in Montana. Future issues will profile other safe sulfide mines. For a summary of the SME report, call Crandon Mining Company at 715/365-1450.



(cont'd from page 3) At Home in the Wilderness

allowed under the mine's water quality permit.

Perhaps most significant, Stillwater voluntarily spent $250,000 to clean up and reclaim a nearby chromium mine tailings area left over from the World War II era. By capping and stabilizing the tailings, Stillwater eliminated a local problem with windblown dust and saved state taxpayers the cost of the clean-up.

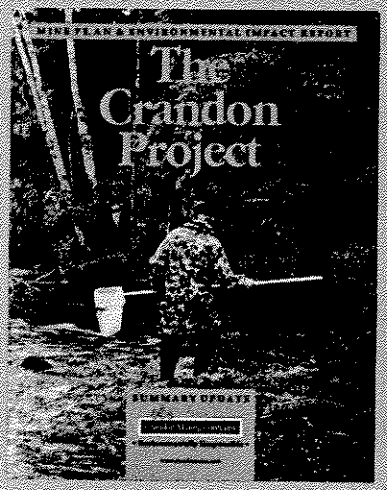
The area surrounding the mine is home to bighorn sheep. Stillwater provides food and salt for the sheep on their winter range and has worked with Montana State University to treat the sheep for lung worm, a common ailment in the species. These efforts have helped increase the local herd's lambing rate from two per year to six to seven per year.

Stillwater also conducts an extensive recycling program and donates compacted paper to local schools to help them raise funds.

For more information about the Stillwater mine, call 406/328-6400.

Updated Brochure Available

In case you want an overview of our project, we've just published an update of our 20-page Project Summary brochure. Stop by our offices and pick one up, or give us a call and we'll mail it to you.



Crandon Mining Company

Crandon Mining Company
P.O. Box 336
Crandon, WI 54520-0336

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701–2536
Telephone (608) 266–1304
Fax (608) 266–3830

DATE: July 8, 1997

TO: REPRESENTATIVE MARC DUFF, CHAIRPERSON, ASSEMBLY COMMITTEE ON ENVIRONMENT

FROM: William Ford, Senior Staff Attorney

SUBJECT: 1997 Senate Bill 3, Relating to Issuance of Metallic Mining Permits for the Mining of Sulfide Ore Bodies

A. INTRODUCTION

This memorandum is in response to your request for an analyses of 1997 Engrossed Senate Bill 3 ("the Bill") relating to issuance of metallic mining permits for the mining of sulfide ore bodies. The memorandum first explains current state law relating to the issuance of metallic mining permits and then describes the Bill. The memorandum next summarizes the interpretations of the Bill by the Department of Natural Resources (DNR), particularly with respect to key phrases in the Bill as they would affect the administration of the process for issuing metallic mining permits by the DNR. The memorandum finally discusses the interpretation of the Bill by the DNR.

B. CURRENT LAW PERTAINING TO THE ISSUANCE OF A METALLIC MINING PERMIT

Under s. 293.49 (1), Stats., the DNR is directed to issue a metallic mining permit if it finds:

1. The mining plan and reclamation plan are reasonably certain to result in reclamation of the mining site and the DNR has approved the mining plan. "Reclamation" is defined in s. 293.01 (23), Stats., to mean the process by which an area physically or environmentally affected by mining is rehabilitated to either its original state or, if this is shown to be physically or economically impracticable or environmentally or socially undesirable, to a state that provides long-term environmental stability.

2. The proposed operation will comply with all applicable air, groundwater, surface water and solid and hazardous waste management laws and rules of the DNR.

3. In the case of a surface mine, the site is not unsuitable for mining. "Unsuitability" is defined in s. 293.01 (28), Stats., to mean that the land proposed for surface mining is not suitable for such activity because the surface mining activity itself may reasonably be expected to destroy or irreparably damage either: (a) habitat required for survival of species of vegetation or wildlife designated as endangered in rules adopted by the DNR, if such endangered species cannot be firmly reestablished elsewhere; or (b) unique features of the land, as determined by state or federal designation and incorporated in rules adopted by the DNR, as wilderness areas, wild and scenic rivers, national or state parks, wildlife refuges and areas, archaeological areas, property registered in the National or State Register of Historic Places and other lands of a type designated as unique or unsuitable for surface mining.

4. The proposed mine will not endanger public health, safety or welfare.

5. The proposed mine will result in a net positive economic impact in the area reasonably expected to be most impacted by the activity.

6. The proposed mining operation conforms with all applicable zoning ordinances.

The DNR is required to ***deny*** a mining permit if any of the following situations may reasonably be expected to occur during or subsequent to mining [s. 293.13 (2) (d), Stats.]:

1. Landslides or substantial deposition from the proposed operation in stream or lake beds which cannot be feasibly prevented.

2. Significant surface subsidence which cannot be reclaimed because of the geologic characteristics present at the proposed site.

3. Hazards resulting in irreparable damage to various types of buildings or facilities which cannot be avoided by removal from the area of hazard or mitigated by purchase or by obtaining the consent of the owner.

4. Irreparable environmental damage to lake or stream bodies despite adherence to the requirements of ch. 293, Stats.

The DNR is also required to deny issuance of a mining permit if the person applying for the permit or certain related persons have engaged in activities specified in s. 293.49, Stats., which indicate that the person may be unsuitable to operate a mine. [s. 293.49 (2), Stats.]

The DNR is authorized to promulgate rules by which it may grant an exemption, modification or variance, either making a requirement more or less restrictive, from any rule promulgated under a variety of statutes authorizing environmental rule-making, if the exemption, modification or variance does not result in the violation of any federal or state environmental law or endanger public health, safety or welfare or the environment. [s. 293.15 (9), Stats.]

After a mining permit has been issued, but before mining can actually commence, the mine operator is required to file with the DNR a bond equal to the estimated cost to the state of fulfilling the reclamation plan. In lieu of a bond, the operator may deposit cash, certificates of

deposit or government securities with the DNR. The amount of the bond or other security required shall be equal to the estimated cost to the state of fulfilling the reclamation plan. [s. 293.51, Stats.]

C. DESCRIPTION OF 1997 SENATE BILL 3

The Bill would establish two preconditions for issuance of a mining permit by the DNR in addition to the requirements of current law. Under the Bill, the DNR may not issue a permit for the mining of a sulfide ore body until both of the following preconditions are satisfied:

1. The DNR determines, based on information provided by an applicant for a permit under s. 293.49, Stats., that a mining operation has operated in a sulfide ore body which is not capable of neutralizing acid mine drainage in the United States or Canada, for at least 10 years without the pollution of groundwater or surface water from acid drainage at the tailings site or at the mine site or from the release of heavy metals.

2. The DNR determines, based on information provided by an applicant for a permit under s. 293.49, Stats., that a mining operation that operated in a sulfide ore body which is not capable of neutralizing acid mine drainage in the United States or Canada, has been closed for at least 10 years without the pollution of groundwater or surface water from acid drainage at the tailings site or at the mine site or from the release of heavy metals.

The Bill defines "pollution" to mean "degradation that results in any violation of any environmental law" and defines "sulfide ore body" to mean a mineral deposit in which metals are mixed with sulfide minerals.

D. DNR INTERPRETATION OF THE BILL

In a letter to you as Chairperson of the Assembly Committee on Environment dated June 6, 1997, George E. Meyer, Secretary, DNR, states that the DNR is not opposed to the Bill but does not believe it will provide any additional assurances over current law that mining can be environmentally safe. In addition, Secretary Meyer states that the Bill will not serve to create a moratorium on mining. These statements are based upon DNR interpretations of a few key phrases in the Bill, which are explained in the material attached to Secretary Meyer's letter and which are summarized below.

1. Acid Neutralization

Both preconditions of the Bill must be satisfied with respect to mines operated "in a sulfide ***ore body*** which is not capable of neutralizing acid mine drainage." (Emphasis added.) Sulfide minerals, when exposed to oxygen and water, can progress through a series of chemical and biochemical reactions to produce acid. Other minerals (principally carbonate minerals such as calcite) have the capacity to ***neutralize*** acid. If sufficient neutralizing minerals are present at the mine site or mine waste site, the acid generating reactions will be counterbalanced by the neutralizing reactions with the net effect that the mine and mine waste drainage will not become more acidic.

The apparent intent of the quoted language of the Bill is to require the applicant for a mining permit to show that ***technology*** has successfully been used to control acid drainage at a mine site where the absence of acid neutralizing minerals made acid drainage a potential danger to the environment. (The proposed Crandon mine site is ***not*** located in an area where there are sufficient acid neutralizing minerals to control acid generation.) However, DNR expresses concern that this intent is not accomplished by the Bill because it is the ***host rock***, rather than the ore body itself, that is important in determining whether acid drainage is a potential problem at a mine site.

For example, DNR suggests, some of the lead mines in Southwest Wisconsin could be used to satisfy the two preconditions under the Bill because the ore bodies containing the lead were sulfide ore bodies that were not, in themselves, capable of neutralizing acid generation. However, because these ore bodies were located in a limestone host rock that does neutralize acid generation, DNR believes that these mines would not be an appropriate example to determine whether environmentally safe mining can be conducted in an area where the ore body and host rock, together, would not neutralize all the acid that would be generated.

2. Definition of Pollution

The DNR also expresses concern about the definition of "pollution" in the Bill. Both preconditions in the Bill require that the mine have operated in the United States or Canada "without the pollution of groundwater or surface water . . . ." "Pollution" is defined in the Bill to mean "degradation that results in any violation of any environmental law." The DNR has interpreted this language to mean that a mining permit applicant must show that a mine meeting the requirements of the Bill has operated or been closed for the applicable period in the United States or Canada without the determination by a court, or a determination by the relevant administrative agency with jurisdiction over the mine that could be administratively challenged or judicially appealed, that the mine has polluted groundwater or surface water from acid drainage or from the release of heavy metals and that a violation of a law has occurred.

The Bill does not place any time limits upon when the mine has operated or been closed nor does it address the stringency of any environmental laws under which the mine has operated. The DNR is concerned that most environmental laws have only been enacted within the last 30 years and have been constantly made more protective of the environment since that time. Therefore, the DNR believes that if a mine was operated or closed for the applicable period at a time or under a jurisdiction where mining laws were weak or nonexistent or enforcement of environmental laws was minimal, an applicant could meet both of the preconditions of the Bill without necessarily showing that the mine could be operated in an environmentally safe manner.

3. Verification

The Bill requires the DNR to determine that the two preconditions have been satisfied "based on information provided by an applicant for a mining permit." The DNR is concerned that this language of the Bill would not allow it to independently verify the information.

E. DISCUSSION

In reviewing the Bill, it is important to keep in mind that the Bill, as of the date of this memorandum, is still being reviewed by the Legislature and can be amended to address any concerns raised by ambiguities in language or inappropriate standards.

The Bill is ambiguous concerning what environmental laws are to be referred to in determining whether mines operated in the United States or Canada have been operated and closed in a manner that satisfies the two preconditions of the Bill. The lack of direction in the Bill for this determination is, in my opinion, the primary reason that such a wide range of opinion has been expressed at public hearings on the Bill before the Assembly Committee on Environment concerning what the effect of the Bill would be.

The DNR's interpretation that the laws in effect in the state or province where the mine is located are to be used for this determination appears reasonable given that DNR has no effective way of enforcing and monitoring environmental regulations for mines that may be located far away or may have been operated years ago. In addition, the DNR's interpretation that a violation of an environmental law under the Bill includes a violation adjudicated by a court and a final determination by an administrative agency that can be legally reviewed appears reasonable.

It is also important to keep in mind how a court would be likely to approach its review of a legal challenge to an order by the DNR with respect to a mining permit application under the Bill. The DNR is given the statutory responsibility to serve as the "central unit of state government to ensure that the air, lands, waters, plants, fish and wildlife affected by prospecting or mining in this state will receive the greatest practicable degree of protection and reclamation." [s. 293.11, Stats.] In addition, the Bill gives the DNR authority to determine whether the two preconditions established by the Bill have been met and s. 293.49, Stats., gives the DNR authority to determine whether to issue a mining permit if other standards are met. Third, the decision of whether to issue a mining permit under the standards of ch. 293, Stats., necessarily involves a policy determination--a determination of whether the proposed mine can be operated and, after operation, closed, in a manner that protects the environment. These factors make it very likely that a court would defer to the DNR's interpretation of the Bill, particularly on issues where the language of the Bill is ambiguous.

