



ENVIRONMENTAL JUSTICE –POLYMET PROJECT

I was asked to provide background to help citizens interested in making comments pertaining to environmental justice issues. Below, please find a very preliminary set of points. As the PolyMet project proceeds, WaterLegacy intends to do additional research on environmental justice. If citizens or groups have current research on environmental justice, we'd appreciate if you could share information as well.

The US EPA includes the following statement about environmental justice on its web site, <http://www.epa.gov/compliance/basics/ejbackground.html>:

Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. **Fair treatment** means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.

On Feb 11, 1994, President Bill Clinton signed *Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,"* to focus federal attention on the environmental and human health conditions of minority and low-income populations. The Order, which is still in effect, directs federal agencies to develop environmental justice strategies to help federal agencies address disproportionately high and adverse human health or environmental effects of their programs on minority and low-income populations. The order is also intended to promote nondiscrimination in federal programs that affect human health and the environment.

The protections of Title VI of the Civil Rights Act prevent federal funds from being spent in a way that has the effect of discrimination on the basis of race, color or national origin. Title VI, 42 U.S. C. 2000d *et seq.* Title VI prohibits discrimination in any program receiving federal financial assistance: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d.

Although various courts have held that Title VI requires intentional discrimination, see for example, *Guardians Ass'n v. Civil Serv. Commn.*, [463 U.S. 582 \(1983\)](#), EPA's implementing regulations and the implementing regulations of many other federal agencies prohibit taking any action, including any permitting decision, which may have a discriminatory *effect* based on race, color, or national origin. U.S. Environmental Protection Agency, *Title VI - Law and EPA's Regulations*, <http://www.epa.gov/civilrights/t6lawrg.htm>.

CITIZEN COMMENTS – POLYMET PROJECT

Citizen comments do not need to wait for a more thorough legal analysis of environmental justice. Key points could include the following.

1. Inadequate Environmental Justice Analysis in CPDEIS. The current CPDEIS makes an inadequate environmental justice (EJ) analysis of the effects of the PolyMet project. There is a brief EJ discussion in Section 4.10.3.1. It is quoted in its entirety at the end of this memo. Basically, this section of the CPDEIS claims that there are no EJ impacts from the Project. It seems that the primary basis for this assertion is that the population of the entire County of St. Louis is not a minority population. This is spurious. The issue for EJ is not whether the population of some enormous county is Native American or belongs to a minority or low-income community. The issue is whether the particular project would have a disproportionate negative impact on EJ communities. The CPDEIS also notes in its section on “Cultural Resources” that the project may impact “cultural use of natural resources,” but seems to suggest that the issue of impacts need not be considered in the EIS, since they will be considered in a land exchange.

2. Minimal Requirements for an Environmental Justice Analysis:

- A. Treaty Lands. The EIS should analyze the impacts of the PolyMet project on specific property rights of tribes (Fond du Lac, Grand Portage and Bois Forte) to hunt, fish and use the land (usufructuary rights) according to the 1854 Treaty ceding territory to the United States. If the Superior National Forest land on which tribes have treaty rights is proposed to be exchanged for land on which the tribes do not have the same rights or if the land proposed to be exchanged is of lower quality in terms of its forests and wetlands, it is highly likely that tribes will suffer a disproportionate impact from the PolyMet project. Tribes, uniquely, would lose specific property rights as a result of the proposed mine. Arguably, if the PolyMet project is permitted without first ensuring that the land exchange protects all tribal rights, the project on its face would allow a disproportionate impact on tribal communities.
- B. Mercury. Impacts of increased mercury contamination of fish in the Partridge, Embarrass and St. Louis Rivers and throughout the watershed are likely to have disproportionate impacts on tribal, minority and low-income communities. The tribes have fisheries in the areas likely to be affected by increased methylation and bioaccumulation of mercury. The EIS should specifically analyze likely rates of mercury methylation, and health or constraints on consumption that would affect men, women and children in tribal communities and low income and communities who rely on fish for subsistence.
- C. Tribal species of concern. In addition to the rare and endangered species, the EIS should analyze the impacts of the PolyMet on any animal or plant species of relevance to any tribal practice, including wild rice in rivers that will be affected

by PolyMet discharge and changes in hydrology and other plant and animal species important for tribal harvest, fishing or hunting. This has not been done.

