

# Rob Hutton

STATE REPRESENTATIVE • 13<sup>TH</sup> ASSEMBLY DISTRICT

10/13/2017

## Rep. Rob Hutton Testimony on AB 499

Thank you chairman and members of the Committee on Labor for the opportunity to testify on AB 499. AB 499 is an important piece of legislation that has the potential to transform Northern Wisconsin's economy. This bill would repeal Wisconsin's mining moratorium allowing for safe extraction of Wisconsin's great natural resources. The legislation strikes the needed balance to promote jobs and development while continuing to protect Wisconsin's environment.

The site of the Flambeau Mine, which I had the privilege of touring recently, is a great demonstration that mining can be done in a safe environmentally friendly manner. This legislation seeks to set up guidelines that will duplicate the success found at this mine site.

This legislation would repeal the mining moratorium in Wisconsin. The mining moratorium, put into place in 1998, banned any future nonferrous mines unless it could be proven that a mine was operational for ten years and then closed for ten years with no long term detriment to the environment. The Flambeau Mine site fulfills the spirit of this moratorium as it has been beautifully restored over ten years ago with no long term environmental consequences.

There will be many speakers today that will speak to the technical aspects of the bill, I am here to talk about the human impact of this bill. Time and time again we have seen the enormous economic investment made in Southern Wisconsin most recently with the Foxconn legislation that would create 13,000 jobs in the southeastern part of the state. There is nothing wrong with this investment but over and over Northern Wisconsin has (legitimately) asked, what about us?

This is the economic development package for Northern Wisconsin except instead of a monetary investment it only requires government to provide certainty in timelines and reasonable guidelines for companies who are seeking to invest in this area.

The bill will create opportunities for family supporting jobs in Northern Wisconsin. It will give the 11<sup>th</sup> grader going into college a reason to return and raise his family in Wisconsin after college. It is time to leverage Wisconsin's natural resources in a responsible manner to create a lasting impact for Wisconsin's families.

Thank you again for the opportunity to testify, I look forward to answering any questions you may have.



# TOM TIFFANY

STATE SENATOR • 12TH SENATE DISTRICT

## **Testimony on Assembly Bill 499 Assembly Committee on Labor October 13, 2017**

Thank you members of the Assembly Committee on Labor for listening to my testimony on Assembly Bill 499 (AB 499) related to nonferrous mining.

Wisconsin has a rich history of mining. Unfortunately, for the last 20 years, the miner that proudly emblazons our state flag has been out of work. Despite having great mineral wealth, Wisconsin's mining moratorium keeps our miner on the sidelines.

Assembly Bill 499 repeals the mining moratorium and makes modest changes to Wisconsin's mining permitting laws. The bill changes Chapter 293 in five ways: it removes Wisconsin's sulfide mining moratorium, it conforms the permit process to that used in other environmental permits and establishes a timeframe for the permitting process, it makes minor modifications for demonstrating compliance with certain standards, it adds provisions for bulk sampling and it clarifies the fee schedules.

It is also important to point out what the bill does not do. First, the bill does not change the substantive standards for any of the environmental protections under existing state law. This includes: groundwater quality, groundwater quantity, surface water standards, chapter 30 permits, or wetland permits. Second, this bill does not preempt any local laws or alter the existing provisions for local agreements under Chapter 293. Third, while the bill establishes permitting timeframes there are no presumptive approvals.

Sulfide mining can be done safely and effectively. The Flambeau Mine in Ladysmith has demonstrated this and our neighbors in both Minnesota and Michigan are both utilizing their mineral resources. This includes the expansion of traditional taconite mines, and a new wave of metallic mines.

According to a study by the University of Minnesota Duluth's Labovitz School of Business and Economics, Minnesota's existing iron ore mining made a \$3.2 billion economic impact in the state and was responsible for 11,500 jobs. The study concluded that if new copper mines and current taconite mines expand, those numbers could more than double. In Michigan, the Eagle mine currently employs several hundred people and is expected to have a \$2 billion economic impact.

People want to make things in America again. As the world's energy and technology demands change, nonferrous metals are becoming increasingly rare. Every Toyota Prius requires about 64 pounds of copper, a wind turbine requires 8,000 pounds of copper, a television requires 35 different minerals, 40 minerals are used to make a smart phone. These minerals have to come from somewhere. I would rather have the mining take place in Wisconsin where we can regulate it, employ Wisconsinites, and have our schools and local governments reap the windfall. It is time to remove the mining moratorium and put Wisconsin's miner back to work.



**Assembly Committee on Labor**  
*2017 AB 499*  
*Sulfide Mining*

Good morning Chairman Kulp and committee members. My name is Pat Stevens and I am the Administrator for the Environmental Management Division, Wisconsin Department of Natural Resources. I am here today to testify for information only on AB 499.

In general, this bill makes a number of changes in the regulation of nonferrous metallic mining. It eliminates the "mining moratorium" on the issuance of permits for the mining of sulfide ore bodies. It specifies by statute the financial assurance requirements that are required for a mining operation. And, it modifies other provisions relating to the process for obtaining permits and the payment of fees.

**Moratorium on Permits for Mining Sulfide Ore Bodies**

Current law prohibits the Department from issuing a permit for mining a sulfide ore body until the applicant submits and the department verifies that a mining operation in the United States or Canada has operated for ten years without a violation of environmental laws and without causing significant environmental pollution of surface or groundwater from acid drainage or the release of heavy metals. In addition, it must be shown that a mining operation has been closed for ten years without a violation of environmental laws and without causing significant environmental pollution of groundwater or surface water from acid drainage or the release of heavy metals. The bill repeals this prohibition.

Some observations regarding the moratorium include:

- Current law provisions do not focus on the site-specific characteristics of a proposed mine site in Wisconsin. Each mining proposal and mine site must be evaluated based on site-specific characteristics.
- Because of the differences in geology and hydrogeology in different areas of North America as compared to Wisconsin, it is very difficult to draw conclusions about a proposed mine in Wisconsin based on other mining operations. For example, a mine that has operated in Arizona may not be comparable to a mining operation in Wisconsin.
- In addition, because of the required ten-year look back, it may be difficult to compare the condition of a mining site after practices that occurred in the past with the conditions that would likely occur based on the use of newer technologies or practices that may be used today.

One of the proposed amendments to the bill (Assembly Amendment 4) adds a requirement to the conditions that must be satisfied for the Department to issue a mining permit. Under the amendment, the Department must find that the technology that will be used at the proposed operation is capable of resulting in compliance with all applicable air, groundwater, surface water, and solid and hazardous waste management laws and rules of the Department.

## Financial Assurance

The bill specifies by statute the type of financial assurance the Department may require for a mining operation. The statutes do not include one form of financial assurance – an irrevocable trust agreement – that is currently authorized by Department regulations (NR 132.085). Consequently, the irrevocable trust agreement would be eliminated under this bill.

- The Department adopted the trust fund requirement after receiving a petition from a group of legislators in July 1996 requesting that rules be adopted to require mining permit holders to carry insurance adequate to fund any remedial measures in case of environmental contamination caused by the mining operation. Instead of an insurance policy, the rule adopted by the Department specifies that a trust fund be maintained in perpetuity. The rule requires a risk assessment of the need for preventive or remedial measures, but otherwise provides limited guidance on how the amount of the fund is to be determined.
- There are two types of financial assurance in current law that would continue to be required under this bill: (1) a bond conditioned on the performance of all of the requirements of the mining permit, including reclamation of the site and (2) financial assurance for the long term care of the mining waste site.
- Reclamation Bond: A reclamation bond is required prior to commencing mining activity. The amount of the bond is based on the estimated cost to the state of reclaiming the site. The full amount of the bond must stay in place until a certificate of completion is issued, based on a finding, after public notice and a hearing, that reclamation of all or a portion of the mine site is complete. After a certificate of completion is issued for the entire mine site, a portion of the reclamation bond must remain in place. At least ten percent of the cost to the state of reclamation of the entire mine site must be maintained for at least 20 years after a certificate of completion is issued. Twenty years after the Certificate of Completion is issued for the entire mine site, the Department must release the bond if the Department finds the reclamation plan has been complied with.
- Long--Term Care Financial Assurance: Separate financial assurance is required for the long term care of the waste site. This requirement comes from section 289.41 of the solid waste laws. Proof of financial responsibility must be submitted with the plan of operation for the waste site. The amount is based on the cost to carry out the long-term care responsibilities in the plan of operation for the waste site. The financial assurance must be maintained for at least 40 years after the closing of the facility. After the 40-year period, the owner of the waste facility may apply to the Department to reduce or eliminate the bond. There is a mandatory 30-day public comment period and an opportunity for members of the public to request an informational hearing and a contested case hearing. In any hearing on the matter, the burden is on the waste facility owner to prove that maintenance of the financial assurance is not necessary for adequate protection of human health or the environment. The Department can require the bond to continue for so long as necessary to protect human health or the environment.
- In addition to these financial requirements, there are a number of provisions that are designed to detect and address potential environmental problems. For example, current law requires ongoing monitoring and review of conditions at a mine site. Current law also requires an annual review of the mining plan and the reclamation plan and permits the Department to request an amendment to the mining plan or reclamation plan based on changed conditions. Finally, current law requires the mine to have a contingency plan to address any potential risks and hazards potentially associated with the mining operation.
- The remedial action statute, ch. 292, could also apply to impose liability on a mining company for any unpermitted release of a hazardous substance (292.11) or any remedial action necessary to avert or repair environmental damage (s. 292.31).



Proposed amendments to the bill (Assembly Amendments 1 and 6) would add two additional financial assurance requirements:

- (1) A 40-year remedial action bond or other financial assurance to cover unforeseen remedial contingencies that would not be covered under the reclamation bond or the long term care financial assurance . The amount of the bond is set at 10% of the amount required for the reclamation bond and the long term care financial assurance. The amount can increase or decrease if the amount of other financial assurance changes. The bond must be released no later than 40 years after the operator ceases to extract material from the site. (This is Assembly Amendment 1)
- (2) Proof of financial responsibility for reasonably anticipated costs between 40 and 250 years after closure of the mining waste site. The amount is set at the time the application for a mining permit is approved. The amount is to cover the repair or replacement of any engineered cover systems or tailings water management control systems used at the mining site or mining waste site to avoid adverse environmental consequences. The operator or any successor may use the funds to cover any reasonably anticipated costs that were identified by the Department. The Department must release any remaining funds or financial assurance after all of the reasonably anticipated costs have been incurred or upon determining that the reasonably anticipated costs are no longer applicable. (This is Senate Amendment 6)

### **Other Modifications**

The bill makes a number of other changes to the nonferrous mining laws and regulations.

- The bill includes provisions similar to those for ferrous mining that allow bulk sampling. One of the proposed amendments to the bill (Assembly Amendment 5) adds a requirement to obtain a bulk sampling license from the Department.
- The bill includes deadlines for Department review of a mining permit application and requires the Department to seek to enter into a Memorandum of Understanding with the US Army Corps of Engineers regarding timelines for studies and for review. The bill allows the Department more time and more opportunity to ask for additional information than is allowed under the ferrous mining law.
- The bill requires a public informational hearing instead of a contested case hearing *prior to* the issuance of any permitting decisions. The public informational hearing process is commonly used by the Department for permits, approvals and Environmental Impact Statements (EIS).
- The bill also provides an opportunity for a contested case hearing and for judicial review after the Department issues a decision on a mining permit, an EIS, or an approval related to the mining operation.
- In terms of the Department's review of a mining application, the bill adds a 250 year timeframe for modeling groundwater impacts of a waste site and defines how the Department is to determine the vertical distance (depth) used to determine compliance with groundwater standards. In addition, the bill explicitly authorizes the Department to include conditions in any approval of a high capacity well and modifies the standards for the assessment of wetland impacts so that the standards are consistent with the current wetland statute, s. 281.36.
- Finally, the bill exempts a mining operator from certain solid waste fees.

I hope you find this information helpful, and would be happy to address any questions you may have.

## Wisconsin Wildlife Federation

Chairman Kulp and members of the Assembly Labor Committee, the Wisconsin Wildlife Federation is appearing "For informational purposes" on Assembly Bill 499 which revises certain nonferrous mining regulations. The Federation has been significantly involved in past mining regulation changes and in several mining permit processes, the most recent ones being the Federation strongly opposing the ferrous mining bills related to the Penokee mine and opposes the Back Forty mine in Michigan because of its potential severe negative impact on the important sturgeon and small mouth bass fishery of the Menominee River.

I personally had extensive mining regulation experience during my tenure at the Department of Natural Resources, having various roles in the regulation of four separate metallic mines. Also on behalf of the Wildlife Federation and at the request of former Senators Tim Cullen and Dale Schultz, I was involved in negotiating with mining industry representatives a compromise alternative draft of the aforementioned ferrous mining bill, portions of which were introduced as legislation by Senators Cullen and Schulz.

AB 499 contains several provisions of that negotiated alternative iron mining bill and the Federation remains in agreement with those provisions. However there are three portions of the AB 499 that we believe need changing in order to assure that the environment and neighboring landowners are protected and that State of Wisconsin taxpayers are not holding the bag for substantial pollution cleanup costs from a future sulfide in Wisconsin.

The three sections of the bill that need amendment are:

1. The replacement of the current "Mining Moratorium" provision of current law. While the current "mining moratorium" language is flawed and ineffectual in providing valuable information insuring that future sulfide mines in Wisconsin are environmentally sound, the principle behind the mining moratorium law remains very important. The mining moratorium section of current law should not just be deleted but rather should be replaced by a requirement that nonferrous mining applicants submit pollution abatement technology for the mining project that has been proven to be effectual and reliable in meeting environmental standards. That would be far more beneficial to mining regulators than the current mining moratorium law provisions.
2. Secondly, the bill should be modified to require that if the mining company makes significant changes to its initial bulk sampling plan after it is submitted to the DNR for review, the applicant must submit an amendment to the plan documenting those changes and including a revised reclamation plan.
3. Thirdly and **most importantly**, the current perpetual irrevocable trust should not be completely removed. The irrevocable trust financial assurance in NR 132 provides financial protection broader in scope than the chapter 293 mine reclamation bond and the chapter 281 long term assurance bond for the mine waste site. In addition, in light of the pollution history of sulfide mining, there needs to be assured financial assurance for a substantially longer period of time than the 40 years required by the long term assurance bond for the mine waste site. Future generations of Wisconsin taxpayers should not be left holding the bag of substantial mining cleanup costs.