> The interpretation of a statute by an administrative agency is a conclusion of law which may be independently reviewed by the appellate court . . . . "However, the construction and interpretation of a statute by the administrative agency which must apply the law is entitled to great weight and if several rules or applications of rules are equally consistent with the purpose of the statute, the court should defer to the agency's interpretation. In general, the reviewing court should not upset an administrative agency's interpretation of a statute if there exists a rational basis for that conclusion . . . . Even where an agency has established no body of precedent relating to its interpretation of a statute, we are still to defer to that agency's legal conclusions . . . . We should also defer

> to an agency where the legal question is intertwined with policy determinations. [*Rotfeld v. Department of Natural Resources*, 434 N.W. 2d 617, 618 and 619 (Wis. App. 1988) (citations omitted).]

The concern expressed by the DNR that the two preconditions established by the Bill should include the host rock in determining whether the mine could generate acid also appears reasonable and should be addressed in any amendments to the Bill. The opinion of the DNR that the Bill only permits the DNR to consider information submitted by the applicant and does not authorize it to independently verify the information appears to be less well-founded. The Bill requires the DNR to determine whether the two preconditions have been met. Generally, administrative agencies are accorded such powers as are necessary to carry out the functions they are responsible for by statute. Therefore, it would appear reasonable to assume that the DNR could independently verify information submitted by an applicant to determine if the two pre-conditions are met, although the Bill could be amended to explicitly authorize DNR to verify the information.

Please contact me at the Legislative Council Staff offices if I can be of further assistance.

WF:ksm:kja:rav;ksm

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701–2536
Telephone (608) 266–1304
Fax (608) 266–3830

DATE: December 5, 1997

TO: REPRESENTATIVES SCOTT JENSEN AND MARC DUFF

FROM: Mark C. Patronsky, Senior Staff Attorney

SUBJECT: Application of the Law of Regulatory Takings to a Moratorium on the Issuance of Metallic Mining Permits

This memorandum is in response to your request to David J. Stute, Director of the Legislative Council Staff, for an analysis of the potential constitutional issues associated with a statutory moratorium on the issuance of metallic mining permits in Wisconsin. Mr. Stute asked me to respond to your request.

In your request, you asked for an analysis of two different hypothetical legislative actions: one which would prevent an applicant from continuing the process of obtaining a mining permit and a second which would allow the applicant to obtain a mining permit, but preclude any mining activities for a fixed period of time, such as 5, 10 or 15 years. You asked specifically for a discussion of the law of regulatory takings and any similar constitutional issues that may have a bearing on such legislation.

The legislative debate regarding a mining moratorium is most pertinent to the mining permit application now under consideration for the Crandon mineral deposit. This memorandum places the discussion of your request into the context of the current mining permit application, as appropriate.

Throughout this memorandum, citations include only the name of the plaintiff in a court case or the author of an article and the page number or numbers of the case or article. The full citation of the noted cases and articles are found at the end of this memorandum.

A. INTRODUCTION

1. 1997 Senate Bill 3, Relating to Issuance of Metallic Mining Permits for the Mining of Sulfide Ore Bodies

1997 Senate Bill 3 was passed by the Senate on March 11, 1997. The Assembly Committee on Environment held public hearings on the Bill on May 12 and October 14, 1997 and took executive action to recommend the Engrossed Bill for concurrence, without amendment, on November 11, 1997.

The Engrossed Bill establishes two conditions that must be met before the Department of Natural Resources (DNR) may issue a mining permit for the mining of a sulfide ore body. These two conditions are in addition to all of the other requirements of current mining law. Before the DNR may issue a mining permit for mining of a sulfide ore body, the DNR must determine, based on information provided by a mining permit applicant, that both of the following have occurred:

a. A mining operation has operated in a sulfide ore body which is not capable of neutralizing acid mine drainage in the United States or Canada for at least 10 years without the pollution of groundwater or surface water from acid drainage at the tailings site or at the mine site or from the release of heavy metals.

b. A mining operation that operated in a sulfide ore body which is not capable of neutralizing acid mine drainage in the United States or Canada has been closed for at least 10 years without the pollution of groundwater or surface water from acid drainage at the tailings site or at the mine site or from the release of heavy metals.

The Engrossed Bill defines "pollution" to mean "degradation that results in any violation of any environmental law" and defines "sulfide ore body" to mean "a mineral deposit in which metals are mixed with sulfide minerals." The Engrossed Bill applies without regard to the date of submission of a mining permit application and would, therefore, apply to the mining permit application that has been submitted by the Crandon Mining Corporation (CMC).

In a letter to Representative Duff as Chairperson of the Assembly Committee on Environment, dated June 6, 1997, George E. Meyer, Secretary of the Department of Natural Resources, stated that the DNR is not opposed to the Engrossed Bill, but does not believe it will provide any additional assurances over current law that mining can be environmentally safe. In addition, Secretary Meyer states that the Engrossed Bill will not serve to create a moratorium on mining.

2. Hypothetical Mining Moratorium Legislation

The Engrossed Bill, and the various amendments that were discussed during the executive session in the Assembly Committee on Environment, all impose a moratorium on the issuance of a metallic mining permit until the occurrence of certain conditions stated in the Engrossed Bill relating to the conduct of mining operations in other states or in Canada.

You have asked for an analysis of hypothetical legislation that differs from Engrossed Senate Bill 3. The hypothetical legislation would either impose a moratorium on issuance of a metallic mining permit or on the construction and operation of a metallic mineral mine after a permit is issued. This moratorium would not be contingent on any findings regarding the performance of other mines.

3. Predicting the Outcome of a Challenge to a Mining Moratorium on Constitutional Grounds

The fundamental question in this memorandum is how the mining moratorium described by you would relate to the prohibitions against the taking of private property for public use without just compensation in the Fifth and Fourteenth Amendments to the U.S. Constitution and Wis. Const. art. I, s. 3. When a taking results from the action of a governmental regulation on private property, rather than by the government's physical occupancy of the property, it is called a "regulatory taking."

A substantial body of jurisprudence has been developed concerning the issue of regulatory takings. The basic question in a regulatory taking is whether a regulation is so burdensome that it becomes a taking of property in the constitutional sense. This question is discussed in substantially greater detail in the remainder of this memorandum.

The simple answer to your question is that it is not possible to predict with certainty whether a moratorium on the issuance of a mining permit or on the conduct of a mining operation after permit issuance would be construed by Wisconsin or federal courts to be a taking of property. Both the U.S. and the Wisconsin Supreme Courts have stated repeatedly that there is no "bright line" test to divide an appropriate exercise of the police power from an inappropriate regulatory taking. Decisions in regulatory takings cases are always ad hoc.

> In 70-odd years of succeeding "regulatory takings" jurisprudence, we have generally eschewed any "set formula" for determining how far is too far, preferring to "engag[e] in . . . essentially ad hoc, factual inquiries." [*Lucas* at S. Ct. 2893.]
>
> The problem of how to distinguish between an unconstitutional taking and a police power regulation is a difficult one, and the decisions of the [U.S.] Supreme Court have made it no less difficult. Decisions in this area of the law must necessarily be made on an ad hoc basis. [*Noranda* at N.W.2d 603.]

Another factor that reduces the predictability of regulatory takings cases is the complexity and confusion of the law of regulatory takings. One commentator described the state of eminent domain law with the following comment:

> In spite of decades of determined litigation, accompanied by vigorous brandishing of scholarly pens and the spilling of much printer's ink, the interpretation of constitutional guarantees against

> the taking (or damaging) of private property for public use continues to present a murky and confused area of the law, whose conceptual premises can be charitably characterized as uncertain. Judges, scholars, and practitioners with experience in this field, quickly learn that a modicum of mature research will--more often than not--disclose a kind of legal Newtonian law: for every rule there lies somewhere in the legal decisions a counterrule, espousing the opposite principle (or at least an entirely different approach to the problem). [Kanner at 765-766.]

As a result of this confusion, which is almost universally acknowledged in cases and commentaries, it is often difficult to determine the claimant's theory in the lawsuit and which of the various standards in regulatory takings jurisprudence the court is applying. Furthermore, even when courts analyze the issues clearly, they may arrive at a decision that is inconsistent with the analysis.

Another factor making it difficult to predict the outcome of a regulatory takings case is that the cases are heavily dependent on the facts. For example, there are many possible ways to draft legislation and, depending on the particular contents of a moratorium bill, there may be a greater or lesser likelihood of a successful takings challenge. Also, the ownership status of the land's surface and the mineral interests would have a substantial bearing on who could be a plaintiff and what chances that plaintiff has for success.

In light of the difficulty predicting the outcome of a regulatory takings case, this memorandum discusses the various factors that relate to a regulatory takings claim and the effect that those factors may have on the potential for the claimant to succeed. However, it cannot provide a conclusion regarding the outcome of a takings claim in the context of your question.

B. OVERVIEW OF REGULATORY TAKINGS LAW

1. The Appropriate Scope of a Police Power Regulation

It has been stated repeatedly in court cases that private property is subject to the reasonable exercise of the police power. [*Caledonia* at N.W.2d 699.] Takings jurisprudence has built on this basic concept a body of law that addresses the ongoing judicial goal of finding an appropriate balance between two conflicting principles: the property rights of individuals and the government's authority on behalf of all citizens to regulate an owner's use of the land. [*Zealy* at N.W.2d 531.] This fundamental concern for locating the point of balance is the common thread of all regulatory takings decisions, including the widely publicized regulatory takings cases of the past 10 years.

2. Threshold for the Finding of a Taking

It is clear from the regulatory takings law that even a moratorium is not *per se* a taking of property. Rather, the specific regulation must be analyzed to determine if the regulation "goes too far." This phrase is repeated frequently in regulatory takings cases. In determining whether

the regulation goes too far, the threshold has been set high by the courts. A regulation must deprive the claimant of "all or substantially all" of the economic value of the property to establish that a regulatory taking has occurred. [*Zealy* at N.W.2d 531.] It is not enough for the claimant to show that the regulation denied the expected use of the property.

If a court finds that a regulation has effected a taking, it does not matter if the regulation is temporary. Limiting the duration of a regulation or even repealing it, does not eliminate the taking for the time that the regulation is in effect. [*Zinn*, at N.W.2d 72.] Therefore, the two versions of the hypothetical moratorium would have the same effect regarding the finding of a taking, but may have a different effect regarding damages if a taking is found.

3. Elements of a Regulatory Takings Case

In a regulatory takings case, the plaintiff's case has three basic elements. First, the claimant must show that there is an interest in property that is protected under the Constitution. The interest must be some sort of vested interest in property; the plans and expectations of the claimant are usually not property rights. Second, the claimant must show that there has been an impermissible "taking" of that property interest. Finally, if the claimant seeks damages, as well as invalidation of the regulation, the claimant must show that there are some measurable damages.

Even if the claimant prevails in all of the elements of the claimant's case, the government may have a defense under what is often referred to as the "nuisance exception." Under this exception, which has been somewhat narrowed by the *Lucas* decision, the court will refuse to strike down a regulation which would otherwise constitute taking of property if the purpose of the regulation is to prevent an activity which could cause a public nuisance.

The remainder of this memorandum contains a more detailed description of the law of regulatory takings and summarizes some of the facts, arguments and law that may either favor or negate a finding of a regulatory taking in connection with the hypothetical mining moratorium.

C. FIRST ISSUE IN A REGULATORY TAKINGS CASE: CLAIMANT MUST ESTABLISH THAT THERE IS A PROTECTABLE PROPERTY RIGHT

1. Types of Property Subject to a Taking

Anything that can be recognized as "property" can be the subject of a regulatory taking. The types of property that can be the subject of a regulatory takings claim range from the most concrete, such as real estate and personal property, to the most intangible, such as contracts.

Further, any divisible portion of property can be taken. Any parcel of land can, and typically does, have more than one property right associated with it. For example, in addition to ownership of the fee title, there may be a lease, an easement, a license to use a portion of the property, a lien or a mortgage. All of these property rights, both collectively and individually, may be subject to a regulatory taking, depending on the nature of the regulation.

However, not all "interests" in property are protected under the Constitution; the interest receives protection only if the law recognizes the claimant's interest in the property as a legitimate legal interest in the property. In the case of a mining moratorium, one key question is whether the claimant has a "right" to undertake mining, as discussed in section 3., below.

2. Ownership of the Crandon Deposit

Metallic minerals constitute a unique property interest because of the potential for the separate ownership of the surface of the land and the minerals beneath the land. The Wisconsin Supreme Court has clearly established that the mineral interest is a fee title interest that can be owned separate from the surface of the land.

> Mineral rights are an interest in land which may be created or transferred as any other estate in land . . . . Where the mineral right is severed from the surface fee . . . it has been held to be property, distinct from the land itself vendible, inheritable and taxable. [*Chicago and Northwestern* at N.W.2d 319.]

