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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 methylization 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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### Blaze scorches 20 acres near Ely

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#### Retired pastor still preaching of peace and joy

SOUDAN-H. Arthur (Art) Dule has surved as a Lutheran paster in our area for decades, and now in his retirement, and at 99 years of age, the is continuing to pass on his vision through his second book. "Makers of Joy and Peace; Healing Human Conflict and Soffering."

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#### LEGISLATIVE FEEDBACK

#### Progress, but more to do for nursing homes

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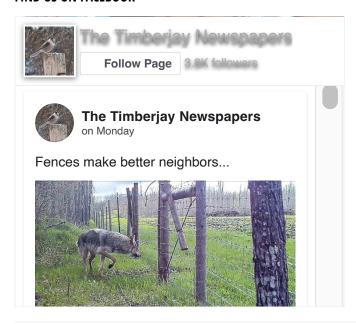
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