Please find attached additional testimony providing more detailed information supporting the need fore amendments to these provision of AB 499. The Federation has been very willing to work with the bill authors and representatives of the mining industry on bill amendment language to address the aforementioned three concerns.

Submitted by George Meyer  
Executive Director  
Wisconsin Wildlife Federation  
October 13, 2017

## **1. Mining Moratorium Language Replacement**

Section 293.50, Wisconsin Statutes, also known as the mining moratorium law, was enacted by the Legislature in 1998 during the permitting process for the proposed Crandon mine in Forest County. The law basically required an applicant for a sulfide mine to submit proof that a Canadian or U.S. sulfide mine had operated for 10 years and another mine that had been closed for 10 years without an environmental violation or causing environmental pollution.

The Department of Natural Resources, based on the recommendations of experienced mining regulatory staff, opposed the mining moratorium bill for several reasons. It was the Department's conclusion that the law would not provide any significant information that would help assure that any future sulfide mine proposed in Wisconsin would not cause pollution. All mines are unique in their geological and hydrogeological characteristics and mines in other states or provinces would not necessarily translate to a Wisconsin mining location. In addition, since the sample mines would have had to be in existence for a lengthy period of time and necessarily been planned and designed well before their opening or closure, the technology associated with those mines would have been old and likely outdated technology.

After the mining moratorium law was enacted, the Crandon mine applicant did submit three sample mines, one had been in existence for over 10 years and was still operating, another had been closed for 10 years and one that had been open for more than 10 years and closed for 10 years. One was in the desert of Arizona, one was in the permafrost of the Northwest Territories and the third was in the foothills of a mountain range in California. None bore any resemblance to the topographical and hydrogeological conditions of the Crandon mine. A great amount of staff time was spent sending staff to those sites to inspect the mines and conferring with the proper state and provincial mining regulatory staff. This cost was then passed onto the mining company. None of the resulting information was helpful to the Crandon mine regulatory process. In addition the Department reviewed the information from those three mines and the preliminary staff judgement was that the sample mines met the standards of the mining moratorium law. The information on those three mines is available to being used by future sulfide mining companies to show compliance with the current mining moratorium law.

The Department while opposing the bill creating the mining moratorium law testified the bill should be amended to require the sulfide mining applicant provide information that the technology that they were proposing for the mine had previously been used and proven to meet environmental standards. The Wisconsin Wildlife Federation is requesting that the bill be amended to include such language. In fact it would be a true "Prove it First" provision.

## **2. Bulk Sampling Plan Amendment Language**

SB 395 make changes to the current statutory bulk sampling plan review process. One deficiency in the new bill language is that it does not address the situation where, after there has been a thorough DNR review of all the components required for a bulk sampling plan including the reclamation plan, the company makes significant changes in its bulk sampling process. The bill should be modified to require that if there are significant changes, the applicant shall submit to DNR an amendment to the plan including an amended reclamation plan if necessary.

### **3. Retention of Greater Long Term Care Financial Responsibility**

Under chapters 293 and 281, Wisconsin Statutes, DNR requires mining applicants to furnish bonds for reclamation of a completed or abandoned mine site and a long term care bond for the mining waste site. These two bonds do not cover all of the pollution potential that may result from sulfide mines. In addition, the longer of the two bonds, the long term care bond for the mining waste site only lasts for forty years.

During the Crandon mine regulatory process, it became evident that the complexities of mining sites and the historical substantial pollution problems associated with sulfide mining required a long term financial assurance instrument covering all of the potential sources of pollution from a sulfide mining site and that the assurance instrument would need to last for more than forty years.. As a result, section NR 132.085, Wisconsin Administrative Code, was adopted to assure that Wisconsin taxpayers and affected neighboring landowners would not have to bear the potential substantial cost of long term failure of a mining site. That section requires a sulfide mining applicant to enter into a perpetual irrevocable trust agreement with sufficient financial backing to assure that there would be sufficient finances available perpetually to cover any preventative and remedial costs associated with a sulfide mine. The risk of long term pollution from a future sulfide mine in Wisconsin still exists. While mining companies may feel that the current perpetual irrevocable trust fund requirement of NR 132 is unreasonable and onerous, the alternative to falling back on the 40 years long term care financial assurance provisions of section 289.41 (1m) (g) is not considered adequate by former experienced mining regulators to protect the citizens of Wisconsin.



**Testimony of Sarah Barry, Director of Government Relations**

**Assembly Bill 499 Public Hearing  
Assembly Committee on Labor  
October 13, 2017**

Clean Wisconsin is a non-profit environmental advocacy group focused on clean water, clean air and clean energy issues. We were founded forty-seven years ago as Wisconsin's Environmental Decade and we have 20,000 members and supporters around the state.

**Chair Kulp and members of the committee, I appreciate the opportunity to appear before you today in opposition to Assembly Bill 499.**

Throughout Wisconsin, we have clean water because of sound policies that enable economic development while protecting our natural resources. The cornerstone Prove it First law has kept Wisconsin communities from facing long term, irreparable damage from irresponsible mining practices. The sulfide mining industry has a long history of polluting water.

Prove it First is a common-sense requirement: before a mining company can dig, they must provide an example of a sulfide mine that hasn't polluted nearby water. The bi-partisan bill was passed twenty years ago and Governor Thompson signed it into law.

According to the Environmental Protection Agency, sulfide mining has accounted for 41 percent of all toxic materials released in the United States since 1997. Six of the World Health Organization's Top 10 toxins of major public health concern are associated with sulfide mining, including mercury, lead, arsenic, cadmium and asbestos. This industry is notorious for underestimating the impact on water quality at mining sites throughout the country. This industry has a track record of environmental contamination. According to the EPA, the metallic mining industry is responsible for polluting 440,000 acres of land. The US Forest Service estimates that 10,000 miles of rivers and streams have been contaminated by acid mine drainage from the industry. **This industry is particularly risky in Wisconsin because mines with high acid generating potential in close proximity to surface and groundwater pose the greatest risk for negative water quality impacts.**

The bill before you promotes mining at the expense of our clean water, healthy families, and strong communities by rolling back provisions that protect our state from the devastating and long lasting impacts of sulfide mining. Assembly Bill 499 will put taxpayers on the hook financially for long term mining pollution. In addition, it reduces oversight of mining evaluation activities, it threatens our groundwater resources, and it removes public input from the permitting process.

*We should all question a company that needs common-sense regulations rolled back in order to site and operate any industry in Wisconsin.*

## Specific Provisions of AB 499, As Amended

### Bulk Sampling

Under current law, bulk sampling is governed by regulations related to prospecting. Under the bill, a mining entity would be able to engage in the bulk sampling of material up to 10,000 tons without any of the oversight ensured under the rules of prospecting.

**Assembly Amendment 5** requires bulk sampling to go through the bulk sampling plan process with the DNR. The amendment gives DNR the option to revoke the bulk sampling license only if laws are broken, meaning the DNR can only be reactive rather than proactive in protecting the environment.

The amendment does not address the problems with changing the definition of these activities from prospecting to bulk sampling. What is lost:

- Prospecting requires monitoring of environmental impacts, bulk sampling has no monitoring requirement
- Prospecting requires reclamation; bulk sampling only requires revegetation
- Prospecting requires a bond for reclamation + \$50k insurance, bulk sampling only requires \$5k for revegetation

### Irrevocable Trust

This proposal removes the irrevocable trust requirement for mining companies that operate in Wisconsin. **The irrevocable trust is a financial safeguard that prevents Wisconsin citizens from being on the hook for the long-term costs of mining clean up.** Irrevocable trusts are the best form of financial assurance to protect taxpayers from the environmental costs that are left behind by creditors and corporate restructuring. Removing the irrevocable trust leaves the public at risk. Minnesota prevents financial assurance provided by mining companies from being discharged through bankruptcy – and Wisconsin should do the same. The metallic mining industry has a well-documented pattern of failed operations that lead to substantial environmental damage not paid for by the industry. As a result, federal and state government have spent billions to clean up metallic mining sites across the country – and billions of dollars of work remains to be finished.

**Assembly Amendment 1** is intended to cover unforeseen remedial costs, but the money is returned to the company after 40 years. Furthermore, the proposed financial assurance mechanisms in this amendment do not offer the same protection from creditors and corporate restructuring that is guaranteed by the irrevocable trust required in the existing Prove it First law. That's a huge risk in an industry where mines frequently close and mining companies fold in response to volatile prices in

metals markets. As a result of this boom and bust cycle – which has been occurring across the country for decades – Wisconsin taxpayers would be left footing the bill to clean up damage to our waterways, groundwater and land resources near abandoned mines.

**Assembly Amendment 6** is intended to cover maintenance/repair costs of control devices and caps up to 250 years post-closure. However, **it does not cover remediation or supplying alternative water supplies if there is pollution.** As with Amendment 1, it is unclear which of the provided options for this assurance are safe from creditors in the case of bankruptcy.

The solution to this problem is straightforward. Wisconsin taxpayers must be protected by a financial assurance mechanism that is bankruptcy-proof and restructuring-proof. Wisconsin should continue to require mining companies to fund remediation and reclamation costs up front, by putting cash in an irrevocable trust. The only other possible option that would protect taxpayers would be to require mining companies to post performance bonds that are unconditionally guaranteed by a bank or other financial institution that is contractually obligated to pay the State of Wisconsin, if the mining company declares bankruptcy or otherwise disappears.

### **Groundwater Protections**

Instead of denying a permit for a well that will result in the unreasonable detriment of public or private water supplies, as current law requires, under the bill the DNR is allowed to set conditions for these permits. These conditions can include that the applicant provide a replacement water supply or temporarily augment the quantity of water flowing in or out of an affected body of water. The language is vague regarding what these conditions would include. Given the water-intensive nature of the mining industry, we are concerned about the potential impact of this provision.

In addition to high capacity well provisions, the bill makes changes to enforcement of groundwater quality standards in the bedrock. The bill will require the mining company to prevent water quality impacts only to a certain depth. The DNR will be challenged to make this determination because of the complex fractured nature of the bedrock.

### **Public Input**

Assembly Bill 499 removes public input and transparency, weakening the permit process and opening the door to more legal challenges down the road. The master hearing process thoroughly investigates all the facts and legal issues being considered during the permitting process of a mine and it happens before any damage is done. A master hearing gives the public its only real, meaningful way to participate in the permitting process, by giving them the opportunity to bring in experts who can independently verify the technical data being submitted by the mining company, or challenge it if necessary. The company, the DNR, and interveners must all swear under oath that the information they offer is true. The bill requires a public informational hearing only, removing any meaningful scrutiny that is usually achieved through the master hearing process.

Hearings like the master hearing being eliminated in this bill are not only common, but sometimes automatic, for large-scale projects with the potential for large scale environmental impacts. Landfills are

a great example of a project with somewhat similar impacts to mining. Landfill permitting allows for such a hearing. Power plants and transmission lines are given automatic administrative hearings at the Public Service Commission. Even issues like electricity and water rate increases are given such treatment at the PSC.

**Assembly Amendment 3** changes the number of days that a person can request a contested case from 30 to 60 days. This is a very minor change and does not at all address the loss of the master hearing process, which allows for a thorough investigation of all the facts and legal issues under consideration before a permit is issued. In addition, the bill still does not allow an administrative judge to stop the activity associated with the mining permit after it is issued.

### **Prove-it-first versus “capable of.”**

**Assembly Amendment 4** adds a requirement that DNR has to find that the technology to be used in mining is capable of resulting in compliance with all applicable air, groundwater, surface water, and solid and hazardous waste management laws and rules of the department. “Capable of preventing pollution” and “proven to prevent pollution” are two very different things and Amendment 4 again highlights the importance of the concept Prove-it-First. Just because a mining company says that their technology is capable of preventing pollution does not make it so. **This amendment does not provide adequate additional assurance to compensate for the loss of the Prove-it-First protections, especially when the mining company is off the hook for any pollution after year 40.**

### **Conclusion**

**At Clean Wisconsin, we support the common sense Prove it First law.** As I have highlighted, there are several points of concern with this proposal. **Any new sulfide mining project must meet our current standards.** Forcing residents to decide between protecting natural resources and promoting economic development is a false choice. **We can maintain respect for our natural resources and those who rely on them.** That is especially clear in Wisconsin, where tourism is a \$2.6 billion industry and our pristine natural resources lure anglers, hunters, and those seeking to recreate and enjoy our waterways from all over the country.

***We urge you to reject Assembly Bill 499.***

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**Written Testimony of  
Stephen V. Donohue, P.H.**

**Assembly Committee on Labor Hearing  
October 13, 2017**

**1. Introductory Comments**

Good morning Representative Kulp and Representatives of the Committee on Labor. Thank you for allowing me to speak to this committee. We appreciate the commitment that you have made time for the important discussion on the regulation of mining in Wisconsin. I am appearing today as an employee of Foth Infrastructure & Environment, LLC headquartered in De Pere, Wisconsin. Foth has served and continues to serve various mining interests across the U.S., Canada, South America, and Central Asia. Our services extend from the exploration stage, through permitting, operations, closure, and reclamation.