CMC owns the surface of the land over the Crandon deposit and it appears, from information provided by DNR staff, that CMC owns the minerals beneath the land as well. However, DNR staff believes that, in the past, at least some of the minerals associated with the Crandon deposit were owned separate from the surface of the land. Those separate mineral interests have apparently been sold to CMC, but the former owners have retained the right to receive a royalty payment. If the right to receive a royalty payment is determined to be a property right, the moratorium is more likely to reach the "all or substantially all value" threshold, because the right to receive payments represents the entire value of the royalty and the moratorium could potentially, for a period of time, eliminate all value of the royalty. On the other hand, if the royalty payment is to be made only if mining occurs and the royalty holder does not control the CMC's decision to proceed with mining, a court might hold that the royalty is too contingent or speculative to constitute an interest in property.

3. Potential for the Existence of a "Right" to Mine

It is difficult to predict how a court might rule on the question of whether there is a "right" to mine on property that contains a mineral deposit. A court would have to consider the uncertainty of obtaining a mining permit in Wisconsin. For example, the mining statutes, in s. 293.49, Stats., require: compliance with environmental regulations; a general evaluation of the effect of the mine on public health, safety or welfare and a determination that the proposed mine will not endanger it; a net positive economic impact in the area reasonably expected to be most impacted by the mine; and compliance with all applicable zoning ordinances. Given the uncertainty of obtaining a mining permit, it may be reasonable for a court to conclude that there is no vested right to mine in Wisconsin, which would negate any potential for a claim of regulatory taking caused by a moratorium.

D. SECOND ISSUE IN A REGULATORY TAKINGS CASE: CLAIMANT MUST ESTABLISH THAT THERE IS A TAKING

1. Intent of the Legislature

The intent of the Legislature in enacting a moratorium on issuance of a mining permit or on construction and operation of a mine would be significant, but not necessarily determinative, on the regulatory takings issue. The Wisconsin Supreme Court has stated that the Legislature cannot avoid the prohibition on unconstitutional takings of property by expressing an intent to enact legitimate regulation.

> Decisions of this court make it clear that the intent of the government has never been the test, rather we look to whether the impact on the property owner was to deprive him or her of substantially all beneficial use of the property or render the land useless for all reasonable purposes. [*Zinn* at N.W.2d 73.]

Nevertheless, the courts determine the appropriateness of a regulation in part by referring to the purpose of the Legislature and determining whether there is any reasonable grounds for the regulation. Presumably, the hypothetical moratorium discussed in this memorandum would be enacted as a substitute amendment or a simple amendment to the Engrossed Bill. Even if the moratorium consisted only of a prohibition of further action on the mining permit application or on construction and operation of the mine after a mining permit is obtained, the contents of the Engrossed Bill and the various amendments would indicate legislative intent regarding protection of the environment and evaluation of the technologies of mining.

In fact, it has been noted that legislation without an explicit statement of legislative intent is generally preferable, because the absence of express legislative intent allows a court to consider all possible rationales for the legislation, rather than only those listed by the Legislature. [*Hurst* at 95.] The Engrossed Bill is devoid of any statement of intent.

2. Effect of the Regulation on the Parcel as a Whole

There is a significant difference between a physical occupancy of the property (the classic eminent domain situation) and a regulatory taking. For a physical occupancy of the property, even a minor impact on a part of a parcel may be deemed a taking. However, for a regulatory taking, the courts have not accepted claimants' arguments to consider individual property rights separately for determining whether there has been a taking. Whether the protected interest is an individual property right applicable to part or all of the parcel or a physical part of the entire parcel, the courts have not allowed consideration of the effect of the regulation on only a portion of the property rights.

> We conclude that the United States Supreme Court has never endorsed a test that "segments" a contiguous property to determine the relevant parcel; rather, the Court has consistently held that a landowner's property in such a case should be considered as a whole. [*Zealy* at 532.]

With respect to the mining moratorium, CMC owns both the surface of the land and the minerals beneath it. CMC is unlikely to be able successfully to argue that the court should view its intention to mine as a separate interest for purposes of the constitutional analysis. Further, the value of the land for other purposes, such as commercial, industrial, residential or recreational uses, is likely to prevent CMC from demonstrating that all or substantially all of the value of the land is taken. [*Zealy* at 531.]

3. Ripeness

The doctrine of ripeness requires appellate courts to consider whether a case has reached the stage in which it is a controversy suitable for adjudication. This issue could influence when, and whether, a claimant could bring a regulatory takings claim.

Courts avoid hearing cases before they are ripe, to avoid making declaratory judgments in the absence of an actual or clearly determined controversy. One of the ways that the courts apply the ripeness doctrine is to require exhaustion of administrative remedies. In *Hoepker*, the Wisconsin Supreme Court cited the U.S. Supreme Court for the proposition that the governmental entity that implements the regulations must reach a final decision regarding the application of the regulations to the property. This final decision is necessary in order to determine whether the regulation has "gone too far." [*Hoepker*, at N.W.2d 152-153.]

In the case of a mining moratorium that prohibited construction and operation of a mine, a court would probably require the claimant to complete all aspects of the mine permit approval process and obtain a favorable determination on all aspects of the application except for the moratorium. A moratorium that prohibited further DNR action on the mine permit application would probably be ripe for adjudication. It should be noted, however, that even if a takings claim is not ripe, and would normally be dismissed by the courts, a court may address the merits of the claim if that would best serve the interest of justice. [*Zealy* at N.W.2d 531.]

4. Legal Theories for a Regulatory Takings Claim

The common thread in all claims regarding a taking of property caused by excessive regulation is the burden on the claimant to demonstrate that the regulation is not a valid exercise of the police power. The three legal theories, discussed below, each take a different approach to this issue.

The primary legal theory is the ***due process taking***. This is the legal theory that most clearly represents what is meant by a "regulatory taking." The conceptual basis for this theory is that the regulation, by taking all or substantially all of the value, is equivalent to an actual taking of the property by eminent domain.

> Although phrased in slightly differing terms in the cases, the rule emerging from opinions in our state courts and the United States Supreme Court is that a regulation must deny the landowner all or substantially all practical uses of a property in order to be considered a taking for which compensation is required. [*Zealy* at N.W.2d 531.]

The claimant in a due process taking must obtain a final regulatory decision and the remedy for a due process taking is invalidation of the regulation and possibly money damages.

The second possible theory in a regulatory takings claim can be described as ***arbitrary and capricious due process***. This is not strictly speaking a regulatory taking claim, because it can relate to the nature of the regulation itself, rather than the effect of the regulation on the property. For purposes of this kind of claim, it is not necessary to show that all or substantially all of the value of the property was destroyed by the regulation. The claimant must, at a minimum, show that a property interest was affected by the regulation and that the regulation is not reasonable and is not rationally related to protection of public health, safety or welfare.

If an arbitrary and capricious due process claim relates to the regulation itself, it is often referred to as a "facial challenge." If the claim relates to the regulation as applied to the claimant, it is referred to as an "as applied" challenge. In a facial challenge, the claimant need not obtain a final decision on the permit and the remedy is invalidation of the regulation. In an "as applied" claim, there must be a final decision and the remedy is an injunction against application of the regulation to the claimant, as well as damages, if damages can be proved.

The third possible theory regarding the constitutionality of legislation is ***equal protection***. A lawsuit on equal protection grounds is less likely to succeed than a due process claim, but equal protection is often raised as a grounds to challenge a regulation. In an equal protection challenge to a statute, the court identifies the classifications made by the statute. If there is no constitutionally protected class or fundamental interest, the court only needs to determine whether there is legitimate public interest for the classification and must affirm a classification which is rationally related in any way to the purpose of the legislation. Statutes enjoy a presumption of validity and the claimant must demonstrate beyond a reasonable doubt that there is no rational basis for the Legislature's objective. [*Madison Landfills* at 327.] It would be difficult for a plaintiff to succeed in an equal protection challenge, because of the likelihood that mining can be shown to be different from other kinds of activities that could be subject to similar regulation.

5. Burden of Proof

In the application of constitutional standards which allow for some latitude for legislative judgments, the courts defer to the Legislature's determinations and impose a burden of proof on the party who attacks the constitutionality of the statute. Constitutional provisions which establish rules that do not require legislative implementation (such as the prohibition of *ex post facto* laws) are treated by courts as questions of law and the same burden of proof is not imposed on plaintiffs. [*Hurst* at 89.] The standard imposed on the party attacking the constitutionality of a statute requires proof beyond a reasonable doubt, which is the highest standard of proof, the same as that applied in criminal cases.

The main consequence of the burden of proof in a constitutional challenge is that the plaintiff may have sufficient evidence to raise the constitutional issue and to make arguments before the court, but may not have sufficient evidence to overcome the burdens imposed on the plaintiff and to prevail on the action. [*Hurst* at 92.]

Some doubt has been raised about the presumption of constitutionality and the burden of proof in a takings challenge. Justice Abrahamson has questioned whether the presumption of constitutionality and burden imposed on the challenger should apply to a challenge under the takings provisions of the Constitutions. [*Noranda* at N.W.2d 607, n.5, citing *Hurst* at 87-106.] If this statement has merit, it may be because courts view the "all or substantially all value destroyed" test as more of a "bright line" test that does not require deference to legislative decision-making. Furthermore, Professor Hurst observed that courts may acknowledge the presumption but not apply it in a particular case, thus, increasing the chances of finding a regulatory taking. [*Hurst* at 88-89.]

6. Defenses

One of the changes that has occurred in recent takings litigation, as a result of *Lucas*, is a narrowing of the defense variously known as the "nuisance exception," the "noxious-use analysis" or the characterization of a regulation as a "harm-prevention" under the jurisprudence prior to *Lucas*.

In *Lucas*, the U.S. Supreme Court established a distinction between traditional noxious-use cases and the fact situation in *Lucas*. The Court will continue to allow the noxious-use defense if the regulation does not totally eliminate the value of land but, rather, eliminates only some potential use of the land. This emphasizes the importance of finding that the value of the property has been totally eliminated in order to succeed in a regulatory takings challenge. If the total diminution in value occurs, *Lucas* establishes a new standard in which the total diminution in value can be sustained against a regulatory takings challenge only if the owner's property interest was subject to existing restrictions on use applicable at the time title was acquired. The restrictions on use need not be expressed in explicit regulatory language, but may be prohibited by the background principles of property or nuisance law in that state. [*Lucas* at S. Ct. 2898-2899.]

It is difficult to say what aspects of Wisconsin law could satisfy the nuisance exception as narrowed by the Court in *Lucas*. It appears that the public trust in navigable waters-protection of water resources doctrine is the kind of background principle of law contemplated by the Court in *Lucas*.

> Wisconsin has a long history of protecting its water resources, its lakes, rivers, and streams, which depend on wetlands for their proper survival. As stated in *Just* [v. Marinette County], 56 Wis.2d at 17, 201 N.W.2d 761:
>
> Swamps and wetlands were once considered wasteland, undesirable, and not picturesque. But as the people became more sophisticated, an appreciation was acquired that swamps and wetlands serve a vital role in nature, are part of the balance of nature and are essential to the purity of the water in our lakes and streams. Swamps and wetlands are a necessary part of the ecological creation and now, even to the uninitiated, possess their own beauty in nature. [*Zealy* at N.W.2d 535.]

E. THIRD ISSUE IN A TAKINGS CASE: THE CLAIMANT MUST ESTABLISH DAMAGES

As described previously in this memorandum, some challenges to the constitutionality of the regulation relate only to the regulation itself and the appropriate remedy is invalidation of the regulation or an injunction against application of the regulation to the plaintiff.

However, in cases in which the constitutionality of a regulation as that regulation is applied to the plaintiff is challenged, and it is determined that property is taken in the constitutional sense, compensation must be paid to the plaintiff. [*Zinn* at N.W.2d 74.] It has been observed that there is "little or nothing" in land use cases that helps to understand how damages should be determined. There appear to be two alternative methods of determining damages, a percentage (reflecting a reasonable annual rate of return) of lost value of the property during the time it was covered by the regulation and a percentage (reflecting a reasonable rate of return) of the investment the landowner would have put into the property had development not been prohibited by the regulation for the period the regulation was in effect. [Duerksen at 22.]

The application of these two methods of determining damages to a royalty interest in the Crandon deposit is unclear, because the royalty holder has no assurance that minerals will be removed at any particular time.

F. CONCLUSION

The reported decisions of appellate courts do not establish a formula for determining whether a particular regulation constitutes a taking of private property without just compensation in violation of the state and federal constitutions. When a court is called on to review the constitutionality of a regulation, it engages in an ad hoc analysis in which the primary concern of the court is achieving a balance between private property rights and legitimate regulations for the benefit of the public. A taking is found only if the regulation deprives the plaintiff of all or substantially all of the value of a constitutionally protected property interest and the government does not have an adequate defense based on background principles of property and nuisance law. It is therefore impossible to predict how a court might rule if asked to determine whether a mining moratorium would constitute a taking of private property without just compensation.

