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MINING

Army Corps revokes NorthMet wetlands permit

Decision a major blow to plans for copper-nickel mine near Hoyt Lakes



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The planned processing facility for the New Range copper-nickel proposal formerly PolyMet.

Posted Tuesday, June 6, 2023 5:55 pm

Marshall Helmberger

REGIONAL— The U.S. Army Corps of Engineers has dealt a major blow to the prospects for the NorthMet copper-nickel venture proposed by NewRange Copper, formerly known as PolyMet Mining. On Tuesday, June 6, the federal agency announced that it has revoked the company's Section 404

wetlands permit under the Clean Water Act because it does not ensure compliance with water quality requirements of the Fond du Lac Band. The reservation's boundaries are located downstream of the proposed copper-nickel mine.

The decision is just the latest in a series of setbacks that have resulted in the suspension or reversal of several major permits for the project, including the state-issued permit to mine. While the company has the option to resubmit an application to the Army Corps, doing so would be a time-consuming process and could require significant changes in the proposal to meet the more stringent water quality standards set by the Band.

An oversight by the Environmental Protection Agency under the Trump administration led to the latest challenge for the mining proposal. Under federal law, downstream "states" are supposed to be notified if a federally permitted project has the potential to impact water quality within their jurisdiction. Indian reservations are considered states under the law and the Fond du Lac Reservation, near Cloquet, encompasses a portion of the St. Louis River, which would receive discharge from the proposed NorthMet mine.

However, the EPA never provided the required notice, either to the state of Wisconsin nor the Fond du Lac Band. The Band filed suit over that failure in 2019 and two years later a federal judge agreed that the EPA had erred and sent the matter back to the agency for further proceedings. The EPA subsequently held public hearings on the matter and later recommended that the Army Corps suspend the permit, which it did.

This week's decision makes that suspension permanent.

In a statement, Corps officials say they made the decision "after thoroughly considering all information provided to the district at a public hearing hosted in May of 2022." That includes analysis and recommendations provided by the EPA, the Fond du Lac Band, NewRange Copper-Nickel and the public. In a 27-page decision memo, the Corps stated that it received over 22,500 public comments on the issue.

When the Corps initially issued its Section 404 permit in 2019, it had determined that the proposed mine would comply with all relevant water quality standards. But the Fond du Lac, who have established their own water quality standards under the authority of the Clean Water Act, disagreed and provided evidence that the discharges would likely exacerbate existing violations of its standards for both mercury and specific conductance within the St. Louis River.

The Band's mercury limit, of 0.77 nanograms per liter is stricter than the 1.3 ng/l standard set by the state of Minnesota. In its review, the EPA noted that the St. Louis River is already impaired due to mercury levels and that it lacked "the assimilative capacity that would ameliorate any adverse impacts of additional mercury loading from the NorthMet project."

The Band's own water quality experts had cited concerns that the proposed mine would alter the hydrology of up to 6,000 acres of wetlands, potentially increasing the transport and methylation of mercury already present in the wetlands.

EPA officials acknowledged there were gaps in the available data making it difficult to predict what impact the mine project would have on mercury levels, as well as on specific conductance which is a measure of metal ions in water.

Given those uncertainties, the EPA concluded that the conditions set in the existing permit could not ensure compliance with the Band's water quality standards. The decision is certainly the first time that a permit for a major project in Minnesota, possibly in the country, was revoked for failing to meet the water quality standards set by an Indian nation.

Reaction robust

"This is a very consequential decision," said Paula Maccabee, legal counsel with Duluth-based Water Legacy, a group that has joined forces with Fond du Lac more than once in efforts to halt the current mine proposal. So consequential, that Maccabee worries that tribal governments could face a backlash. "At least for today, the people with the authority made the right and honest decision," she said. "It's a huge victory for law and science and the sovereignty of the Fond du Lac Band to set their own standards."

A spokesperson for NewRange Copper Nickel said water quality data has already been thoroughly reviewed for the project for more than a decade. "The planned NorthMet project development is protective of water, air, and other resources and can produce copper, nickel, and platinum group metals in a responsible and sustainable manner," said Bruce Richardson, director of communications.

Where the project goes from here is uncertain. "The Corps' decision is one that requires careful review, determined action, and further engagement with regulators and all key stakeholders," said Richardson. "NewRange is reviewing all of our options as we chart a course forward."

Eighth District Congressman Pete Stauber issued a blistering statement in the wake of the decision, calling it a "gift to the Chinese Communist Party."