I am a licensed Professional Hydrologist here in the state of Wisconsin. I have been appointed to the Examining Board for Professional Geologists, Hydrologists, and Soil Scientists through appointments by Governors Thompson, McCallum, and Doyle where I served as Chair of the Hydrology Section and Chair of the Examining Board. For nearly 30 years I have worked at Foth. We are an employee-owned Wisconsin based engineering consulting firm comprised of a wide variety of engineers and geo-environmental scientists, many of them educated with advanced degrees earned through the University of Wisconsin System.

My role at Foth is Vice President of Mining. I have had the pleasure of being involved in numerous metallic mining projects here in the Great Lakes Region and internationally. My colleagues and I have been involved in the permitting, construction, operations, and reclamation of the very successful Flambeau Mine, the only metallic mine permitted and reclaimed under

Wisconsin's current statutory and regulatory framework. Our company was involved in the permitting effort for the Eagle Mine project in Michigan's Upper Peninsula, the first nonferrous project permitted under Michigan's new mining law. Ore from that mine is being processed at a converted iron mine site that is being used for milling the ore and management of mill tailings. This site was also permitted under Michigan's nonferrous mining law and is contributing to the economic vitality of northern Michigan. Michigan is experiencing the economic benefits of mining and also protecting their environment. Our company is involved in numerous nonferrous mining projects across this region and country but not one of them is located in Wisconsin.

My testimony that I am providing to you today is my own. I am not here today representing any client that I am currently working for or have worked for or may work for. In short, my testimony has not been vetted by any mining company.

## **2. Mining is Vital to Our Economy**

Mining of metallic minerals is a foundational industry upon which our economy and society is built. When I woke up this morning, I took a vitamin and mineral supplement along with my breakfast. That vitamin had everything in it from "A to zinc". The zinc in that vitamin tablet did not come from a plant. It came from a mine. Vitamin and mineral supplements added to our food are a basic product of our pharmaceutical industry and are vital to the nutritional health of our citizens and virtually every person on this planet. The pharmaceutical industry that we rely on for so many health care products and lifesaving medicines would not exist without mining. Our transportation system, including hybrid and electric cars, would not exist without mining. The renewable energy industry would not exist without mining. Our agricultural industry could not produce the food required to feed the human population on this planet without mining. Our homes, places of business, schools and universities, cities, healthcare system, and manufacturing industry would not exist and could not be maintained without mining nonferrous metallic minerals.

Simply put, if we are to maintain our society, grow our economy, create jobs and improve the quality of life for our citizens and impoverished populations in less fortunate countries, a moral responsibility that I believe we all have, we cannot do so without responsible mining.

### **3. Wisconsin's Regulatory Climate and Metallic Mining**

Wisconsin's history is steeped in mining from the lead district of southwestern Wisconsin to the iron mines of the north. Our state flag has a miner on it. Yet today, in a state known for a wealth of metallic resources, there is no metallic mining activity in the state and fleeting interest.

In the Michigan's Upper Peninsula, the Michigan Department of Environmental Quality has issued four nonferrous mining permits in the last 10 years. Michigan is also home to several large operating iron mines. To the northwest in the state of Minnesota, the iron mining industry remains vibrant and permits for new mining operations are progressing. The permitting of new copper/nickel and platinum and palladium group metal mines is also progressing in Minnesota. Exploration work on mineral deposits in Michigan and Minnesota is so active that at times it is hard to find drill rigs to support the exploration needs of the industry in those two states.

We need to ask why Michigan and Minnesota are able to attract mining investments, leading to the permitting of new metallic mine projects, when mining investment in Wisconsin is dormant. Is it due to geology? The answer is no. All three states enjoy similar geologic histories that gave rise to the occurrence of mineralized resources suitable for mining. Certainly the citizens of Michigan and Minnesota value their natural environment, clean water and clean air as much as Wisconsin citizens.

The basic reason there is no investment in this state from the metallic mining industry is due to regulatory uncertainty and ambiguous rules embedded in Wisconsin's current statutory and regulatory framework for the development of metallic resources. It is the open-ended review process and ambiguous rules that drive investment away from the state. While it is important to address Wisconsin's regulatory road blocks, it should be emphasized that there is much to like about Wisconsin's mining statute and rules. The requirement for rigorous baseline environmental studies, environmental impact analysis, demonstrable engineering plans, environmental monitoring, reclamation, post reclamation monitoring, compliance with water quality and air quality standards, financial assurance, and public participation are not hindrances to investment in this state by the mining industry.

Objective environmental protection standards do not need to be relaxed to attract mining investment in the state. However, the environmental review process and ambiguous rules and statutes need to be reformed. The changes to Wisconsin's Nonferrous Mining Laws contained in the Bill before you address much needed reforms. I would like to comment on several aspects of the legislation that addresses necessary reforms without relaxing important environmental protections standards.

#### **4. Rescinding the Moratorium on Issuance of Permits for Mining of Sulfide Ore Bodies**

In 1998 the state of Wisconsin amended its mining statute to include a moratorium on issuance of mining permits for so called sulfide ore bodies. This statute was passed in light of legacy issues related to historic mining operations. Like many industries that generate waste that needs to be managed properly to prevent environmental impairment, this is a waste management issue that requires engineering and science to resolve, not prohibition of the industry.

The moratorium law is vague and prone to endless litigation on what type of a site would be acceptable to the DNR or a judge for demonstration of the requirements written into the moratorium law. The industry looks at this provision of state law and the potential for drawn out litigation as if it were a sign at the boarder of Wisconsin saying "Not Open for Your Business." "Mine somewhere else...but we will continue to use the products of your mining operations in our manufacturing industry."

The legislature is right to consider rescinding this provision of state law. There would be no relaxation in environmental protection if the state were to make this one change. Moreover, this law should be rescinded based on the success of the Flambeau Mine Project, which fulfills the intent of the moratorium and was done right here in Wisconsin.

Allow me to speak to a few pertinent aspects of that project as it relates to rescinding the Mining Moratorium.

## **Flambeau Mine History**

The reclaimed Flambeau Mine is located in Rusk County, Wisconsin, approximately 1.5 miles south of Ladysmith.

The total reclaimed site is approximately 181 acres. The open pit was mined to within 140 ft. of the Flambeau River. Many opponents of the project claimed it could not be done without “destroying” the Flambeau River.

The Flambeau Mine began in 1991 and after 10 years, filed in 2001, a Notice of Completion for Reclamation. During its mine life the Flambeau Mine produced 181,000 tons of copper, 334,000 ounces of gold, and 3.3 million ounces of silver.

- ◆ Discovered in 1969
- ◆ 1987-1991 Permitting
- ◆ 1991-1993 Construction/Pre-production
- ◆ 1993-1997 Operations
- ◆ Fall 1997 Backfilling Complete
- ◆ 1998-1999 Reclamation, Revegetation, Re-Establish Intermittent Streams, and Monitoring
- ◆ Industrial Outlot Left In Place at Request of City of Ladysmith
- ◆ 2001 Flambeau Mine Files Notice of Completion for Reclamation
- ◆ 2002 Wisconsin Department of Natural Resources (DNR) Concurs on Notice of Completion
- ◆ 2007 Certification of Completion Granted
- ◆ 2007+ Ongoing Long-Term Monitoring

## **Environmental Monitoring at Flambeau Mine**

Throughout the life of the Flambeau Mine, an environmental monitoring program was conducted to evaluate the surrounding environment and to determine if the project was complying with permit requirements. Flambeau Mining Company (FMC) was required to regularly monitor

groundwater levels, groundwater quality, air quality, surface water quality, wastewater effluent quality, wetlands, and aquatic life in the Flambeau River, etc.

Monitoring was conducted and the results were submitted to the DNR. Monitoring of groundwater and surface water quality continues to this day. The DNR also conducted independent sampling to verify the results obtained by the company. Groundwater monitoring will continue at the site for several decades to measure conditions within and around the backfilled pit.

The DNR's website on the Flambeau Mine states that "Throughout the life of the project, the company has remained in substantial compliance with all permit conditions and applicable standards." The website notes that air monitoring indicated several exceedances of suspended particulate limits, only one of which was attributed to activities on the mining site: dust from a delivery of an uncovered load of crushed limestone. There were no exceedances of any effluent (treated wastewater) limits during the period of discharge. Monitoring of water quality and other characteristics in the Flambeau River similarly did not show any impacts from the effluent discharge during operations or from the backfilled mine.

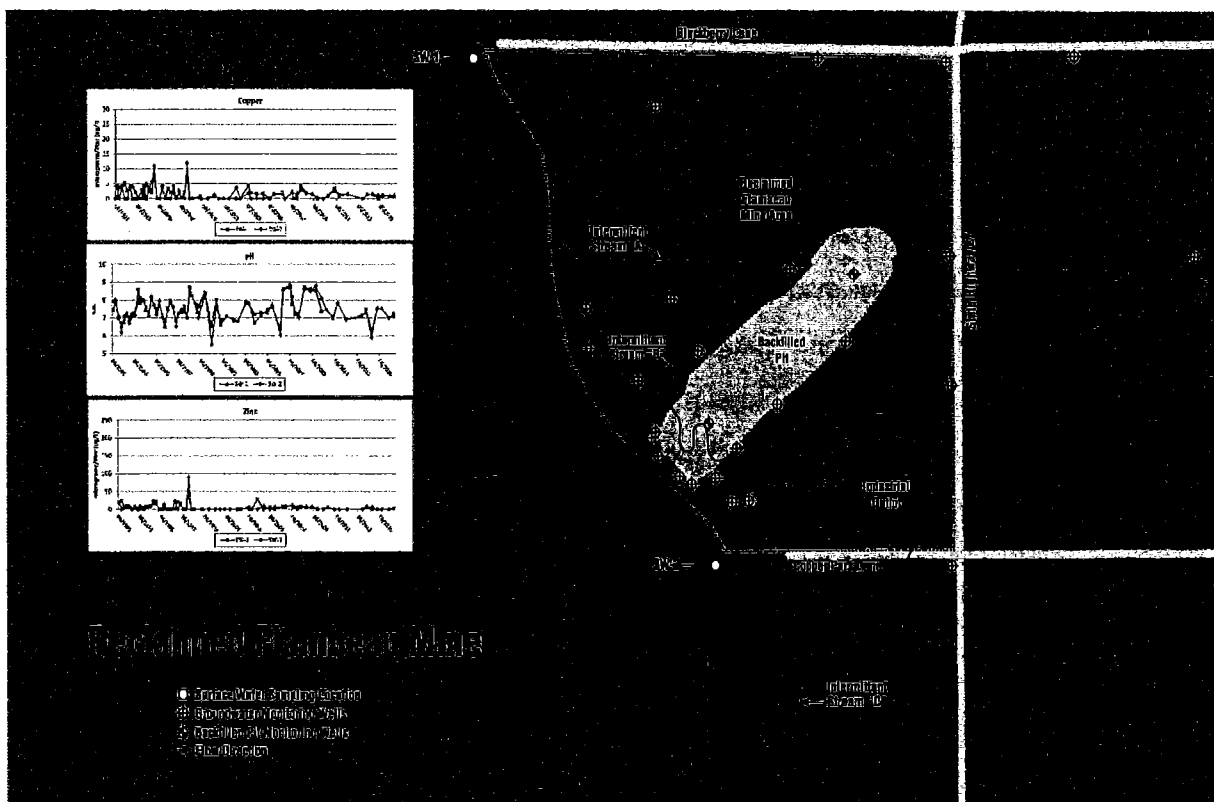
Monitoring results show that groundwater levels have recovered. Most groundwater at the site flows through the till and very little water is moving through the bedrock and backfill material.

After backfilling was complete, the first few rounds of well samples collected from the backfilled material in 1999 indicated that elevated levels of sulfate, copper, manganese, and iron were present. These results were not a surprise and were approximately equal to or slightly greater than the concentrations originally predicted. Analyses to date indicates there is no acid production in the pit, groundwater elevations have generally stabilized since recovering in 2003, and metals concentrations in the in-pit water are stable and are not at levels that pose a threat to water quality in the Flambeau River.

In addition to the wells located within the backfilled pit, groundwater samples are collected quarterly at wells surrounding the backfilled pit. Some of these wells recorded increases in concentrations of copper, sulfate and/or manganese since mine pumping stopped in 1997. These increases were not unexpected. Recent data shows levels for these parameters have steadily

decreased since the wells have fully recovered. The data continues to demonstrate that Flambeau Mine is in compliance with groundwater quality provisions in the Mine Permit and that the groundwater quality is protected at the limits of the compliance boundary.

In addition, water quality in the Flambeau River has not been affected by the mine project as many project opponents predicted and claim. Included in my written testimony is a graphic of the site showing the location of the reclaimed mine and upstream and downstream monitoring stations.



Data from these monitoring stations shows that there has been no change in water quality in the Flambeau River due to the mine. FMC will continue monitoring conditions at the reclaimed Flambeau Mine for many decades.

Groundwater and surface water in the Flambeau River at the reclaimed mine site continues to be monitored and evaluated in an annual report submitted to the DNR in January of every year. The data and annual reports document that the backfilled mine is not impacting water quality in the Flambeau River.

## 2012 Clean Water Act Lawsuit

In 2012 long standing opponents to the Flambeau project filed a lawsuit in federal court under provisions of the federal Clean Water Act. The plaintiffs alleged unlawful discharge of pollutants from the Industrial Outlot and impairment of water quality in the Flambeau River. Specifically, the plaintiff's alleged that FMC did not have a Storm Water Discharge Permit for storm water derived from the Industrial Outlot and that the storm water was carrying pollutants from the Industrial Outlot into regulated federal water ways. The plaintiffs alleged that the pollutants were impairing water quality in Stream C and the Flambeau River, which received the storm water runoff.