G. CASES AND ARTICLES CITED

1. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed.2d 798 (1992).

2. *Noranda Exploration, Inc. v. Ostrom*, 113 Wis. 2d 612, 335 N.W.2d 596 (Wis. 1983).

3. Kanner, Gideon, "Condemnation Blight: Just How Just is Just Compensation?", 48 *Notre Dame Lawyer*, 765 (1973).

4. *Town of Caledonia v. Racine Limestone Co.*, 266 Wis. 475, 63 N.W.2d 697 (1954).

5. *Zealy v. City of Waukesha*, 201 Wis. 2d 365, 548 N.W.2d 528 (Wis. 1996).

6. *Chicago and Northwestern Transportation Co. v. Pederson*, 80 Wis. 2d 566, 259 N.W.2d 316 (1977).

7. *Zinn v. State*, 112 Wis. 2d 417, 334 N.W.2d 67 (Wis. 1983).

8. Hurst, James W., *Dealing With Statutes*, (New York: Columbia University Press 1982).

9. *Hoepker v. City of Madison Planning Commission*, 209 Wis. 2d 633, 563 N.W.2d 145 (Wis. 1997).

10. *Madison Landfills, Inc. v. Dane County*, 183 Wis. 2d 282, 515 N.W.2d 322 (Wis. App. 1994).

11. *Zealy v. City of Waukesha*, 201 Wis. 2d 365, 548 N.W.2d 528 (Wis. 1996).

12. *Just v. Marinette County*, 56 Wis. 2d, 201 N.W.2d 761 (1972).

13. Duerksen, Christopher J., and Richard J. Roddewig, *Takings Law in Plain English*, American Resources Information Network (Washington D.C., 1994).

MCP:ksm:jt:rv:kjf;lah

MEMORANDUM

from JOYCE L. KIEL
Legislative Council

1/5/98

Representative Marc Duff —

Attached is a copy of the resolution adopted by Mole Lake relating to mining. If you need anything else, let me know.

Regards,
Joyce Kiel

CHIEF
WILLARD L. ACKLEY

SOKAOGON CHIPPEWA COMMUNITY

MOLE LAKE BAND
RT. 1, BOX 625
CRANDON, WISCONSIN 54520-9635
(715) 478-7500

Resolution 9/ 03 B /97

Whereas, The Sokaogon Chippewa Community is a federally recognized Indian Tribe, organized under a Constitution adopted August 25, 1938, and approved on November 9, 1938, pursuant to Section 16 of the Indian Reorganization Act; and,

Whereas, The Constitution of the Sokaogon Chippewa Community (Article III, Section 1 (g)) authorizes the Tribal Council to make and enforce rules and regulations governing the preservation of the wild-life and natural resources of the Community; and,

Whereas, Historical developments regarding potential metallic mineral exploration and possible mine development require the Tribal Governing Body to clarify and strengthen the Tribe's position regarding metallic mining on Reservation and in the watershed; and,

Whereas, The Sokaogon Chippewa Community, upon interest and advice of the federal government, engaged metallic mineral exploration and environmental impact assessments on the Mole Lake Indian Reservation in the late 1970's and early 1980's with assistance of the Bureau of Indian Affairs and United States Geological Survey; and,

Whereas, Exploration confirmed the mineralization of the Tribal lands, and environmental studies concluded that development of metallic minerals on the Reservation would destroy the water resources (and wild rice) of the Tribe and our neighbors downstream; and,

Whereas, The Sokaogon Chippewa Tribal Council did notify the federal government to cease mineral exploration on the Mole Lake Indian Reservation and assist the Tribe with all means necessary to restore exploration sites to natural conditions; and,

Whereas, In the presence of overwhelming experience and evidence, public opposition and common sense, the adverse and unacceptable impacts of metallic mineral mining are obviously harmful to the health, safety, welfare, political integrity, and economic security of the Tribe; and,

Whereas, Metallic mineral exploration and development, whether on or off-Reservation would erode and potentially destroy the unique cultural and spiritual fabric and identity of the Sokaogon people and our friends and neighbors; and,

Whereas, The Tribe's analysis of the potential impacts of the proposed off-Reservation Crandon Mine reaffirms the tribe's position and cultural understanding that mitigation of impacts of such a development or monetary compensation for such impacts is not possible; and,

Whereas, The Tribal Council acknowledges that the Sokaogon Chippewa Culture requires that the Tribe protect this precious homeland, battle ground and burial grounds, as well as fulfill our solemn responsibilities as Keeper's of the Water in acknowledgment of our spiritual foundations and responsibilities to our children and our children's children for each seven generations;

Now Therefore Be It Resolved: The Sokaogon Chippewa Tribal Council does hereby reaffirm the Tribe's unyielding opposition to metallic mineral exploration and development on and off- the Mole Lake Indian Reservation.

Be It Further Resolved: The Sokaogon Chippewa Tribal Council does hereby notice the Federal Government, the State of Wisconsin, the Sokaogon Chippewa Community, and local units of government that metallic mineral exploration and/or development on the Mole Lake Indian Reservation is strictly prohibited, and any attempt to do so would be an assault on the Sokaogon Nation, our culture and religion.

Be It Further Resolved: The Sokaogon Chippewa Community shall not take compensation in anticipation of metallic mine development, or accept mitigation, or compensation for mitigation, for the impacts of such proposed developments.

Be It Further Resolved: This prohibition against metallic mineral mining on the Mole Lake Indian Reservation is, and shall be, the law of the land for this and the next seven generations of the Sokaogon.

Certification

I, the undersigned, as Secretary of the Sokaogon Chippewa Community Tribal Council, do hereby certify that the Tribal Council is composed of six members, of whom (6) were present, constituting a quorum, at a meeting dully called, and convened on the 3rd day of September, 1997, and that the foregoing Resolution was passed by an affirmative vote of (6) members for, (0) members against, and (0) members abstaining, (0) members absent.

Paulette Smith

Paulette Smith, Tribal Secretary

Letter to the Editor
Mole Lake Tribal Chairman Responds to Rep. Marc Duff
For Immediate Release
December 18, 1997

To the Editor:

The Mole Lake Sokaogon Chippewa would like to respond to Rep. Marc Duff's statement that the Mining Moratorium Bill would not cover mining on Native American lands, and that the Mining Moratorium Bill is a "sham."

The Mole Lake Sokaogon Chippewa Tribe can sympathize with Rep. Marc Duff, the Republican Representative from New Berlin, and the Chairman of the Assembly Environment Committee. Rep. Duff has accepted the responsibility, as Chair of the Environment Committee, to protect the waters of Wisconsin from degradation. It is an awesome responsibility.

In the past, the Tribe has watched as mining interests have successfully lobbied the legislature to water down environmental mining laws meant to protect the state's resources from destruction. The Tribe remains concerned that the same mining interests will gut the protections provided in the present mining moratorium bill, and open up our precious water to exploitation and degradation by outside mining interests.

We look forward to the day when Rep. Duff and his colleagues require a 150 foot compliance boundary around tailings dumps, like all other types of industry in the state, and not the 1200 foot boundary currently in place. We anxiously await the day when a mining company truly is perpetually responsible for the environmental problems inherent with the mining industry. BUT MOST OF ALL, WE HOPE FOR THE DAY THAT OUR LEGISLATORS, ESPECIALLY REP. DUFF, RECOGNIZE THAT NOT ALL AREAS OF OUR FAIR STATE ARE APPROPRIATE FOR MINING, AND THAT CLEAN AIR AND WATER IN FOREST COUNTY ARE MORE VALUABLE RESOURCES THAN THE METALS IN THE CRANDON MINE OR UNDER FEDERAL INDIAN LANDS.

The Mining Moratorium Bill is a clear and concise piece of legislation that requires little interpretation. Quite simply, it would mandate that a mining interest show any other example of a North American mine that has operated in a sulfide ore body for 10 years

and has been successfully reclaimed for 10 years without polluting. It sends the message to the multi-national mining companies that Wisconsin values the clean waters it still possesses, and is not open for experimental mining technology.

Rep. Duff can put aside his fears of the Tribe exploiting its mineral resources. As a people, we have already rejected the idea of a short-term gain at the expense of future generations. The Mole Lake Tribal Council, with the overwhelming support of its constituents, has unanimously voted for a mining prohibition on all Tribal lands, now and for seven generations. In September, the Tribal Council reaffirmed the Tribe's opposition to mining on the Mole Lake Reservation, by establishing a Tribal Law specifically prohibiting metals exploitation. The Tribe has also completed the extensive scientific work required to classify and support all Tribal waters as Outstanding National Resource Waters, precluding any chance of Tribal government making a deal with mining interests, and giving peace of mind to Tribal members and our neighbors surrounding the Reservation. The people who supply Rep. Duff with information on this issue, presumably the mining lobby, know these facts, and have obviously mislead him.

We would urge Rep. Duff, and other legislators, to follow the lead of the Mole Lake Tribal Council, and give their constituents peace of mind as well, and support the common sense legislation before them. Don't look for excuses, just vote for the Mining Moratorium Bill. It is good for Native Americans and everyone else in Wisconsin.

/s/ Arlyn Ackley, Chairman, Mole Lake Sokaogon Chippewa Community

For Further Information and verification, call 715-478-7604 or 478-5643

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701–2536
Telephone (608) 266–1304
Fax (608) 266–3830

DATE: January 21, 1998

TO: SPEAKER SCOTT JENSEN AND REPRESENTATIVE MARC DUFF

FROM: William Ford, Senior Staff Attorney

SUBJECT: The Affect of Two Unintroduced Amendments to 1997 Senate Bill 3, Relating to Issuance of Metallic Mining Permits for the Mining of Sulfide Ore Bodies

This memorandum, which was prepared at your request, explains how two unintroduced amendments ("the amendments") to Engrossed 1997 Senate Bill 3 ("the Bill") would affect the Bill. The two amendments you have inquired about are LRB-1359/1 and LRB-1361/2.

A. LRB-1359/1

This amendment specifies what constitutes the violation of an environmental law and is intended to clarify the definition of "pollution" under the Bill.

Both preconditions in the Bill require that the mine have been operated or have been closed for the applicable period in the United States or Canada "without the pollution of groundwater or surface water . . . ." "Pollution" is defined in the Bill to mean "degradation that results in any violation of any environmental law." However, the Bill does not state what is included in the phrase "violation of any environmental law."

The amendment specifies that violation of an environmental law includes a determination by an administrative proceeding, a civil action, a criminal action or other legal proceeding which affords the alleged violator due process right of notice and an opportunity for a contested hearing. In addition, the amendment provides that a stipulated fine, forfeiture or other penalty is considered a determination of a violation of an environmental law, regardless of whether there is a finding or admission of liability.

It can be argued that this amendment clarifies the Bill by stating in the statutes what is intended by the Legislature and making it less likely that a court would come to a different interpretation. For example, it is possible that a court would interpret the Bill to mean that violation of an environmental law means a violation of a law as determined by a court. If a court interpreted this Bill in this manner, a determination by an administrative agency, such as

the Department of Natural Resources (DNR) that a mining company violated an environmental law, would not count as a violation under the Bill. This would make it more likely that a mining permit applicant could satisfy the conditions imposed by the Bill by showing that a mine operated and was closed for the applicable period without a determination by a court that an environmental law was violated, even though an administrative agency had made such a determination. In addition, it can be argued that the amendment strengthens the Bill by providing that a stipulated fine, forfeiture or other penalty is a determination of a violation, regardless of whether there is any finding or admission of liability on the part of the mining company. This provision of the amendment is not an obvious interpretation of the language in the Bill as drafted, because a stipulated agreement often does not involve an admission of liability for a violation of law.

B. LRB-1361/2

This amendment revises the type of mine that may be used by a mining applicant to show that the two preconditions established by the Bill have been satisfied.

Under the Bill, both preconditions must be satisfied with respect to mines operated "in a sulfide ore body which is not capable of neutralizing acid mine drainage." Sulfide minerals, when exposed to oxygen and water, can progress through a series of chemical and biochemical reactions to produce acid. Other minerals (principally, carbonate minerals such as calcite) have the capacity to neutralize acid. If sufficient neutralizing minerals are present at the mine site or mine waste site, the acid generating reactions will be counterbalanced by the neutralizing reactions with the net effect that the mine waste drainage will not become more acidic.

The amendment would provide that both preconditions of the Bill must be satisfied with respect to mines operated in a sulfide ore body that has a net acid generating potential.