Stauber said the decision highlights the need for "serious mining reform to limit frivolous lawsuits and modernize the Clean Water Act permitting process" and he blamed the decision on activists in Washington. "Because of this, America will be more reliant on China, which has no environmental or labor standards and uses minerals sourced by child labor," he stated.

Back in Minnesota, opponents of the mine proposal lauded the work done by the Fond du Lac Band. "We are incredibly fortunate to have the Fond du Lac Band fighting to protect our clean water," said Chris Knopf, executive director at Friends of the Boundary Waters Wilderness.

"The legal strategy, scientific expertise, and passion they brought to this cause made today's momentous victory possible. We feel an incredible amount of gratitude for all the work the Band has done to protect our state's clean water."

Maccabee agreed and noted that Fond du Lac has shown itself to be a formidable ally in their efforts to halt the current mine plan. "Not too many tribes would have the expertise, the resources, and the sheer toughness, to follow through with this," she said.

Comments

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WILDFIRE

Blaze scorches 20 acres near Ely

by CATH CLARK
Ely Editor

Ely — With red flag fire weather warnings posted across northern Minnesota, Ely had its first brush with a wildfire on the afternoon of Saturday, May 27. The fire was reported before 5 p.m. immediately west of the Ely Golf Course and just north of the Pioneer Trailings Basin, known locally as the Lucky Boy Ponds.

"The fire burned approximately 20 acres near the Taconite Trail," said Leanne Langeberg, a spokesperson for the Minnesota Interagency Fire Center in Grand Rapids.

Because the fire started on state-owned land, the Department of Natural Resources was the lead agency directing fire response, Langeberg explained. The Moose/Full Lake and Ely Fire Departments also responded to the fire with ground units.

Right: A Boeing Chinook CH-47D helicopter drops its 2,500 gallons of water on a wildfire that started just west of the Ely Golf Course on Saturday, May 27.

photo by G. Clark

Three air assets, a Chinook helicopter and two Fire Boss fixed wing aircraft also responded to the fire.

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LOCAL WRITERS

Retired pastor still preaching of peace and joy

by JOSE SUMMITT
Ely-Grand Rapids Editor

SOUDAN- H. Arthur (Art) Dale has served as a Lutheran pastor in our area for decades, and now in his retirement, and at 93 years of age, he is continuing to pass on his vision through his second book, "Makers of Joy and Peace: Healing Human Conflict and Suffering."

"The church is going down the hill," said Dale, "and I think I have discovered why." Dale's new book explores a path to reinvigorating Christian faith, by expanding the work of the church to enable more focus on the joy and peace of the gospels.



Art Dale with his new book

"The church doesn't have an infrastructure that supports, number one, the proclamation of the good news of Jesus," said Dale. "They made it into a doctrine. Something you have to believe, instead of absolutely out-of-this-world good news."

"I speak as a Christian," Dale writes in the introduction. "I hope that other believers will join with me in escaping the blame game and in searching for what we cannot see. If we blame, we can't see. It is useless to blame our secular culture that gives authority to power and weapons. Nor can we fault the younger

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MEMORIAL DAY 2023

HONOR & RESPECT



Above: Jim Taylor with the Cook VFW displays the colors during a Memorial Day event in Cook on Monday.

Left: Ely Area Honor Guard gives the salute to the honored dead.

Right: The grave of Cpl. Wiseman is among many marked at the Lakeview Cemetery in Tower on Memorial Day.



LEGISLATIVE FEEDBACK

Progress, but more to do for nursing homes

by MARSHALL HILMBERGER
Managing Editor

Ely — In the wake of the recently completed legislative session, area lawmakers met here with officials from the Boundary Waters Care Center to talk about how the session helped address the funding crisis for nursing homes and where it fell short.

Sen. Grant Hauschild, DFL-

Hermantown, and Rep. Roger Skrabu, GOP-Ely, may belong to different parties but they were of one mind when it came to finding ways to help the BWCC and other nursing homes in the region address an acute funding shortfall brought on by a variety of factors. The impacts of the COVID pandemic and subsequent inflation, delays in funding increases, along with staffing shortages that forced BWCC

Right: Sen. Grant Hauschild (l) and Rep. Roger Skrabu (r) talk with BWCC director Adam Masloski about the recently completed legislative session.

photo by M. Hilmbarger

and many other facilities to turn to expensive contract nurses, have all contributed to what became an existential crisis for many.

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