In pre-trial motions FMC sought to have the case dismissed by noting that storm water runoff was regulated by the DNR under provisions of the Mine Permit. In essence, the Mine Permit is the WPDES Permit for management of storm water runoff from the Industrial Outlot. The DNR supported FMC's position. The trial Judge disagreed with FMC and the DNR and allowed the case to go to trial. The trial Judge ruled that there 11 instances of storm water runoff from the site to Stream C. The Judge ruled that since there was no separate WPDES Storm Water Permit, these 11 instances of runoff were technical or *de minimis* violations of the Clean Water Act and levied a penalty of \$275 against FMC. FMC appealed the trial court's decision which was overturned. The United States Court of Appeals stated in their ruling that the Mine Permit was a valid WDPES Permit, that Flambeau was in compliance with the Clean Water Act, and that the case should have been dismissed. Thus there has been no violation of the Clean Water Act.

The Appeals Court Ruling, while significant, does not capture the significance of the lawsuit. For that, one must read the trial Judge's ruling which praised the company's environmental record, commitment to its neighboring community, and exemplary efforts to protect water quality in the Flambeau River and more. She questioned the motives of the plaintiffs in bringing the lawsuit. Moreover, **the written opinion from Judge Barbara Crabb is clear that there was no pollution or impairment of water quality in the Flambeau River as the plaintiff's alleged.**



The Judge's decision is best summed up in these key quotes:

1. "Plaintiffs cannot make a plausible argument that the quality of the water in the river is affected by the discharges from the biofilter. They can continue to enjoy the river for fishing, recreation, and wildlife viewing without any concern for the river's water quality resulting from biofilter discharges, not only because the biofilter is being replaced but because it never threatened the river's water quality during the period at issue in this suit." (Decision, Page 36)
2. "Although plaintiffs seem to be motivated by an admirable concern for the environment, it remains unclear to me why they would have expended so much time and energy litigating against a company that seems every bit as committed as they (the plaintiffs) are to the protection of the environment and preservation of water quality." (Decision, Page 37)
3. "I will enter judgment for plaintiffs on liability, but I will impose only a pro forma penalty on defendant (this was subsequently overturned by the Appeals Court), not only because the discharges of pollutants were so slight, but because of defendant's exemplary efforts to protect the environment during its mining operations and reclamation effort. **These efforts deserve commendation, not penalties.**" (Decision, Pages 3 & 4)
4. "It would have been less expensive for defendant to have refused the city's request to keep the outlot and the buildings, removed them and dug up the outlot. It incurred the extra costs only because it wanted to help out a city that was struggling economically." (Decision, Page 33)
5. "...I will take into account the extensive efforts that defendant made to protect the environment of the Flambeau Mine site, both during the mining operation and afterwards during the reclamation effort. It would not advance the goals of the Clean Water Act to impose anything but a pro forma penalty on a company that was compliant with the Act and with the directives of the state's Department of Natural Resources and acted in all respects as a good neighbor." (Decision, Page 34-35)

6. “Moreover, plaintiffs have not proven that they have suffered irreparable injury from any biofilter discharge. At no time has a discharge contained a concentration of copper close to the level formerly allowed under the permit.” (Decision, Page 36)
7. “The evidence shows that the Flambeau River has a higher level of copper upstream of the mouth of Stream C than downstream, indicating that any discharge that makes its way to Stream C is not impairing the water in the river. The evidence also shows that the level of copper in Stream C, which is generally higher than that of any biofilter discharge, is not toxic to the species most likely to be affected, which are the biota in the stream. (Decision, Page 36)

Finally, it should be noted that the Judge denied the plaintiff’s appeal for the company to cover plaintiff’s legal fees and costs for the trial, and in fact ruled that the plaintiff’s had to reimburse the company for certain legal costs associated with the trial.

Two final comments related to the Flambeau Mine. With respect to Stream C, you often hear about that stream being included on Wisconsin’s Impaired Waters list and that it is impaired due to the Flambeau Mine. While Stream C is included in the impaired waters list, the source of the impairment is listed as “unknown”. With all the monitoring that has been done at the site, the Flambeau Mine would certainly be listed as the source if it were in fact the source. An excerpt of the Impaired Waters List is included as Attachment 1 of my written testimony substantiating what I have just stated.

One also reads in news articles and public venues that the water quality in the Flambeau River is impaired due to the Reclaimed Flambeau Mine. This too is false. Included in Attachment 2 of my written testimony is a print out from the DNR website assessing water quality in the Flambeau River dated 2017. Based on the DNR report the Flambeau River is “below listing thresholds for Fish and Aquatic Life” and is meeting designated uses and is not impaired.

## **Summary**

The Flambeau Mine was one of the state's most contentious projects. It received extensive regulatory oversight, was operated in a water-rich environment on the banks of the Flambeau River, was reclaimed, and is protective of the Flambeau River and is a great success. It is an engineering achievement and should be celebrated by the state by rescinding the moratorium. What the state was seeking when it passed the moratorium has been met right here in Wisconsin and the proof is sitting in boxes of expert witness reports and testimony in Federal Court here in Madison. Rescinding the moratorium will signal that state is open for investment from this important industry and the economic benefits and jobs that are created through that investment. Rescinding the moratorium will not diminish environmental protection one bit. It is noted that efforts to pass similar moratorium legislation in Michigan and Minnesota have repeatedly been rejected in those states.

### **5. Other Provisions of SB 395**

I would like to now comment briefly on other key provisions of SB 395 that address key reforms that will reduce regulatory uncertainty without altering important environmental protection standards.

The bill addresses uncertainty with respect to regulatory timelines. Under current law there is no timeline for review and issuance of permits. The environmental review and permitting timeline is completely open ended. The Bill addresses this in a responsible manner that addresses stakeholder needs. First, the Bill requires consultation with federal agencies that may be involved in the process. Second the Bill provides for DNR to make two requests for additional information. If the Secretary of the DNR determines that there is a substantial modification of the mining plan during the review process, the timeline starts over. Finally the DNR and the applicant can agree to modify the timeline. The review process maintains public involvement. At the end of the review and permitting process, the DNR issues a Final Environmental Impact Statement and Final Permits. A contested case hearing may be requested within 30 days of the final decision on permits. This is similar to how our neighboring states administer their review and permitting process.

The Bill provides to the DNR the ability to determine the depth of the DMZ in the Precambrian bedrock. Right now the DNR does not have this latitude and is forced to extend the DMZ to depths at which the groundwater is not usable or hydrologically connected to other important sources of water. SB 395 also provides that predictive modeling of the mine waste storage facilities shall be for a reasonable planning horizon covering the operating period plus 250 years.

The Bill retains financial assurance for reclamation and long-term care. The Bill removes the poorly defined requirements of the irrevocable trust fund and replaces it with more defined financial assurance mechanisms that address unforeseen remedial contingencies and longer term requirements for replacement of engineered cover systems and tailings water management control systems. This is a much needed reform that will not alter any environmental protection standards.

The Bill creates a provision that allows a company performing exploration work, to bulk sample up to 10,000 tons. The bulk sampling process requires the applicant to obtain DNR approval. Again, this provision puts Wisconsin on a similar playing field to Michigan.

Other provisions of the Bill address needed reforms related to wetlands, water withdrawal, and fees. These provisions represent responsible updates to Wisconsin's Nonferrous Mining Law.

I would like to thank you for allowing me to speak to this committee on the important matter of reforming Wisconsin's nonferrous metallic mining statute.

## **Attachment 1**

Excerpt of DNR Website on Impaired Waters List

Source of Impairment for Stream C is Listed as Unknown

# Attachment to Wisconsin 2016 Impaired Waters list

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Local Waterbody Name 2016	WATERS ID (AU)	WBIC	Water Type	County	Start Mile	End Mile	Size (Miles or Acres)	Date Listed	Source Category	Pollutant	Impairment Indicator	TMDL Design Priority
St. Louis River AOC, St. Louis River	17465	2843800	BAY/HARBOR	Douglas			5,902	4/1/2010	Other	Dieldrin	Contaminated Sediment	Low
St. Louis River AOC, St. Louis River	17465	2843800	BAY/HARBOR	Douglas			5,902	4/1/2006	Other	Unspecified Metals	Chronic Aquatic Toxicity	Low
Starkweather Creek	11668	805100	RIVER	Dane	0	4	4	4/1/2016	NPS	Chloride	Chronic Aquatic Toxicity, Acute Aquatic Toxicity	Low
Starkweather Creek	11668	805100	RIVER	Dane	0	4	4	4/1/1998	NPS	BOD	Low DO	Low
Starkweather Creek	11668	805100	RIVER	Dane	0	4	4	4/1/1998	NPS	Sediment/Total Suspended Solids	Degraded Habitat	Low
Starkweather Creek	11668	805100	RIVER	Dane	0	4	4	4/1/1998	Contam. Sed.	Unspecified Metals	Chronic Aquatic Toxicity	Low
Stony Creek	10219	96100	RIVER	Door, Kewaunee	0	8	8	4/1/1998	NPS	Sediment/Total Suspended Solids	Degraded Habitat	Medium
Stream C, trib to Flambeau River	3924686	7215137	RIVER	Rusk	2	2	1	4/1/2012	Unknown	Copper	Acute Aquatic Toxicity	Low
Stream C, trib to Flambeau River	3924686	7215137	RIVER	Rusk	2	2	1	4/1/2012	Unknown	Zinc	Acute Aquatic Toxicity	Low
Sucker Creek	11343	50100	RIVER	Oraukee, Sheboygan	0	10	10	4/1/2012	Unknown	Total Phosphorus	Degraded Biological Community	Medium
Sugar Camp Lake	128310	1020400	LAKE	Oneida			545	4/1/1998	Atm. Dep.	Mercury	Contaminated Fish Tissue	Low
Sugar Camp Lake	128310	1020400	LAKE	Oneida			545	4/1/2016	PS/NPS	Unknown Pollutant	Excess Algal Growth	Low
Sugar Creek	10247	100500	RIVER	Door	0	9	9	4/1/2014	NPS	Total Phosphorus	Impairment Unknown	Low
Sugar Creek	10488	752100	RIVER	Walworth	0	27	27	4/1/2014	NPS	Total Phosphorus	Impairment Unknown	Low
Sugar River	13651	876300	RIVER	Dane, Green	11	56	45	4/1/2014	PS/NPS	Total Phosphorus	Impairment Unknown	Medium
Sugar River	1855695	876300	RIVER	Rock	0	11	11	4/1/2012	NPS	Total Phosphorus	Impairment Unknown	Medium
Sugar River East Channel	5476700	878400	RIVER	Green	0	3	3	4/1/2016	PS/NPS	Total Phosphorus	Impairment Unknown	Medium
Summit Lake	127905	1445600	LAKE	Langlade			282	4/1/1998	Atm. Dep.	Mercury	Contaminated Fish Tissue	Low
Swan Creek	13608	876700	RIVER	Rock	0	5	5	4/1/2016	PS/NPS	Total Phosphorus	Impairment Unknown	Medium
Swan Lake	10744	179800	LAKE	Columbia			406	4/1/2014	NPS	Unknown Pollutant	Excess Algal Growth	Low
Sylvan Lake (Pipe)	15843	1864800	LAKE	Barton			67	4/1/1998	Atm. Dep.	Mercury	Contaminated Fish Tissue	Low
Sylvan Lake (Pipe)	15843	1864800	LAKE	Barton			67	4/1/2016	PS/NPS	Total Phosphorus	Excess Algal Growth	Low

## **Attachment 2**

Excerpt from DNR Website Assessing Water Quality/Fish/Aquatic Life in Flambeau River



Wisconsin Department of Natural Resources

Explore Water Waters Lakes Watersheds Basins Impaired Waters TMDLs Projects Documents Help

Flambeau River, Lower Flambeau River, Holcombe Flowage Watershed (UC01, UC07)

[Return to Search](#) [Go to Watersheds](#)

Flambeau River (2225000)

Size 20.28 Miles  
 Segment 0 - 20.28  
 Natural Community Large River  
 Year Last Monitored 2017  
 General Condition Good



North Fork of the Flambeau River. Photo courtesy of Hilgart Realty.

Overview	Conditions	Goals	Monitoring & Projects	Ecosystem Challenges	Fish & Habitat	Photo Gallery	Map Gallery
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General Condition

The Flambeau River was assessed during the 2018 listing cycle; new biological (macroinvertebrate Index of Biotic Integrity (IBI) scores) and chloride sample data were clearly below 2018 WisCALM listing thresholds for the Fish and Aquatic Life use. This water is meeting this designated use and is not considered impaired.

Date 2017

Author Ashley Beranek

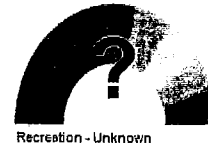
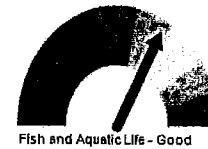
Condition

Wisconsin has over 84,000 miles of streams, 15,000 lakes and millions of acres of wetlands. Assessing the condition of this vast amount of water is challenging. The state's water monitoring program uses a media-based, cross-program approach to analyze water condition. An updated [monitoring strategy \(2015-2020\)](#) is now available.

Compliance with Clean Water Act fishable, swimmable standards are located in the [Executive Summary of Water Condition in 2016](#). See also 'monitoring' and 'projects'.