It can be argued that this amendment strengthens the Bill by requiring the applicant for a mining permit to show that ***technology*** has successfully been used to control acid drainage at a mine site where the absence of acid neutralizing minerals made acid drainage a potential danger to the environment. (The proposed Crandon Mine is ***not*** located in an area where there are sufficient acid neutralizing minerals to control acid generation.)

The DNR has expressed concern that the intent of the Bill is not accomplished by the language of the Bill because it is the ***host rock***, rather than the ore body itself, that it is important in determining whether acid drainage is a potential problem at a mine site. For example, DNR has suggested, in its testimony before the Assembly Environment Committee, that some of the lead mines in Southwest Wisconsin could be used to satisfy the two preconditions under the Bill because the ore bodies containing the lead were sulfide ore bodies that were not, in themselves, capable of neutralizing acid generation. However, because these ore bodies were located in a limestone host rock that does neutralize acid generation, DNR believes that these mines would not be an appropriate example to determine whether environmentally safe mining can be conducted in an area where the ore body and host rock, together, would not neutralize all the acid that would be generated.

The amendment resolves this problem in the Bill by requiring that only mines operated in a sulfide ore body that has a "net acid generating potential" be used to satisfy both of the preconditions of the Bill. Thus, the amendment provides that if there is not sufficient acid neutralizing material in an ore body so that the ore body has a net acid generating potential, the mine can be used to satisfy the preconditions established by the Bill. In addition, Chuck Hammer, Attorney, DNR, has informed me that if the amendment were adopted, the DNR would also consider the acid neutralizing capacity of the host rock in which the ore body is located and in which refuse is deposited in determining whether the mine has a net acid generating potential.

Please contact me at the Legislative Council offices if I can be of further assistance.

WF:kjf;lah

Misconceptions About Mining In Wisconsin

February 1998

This publication was prepared to address misconceptions about mining regulation in Wisconsin and to answer some of the commonly asked questions regarding review of the Crandon Mine proposal.

The Politics Of Mining (misconceptions #1-#2)

1⇒ *Misconception:*

The Mining Moratorium Bill means that the Crandon mine has been stopped and there will be no further action on the mine's permit application.

Response:

If signed by the Governor, the Mining Moratorium bill *would not stop the Department's Crandon mine review process.* The DNR will continue to review the Crandon project. The bill does add one more set of requirements that a mining company must meet before a sulfide mineral mine can be approved in Wisconsin. The bill states that a mining applicant must submit an example of a mine that has been operating for ten years without causing environmental pollution, and an example of a mine that has been closed for ten years without causing environmental pollution. As part of the Master Hearing, the DNR will check the examples submitted by the company and verify that they do in fact meet the requirements. However, if they do not meet the requirements, the mine cannot be permitted.

2⇒ *Misconception:*

DNR staff and administration are under tremendous political pressure to support mining in Wisconsin and to approve the proposed Crandon mine.

Response:

Mining issues are controversial and have become very political. Although there has been significant political pressure applied by various legislators on both sides of the issue, the only direction to the Department from the Governor has been to ensure proper application of all present and future mining regulations, regardless of the outcome. At the Master Hearing on the project, each DNR staff person that testifies under oath may be asked whether anyone within the Department or the Governor's Office influenced them to take a position inconsistent with their technical judgment. Department employees are encouraged by the Secretary to use their professional judgement throughout the review process - whether their conclusions support or oppose the issuance of the necessary permits.

Wolf River (misconception #3)

3⇒ *Misconception:*

The Crandon mine would destroy the Wolf River.

Response:

The Crandon mine could not be permitted if it would damage Wolf River water quality or quantity. The Department is assessing potential impacts from the tailings facility, from the groundwater drawdown, and from any necessary mitigation of Wolf River tributaries. If any of these things indicated a potential to degrade the Wolf River, the Department would recommend either plan revisions or the denial of permits.

The Science Advisory Council (misconception #4)

4⇒ *Misconception:*

The Science Advisory Council has veto power over the Crandon project. If they say the mine can't be operated safely, it won't be permitted.

Response:

The Governor's Executive Order that created the Science Advisory Council is clear that the Council is advisory in nature. The Council has the responsibility to review technologies used in proposed mining projects and submit *recommendations* to the DNR Secretary regarding the ability of the technologies to comply with state groundwater and surface water statutes and rules. The Department will include the Council's recommendations in their entirety in the Environmental Impact Statement.

The DNR's Role (misconceptions #5-#7)

5⇒ *Misconception:*

The DNR is defending mining.

Response:

The DNR is charged in the law with protecting the environment and cannot be an advocate for the mining industry or any proposed project. The Department will explain and defend the role and activities assigned to it by law in reviewing the proposed mine, but will not defend mining in general, a mining proposal, or a mining company. The Department's comments are analyses of the facts based on the laws and regulations governing the review of the proposal. The Department will actively seek denial of permits if a proposal can't meet environmental standards.

6⇒ *Misconception:*

The decision on whether to permit the mine comes down to the personal judgement of the DNR Secretary.

Response:

The final decision is made after a trial-like "Master Hearing", during which all the permits that the mining company needs to obtain are evaluated. The statutes and administrative codes that govern each of these permits set out the criteria that must be met for the permits to be issued. Furthermore, the Secretary will NOT be the decision-maker for the Crandon mine project. The Department's role is to review the project, to provide technical expertise, and to assist in developing the record. The Department staff will take a position on whether a permit can be issued with conditions or denied, consistent with state laws and regulations. However, the final decision will be made by an administrative law judge appointed by the State Division of Hearings & Appeals.

7⇒ *Misconception:*

If the DNR really cared about the environment, it wouldn't even consider permitting the Crandon mine - it would just say "No!"

Response:

A mining applicant has the same right to equal protection under the law as any other type of applicant. The Department CANNOT legally say "no" to any permit applicant without examining the facts on a case-by-case basis and determining whether the project complies with state laws and regulations that control whether projects should be allowed. The Department is responsible for regulating mining in the state and is required to follow the process specified by law for review of a mining applicant's proposal.

Groundwater (misconceptions #8-#11)

8⇒ *Misconception:*

The groundwater standards that apply to mining waste are less stringent than the standards that apply to other wastes.

Response:

Although the boundary for groundwater compliance is different, a mining operation must comply with the SAME groundwater quality standards as other industries. Actually, the review process for a proposed mining project is much more rigorous than that for other industries. For instance, mining is the only industry that is required by state law to predict groundwater impacts through time, using complex computer programs.

9⇒ *Misconception:*

Groundwater modeling is an unnecessary and untested tool that only serves to justify pre-conceived opinions.

Response:

Modern computer models are constructed with sound mathematical and physical principles. Nevertheless, models are only tools with limitations that must be thoroughly understood by the user - the results are only as good as the data and assumptions that are put into them. We use computer models with worst-case assumptions so we can be sure that we have predicted reasonable worst-case scenarios. This worst-case scenario is used for the purpose of facility design evaluation and impact predictions.

10⇒ *Misconception:*

The Crandon Mine would contaminate groundwater to such an extent that nearby streams or drinking water wells become polluted.

Response:

State laws and regulations prohibit any projects that result in groundwater contamination that could harm streams or pollute drinking water wells. All groundwater that leaves a mine property must meet drinking water quality standards and cannot have any significant effect on surface water, aquatic life, plants, or people. If a proposed mine cannot meet that requirement, it cannot be approved. The only exception to this rule would be for those substances which naturally occur at the site in concentrations above the groundwater standards.

11⇒ *Misconception:*

Eventually, the Crandon mine and waste facility will pollute the environment. The DNR can only look at the short term impacts from this project - but the impacts will be felt for thousands of years.

Response:

It is clear that there will be some changes in the groundwater quality in the area of a mine or tailings facility. Groundwater flow and transport models are being used to help predict the flow of contaminants from the mine and tailings management area through time. Eventually, the groundwater system would reach an equilibrium -a point at which the contaminant concentration and the size of the affected area would not increase. The models will predict when this equilibrium would happen - it would likely be several hundreds of years into the future. Even at this future time, the groundwater concentrations must be projected to meet current environmental standards, or, by law, the mine could not be permitted.

Tailings Management Area (TMA) (misconceptions #12-#15)

12⇒ *Misconception:*

The Crandon mine Tailings Management Area (TMA) design is unproven and experimental.

Response:

All of the components of the tailings facility proposed by Nicolet Minerals Company (NMC, formerly the Crandon Mining Company) have been used successfully in other facilities. The laws and regulations in Wisconsin have compelled NMC to propose one of the most highly-engineered mine tailings facilities ever developed. However, if the Department's review determines that NMC's proposed design would not achieve compliance with Wisconsin's environmental standards, the Department would either recommend revisions to or denial of the permit. The Department believes that a thorough case-by-case review of any proposed design is necessary, because a design that works elsewhere is not necessarily suitable for the environment of northern Wisconsin. Also, the design will be analyzed by the independent Science Advisory Council and its analysis will be part of the Environmental Impact Statement.

13⇒ *Misconception:*

The tailings in the Crandon mine TMA will be radioactive.

Response:

The tailings would not be radioactive. Tests done on samples and tailings from the Crandon ore body indicate that they contain only normal background levels of radioactive materials in concentrations similar to other areas of the state. Geologists at the Wisconsin Geological and Natural History Survey (WGNHS), among others, have confirmed this finding.

14⇒ *Misconception:*

To protect the environment, it's critical that a Design Management Zone around a tailings facility be established at 150 feet rather than at 1,200 feet.

Response:

The Design Management Zone is a buffer and monitoring zone. The distance of the Design Management Zone does not determine whether or not contamination is going to spread off-site or affect anyone. Monitoring at a mine waste site must take place within a Mandatory Intervention Boundary (150 feet from waste). If contamination is detected, action would have to be taken by the mining company to ensure that groundwater standards are met 1,200 feet from the facility or at the property line, whichever is closest.

15⇒ *Misconception:*

DNR has established a 1200 foot Design Management Zone for mining because it wanted to be less stringent for mining than the 150 foot zone that applies to landfills.

Response:

The 1200 foot requirement is necessary to accommodate projections from a complex computer program (called a groundwater solute transport model) which is required ONLY of mining applicants. The model uses many worst case assumptions, and therefore results tend to significantly exaggerate the probable impacts. For this reason, a larger buffer area is necessary. Regardless, groundwater under ANY property outside the Design Management Zone cannot be adversely affected, ever. (See Misconceptions #7 & #11.)

The Mining Industry (misconception #16)

16⇒ *Misconception:*

There has never been a sulfide mine anywhere that didn't pollute the environment.

Response:

Many mines, both historical and current, have polluted to levels unacceptable by today's environmental standards. However, mining regulators in other states and Canada inform us that they are regulating mines, both closed and operating, that do meet environmental standards. The Mining Moratorium Bill, which recently passed the Senate and Assembly and is awaiting the Governor's signature, addresses this issue by requiring that a mining company must identify sulfide mines that haven't polluted the environment before it can be allowed to mine in this state. The fact remains that we must thoroughly analyze any proposed mine to see if it would work in Wisconsin. The Science Advisory Council will also be called upon to independently review the technology involved in this proposal.

The Pipeline To The Wisconsin River (misconceptions #17-#18)

17⇒ *Misconception:*

NMC's proposed pipeline to the Wisconsin River would be full of toxic, untreated mining wastes, and would contaminate the entire Wisconsin River system.

Response:

Due to the inflow of groundwater into the mine, the proposed facility would produce more water than it could use for processing purposes. If permitted, the pipeline to the Wisconsin River would contain only surplus water that has been treated to meet all water quality standards. No discharge would be allowed unless it meets surface water quality standards. In fact, the treated wastewater would even meet drinking water standards for all but two compounds (sulfate and selenium - these two compounds would meet surface water standards). The difference in water quality in the Wisconsin River from the discharge would not be harmful to aquatic life or existing uses of the river. The Department will also thoroughly analyze alternatives to the wastewater discharge pipeline.

18⇒ *Misconception:*

The DNR has initiated the BOD (biochemical oxygen demand) remodeling process on the Wisconsin River in order to accommodate the Crandon mine.

Response:

The DNR is reevaluating the BOD allocation between Rhinelander and Tomahawk because monitoring data indicates that dissolved oxygen has occasionally dropped to unhealthy levels for fish. This review is being conducted as recommended in the drainage basin plan revision of 1991. There is no question that the proposed NMC discharge provided the stimulus needed to raise the priority of the reevaluation effort, because if permitted, the NMC discharge would be the first new discharge in that segment since the original allocation. However, the reevaluating process would have been done and will continue regardless of the future of the Crandon project.

Wild Rice (misconception #19)

19⇒ *Misconception:*

The Crandon mine will cause the destruction of the wild rice beds in Rice Lake and Lake Alice.

