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WaterLegacy counsel updates group's efforts to save area watersheds

Posted Wednesday, October 10, 2018 5:02 pm

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ELY— Water Legacy attorney Paula Maccabee provided an update on the PolyMet mining project to a packed house at the Tuesday Group gathering at the Grand Ely Lodge this week. Maccabee has followed the project for years and has sought to ensure that the company and the agencies abide by state and federal laws designed to protect the environment.

PolyMet is in the midst of a decade-long review and permitting process over the state's first proposed copper-nickel sulfide mine and it continues to face potential legal challenges from Maccabee and others on multiple fronts .

"Our request for a supplemental environmental impact statement is now in the Court of Appeals (see separate story page 3) and in the next month or two we will be filing briefs," she said.

The 6,600-acre federal land exchange needed for the mine is another subject of litigation. While that land transfer officially closed in June, the parties have agreed that the deal could still be undone if Water Legacy and other environmental groups prevail in the case. "One of the reasons that WaterLegacy sued and asked the courts for an injunction is that once a party asks for an injunction, the court precedent is that if we ever do get our day in court and the judge decides that PolyMet got a low-ball inappropriate appraisal, the court could still unwind the land exchange," she said.

Meanwhile, Maccabee is watching to see if federal legislation designed to enact the exchange into law moves forward before a new Congress takes over in 2019.

Maccabee is also challenging draft environmental permits, including the permit to mine, that the Minnesota Department of Resources and Pollution Control Agency have issued. "WaterLegacy has contested all of them, and we also asked for an independent evidentiary hearing," Maccabee said. The DNR has yet to decide whether it will allow a contested case hearing on the permits.

According to Maccabee, the MPCA has also put out draft permits for water pollution and a draft certification indicating “there is nothing to worry about here, we are just going to allow it to happen.” WaterLegacy has opposed those permits and certification, and again asked for a contested case hearing in front of an administrative law judge.

At the same time, Maccabee is waiting to hear more from the Army Corps of Engineers, which oversees impacts to wetlands. “The Army Corps of Engineers’ permits to destroy wetlands will probably be the last one discussed,” Maccabee said. “Just to remind people, the Army Corps of Engineers has not decided whether the environmental impact statement is adequate or not.”

While some in the region see the PolyMet project as inevitable, Maccabee said it may still be stopped over environmental concerns. “There is hope. There is a court system. Every time I have had an opportunity to get in front of an independent (judge) there has been a chance to protect the environment. Fact and law may not matter in our current administrative agencies, but they still matter to administrative hearing judges, at least for now.”

Maccabee also challenged the perception that the PolyMet mine would bring a major boost to the Iron Range economy.

“What PolyMet initially said in its draft permit to mine in 2009 is that there is the potential of 360 permanent jobs and none of them would be union jobs,” she said.

“At that time they broke down how many jobs would actually come to the local area and it was less than half (of 360),” she explained. “We don’t have those numbers, currently, in terms of who will be getting the jobs, whether they will be for people in the area or will be so specialized that they will come from elsewhere.”

At the same time, Maccabee argued that the project could well burden the region with a range of costs during downturns in the volatile copper market. She said Minnesota does not require reclamation if the mining companies shut down their operations because of falling copper and nickel prices. “What we see (happening) across northern Minnesota is when the prices go down the mine companies just shutter the plants,” Maccabee said. “And the communities will not only have unemployed people, they will have the burden of social services based on having a population that was inflated in order to have the mining.”

While acknowledging that there would be economic benefits to mining, she added: “What I’m saying is, it is a lot less, and a cycle of boom and bust is a lot more risky for a community than having small businesses that rely on something that is sustainable over time.”

Maccabee has served as a public interest lawyer, working to protect human rights, environmental health, social justice, and clean air and water since graduating from Yale Law School in 1981. For the past nine years, she has served as Advocacy Director and Legal Counsel for WaterLegacy, a non-profit formed to protect Minnesota’s clean waters and communities. She is a regular visitor to the Ely Tuesday Group.

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