Reports

- [1997 Pixley Hydroelectric Project, FERC Project No. 2395, Order Issuing Subsequent License \(Minor Project\) Flambeau River \(North Fork\), Rusk Sawyer Counties, OERW Evaluation](#)
- [2016 Pixley, Lower Hydro, Crowley Rapids, and Upper Hydro Hydroelectric Project, FERC Project Nos. 2395, 2421, 2473, and 2640, Water Quality Monitoring Data Report](#)
- [2016 Crowley Rapids Hydroelectric Project, FERC Project No. 2473, Purple Loosetrife Monitoring Report](#)
- [2016 Lower Hydro Hydroelectric Project, FERC Project No. 2421, Purple Loosetrife Monitoring Report](#)
- [2016 Pixley Hydroelectric Project, FERC Project No. 2395, Purple Loosetrife Monitoring Report](#)
- [2016 Upper Hydro Hydroelectric Project, FERC Project No. 2640, Purple Loosetrife Monitoring Report](#)
- [2016 Flambeau Hydroelectric Project FERC Project No. 1960, Water Quality Monitoring Report](#)
- [2015 Big Falls and Thornapple Hydroelectric Project, FERC Project Nos. 2390 and 2475, Water Quality Monitoring Report](#)
- [2015 Crowley Rapids Hydroelectric Project, FERC Project No. 2473, Purple Loosetrife Monitoring Report](#)
- [2015 Pixley Hydroelectric Project, FERC Project No. 2395, Purple Loosetrife Monitoring Report](#)
- [2015 Lower Hydro Hydroelectric Project, FERC Project No. 2421, Purple Loosetrife Monitoring Report](#)
- [2015 Upper Hydro Hydroelectric Project, FERC Project No. 2640, Purple Loosetrife Monitoring Report](#)
- [2015 Pixley, Lower Hydro, Crowley Rapids, and Upper Hydro Hydroelectric Project, FERC Project Nos. 2395, 2421, 2473, and 2640, Water Quality Monitoring Data Report](#)
- [2014 Pixley Hydroelectric Project, FERC Project No. 2395, Purple Loosetrife Monitoring Report](#)
- [2015 Flambeau Hydroelectric Project, FERC Project No. 1960, Water Quality Monitoring Report](#)
- [2014 Lower Hydro Hydroelectric Project, FERC Project No. 2421, Purple Loosetrife Monitoring Report](#)
- [2015 Flambeau Hydroelectric Project, FERC Project No. P-1960, Order Approving Revised Purple Loosetrife Management Plan Pursuant to License Article 401 \(Q\)](#)
- [2015 Big Falls, Hayward, White River, Thornapple, and Superior Falls Hydroelectric Projects, FERC Project Nos. 2390, 2417, 2444, 2475, and 2587, Purple Loosetrife Monitoring Report](#)
- [Comprehensive 2016 Rivers Stream Assessments](#)
- [2014 Big Falls and Thornapple Hydroelectric Project, FERC Project Nos. 2390 and 2475, Water Quality Monitoring Report](#)
- [2014 Crowley Rapids Hydroelectric Project, FERC Project No. 2473, Purple Loosetrife Monitoring Report](#)
- [2014 Upper Hydro Hydroelectric Project, FERC Project No. 2640, Purple Loosetrife Monitoring Report](#)
- [2014 Water Quality Monitoring Report Big Falls \(P-2390-01\), Thornapple \(P-2475\) & Turtle-Flambeau \(P-2390-02\)](#)
- [2014 Lower Hydro Hydroelectric Project, FERC Project No. 2421, Water Quality Monitoring Data](#)
- [2014 Pixley Hydroelectric Project, FERC Project No. 2395, Water Quality Monitoring Data Report](#)
- [2014 Upper Hydro Hydroelectric Project, FERC Project No. 2640, Water Quality Monitoring Data Report](#)
- [2014 Flambeau Hydroelectric Project FERC Project No. 1960, Water Quality Monitoring Report](#)



[2014 Flambeau Hydroelectric Project, FERC Project No. P-1960, Annual Purple Loosetrife Survey](#)  
[2014 Flambeau Hydroelectric Project, FERC Project No. P-1960, Annual Purple Loosetrife Survey AND Plan Revision Request - Article 401Q](#)  
[2014 Big Falls, Hayward, White River, Thornapple, and Superior Falls Hydroelectric Projects, FERC Project Nos. 2390, 2417, 2444, 2475, and 2587, Purple Loosetrife Monitoring Report](#)  
[Comprehensive 2014 TP IBI Rivers Assessment](#)  
[2013 Pixley, Lower Hydro, Crowley Rapids, and Upper Hydro Hydroelectric Project, FERC Project Nos. 2395, 2421, 2473, and 2640, Water Quality Monitoring Data Report](#)  
[2013 Big Falls and Thornapple Hydroelectric Project, FERC Project Nos. 2390 and 2475, Water Quality Monitoring Report](#)  
[2013 Crowley Rapids Hydroelectric Project, FERC Project No. 2473, Purple Loosetrife Monitoring Report](#)  
[2013 Lower Hydro Hydroelectric Project, FERC Project No. 2421, Purple Loosetrife Monitoring Report](#)  
[2013 Pixley Hydroelectric Project, FERC Project No. 2395, Purple Loosetrife Monitoring Report](#)  
[2013 Upper Hydro Hydroelectric Project, FERC Project No. 2640, Purple Loosetrife Monitoring Report](#)  
[2013 Flambeau Hydroelectric Project FERC Project No. 1960, Water Quality Monitoring Report](#)  
[\[Letter to WDNR about\] 2013 Water Quality Monitoring Report for Big Falls Flowage, Thornapple Flowage, and Turtle-Flambeau Flowage](#)  
[2013 Big Falls, Hayward, White River, Thornapple, and Superior Falls Hydroelectric Projects, FERC Project Nos. 2390, 2417, 2444, 2475, and 2587, Purple Loosetrife Monitoring Report](#)  
[2012 Pixley, Lower Hydro, Crowley Rapids, and Upper Hydro Hydroelectric Projects, FERC Project Nos. 2395, 2421, 2473, and 2640, Purple Loosetrife Report](#)  
[2012 Pixley, Lower Hydro, Crowley Rapids, and Upper Hydro Hydroelectric Project, FERC Project Nos. 2395, 2421, 2473, and 2640, Water Quality Monitoring Data Report](#)  
[2012 Big Falls and Thornapple Hydroelectric Project, FERC Project Nos. 2390 and 2475, Water Quality Monitoring Report](#)  
[2012 Big Falls, Hayward, White River, Thornapple, and Superior Falls Hydroelectric Projects, FERC Project Nos. 2390, 2417, 2444, 2475, and 2587, Purple Loosetrife Monitoring Report](#)  
[2011 Big Falls and Thornapple Hydroelectric Project, FERC Project Nos. 2390 and 2475, Water Quality Monitoring Report](#)  
[Oneida County Land and Water Resource Management Plan](#)  
[2011 Crowley Rapids Hydroelectric Project, FERC Project No. 2473, Purple Loosetrife Monitoring Report](#)  
[2011 Lower Hydro Hydroelectric Project, FERC Project No. 2421, Purple Loosetrife Monitoring Report](#)  
[2011 Pixley Hydroelectric Project, FERC Project No. 2395, Purple Loosetrife Monitoring Report](#)  
[2011 Upper Hydro Hydroelectric Project, FERC Project No. 2640, Purple Loosetrife Monitoring Report](#)  
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[2011 Big Falls, Hayward, White River, Thornapple, and Superior Falls Hydroelectric Projects, FERC Project Nos. 2390, 2417, 2444, 2475, and 2587, Purple Loosetrife Monitoring Report](#)  
[2010 Big Falls and Thornapple Hydroelectric Project, FERC Project Nos. 2390 and 2475, Water Quality Monitoring Report](#)  
[2010 Crowley Rapids Hydroelectric Project, FERC Project No. 2473, Purple Loosetrife Monitoring Report](#)  
[2010 Lower Hydro Hydroelectric Project, FERC Project No. 2421, Purple Loosetrife Monitoring Report](#)  
[2010 Pixley Hydroelectric Project, FERC Project No. 2395, Purple Loosetrife Monitoring Report](#)  
[2010 Upper Hydro Hydroelectric Project, FERC Project No. 2640, Purple Loosetrife Monitoring Report](#)  
[2010 Big Falls, Hayward, White River, Thornapple, and Superior Falls Hydroelectric Projects, FERC Project Nos. 2390, 2417, 2444, 2475, and 2587, Purple Loosetrife Monitoring Report](#)  
[2010 Turtle-Flambeau Storage Reservoir / Big Falls Hydroelectric Project, FERC Project No. 2390, Invasive Species Management Plan for the Turtle Flambeau Storage Reservoir](#)  
[2009 Big Falls and Thornapple Hydroelectric Project, FERC Project Nos. 2390 and 2475, Water Quality Monitoring Report](#)  
[2009 Crowley Rapids Hydroelectric Project, FERC Project No. 2473, Purple Loosetrife Monitoring Report](#)  
[2009 Lower Hydro Hydroelectric Project, FERC Project No. 2421, Purple Loosetrife Monitoring Report](#)  
[2009 Pixley Hydroelectric Project, FERC Project No. 2395, Purple Loosetrife Monitoring Report](#)  
[2009 Upper Hydro Hydroelectric Project, FERC Project No. 2640, Purple Loosetrife Monitoring Report](#)  
[2009 Big Falls, Hayward, White River, Thornapple, and Superior Falls Hydroelectric Projects, FERC Project Nos. 2390, 2417, 2444, 2475, and 2587, Purple Loosetrife Monitoring Report](#)  
[2008 Big Falls and Thornapple Hydroelectric Project, FERC Project Nos. 2390 and 2475, Water Quality Monitoring Report](#)  
[2008 Crowley Rapids Hydroelectric Project, FERC Project No. 2473, Purple Loosetrife Monitoring Report](#)  
[2008 Lower Hydro Hydroelectric Project, FERC Project No. 2421, Purple Loosetrife Monitoring Report](#)  
[2008 Pixley Hydroelectric Project, FERC Project No. 2395, Purple Loosetrife Monitoring Report](#)  
[2008 Upper Hydro Hydroelectric Project, FERC Project No. 2640, Purple Loosetrife Monitoring Report](#)  
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[2007 Crowley Rapids Hydroelectric Project, FERC Project No. 2473, Purple Loosetrife Monitoring Report](#)  
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[2007 Pixley Hydroelectric Project, FERC Project No. 2395, Purple Loosetrife Monitoring Report](#)  
[2007 Upper Hydro Hydroelectric Project, FERC Project No. 2640, Purple Loosetrife Monitoring Report](#)  
[2007 Big Falls and Thornapple Hydroelectric Project, FERC Project Nos. 2390 and 2475, Water Quality Monitoring Report](#)  
[2007 Flambeau Hydroelectric Project FERC Project No. 1960, Water Quality Monitoring Report](#)  
[2007 Lower Hydro Hydroelectric Project, FERC Project No. 2421, Water Quality Monitoring Data Report](#)  
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[2006 Pixley Hydroelectric Project, FERC Project No. 2395, Purple Loosetrife Monitoring Report](#)  
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[2006 Big Falls and Thornapple Hydroelectric Project, FERC Project Nos. 2390 and 2475, Water Quality Monitoring Report](#)  
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[2005 Pixley Hydroelectric Project, FERC Project No. 2395, Purple Loosetrife Monitoring Report](#)