Response:

The Department is committed to protecting the wild rice resource in Rice Lake and Lake Alice. For this reason, the Department is carefully analyzing the proposed wastewater discharge, the potential for groundwater contamination around the mine site, surface runoff, and surface water mitigation. Results of these analyses will be printed in our Draft Environmental Impact Statement. Water quality standards are set to protect species that are more sensitive to polutants than wild rice - we know this because recent research has revealed the levels of certain pollutants that are harmful to wild rice. The project could not be permitted if it would violate surface water quality standards. Also, if mining would cause any water levels to drop below the public rights stage, the company would have to add water to mitigate those water bodies. Therefore, the mine would not be allowed to cause water levels to drop enough to harm wild rice beds.

The Mining Company (misconceptions #20-#21)

20⇒ *Misconception:*

The big mining corporations have lots of money and therefore wouldn't worry about complying with the permit conditions - they could just pay any fines.

Response:

A company does not have a choice between complying with permit conditions or paying fines - complying with the permit conditions is the only option. The maximum penalties for violating environmental laws in Wisconsin can be steep - $5,000- $25,000 per violation per day. If further sanctions are necessary, the DNR, through the Department of Justice, has the ability to have the courts intervene to enforce compliance. In extreme cases, this can even mean shutting down a facility, or criminal prosecutions of companies and individuals.

21⇒ *Misconception:*

Since the mining company is doing the studies and will be performing the monitoring, they can submit any data that they want - even falsified data.

Response:

The Department has oversight over the company's testing programs and conducts independent verification of its data. The company can use only DNR approved laboratories and techniques, often performing parallel sampling with the DNR, and is subject to scheduled and unscheduled DNR site visits. In the Department's experience, it is extremely rare for a company to submit falsified information. The great majority of work is not done by project sponsors, like CMC, but by private consulting firms and private laboratories. Their business, as well as their professional licenses, rely on the integrity of their work. It is rare for such firms to risk their reputation and survival for the sake of providing a client with false data. This would, in fact, be a criminal act. (See Misconception #18.) In addition, the mining law specifies that if false statements are intentionally submitted as part of the permit application, the Department may cancel a subsequently issued mining permit.

State Mining Law (misconception #22)

22⇒ *Misconception:*

The mining laws in this state have been significantly weakened in recent years.

Response:

On the contrary, the changes made in the last twenty years to Wisconsin's mining laws and regulations have primarily strengthened them. Some key measures include making an Environmental Impact Statement mandatory for any proposed mining project, requiring consideration of an applicant's performance history at other U.S. mining operations, and the pending creation of a dedicated trust fund to be used for long-term maintenance and emergencies.

Who Will Pay? (misconceptions #23-#24)

23⇒ *Misconception:*

The taxpayers are going to have to pay if anything bad happens at the mine.

Response:

It is impossible to predict how the laws governing liability will read tens or hundreds of years from now. However, using present laws as a guide, it would be very difficult for a mining company to avoid paying for problems that arise. To address these uncertainties, a recent rule change established a dedicated perpetual trust fund, funded by the company, to ensure that money is available for such situations.

24⇒ *Misconception:*

The taxpayers are paying for the DNR's review process.

Response:

Nicolet Minerals Company must pay the state for the costs to review the permits and prepare the environmental impact statement (EIS), including costs for DNR consultants. EIS and DNR consultant fees, which the company has paid, total more than $854,000 through the first half of 1997. The permit-related fees, which currently total more than $1,000,000, will be paid by the company at the conclusion of the project review. These fees must be paid whether the permits are granted or denied.

The Cumulative Effects Of Mining (misconception #25)

25⇒ *Misconception:*

If the Crandon mine is permitted, it will pave the way for dozens of other mines in northern Wisconsin, turning that area into a mining district.

Response:

After over three decades of modern mineral exploration in northern Wisconsin, only two ore bodies have been deemed economically viable enough to go through the permitting process. Although more ore bodies may be proposed for future development, most geologists do not expect the development of a "mining district" in northern Wisconsin. Regardless, each newly proposed project would need to be evaluated individually, considering the environmental characteristics unique to that site. The experience with the Crandon and Flambeau projects demonstrates that because of the complex nature of mine proposals and review, each proposal would take five to ten years from project initiation to the beginning of operations.

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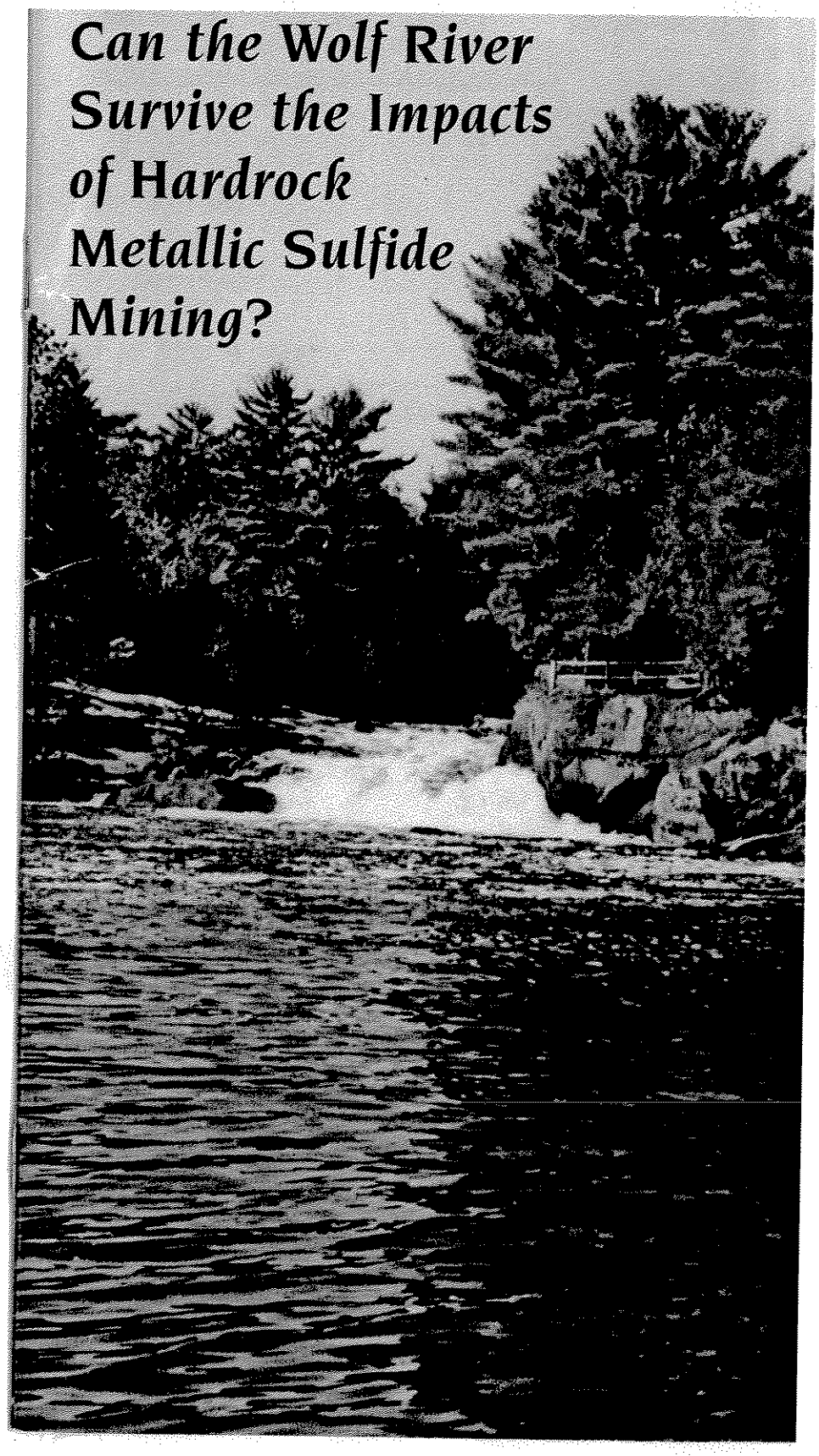
PUB-SS-928 98

Can the Wolf River Survive the Impacts of Hardrock Metallic Sulfide Mining?



There has never been a metallic mine in the upper Wolf River watershed. The Wolf River is listed by the American Rivers organization as one of "The Most Threatened and Endangered Rivers in North America" due to threats of pollution posed by Crandon Mining Company's Proposed Hardrock Mine.

THE WOLF RIVER IS ONE OF THE GREATEST NATURAL RESOURCES IN THE MIDWEST.

- **PRISTINE** - High quality waters flow through dense forest, granite outcroppings and waterfalls.

- **FISHING** - The upper Wolf River is considered one of the premier trout fishing rivers in the midwest, sporting native brook, brown, and rainbow trout.

- **EAGLES** - Bald eagles, our majestic national symbol, nest along and fish the waters of the Wolf River along with other rare and endangered species.

- **STURGEON** - The largest freshwater fish, Lake Sturgeon, has lived and spawned in the Wolf River for thousands of years.

- **WILD RICE** - Annual harvests of wild rice from the Wolf River are of cultural significance to the area, and provides a gourmet delight for everyone.

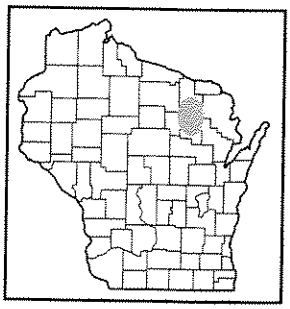
- **TOURISM** - The Wolf River is the backbone of northeastern Wisconsin's summer tourism industry.

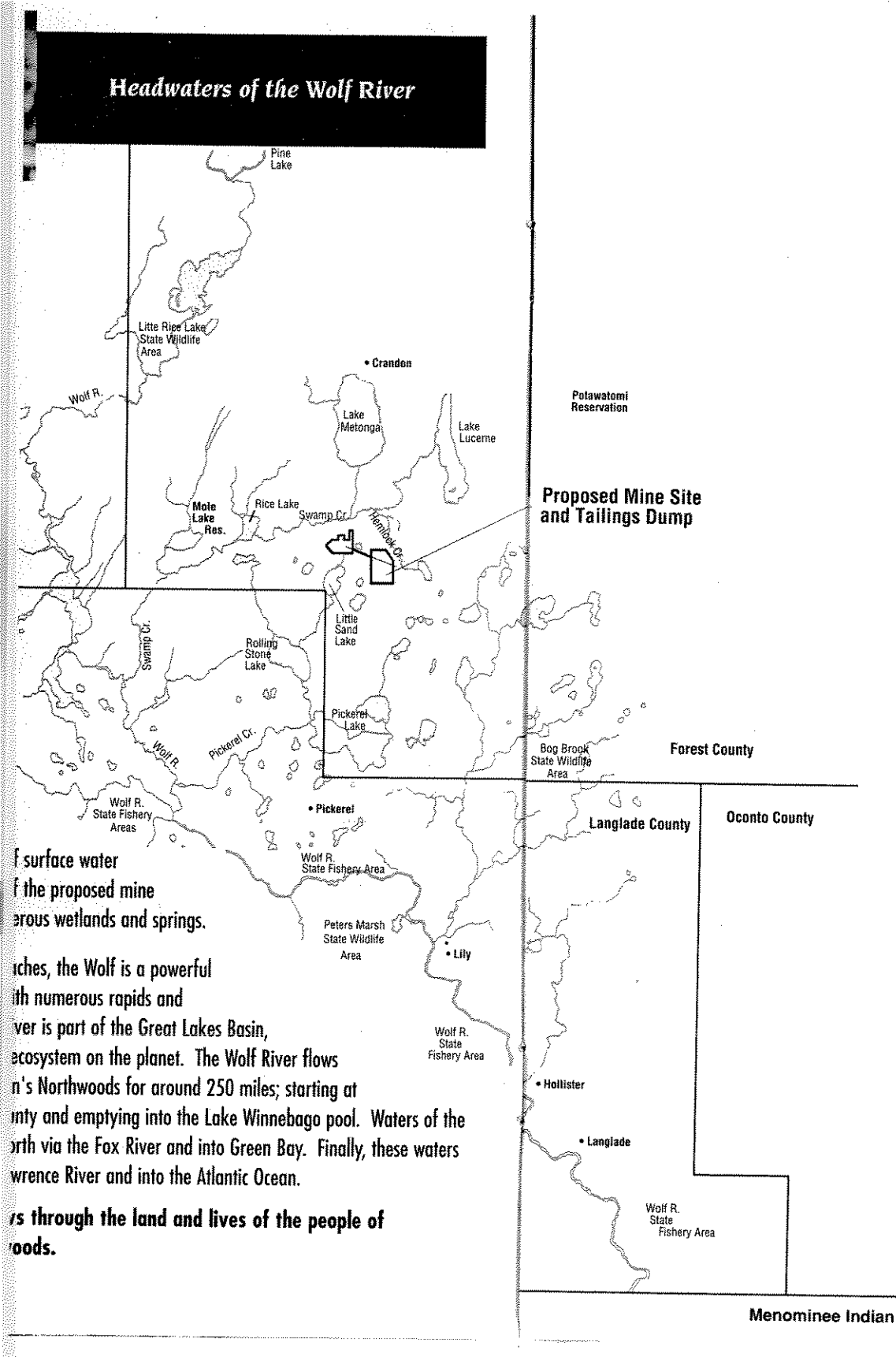
THE WILD AND SCENIC WOLF RIVER IS IMPERILED BY CRANDON MINING COMPANY'S PROPOSED HARDROCK METALLIC SULFIDE MINE.