- D. Cumulative Impacts. The CPDEIS conducted no analysis of cumulative impacts of the PolyMet and other projects on environmental justice, claiming that no issues had been identified. Given historical and proposed mining and processing activities in the Hoyt Lakes area, an environmental justice impacts analysis should examine the cumulative impacts of these projects, including the PolyMet project, on tribal property rights, species and habitats of concern, fresh water resources and health as a result of eating mercury-contaminated fish.

VERBATIM EXCERPTS FROM POLYMET CPDEIS (DECEMBER 2008)

4.10.3.1. Proposed Action

Environmental Justice

The Project was evaluated for effects relating to the social, cultural, and economic well-being and health of minorities and low-income groups through a review of socioeconomic and demographic data compiled from the 2000 U.S. Census. Such effects are termed environmental justice issues, and none were identified for the NorthMet Project. Minority populations in the affected communities do not comprise over 50 percent. In addition, in 2000 (US Census) the Native American population was 2.1% of St Louis County, Minnesota. The same census reported 1.2% Native American across the State of Minnesota. Therefore the Proposed Action and alternatives would not adversely affect minority groups disproportionately. While there are an elevated percentage of families below the poverty level in the East Range communities as compared with the State, the Project would create an economic benefit to the community and would not appear to create significant adverse social impacts.

As discussed in section 4.8.3.1, the proposed Project area overlaps the 1854 Ceded Territory, where certain tribal communities retain rights to hunt, fish, and gather on public lands. With 2.1% of Native Americans living in St Louis County, Minnesota, few members of these tribal communities live in the immediate vicinity. Further discussion of tribal use of Project area resources is provided in Section 4.8.

* * *

4.8 CULTURAL RESOURCES

Beyond potential impact to historic properties, impacts to cultural use of some natural resources would occur. Public or tribal access to natural resources within the Project site, which has been limited at least at the Plant Site since initial LTVSMC mine development, would continue to be prohibited for the lifetime of the Project. Further, the Project would impact some of the natural resources within the Mine Site that the 1854 Treaty makes available for traditional use by Ojibwe people, including plants,

wetlands, and game. Although wetlands impacts would be mitigated, most of the proposed compensatory wetlands mitigation would be located outside the ceded 1854 Treaty area. These natural resource impacts are evaluated elsewhere in this document. A potential land exchange is currently being considered by the USFS for National Forest System lands proposed to be used by the Project; should this occur, access to natural resources on the additional land by 1854 signatory tribes may be made available, although it is unknown whether or not this would compensate for or result in a net loss of access rights to ceded territory.

A potential mitigation measure for the loss of hunting, gathering, and fishing at the Project site is the proposed land exchange or purchase in which new land would be acquired for inclusion in the USFS lands in exchange for the USFS land occupied by the NorthMet Project. The extent to which this measure would be effective in offsetting these natural and cultural resource impacts depends on the location of the exchanged or acquired lands and the type and degree of specific resources that would be made available. The effects of this land exchange/acquisition will be evaluated in a separate analysis prepared by the USFS. The USFS is consulting with the tribes regarding this land access issue.

Of particular concern to tribal representatives is the potential impact to wild rice beds. The Embarrass River has been identified as one of approximately 1,200 water bodies in Minnesota where wild rice is or has been recently located; according to inventory information as reported by the MnDNR. The closest wild rice bed on the Embarrass River is located downstream of the Project approximately 5.5 miles west of the proposed Tailings Basin (MnDNR, February 2008). As indicated in Section 4.1, predicted impacts to the Embarrass River include an increase in aluminum concentration that exceeds the surface water quality criterion; however, recent measured background concentrations also exceed this standard. Other modeled constituents met applicable standards. Predicted hydrologic impacts are uncertain but likely to be small. As a result, the impact to this wild rice bed is unknown but not likely to be significantly adversely affected.

* * *

4.8.4 Cumulative Impacts

During the EIS scoping process (see Section 2.1 of the Final SDD), no cumulative impact issues associated with cultural resources were identified.

CONTACT

Please feel free to contact me with questions as well as to share the benefits of any additional specific information you may have that supports the need for an Environmental Justice analysis. Paula Maccabee 651-646-8890, pmaccabee@visi.com.