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[UNNAMED TRIBUTARY TO MAIN CREEK, HACKETT CREEK, RUSK COUNTY, FLAMBEAU CORRECTIONAL CENTER WWTP, WI DAIRIES COOP \(CONRATH\) WWTP, USE DESIGNATION](#)  
[2005 Big Falls, Hayward, White River, Thornapple, and Superior Falls Hydroelectric Projects, FERC Project Nos. 2390, 2417, 2444, 2475, and 2587, Purple Loosetrife Monitoring Report](#)  
[2005 Flambeau Hydroelectric Project, FERC Project No. P-1960, Order Approving Purple Loosetrife Management Plan, Pursuant to Article 401](#)  
[2004 Crowley Rapids Hydroelectric Project, FERC Project No. 2473, Purple Loosetrife Monitoring Report](#)  
[2004 Lower Hydro Hydroelectric Project, FERC Project No. 2421, Purple Loosetrife Monitoring Report](#)  
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[2004 Flambeau Hydroelectric Project, FERC Project No. P-1960, Letter from WI DNR refining the water quality monitoring plan](#)  
[2004 Flambeau Hydroelectric Project, FERC Project No. 1960, Order Issuing New License](#)  
[2003 Crowley Rapids Hydroelectric Project, FERC Project No. 2473, Purple Loosetrife Monitoring Report](#)  
[2003 Lower Hydro Hydroelectric Project, FERC Project No. 2421, Purple Loosetrife Monitoring Report](#)  
[2003 Pixley Hydroelectric Project, FERC Project No. 2395, Purple Loosetrife Monitoring Report](#)  
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[HACKETT CREEK, UNNAMED TRIBUTARY, SAWYER COUNTY, FLAMBEAU CORRECTIONAL CENTER, FLAMBEAU STATE CAMP USE DESIGNATION](#)  
[2003 Big Falls, Hayward, White River, Thornapple, and Superior Falls Hydroelectric Projects, FERC Project Nos. 2390, 2417, 2444, 2475, and 2587, Purple Loosetrife Monitoring Report](#)  
[2003 Pixley, Lower Hydro, Crowley Rapids, and Upper Hydro Hydroelectric Projects, FERC Project Nos. 2395, 2421, 2473, and 2640, Order Approving and Modifying Water Quality Monitoring Plans Under Articles 406 and 408](#)  
[2003 Pixley, Lower Hydro, Crowley Rapids, and Upper Hydro Hydroelectric Projects, FERC Project Nos. 2395, 2421, 2473, and 2640, Order Modifying and Approving Purple Loosetrife Monitoring Plans](#)  
[2003 Crowley Rapids Hydroelectric Project, FERC Project No. P-2473, Water Quality Monitoring Plan](#)  
[2003 Lower Hydro Hydroelectric Project, FERC Project No. 2421, Water Quality Monitoring Plan](#)  
[2003 Pixley Hydroelectric Project, FERC Project No. 2395, Water Quality Monitoring Plan](#)  
[2003 Upper Hydro Hydroelectric Project, FERC Project No. 2640, Water Quality Monitoring Plan](#)  
[2002 Big Falls and Thornapple Hydroelectric Project, FERC Project Nos. 2390 and 2475, Water Quality Monitoring Report](#)  
[2002 Crowley Rapids Hydroelectric Project, FERC Project No. 2473, Purple Loosetrife Monitoring Plan](#)  
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[2002 Pixley, Lower Hydro, Crowley Rapids, and Upper Hydro Hydroelectric Projects, FERC Project Nos. 2395, 2421, 2473, and 2640, License Compliance Order](#)  
[2001 Big Falls and Thornapple Hydroelectric Project, FERC Project Nos. 2390 and 2475, Water Quality Monitoring Report](#)  
[2001 Big Falls, Hayward, White River, Thornapple, and Superior Falls Hydroelectric Projects, FERC Project Nos. 2390, 2417, 2444, 2475, and 2587, Purple Loosetrife Monitoring Report](#)  
[2000 Big Falls and Thornapple Hydroelectric Project, FERC Project Nos. 2390 and 2475, Water Quality Monitoring Report](#)  
[2000 Big Falls, Hayward, White River, Thornapple, and Superior Falls Hydroelectric Projects, FERC Project Nos. 2390, 2417, 2444, 2475, and 2587, Purple Loosetrife Monitoring Report](#)  
[1998/1999 Big Falls and Thornapple Hydroelectric Projects, FERC Project Nos. 2390 and 2475, Purple Loosetrife Monitoring Report](#)  
[1999 Pixley, Lower Hydro, Crowley Rapids, Upper Hydro Hydroelectric Projects, FERC Project Nos. 2395, 2421, 2473, and 2640, Order Granting Rehearing and Approving Transfer of Licenses](#)  
[1999 Big Falls, Hayward, White River, Thornapple, and Superior Falls Hydroelectric Projects, FERC Project Nos. 2390, 2417, 2444, 2475, and 2587, Purple Loosetrife Monitoring Report](#)  
[1998 Big Falls and Thornapple Hydroelectric Projects, FERC Project Nos. 2390 and 2475, Purple Loosetrife Monitoring Report](#)  
[1997 Big Falls Hydroelectric Project, FERC Project No. 2390, Order Approving Water Quality Monitoring Plan](#)  
[1997 Thornapple Hydroelectric Project, FERC Project No. 2475, Order Approving Water Quality Monitoring Plan](#)  
[1997 Big Falls Hydroelectric Project, FERC Project No. 2390, Order Approving Purple Loosetrife Monitoring Plan](#)  
[1997 Thornapple Hydroelectric Project, FERC Project No. 2475, Order Approving Purple Loosetrife Monitoring Plan](#)  
[1997 Big Falls and Thornapple Hydroelectric Project, FERC Project Nos. 2390 and 2475, Purple Loosetrife Monitoring Plan](#)  
[1997 Big Falls Hydroelectric Project, FERC Project No. 2390, Order Issuing New License \(Major Project\)](#)  
[1997 Crowley Rapids Hydroelectric Project, FERC Project No. 2473, Order Issuing Subsequent License \(Minor Project\)](#)  
[1997 Lower Hydro Hydroelectric Project, FERC Project No. 2421, Order Issuing Subsequent License \(Minor Project\)](#)  
[1997 Thornapple Hydroelectric Project, FERC Project No. 2475, Order Issuing Subsequent License \(Minor Project\)](#)  
[1997 Upper Hydro Hydroelectric Project, FERC Project No. 2640, Order Issuing Subsequent License \(Minor Project\)](#)  
[1991 Crowley Hydroelectric Project, FERC Project No. 2473, Project Boundary Map](#)  
[1991 Lower Hydro Hydroelectric Project, FERC Project No. 2421, Project Boundary Map](#)  
[1991 Pixley Hydroelectric Project, FERC Project No. 2395, Project Boundary Map](#)

[1991 Upper Hydro Hydroelectric Project, FERC Project No. 2640, Project Boundary Map](#)  
[1982 Ladysmith Hydroelectric Project, FERC Project No. 2430, Notice of Exemption from Licensing](#)  
[Ashland County Surface Water Resources 1966 Part 2 of 2](#)

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The Official Internet site for the Wisconsin Department of Natural Resources  
101 S. Webster Street PO Box 7921 . Madison, Wisconsin 53707-7921 . 608.266.2621



October 13, 2017

Assembly Committee on Labor  
Attention: Chair Kulp  
Room 15 West  
State Capitol  
PO Box 8952  
Madison, WI 53708

Chair Kulp and Assembly Labor Committee Members:

This letter is in regards to Assembly Bill (AB) 499 which proposes changes to Metallic Mining laws in the State of Wisconsin. The Reef Deposit is located in Eastern Marathon County, within the watershed of the Eau Claire River, a tributary to the Wisconsin River. Marathon County is opposed to AB499. There are several major concerns with the current version of the bill. The primary concerns are as follows:

***Removal of the Sulphide Ore Moratorium (AKA "Prove it first law")***

Removal of this provision could potentially jeopardize the environment of Marathon County. The most recently permitted and closed non-ferrous metallic mine in the state of Wisconsin is the Flambeau mine. Since the closing, the stream below the mine has been added to the list of impaired waters by the EPA because of "acute aquatic toxicity" caused by copper and zinc contamination. Removal of the "prove it first law" could potentially negatively affect ground and surface water quality. We have found no examples of non-polluting metallic mines.

***Bulk Sampling***

This section may have several unintended consequences:

- Bulk sampling would only require re-vegetation; there is no mention of stabilization, treatment or removal of overburden which may be Sulphur bearing. There could potentially be hundreds of thousands of tons of this material remaining after sampling. Exposure of these materials to oxygen and water causes the formation of sulphuric acid which leads to highly acidic mine runoff pollution.
- The DNR would not be required to prepare an Environmental Impact Statement related to the bulk sampling application. This reduces over-sight during the permitting process and increases risk to human health and the environment.
- The bill does not specify if more than 1 bulk sample can be obtained or if the bulk sample is per parcel, per land owner, per deposit, or per year. This could lead to multiple bulk samples and potential complete removal of a highly concentrated deposit. No mining permit would be needed and the deposit could be potentially removed during sampling. Additional clarification is needed in the bill.

### **Application Process-Financial Assurance Requirement**

- The bill allows the Financial Assurance (FA) to be posted after the mining is completed. This would be contrary to any current mining laws, including the non-metallic mining law. FA is always posted before any mining commences. Businesses go bankrupt every day. This would increase the risk to the taxpayer, as they would potentially bear any costs if the company goes bankrupt during or upon completion of the mining. Solid waste facilities require substantial FA upfront before any approval of the solid waste site.
- The bill does not specify if the listed forms of FA are guaranteed to be protected from creditors. If a creditor seized the FA, there would not be the assurance that funds would be available to the State to clean up pollution and/or reclaim the site.

### **Application Process-Hearing and Review Process**

The bill would eliminate the DNR master hearing process, which would eliminate the opportunity for testimony under oath or cross-examination. The public, local municipalities or counties would not have the opportunity for input as only an informational hearing is required in the bill. The provisions for a contested case hearing are also removed.

Based upon the above listed concerns, Marathon County opposes AB 499. We ask that this correspondence be added to the official record of the Labor Committee public hearing on AB 499.

Sincerely,



Kurt Gibbs  
County Board Chair

cc: Assembly Labor committee members  
Marathon County legislators  
Wisconsin Counties Association  
Wisconsin Towns Association



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October 13, 2017

AB 499 Committee Hearing Members  
Wisconsin State Capitol  
Hearing Room 412  
Madison, WI 53707

RE: IBAW Supports Assembly Bill 499

Dear Committee Hearing Members,

Good afternoon, I'm Steve Kohlmann, Executive Director for the Independent Business Assoc. of Wisconsin (IBAW). The IBAW represents over 155 small, independent businesses throughout the state of Wisconsin. The businesses within IBAW employ thousands of workers throughout our state.

I am here today on behalf of the IBAW board of directors and our statewide membership to support Assembly Bill 499 which we believe will foster mining in Wisconsin and not exclude it.

While Foxconn has recently lead the headlines for job creation, we must not forget there are other parts of the state that depend on employment. Particularly for northern Wisconsin, not all employment can, or should, be related to tourism.

Mining - and all the ancillary jobs that support that industry - play an important role in Wisconsin's supply chain economy. We need to afford the rural communities of upper Wisconsin the economic opportunities needed to retain its young people in order for those communities to remain vibrant and eliminate the talent drain.

Mining jobs just don't happen directly at the mine location but ripple throughout our state. Companies such as Caterpillar, Falk, Metso, Maynard Steel, Rexnord, Terex, Generac, Johnson Controls, Wacker Neuson and Gross Automation all have hundreds, if not thousands of workers impacted economically by the mining industry.

Mining has always been part of Wisconsin's history. So much so that a mine is represented on our state flag. Mining continues to play an important role not just economically but in today's technologies nonferrous metals such as copper, silver and zinc play a vital role in today's modern society and impact us even if we aren't involved directly with the mining industry.

For example;

- The copper pipes inside in your homes and businesses deliver water to your faucets, dishwashers, toilets and refrigerators.

- Hybrid cars such as the Toyota Prius use a minimum of 64 lbs of copper in every car. While the hybrid's batteries are nickel based, a Prius utilizes a lot of copper wiring and computer chips to keep it on the road and cutting carbon emissions. Future generations of hybrid and electric cars plan on using even more copper as they strive to lower our dependence on fossil fuels.

- Your mobile phone utilizes half ounce of copper. While that may seem insignificant, that's more than all the other metals in your phone and more than 12% of your phone's total weight. As more sophistication is added to our phones, the amount of copper in them will continue to grow as well.

- Copper cables deliver energy so millions of Americans can commute and travel in a energy efficient manner. Alternative forms of transportation, from buses to electric trolleys and subways cars use an average of 2,300 pounds of copper each. Additionally, the wire that delivers that power is often copper. Milwaukee is presently constructing a downtown trolley. That trolley runs on energy delivered by an overhead power cable - most likely made of copper

- According to the U.S. Bureau of Mines, the U.S. consumes more than one million metric tons of Zinc annually. The average person will use 730 pounds of zinc in his or her lifetime.

These metals must come from somewhere. More often than not, they can come from locations outside the reach of U.S. EPA Regulations such as India or China where pollutions standards are non existent. If America needs these metal - and we do - they should be supplied from within the U.S. that's is properly regulated - like Wisconsin.

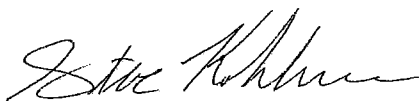
Since mining involves our natural resources, there should be oversight, so there should be a plan to restore a mine to its original state. But that oversight should be used to oversee the mining operation and certainly not prevent it from taking place.

In conclusion, I would like to leave you with this. Our neighboring state to the west, Minnesota, has had a vibrant mining industry for years. Northeastern MN, U.S. Senator Al Franken commented about mining in his state during an interview at Northland's NewsCenter in Duluth. He said, "I believe we can accomplish these projects in a responsible manner and in an environmentally safe manner, too." He concluded, "The role of the government is to create an environment where the marketplace works."

The IBAW agrees.

Thank you for your attention.

Regards,



Steve Kohlmann  
IBAW Executive Director



October 13, 2017



**SIERRA CLUB**  
JOHN MUIR CHAPTER

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## **Sierra Club testimony on SB 395/AB 499 for the Assembly Committee on Labor**

The Sierra Club is testifying in opposition to SB 395 as amended /AB 499 as it is a comprehensive package of provisions that benefit potential mining companies by reducing protections to Wisconsin's environment and limiting the public's rights to participate in the permitting process in meaningful and constructive ways. It also establishes arbitrary permitting deadlines that makes review and analysis of permit applications more difficult for the Department of Natural Resources that is already handicapped by budget and staffing cuts. Most of the provisions of SB 395 can be accomplished if needed simply by directing the applicant to take advantage of the generous exemption and variance provisions that can be accessed within the current law.

Metallic mining proposals, whether for iron, base or precious metals are the largest and most complex and destructive land uses considered in the state. There is no question that mining activities are inherently destructive and create "boom and bust" local economies. The impacts from mining and mine wastes require strict and careful monitoring and management to limit environmental damage and negative economic impacts to local communities and the state.

New mining developments threaten our sustainable tourism economy that supports thousands of jobs and reached \$20 billion in 2016, up \$700 million from 2015 as reported by the State Dept. of Tourism. One in twelve jobs in the state is sustained by tourism. Mining threatens the natural resources that support and sustain our tourism economy for a handful of potential jobs, boom and bust economies, permanent land destruction, and mining wastes that can require perpetual treatment and care to contain pollution. These impacts threaten the quality of life in Wisconsin that will attract needed workers to the state.

The Sierra Club is joined by more than 50 statewide and regional environmental and conservation organizations that support preservation of Prove It First, including Trout Unlimited, River Alliance of Wisconsin, the Nature Conservancy, Wisconsin League of Conservation Voters, Wisconsin Association of Lakes, Natural Resources Defense Council.

The Sierra Club shares the legislature's desire for a stable economy and productive workforce but it cannot be at the expense or diminution of the public's legal rights. Those rights require that the legislature consider carefully any threats to public health via air and water and guard against any threats to our treasured lakes, streams, wetlands and other natural resources.

Each regulatory change proposed in SB 395 is less protective of our environment and less protective of the public's rights to participate in meaningful and constructive analysis and critique of the impacts of mining proposals. The sum of these changes is a significant cumulative erosion of environmental protections for mining.

### **Wisconsin's Comprehensive Mining Law**

Wisconsin's comprehensive mining law is already a product of compromise, drafted in large part by the mining industry itself. The program includes significant exemptions and exceptions for mining only and includes an allowance for variances or exemptions that applies to the entire mining chapter of the statutes (Ch. 293). Even before the Flambeau mine was permitted, the groundwater non-degradation standard for mine sites and wastes was repealed. Local mining ordinances were overridden by a process for "Local Agreements" that requires impacted local governments to negotiate with a mining company to satisfy local laws. This process puts local governments under extreme pressure from a mining company to give up their powers.