Photograph: Mineral Policy Center
— Mine wastes leach acid and heavy-metal contamination in Fisher Creek near Yellowstone.

Cover Photo: Big Smokey Falls, Menominee Reservation

Headwaters of the Wolf River





The sensitive Wolf River and its headwaters region supports perhaps the greatest biological diversity in the state and cannot tolerate hardrock metallic sulfide mining.

The mining company's own studies found over 750 plant and animal species on and around the proposed mine site, of which more than 50 are listed as rare and endangered by the state.

f surface water
f the proposed mine
erous wetlands and springs.

ches, the Wolf is a powerful
th numerous rapids and
ver is part of the Great Lakes Basin,
ecosystem on the planet. The Wolf River flows
n's Northwoods for around 250 miles; starting at
nty and emptying into the Lake Winnebago pool. Waters of the
rth via the Fox River and into Green Bay. Finally, these waters
wrence River and into the Atlantic Ocean.

**s through the land and lives of the people of
oods.**

The Proposed Hardrock Sulfide Mine

mpany **(CMC)** is a partnership formed by Exxon and Rio
n mining firm. CMC proposes to mine an ore deposit that
, running east to west, located in the headwaters of the
ey say they want to mine primarily copper and zinc, and
gold.

place underground in a deep-shaft mine. Crushed ore,
posit would be delivered to the surface for processing.
d to the crushed ore, which will be pumped to special
cals will separate metallic minerals from the ore.
e from flooding, the area around the mine would be
uantities of waste water, well over one million gallons per
discharged. Area groundwater would be drawn down for
site, affecting surface water levels.

[redacted]

s would be stored in the largest dump in the State of
ld be larger than 322 football fields and over 90 feet
ic acid generating heavy metal laden waste could reach
term pollution threats to the integrity of the Wolf River
from the waste storage alone, are alarming.
dwaters would be adversely impacted if hardrock mining
the lakes, streams, and people that depend on these
h could be negatively affected.

[redacted]

Acid Mine Drainage will enter the Wolf River damaging the Wolf River Ecosystem, if Metallic Mining is Permitted.

[redacted]

• "Flows of acid drainage often create large, toxic, metal bearing sediment loads in stream channels. When acid and metal drainage enter streams, fish are often depleted in a short period of time. Copper ions are especially lethal to fish...a copper concentration of as little as one part per million may be lethal to trout."
— U.S. Forest Service

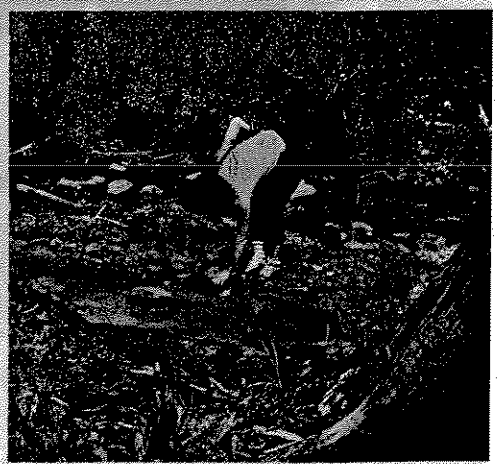
• "Potential for damage may be so severe as to require perpetual monitoring and maintenance similar to that done by federal authorities with radioactive waste material."
— Michael McNamera, UW Madison Center for Geographical Analysis

• "There are at least 500,000 abandoned mine sites nationwide and the cost of cleaning them ranges from 20 BILLION DOLLARS TO 70 BILLION DOLLARS."
— Al Gedicks, phD, Muskie 10/94

• "High sulfide mine wastes retain the ability to generate acid as long as they exist, until either they become part of another permanent rock structure or until the acid is all generated and carried away. When we talk about sealing and capping them, we are talking about doing it for a millennium."
— Philip Hocker, Chairman - Mineral Policy Center

• "There are no ideal metallic mining sites which can be pointed to as the model approach in preventing acidic drainage industry-wide."
— Larry Lynch, WI Dept. of Natural Resources

Some of the WORST polluted sites in the world are old hardrock metallic mine sites. NO COPPER SULFIDE MINE HAS EVER BEEN SUCCESSFULLY RECLAIMED ANYWHERE IN THE WORLD.



Photograph: Mineral Policy Center
Acid mine drainage from McLaren mill tailings, Montana

Menominee Nation...Another Perspective

ominee Nation have been the caretakers of the waters rounds them for thousands of years. The waters that ams and rivers are the lifeblood of the Menominee. dians are the oldest continuous residents of Wisconsin, s land for more than 8,000 years. The name AEQNOMENĒWAK" means Wild Rice People. servation, nearly 235,000 acres, features some of the tland within the Great Lakes Basin. In 1995 the ustained yield forestry management program was recog- onal ceremony by the United Nations at their headquar-

inee are recognized world wide for their conservation ever been proven outdated or ineffective. The er wavered from their responsibility as caretakers of

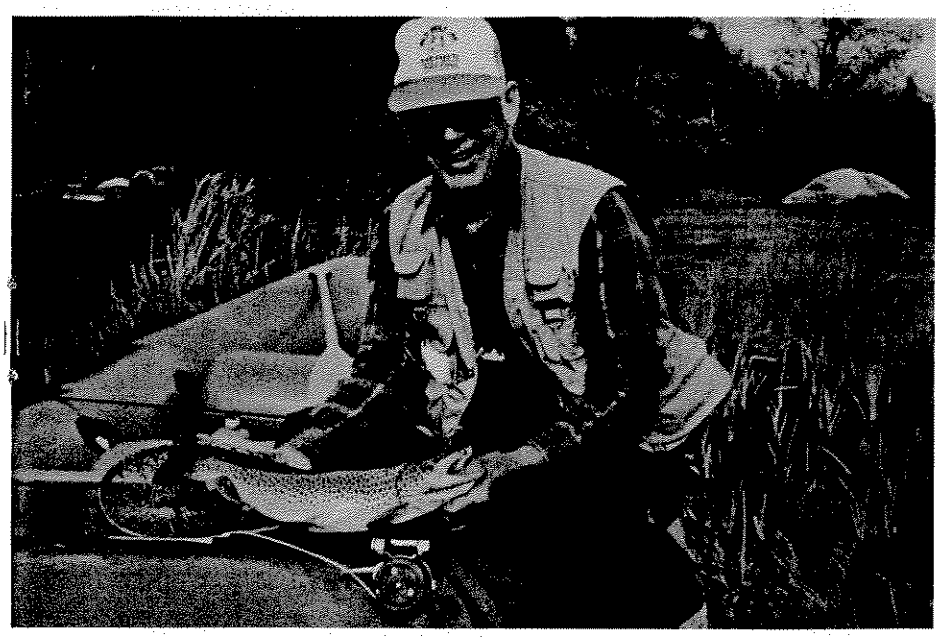
servation, located directly downstream from the pro- , and precious Tribal resources, stand to be negatively inee have joined other concerned organizations and Potawatomi and Ojibwa, in opposition to the proposed . The Tribe has resolved to permanently stop construc- a hardrock metallic mine at the pristine headwaters of

THWOODS PERSPECTIVE

posed would be a serious threat to the Wolf River as a onal river, and tourist economy. The Wolf River is, river, one of the last clean, large white water trout st. The river is irreplaceable and priceless." (Herb Chapter Trout Unlimited)

Mining Company) are proposing to build the largest he largest toxic landfill in Wisconsin." (George Rock,)

rn to me are the amounts of reagents which are to be site, if permitted to operate. For example, estimated of sodium cyanide is 14,000 lbs...Federal guidelines inhaled, swallowed, or absorbed through skin." (Robert Town of Ainsworth/Nashville, next to the proposed

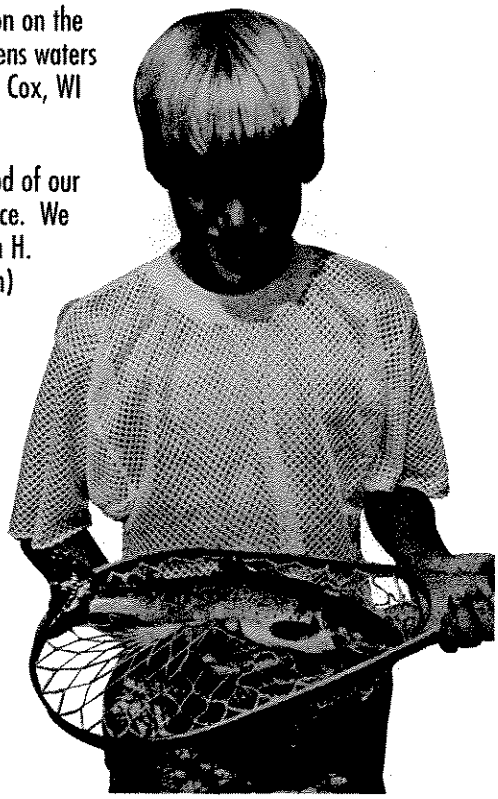


- "I'm a former neighbor of the Crandon people. I come from Iron River, Michigan, originally, where we had extensive mining, underground mining...all of them are closed today and we're left with the problems. I warned people...down the road you're going to have problems with the water, it came true." (Walter Brey, former Mayor of Iron River and Federal Mine Inspector)

- "The Wolf is home to healthiest self reproducing population of sturgeon on the planet. The proposed mine threatens waters that these fish depend on." (Doug Cox, WI Conservation Congress Member)

- "The Wolf River is the lifeblood of our people, and central to our existence. We will let no harm come to it." (John H. Teller, Menominee Tribal Chairman)

- "Crandon Mining Company threatens northeastern Wisconsin and could destroy tourism, a major component of our economy. People come to this area because of their perception that this is a clean environment, the hardrock mining industry will destroy this." (Jamee McCabe, Wolf River Territory Business Association Member)



Environmental Impact Statement (EIS)

Impact Statement (EIS) will be prepared to evaluate the
nine over the next several years. Numerous federal,
nits would be required before construction of the mine
will be used by regulators to decide if the proposed
nitted.

a very unique resource which is threatened by what
largest copper and zinc mines in North America if per-
headwaters area of the Wolf River could be permanent-
roposed mine is constructed and operated — affecting
r watershed.

ederal agencies have said the following about this pro-
e:

ificant natural, cultural, and Native American resources
rea. Construction and operation of the mine could result
s to these resources. In order to evaluate the permit
ental Impact Statement will be prepared." *(US Army*
12/15/94)

ion of the Department of the Interior that the proposed

Crandon Mining Company project may have a substantial and unacceptable impact on aquatic resources of national importance. Accordingly, the department of Interior objects to issuance of a permit for this project at this time..." (DOI letter to USACE, 11/30/94)

commends that the permit be denied because we find
exist sufficient information to make a reasonable judg-
to USACE, 10/17/94)

WHAT CAN YOU DO?