Since the permitting of the Flambeau mine, the compromise mining law that has only been weakened further by significant reductions of regulatory oversight, inspection and enforcement. Examples include:

- Public Intervenor's office dismantled.
- DNR Secretary appointed by Governor instead of NR Board.
- DNR Rules must be approved by the Governor.
- Elimination of the DNR Science Services Bureau, significant cuts to science and education staffing and budgets.
- Wetlands deregulation including protections for sensitive wetlands.

Moreover, federal environmental oversight and protections are all under attack by the current administration. This means that even the current minimum protections in our laws for wetlands, rivers, streams, and air are likely to be further undercut in the future.

### **Prove It First/Mining Moratorium Law**

The production of Acid Mine Drainage (AMD) and associated contaminants is widely considered mining's largest environmental problem in the U.S.<sup>1</sup> AMD is caused by acid produced when sulfide minerals in mines and mining wastes are exposed to air and water damages surface water and groundwater resources. The acid also leaches metals such as mercury, lead, arsenic, cadmium, zinc, copper and many others into the same water resources. The U.S. Forest Service considers these contaminants a greater concern than the acidity.<sup>2</sup> In Wisconsin, economic

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<sup>1</sup> US EPA, Acid Mine Drainage Prediction, Technical Document, 1994

<sup>2</sup> USDA Forest Service 1993, Acid Mine Drainage From Mines on the National Forests, A Management Challenge

metal deposits such as at Flambeau, Crandon, and in Oneida, Taylor, and Marathon Counties are found as what are known as massive sulfide ores. Mining these ores requires separating the metals from the sulfide materials. The sulfide materials are the source of AMD and the chemical reaction leading to acid production in mine waste is extremely difficult and costly to halt.

Prior to the 1998 passage of the Moratorium Law, the mining industry was challenged to give one example of a metallic sulfide mine that had been safely operated and closed without polluting the environment. The mining industry could not document an example. Similarly, state regulators were tasked by the Natural Resources Board to search for examples and were unable to document successful metallic sulfide operations. Wisconsin DNR staff issued a report issued in 1995 that stated: *"There are no ideal metallic mineral mining sites which can be pointed to as the model approach in preventing acidic drainage industry-wide."*<sup>3</sup>

This conclusion confirming the industry's failed environmental track record of mining metallic sulfide ores informed the legislature and led to the passage of the law. The findings remain valid today; the mining industry has offered no examples of safely operated and reclaimed metallic sulfide mines and the Flambeau mine is not a successfully reclaimed mine.

That the law is a moratorium in name only is well understood by regulators and the public. It is not a ban on mining. It is a permit condition that must be met before final permission to mine metals from sulfide ores is granted<sup>4</sup>. A mining company could apply for permits today and not have to submit example mines until years from now to demonstrate compliance with state law. It is a concrete, unambiguous requirement limited to the language specified in state statutes. There is nothing in the law that bars or prohibits a company from conducting exploration or applying for permits to mine today.

In fact, Aquila Resources – the company behind the controversial Back Forty sulfide mine proposal within 150 feet of the Menominee River in MI – has conducted significant exploration drilling at two sites in Wisconsin as recently as 2012.

The provisions of the law were subject to compromise during passage that make satisfying the permit requirements easier for the industry. The law allows the industry to use examples from the U.S. and Canada – two countries with mining companies using the industry's best and newest technology and methods to control pollution. The law also allows the use of more than

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<sup>3</sup> An Overview of Mining Waste Management Issues in Wisconsin, Report to the Natural Resources Board by Wisconsin Department of Natural Resources Bureau of Solid and Hazardous Waste Management, July 1995, Updated October, 1997

<sup>4</sup> See Legislative Reference Bureau Brief 98-1 for general permit requirements for metallic mining or Special Report 13, An Overview of Metallic Mineral Regulation, Wisconsin Geological and Natural History Survey for detailed permit requirements.

one mine to satisfy the requirement of safe mining, a compromise that defies common sense that a single mine be required. The law also allows example mines be found in climates and hydrogeology radically different than what is found in northern Wisconsin where we have four seasons and a water-rich natural environment.

### **“Example mines”**

Proponents have suggested research done by both the DNR and independently demonstrated that the mines would not qualify. After review, the DNR formally rejected the Sacaton Mine on May 30, 2002.<sup>5</sup> Independent review also found significant groundwater pollution from the mine.<sup>6</sup> A review of the permitting record of the Cullaton Lake Mine found in 2003 that the mine was a documented source of significant pollution.<sup>7</sup> The McLaughlin Mine is not yet closed and is not anticipated to be fully reclaimed until 2021.<sup>8</sup> It has documented instances of large exceedances of surface water quality standards for arsenic, chromium, copper, lead, manganese mercury, lead, iron and zinc. It also has caused chronic degradation of groundwater beneath the tailings and waste rock dumps.<sup>9</sup>

### **Flambeau mine**

The arguments made in favor of SB 395 include misleading statements about the success of the Flambeau mine. The Flambeau mine is unique due to its small size and short span of production. The company itself billed it as the “world’s smallest and newest copper mine.” Permitting was finished in less than three years. Development and construction took place in two years followed by less than four years of production. Reclamation began in 1998 and is still unfinished 20 years later. Mine wastes that produced acid drainage while exposed at the site were backfilled into the unlined mine pit.

In 2007, Flambeau Mining Company (FMC) applied for a Certificate of Completion for reclamation of the mine. Monitoring of the site demonstrated that the reclamation was not only incomplete but that the site had been polluting nearby Stream C, a tributary of the Flambeau River for many years. A number of state organizations challenged FMC’s application and it was partially rejected by the DNR due to the incomplete reclamation and pollution of Stream C. FMC was ordered to establish additional monitoring to ensure the site didn’t

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<sup>5</sup> *DNR communication*, Larry Lynch to Gordon Reid, Nicolet Minerals, May 30, 2002

<sup>6</sup> *Evaluation Of Application To Use The Sacaton Mine In Arizona To Meet Wisconsin Mining Law – WIS. STATS. § 293.50 – By Nicolet Minerals Company*, Southwest Research and Information Center, May 2004

<sup>7</sup> Arthur Harrington & John Clancy, Godfrey and Kahn, SC letter to DNR Secretary Scott Hassett, April 24, 2003

<sup>8</sup> Waste Discharge Requirements for McLaughlin Mine, California Regional Water Quality Board, Feb. 2, 2012

<sup>9</sup> Kuipers, J.R., Maest, A.S., MacHardy, K.A., and Lawson, G. 2006. Comparison of Predicted and Actual Water Quality at Hardrock Mines: The reliability of predictions in Environmental Impact Statements

continue to pollute. The company is awaiting results from the 6th attempt at cleanup and reclamation of the site to determine whether contamination of Stream C has been halted.

A DNR assessment of the mine led to the determination that Stream C, a tributary of the Flambeau River was polluted by the mine<sup>10</sup>. The assessment revealed the mine was a chronic pollution source:

*“Monitoring done at the site between 2002 and 2011 showed that Stream C and its contributing drainageways contained copper and zinc concentrations that frequently exceeded acute toxicity criteria (ATC). On average, copper exceeded ATC’s in 92% of samples.”*

The stream is currently designated as impaired by the EPA<sup>11</sup>.

As documented by Robert E. Moran, Ph.D. - a Geochemist and Hydrogeologist with 45 years of domestic and international experience with mining and water quality issues, the groundwater is contaminated at the mine site. This a direct result of the mining industry’s exemption from state groundwater rules required of other industry. Mining is allowed a pollution zone around mines and mining wastes of up to 1200 feet in all directions. The result of this exception is that the larger the mine or waste site is, the more groundwater it is allowed to legally pollute creating groundwater sacrifice zones for mining companies. Dr. Moran’s research findings are attached. Dr. Moran’s general conclusions include:

- Ground and surface water quality is being and has been degraded at the Flambeau mine site—despite years of industry public relations statements touting the success of the Flambeau mining operation.
- The Flambeau mine is an example of a deeply flawed permitting and government oversight process. The opposite of a clean mining operation, groundwater quality data shows contaminants that greatly exceed baseline data and water quality and aquatic life criteria.
- The Flambeau mining and remediation practices are not a sustainable, long-term solution. The mining company may have satisfied state oversight and disclosure requirements, but site ground waters are contaminated and treatment would be extremely costly.

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<sup>10</sup> Surface Water Quality Assessment of the Flambeau Mine Site, Wisconsin Department of Natural Resources, April 2012.

<sup>11</sup> Decision Document for the Approval of Wisconsin’s 2012 list of impaired waters with respect to Section 303(d) of the Clean Water Act, United States Environmental Protection Agency, June 25, 2014.

The history and ongoing groundwater and surface water pollution at the Flambeau mine site reveals the need to protect and improve our mining laws, not repeal or weaken them.

There is also no evidence that the mine created any lasting positive economic impact in Rusk County. After construction, it only operated for 3 years and common sense tells us that a mine that employed less than 70 people for such a short time is incapable of generating any lasting or significant economic development. Nothing changes the fact that all mines are ultimately boom and bust and do not create long-term economic development.

The fact is that Rusk County before, during, and after the mining years ranked at the bottom or near the bottom of all 72 WI counties for several key economic standards: overall unemployment rate, individual poverty level, children living in poverty, and per capita income<sup>12</sup>. There is no question that the mine had a short-term positive economic impact but there's no objective statistical evidence showing the mine had any lasting economic impact beyond the short operating time frame.

### **Mining Technology**

Modern mining technology is not successfully controlling pollution. An independent study in 2012 reviewed 14 out of the 16 operating copper sulfide mines in the U.S. responsible for 89% of U.S. copper production and found that 92% failed to control mine waste seepage and 100% experienced spills through 2012. These are some of the largest mining companies in the world, with the most resources available for pollution control and they all have pollution issues (mines chosen had to have been operating 5 or more years)<sup>13</sup>.

Modern mining technology is also failing to predict and mitigate pollution. A two-year research study found that 100% of mines are predicted to meet relevant water quality standards as they must to receive permits<sup>14</sup>. But predictions didn't match reality as 76% of those studied exceeded water quality standards and mitigation measures predicted to prevent water quality exceedances failed in 64% of those studied.

Moreover, a subset of the studied mines were determined to have a high risk of developing acid mine drainage – the mining industry's most difficult management challenge. The study found:

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<sup>12</sup> Data sources: US Census Bureau, Wisconsin Departments. of Workforce Development, and Revenue.

<sup>13</sup> Gestring, Bonnie, EARTHWORKS, U.S. COPPER PORPHYRY MINES: The track record of water quality impacts resulting from pipeline spills, tailings failures and water collection and treatment failures., November 2012

<sup>14</sup> Kuipers, J.R., Maest, A.S., MacHardy, K.A., and Lawson, G. 2006. Comparison of Predicted and Actual Water Quality at Hardrock Mines: The reliability of predictions in Environmental Impact Statement

- 85% of the mines with elevated potential for acid drainage or contamination of nearby surface water exceeded water quality standards.
- 93% of the mines near groundwater with elevated potential for acid drainage or leak pollution exceeded water quality standards.
- And of the sites that did develop acid drainage, 89% had originally predicted that they would not do so.

These results are clear that predictions made to satisfy permit requirements do not match reality and these results are the norm for modern mining and demonstrate that the Prove It First law remains necessary.

The reality is that technological changes in mining are designed to maximize efficiency and profits. Innovations in mechanization and remote operations of equipment have reduced the number of people needed to work a mine and the related costs. Most easily-accessed, high-grade ores have been mined out. Instead of making mining safer, modern technology is facilitating the mining of lower grade ores using more processing toxics like cyanide, creating larger volumes of waste, stored behind taller and taller tailings dams; which is creating greater risk of failure of spills of toxics and tailings dam failures<sup>15</sup>.

The amendment offered as replacement for the Prove It First law would add a requirement for the mining permit that the DNR must determine that the technology used by the applicant “is capable” of compliance with all applicable laws of the Department. This amendment is essentially redundant since the existing permit condition in 293.49 (1)(a) 2<sup>16</sup> would require denial of the permit if the applicant proposed to use technology not capable of resulting in compliance with all applicable laws and rules of the Dept.

**The Sierra Club would support enhancements to the law that would offer better guidance to state regulators.** The law should be modified to require that the example mines submitted for compliance be constructed and reclaimed in geographical, climatic and hydrologic settings analogous or similar to Wisconsin without causing significant pollution. The law should be modified to require one mine demonstrate both safe operations and reclamation instead of arbitrarily allowing separate mines for compliance.

### Permitting Timelines and Deadlines

<sup>15</sup> Newland Bowker, Lindsay & Chambers, David M., The RISK, PUBLIC LIABILITY, & ECONOMICS of TAILINGS STORAGE FACILITY FAILURES, July 21, 2015

<sup>16</sup> Wisconsin Statutes 293.49(1)(a)2: “The proposed operation will comply with all applicable air, groundwater, surface water and solid and hazardous waste management laws and rules of the department.”

**Wisconsin's current regulatory system for mining does not require establishing timelines that fast-track approval mining permits. Instead, regulators and mining permit applicants need the flexibility inherent in the system.**

In 2012, the Senate Select Committee on Mining heard important testimony from federal regulators such as the US Army Corps of Engineers and experts like Dr. Tom Evans of the Wisconsin Geological and Natural History Survey about the need to respect that the federal government's timelines do not include deadlines and that attempts to artificially shorten our timeline will only result in separate federal analysis and permitting process. This means that establishing deadlines for Wisconsin's regulatory review of mining permits will accomplish nothing to shorten the process or create "certainty" for mine permit applicants.