SPEAK OUT IN OPPOSITION TO THE CRANDON MINING COMPANY. PLEASE SEND WRITTEN COMMENTS TO:

District Engineer
U.S. Army Corps of Engineers - St. Paul District
190 Fifth Street East
St. Paul, MN 55101-1638

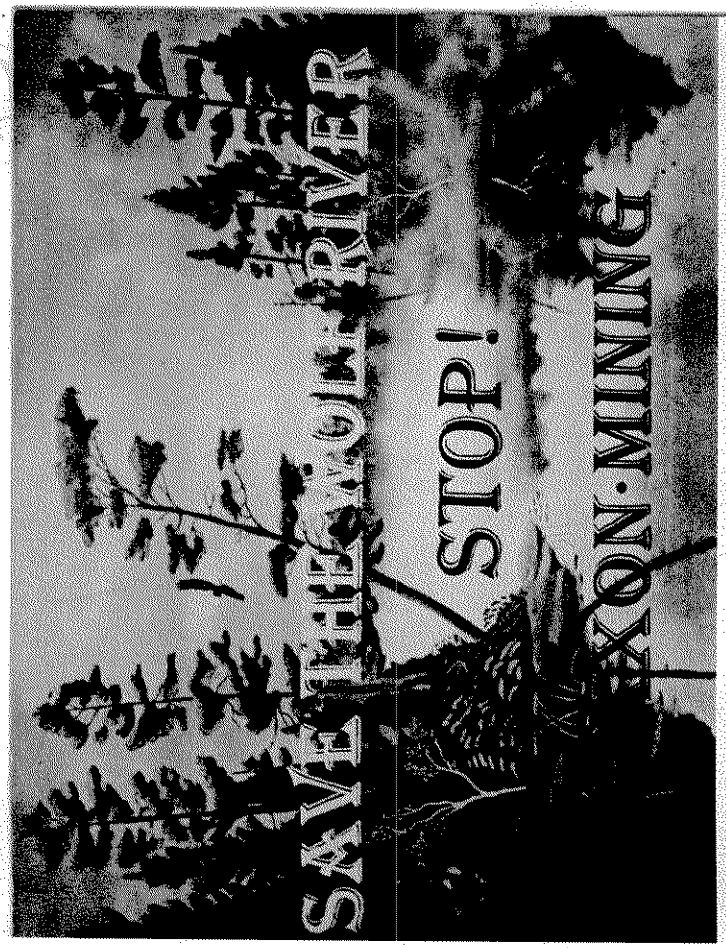
** write this code at the top of your comments:
94-01298-IP-DLB

Call **1-800-362-9472** to leave a message with your Wisconsin Senator or Representative.

Inform these officials that you:

- Value the Wolf River as it exists today, and these values are jeopardized by the proposed mine.
- Oppose permitting the proposed mine at the headwaters of the Wolf River.
- Recommend denial of mine related permits.

Lets protect the Wolf River for our children and future generations!



Menominee Tribal Environmental Services Department
P.O. Box 670
Keshena, WI 54135

For more information call: (715)799-4937

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Northwoods Alliance
Vision Statement

Northcentral Wisconsin is a remarkable, beautiful region of sparkling rivers, bountiful lakes and untamed wildlife. Many people from around the Midwest and the nation travel here to enjoy the unique aesthetic, cultural and ecological features that make up the "Northwoods" experience. Although the Northwoods has changed dramatically since European settlement, its ecological integrity still captures the imagination of the casual visitor or long-time resident.

Unfortunately, past and present environmentally degrading activities threaten the ecological integrity that is the basis for the area's natural beauty and a sustainable economy. Plans for more roads, highways and excessive clearcutting of our recovering forests are fragmenting the landscape and depleting habitat for many species of animals and plants such as white cedar and yellow lady slipper. Mercury contamination of lakes and rivers is growing and the permitting of metallic sulfide mines poses a source of toxic pollutants for centuries to come.

In response to these threats, we need a well-informed citizenry committed to fostering a mutually beneficial relationship between local communities and the land. In this spirit, the Northwoods Alliance is formed. Seven local environmental groups have formed in Northcentral Wisconsin since 1992. These groups are run almost exclusively by volunteers and work with shoe-string budgets.

Mission and Goals

The mission of the Northwoods Alliance is to work together as a federation of organizations to protect, restore and enhance the natural ecosystems of northcentral Wisconsin whereby the beauty, integrity and productivity of our lakes, rivers and forests are maintained in perpetuity. To realize this mission, we have identified the following goals:

1) To protect water quality and make sure all regional Outstanding Resource Waters, such as the Willow Flowage, receive protection against point-source pollution discharges, as recommended by the DNR staff and supported by a large majority of the public.

2) To encourage shared decision-making authority between natural resource agencies and the public for projects that have important ecological and economic impacts.

3) To maintain and enhance the native flora and fauna of the region.

4) To achieve an ecologically sustainable local economy based primarily upon the sustainable use of renewable resources.

5) To achieve a moratorium on metallic sulfide mining in northern Wisconsin until mining technology can unequivocally demonstrate the ability to prevent pollution. To support reuse, recycling and conservation in order to replace the demand for new sources of metals.

6).To uphold and respect the unique contributions that diverse interests and cultures provide to our local communities.

7) To educate the public and elected officials about threats to the environment and recommend solutions.

Northwoods Alliance • P.O. Box 603 • Rhinelander, Wisconsin 54501 • (715) 369-7900

What the Northwoods Alliance Will Do

- Establish an information network among supporting groups in order to share ideas, educate members and coordinate activities.
- Present a unified voice to governments about important environmental issues.
- Become more effective in achieving electronic and print media coverge of environmental issues via press releases, press conferences and personal contacts with reporters.
- Educate the public about environmental issues via newslettters, reports, forums and brochures.
- Strengthen the democaratic process by educating the public about the voting records of public officials and encouraging candidates that care about the environment to run for public office.

This work will be carried out by two part-time employees.

Who We Are

Nine environmental, lake association and tribal groups, representing about 3,200 people belong to the Northwoods Alliance. In alphabetical order, the names and addresses of the groups are:

- **Citizens for a Healthy Environment and Economy in Rhinelander (CHEER)** P.O. Box 603 Rhinelander, WI 54501
- **Critter Rescue Animal Hospital** 7490 Hwy 70 St. Germain, WI 54558
- **ECCOLA** P.O. Box 537 Minocqua, WI 54548
- **Lac du Flambeau Chippewa Tribe**
- **Last Wilderness Conservation Association** P.O. Box 276 Presque Isle, WI 54557
- **Northwoods Conservation Association (NCA)** P.O. Box 222 Boulder Junction, WI 54512
- **Petenwell Flowage Lake Association,** 1797 Badger Court Arkdale, WI 54613
- **Protect Our Wisconsin River (POWR)** P.O. Box 505 Tomahawk, WI 54487
- **Wisconsin Resources Protection Council-Crandon Chapter** Rt. 1 Box 795 Crandon, WI 54520

The Northwoods Alliance has received federal 501(c)(3) status as a tax-exempt non-profit organization.

What You Can Do

Join one of the lake association or environmental groups listed above.

If you are a member of an organization in northcentral Wisconsin that has an interest in conservation such as a lake association or sportsmen's club, urge it to join the Northwoods Alliance.

Donate money to the Northwoods Alliance to help cover our salary and expenses. Please send a check or money order to: **Northwoods Alliance** P.O. Box 603 Rhinelander, WI 54501.

Mining Moratorium Bill (AB-70) May 12, 1997
Legislative Hearing, Ladysmith, Wisconsin

I am Melanie Kirsch, executive director of the Northwoods Alliance, an alliance of lake associations, hunting and fishing groups, tribal interests and environmental groups with more than 3000 members. I own my own commercial agency in the advertising industry and am the author of How to Get Off the Fast Track and Live a Life Money Can't Buy, a massmarket paperbook that features Wisconsin as a premier vacation and retirement community. My three children are fifth generation to grow up in Northern Wisconsin. I am a conservative Catholic republican and I actually voted for Tommy Thompson.

I have spoken with numerous business and professional people; stockbrokers, resort owners, medical people, paper mill workers, union people, lower and middle income families. They are firm in their conviction they do not want the Exxon Mine: they do not want the Northwoods turned into a Mining District. I have witnessed a flood of donations to our organization in support of the work we are doing to stop Exxon mine. The message is simple. The Northwoods is not for sale. Not at any price.

We call, we write, we attend countless meetings. We are told repeatedly by our republican representatives, "Believe in the process."

GOP stalwart, Paul Hassett, former president of the Wisconsin Association of Manufacturers and Commerce and exec sec to the late Governor Warren Knowles said recently, "Tommy Thompson's decision to eliminate the public intervenor's office is wrong...if the public intervenor's office is terminated, then the people's watchdog is also terminated...Exxon should be watched...all mining in the state should be watched....But he (Thompson) wants to control everything. He wants to run the DNR....It's contrary to my belief in the democratic process...."

But you tell us to believe in the process!

Water biologists, hydrogeologists, chemists, the real experts in the DNR will tell you the ageny is hamstrung. Budget cuts. Dissension in the ranks. Job confusion. Low morale. Policy overriding expert research.

But you tell us to believe in the process!

The Wisconsin River where Exxon wants to discharge their contaminated water is currently fully allocated and rated HIGH for standards violations and impairments. Suddenly it is being reallocated. It appears policy hopes to accomodate a new discharger--EXXON--a direct threat to local industry not to mention Oneida and Lincoln County's future industrial

and residential expansion which depend on future allocation in a river that sees minimal enforcement of current violations.

But you tell us to believe in the process!

Wisconsin is ranked # 8 in the nation for the number of toxic spills due to railroad accidents. Weyauwega and the Nemadji River spill cost hundreds of millions of dollars. The Nemadji River spill involved the largest evacuation of people in the United States. Exxon wants to use our highways and railroads for decades to transport highly toxic chemcials including an estimated monthly consumption of 14,000 pounds of sodium cyanide. Our medical community in a five county area is in no way prepared for an EXXON chemcial spill. And all we need is one stretch of black ice....

But you tell us to believe in the process!

Can you tell us the inherent disadvantage in waiting until a single reclaimed sulfide mine can be found that hasn't contaminated ground and surface waters? What reason outweighs all the empirical evidence indicting EXXON mine including their own track record?

You win our votes with your political campaigns, your bumper stickers and yard signs. Now we want your vote. We have our own political campaign: NO EXXON MINE. Give the mining industry this golden opportunity to prove they can mine responsibly. The MMB is specific and scientific. Let them earn the right to take our non-renewable resources. Why should we risk our thriving economy? It is a sustainable economy based on renewable resources. 180,000 tourism-related jobs were created in 1996. Ours is an economy that welcomes soft industry. If you don't give the mining industry this chance to prove they can mine responsibly, if you don't vote for the Mining Moratorium bill, we *will* ban them from the Northwoods. To quote EXXON "<u>We will do whatever it takes.</u>"

We don't want our fish contaminated with mercury!

We don't want our lakes, rivers and drinking water contaminated!

We don't want toxic spills of truckloads of cyanide!

We don't want decades of acid drainage in our wetlands and rivers!

We don't want our water-dependent million dollar tourism industry destroyed!

Believe in the Process? No. Believe in the people!

Melanie Kirsch
Executive Director
Northwoods Alliance

Melanie Kirsch

NO EXXON MINE

THE NORTHWOODS UNDER SIEGE

We don't want our fish contaminated with mercury!

We don't want our lakes, rivers, and drinking water contaminated!

We don't want toxic spills of truckloads of cyanide!

We don't want decades of acid drainage in our wetlands and rivers!

We don't want boom and bust economies!

FACT: EXXON wants to build the largest TOXIC waste dump in Wisconsin history at the headwaters of the pristine Wolf River.

FACT: No sulfide mine in a similar ore body to EXXON'S proposed Wolf River mine has ever operated without contaminating ground and surface waters. Mine effluents have polluted 12,000 miles of the nation's waterways and 180,000 acres of our lakes and reservoirs.

FACT: No known liner material exists that will outlive the toxicity of the acid tailings.

FACT: EXXON wants to dump over 1,000,000 gallons of wastewater contaminated with mercury and heavy metals daily into the Wisconsin River through a 38 mile pipeline.

FACT: EXXON wants to use our highways and railroads for decades to transport highly toxic chemicals including cyanide.

FACT: EXXON and the mining industry's pollution threaten our water-dependent tourism. Their boom and bust cycles have ruined numerous other local economies.

FACT: Union leaders from the Communications Workers, Auto Workers and the South Central federation of the AFL-CIO have condemned Exxon's worker-safety record.

FACT: EXXON wants to transfer water from the Great lakes watershed to the Mississippi River watershed. This will set a precedent for the transfer of our region's waters.

FACT: The mining industry currently leases more than 300,000 acres in Wisconsin. The EXXON mine and 38 mile pipeline will set a precedent and pave the way for international mining cartels to turn the Northwoods into a MINING DISTRICT.

FACT: EXXON'S track record speaks for itself.

WHAT YOU CAN DO:

Call your State Representative and ask them to support the Mining Moratorium Bill.
Langlade & Lincoln County: Tom Ourada - 608-266-7694
Forest County: Lorraine Serrati - 608-266-3780
Oneida & Vilas County: Joseph Handrick - 608-266-7141

Call your State Senator: Roger Breske - 608-266-2509

Support the NORTHWOODS Alliance -- Send a check to PO Box 603, Rhinelander, WI 54501.

Call Toll Free: 1-888-SULFIDE for more information or to request a bumper sticker and yard sign **"NO EXXON MINE"**