The provision in SB 395 that requires the DNR accept data collected by an applicant prior to submitting a Notice of Intent to file for mining permits should be rejected [(amended 293.31(1)], meaning this data would not be controlled for quality or utility by the DNR prior to collection. The current law, NR 132.5(7)(e), is clear about the rationale for this policy: "The Department shall develop studies and quality assurance and verification programs in a manner consistent with future monitoring requirements."

The quality of data submitted is integral to sound, educated permit decisions and the DNR should be involved in decision-making prior to data collection taking place. Moreover, poor quality data and/or the lack of appropriate data may actually lengthen review times instead of hastening the overall process. The current law that bars the applicant from collecting data prior to the hearing on the NOI should be retained.

Similarly, the provision directing the DNR to pursue memoranda of understanding with federal agencies that includes agreements on timelines [new 293.31(4m)] will likely be unsuccessful. The state requested that the Army Corps of Engineers work within the artificial deadlines created by the ferrous mining bill (2013 Act 1) but were turned down meaning federal permits may not be issued for months or even years after any issued by the state.

It has been suggested by proponents of SB 395 that the bill increases the amount of public involvement in the permitting process. This is simply false. The bill adds arbitrary deadlines for the DNR where none were mandated before. And it removes an important step in the current process: the public hearing on the Draft Environmental Impact Statement prior to issuance of the Final EIS and the Master Hearing. Instead the bill requires the DNR to issue the Environmental Impact Statement prior to the single public hearing – the Public Information Hearing at the end of the process.

Mine permit applications are extremely complex documents requiring years of field study, climate data, waste characterization study, hydrologic studies, groundwater and surface water



modeling and more; many of which require a minimum number of years to be considered scientifically sound and defensible.

The fact that the Flambeau Mine received permits to mine proves that the system works for both the mining industry and regulators. Artificial and arbitrary timelines and deadlines set by the legislature based on mining industry recommendations will only lengthen the permitting process due to the likelihood of additional legal and scientific challenges to decision-making. Constraining regulators in this fashion does not respect the realities involved in mine permit decisions.

### **Master Hearing/Contested Case Hearings**

**The Sierra Club urges legislators to reject the provisions of SB 395 that curtail the public's access and rights to information in the current permitting process and the right to challenge regulatory decisions via the contested case Master Hearing.** The current requirements and process for public hearings were proven effective via the permitting of the Flambeau mine. Preservation of public comment opportunities and the Master Hearing are critical as they improve mining plans through the addition of public, scientific, and regulatory input during the hearings both for Draft and Final Environmental Impact Statements (EIS). Reducing public input may ultimately harm the success of a permit application since incomplete or inadequate applications are sure to be subject to legal challenge.

The replacement of the Master Hearing with a Public Information Hearing has several issues that we are concerned about. The hearing is for open public comment only and does not include the contested case portion that would require expert testimony be taken under oath and subject to cross-examination. This means false testimony could be considered in decision-making on permits. Moreover, removing the contested case hearing from the final public hearing shifts the burden of proof from the mining company to the public by forcing the public to petition for the hearing after decisions are made on permits. It removes the right of affected local governments to automatically be a party to the contested case hearing; instead an affected local government must petition for inclusion in the contested case hearing. The hearing is also scheduled with as little as 60 days of public notice; an extremely short period of time within which to review an Environmental Impact Statement and draft permits and provide meaningful public and expert comments and critiques.

We oppose the provision in SB 395 that prohibits the Hearing Examiner in a contested case hearing from halting any approved mining company activities during the hearing. This provision would allow a company to begin mine construction and even mining before a contested case hearing is concluded. It also compounds the problems created by basing permit decisions on testimony that was not offered under oath as in the current law. To allow

development of a mine prior to any modification of permits, mine plans or even a permit denial ordered as a result of a contested case hearing is extremely poor public policy. We urge you to ensure retention of the fundamental legal right of citizens to challenge regulatory decisions made by state officials before permits are issued and mine construction begins.

### **Bulk Sampling**

SB 395 allows up to 10,000 tons of material to be removed (20 million pounds or approximately 75 rail cars) and alters the definition of bulk sampling so that it does not meet the definition of prospecting. This is important because the definition of prospecting includes a prohibition on the use of the material extracted for commercial exploitation; no such prohibition would be in place for bulk sampling under SB 395. It fast-tracks permitting for bulk sampling by requiring the DNR to meet short deadlines for approvals and by removing the requirement to prepare an EIS. It bars contested case hearings of decisions made for bulk sampling. We oppose this change from current law since it relaxes rules for small-scale mining projects that can have effects identical to full mining projects.

### **Irrevocable Trust**

The bill repeals the irrevocable trust enacted in 2000 that was designed to have funds available forever for preventative and cleanup costs. SB 395 does so by exempting mine wastes from the solid waste financial requirements limiting long-term care financial responsibility to only the long-term care requirements spelled out in the waste site feasibility study and plan of operation.

The amendment requiring a financial security to cover contingencies is inadequate due to the fact that it expires at 40 years and is returned to the company. It does not address the long-term contingencies that the Irrevocable Trust was designed to do.

Similarly, the amendment for a financial security to cover the cap of the mine or the tailings control system for years 40-250 post-mining is also inadequate. It fails to address issues outlined in the existing irrevocable trust code (NR 132.085) such as remediation of spills, remediation of escape of hazardous substances from mine workings, remedial action required as a result of a mining waste facility to contain waste (think of a full dam failure or extensive groundwater contamination), and provision of replacement water supply. Even as amended, repeal of the trust could leave significant long-term costs to state taxpayers.

### **High Capacity Wells**

SB 395 removes prohibition on wells withdrawing over 100,000 gallons per day if the withdrawal would result in unreasonable detriment of public or private water supplies or of

public rights in waters of the state. It allows essentially unlimited amount of water withdrawal even if the detriments are predicted, provided the applicant provide a replacement water supply or temporarily augment quantity of water in, flowing into or from affected water body. In other words, there is no practical limit on groundwater pumping if mitigated somehow. This portion of SB 395 appears to violate of the Public Trust Doctrine in Wisconsin's Constitution which requires that the state protect the public rights in the waters of the state.

### **Wetlands**

SB 395 repeals the comprehensive evaluation approach for wetlands destruction - NR 132.06 (4) - based on functional value for the state minimums passed via 2011 Act 118. Those state minimums were designed for small-scale surface developments without the large-scale impacts from mining such as significant groundwater pumping and massive waste sites. The current approach recognizes the importance of wetlands in ecosystems and prioritizes avoidance over use for mining and mining wastes. SB 395 reverses this approach to make destruction of wetlands or the use them for disposal of mining wastes easier to permit by making approvals for mitigation of wetlands loss easier to obtain. While a mining would still likely require individual permits that require more scrutiny, state wetlands law no longer automatically protects wetlands related to Areas of Special Natural Resource Interest that are our highest quality and most sensitive wetlands.

### **Predictive modeling**

SB 395 arbitrarily limits predictive modeling for groundwater and mine waste interactions to 250 years post-operations by simply barring DNR from analysis beyond the limit. Limiting the planning horizon for predictive modeling to a specified number of years in the future is simply poor science that also limits regulatory flexibility when determining whether a mine and/or waste facility is designed adequately. Predictive modeling is not yet accurate enough and mining wastes are too complex for the certainty needed to allow a specified time frame.

A groundbreaking independent research report on geochemical testing of mining wastes, based on a survey of more than 200 reports and studies from the mining industry, educators, and governments, determined that predictive modeling remains a complex and evolving science with inherent uncertainties to every testing method in use<sup>17</sup>.

Initial factors used for predictions such as geology, climate, mining and mineral processing methods, and waste disposal methods are complex and differ from site to site. Geochemical testing must be done at every stage in the life of a mine to account for changes in rock

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<sup>17</sup> Maest, A.S., Kuipers, J.R., Travers, C.L., and Atkins, D.A., 2005. *Predicting Water Quality at Hardrock Mines: Methods and Models, Uncertainties, and State-of-the-Art.*

chemistry of ores and waste tailings and changing conditions in the mine and wastes over time to help predict changes in water quality and long term and make design changes as needed.

*“The length of time over which a mine site will deviate from baseline or pre-mining conditions can be on the order of centuries to tens of thousands of years, as a result of potential delays in the generation or appearance of acid drainage and the long “half-life” of releases from mining wastes. Therefore, the “future” at hardrock mine sites approximates the period of interest for nuclear waste disposal rather than that for more conventional industrial facilities.”<sup>18</sup>*

In a related change, SB 395 bars the DNR from applying groundwater enforcement standards for saline or brine water encountered during mining that is disconnected from other groundwater. We are concerned that this change may lead to the potential for reduced standards for *all* (emphasis added) groundwater at a mine site and below mine wastes. It is the act of mining itself that accesses this water and potentially allows it to mix with groundwater. Mine sites are already exempt from groundwater protection standards so the purpose of this exemption is unclear and needs to be explained further.

### **Conclusion**

Wisconsin’s mining laws are carefully crafted and comprehensive and already contain numerous exemptions and exceptions from law for mining along with a generous provision that allows applicants to apply for variances or exemptions from virtually any part of the law. These exemptions and exceptions in current law came from the mining industry itself and now it is asking the legislature for yet more favors. The changes proposed in SB 395 will in most cases create less certainty for mine permit applicants, will add time and expense to the review of permit applications and certainly will invite additional legal challenges from interested parties.

The Sierra Club is not anti-mining and recognizes that mining is a legal activity in the state, but metallic mining is an activity that requires the strongest standards and controls due to its inherent destructiveness. We repeat our contention that we have yet to hear compelling testimony to support relaxing or reducing state standards and believes the current regulatory program for mining has proven largely effective, flexible and protective of state resources. We remain committed to defending and strengthening the program.

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<sup>18</sup> Ibid., p. 2



## Top 13 Falsehoods Used To Justify SB 395/AB 499

The environmental and conservation community has rarely faced proposed legislation supported by so many falsehoods, misleading statements, and flawed logic as SB 395/AB 499. This is particularly egregious considering this bill is about metallic mining which according to EPA accounts for over 37% of all toxic emissions reported to it<sup>1</sup>. Mining is the most destructive industrial activity proposed for the state and generates toxic wastes that must be managed safely forever to avoid poisoning air and water resources. The metals in Wisconsin are found in metallic sulfides that can cause acid mine drainage (AMD). AMD is sulfuric acid and metal pollution produced when sulfide minerals in mines and mining wastes are exposed to air and water. AMD is toxic to fish and wildlife due to dissolved metals and contaminants such as mercury, lead, arsenic, cadmium, zinc, copper and many others that damage surface water and groundwater resources. This is why Wisconsin protected itself twenty years ago by passing, with bi-partisan support, our "Prove it First" law for metallic sulfide mining.

Below is a list of some of the most misleading claims in use so far contrasted with the truth.

### **MYTH #1: Mining technology is better than in the past so the Prove It First law is unnecessary.**

Proponents offer no examples of pollution control technology that has made metallic sulfide safer. This assertion is no substitute for actual examples of successful operations elsewhere using modern technology – examples that could be used to satisfy the law if there were any available.

Modern mining technology is not successfully controlling pollution. An independent study in 2012 reviewed 14 out of the 16 operating copper sulfide mines in the U.S. responsible for 89% of U.S. copper production and found that 92% failed to control mine waste seepage and 100% experienced spills through 2012. These are some of the largest mining companies in the world, with the most resources available for pollution control and they all have pollution issues (mines chosen had to have been operating 5 or more years)<sup>2</sup>.

Modern mining technology is also failing to predict and mitigate pollution. A two-year research study found that 100% of mines are predicted to meet relevant water quality standards as they must to receive permits<sup>3</sup>. But predictions didn't match reality as 76% of those studied exceeded water quality standards and mitigation measures predicted to prevent water quality exceedances failed in 64% of those studied.

<sup>1</sup> U.S. EPA, 2015 Toxic Release Inventory, April 2017

<sup>2</sup> Gestring, Bonnie, EARTHWORKS, *U.S. COPPER PORPHYRY MINES: The track record of water quality impacts resulting from pipeline spills, tailings failures and water collection and treatment failures.*, November 2012

<sup>3</sup> Kuipers, J.R., Maest, A.S., MacHardy, K.A., and Lawson, G. 2006. *Comparison of Predicted and Actual Water Quality at Hardrock Mines: The reliability of predictions in Environmental Impact Statement*

Moreover, a subset of the studied mines were determined to have a high risk of developing acid mine drainage – the mining industry’s most difficult management challenge. The study found:

- 85% of the mines with elevated potential for acid drainage or contamination of nearby surface water exceeded water quality standards.
- 93% of the mines near groundwater with elevated potential for acid drainage or leak pollution exceeded water quality standards.
- And of the sites that did develop acid drainage, 89% had originally predicted that they would not do so.

The results are clear that predictions made to satisfy permit requirements do not match reality and these results are the norm for modern mining and demonstrate that the Prove It First law remains necessary.

The reality is that technological changes in mining are designed to maximize efficiency and profits. Innovations in mechanization and remote operations of equipment have reduced the number of people needed to work a mine and the related costs. Most easily-accessed, high-grade ores have been mined out. Instead of making mining safer, modern technology is facilitating the mining of lower grade ores using more toxic processing toxics like cyanide, creating larger volumes of waste, stored behind taller and taller tailings dams; which is creating greater risk of failure of spills of toxics and tailings dam failures<sup>4</sup>.

**MYTH #2 SB 395 maintains environmental protections because no “numeric” changes are made.** This is dangerously misleading for two reasons: SB 395 makes it less likely a mining operation will meet our numeric standards and there are important environmental and health protections that are not numeric standards.

Meeting numeric standards is the end goal for any operation that discharges pollution. Think of it this way, meeting numeric standards is the equivalent of the last step in a process. For example, think of Aaron Rogers completing a pass. Meeting standards is the same as the receiver actually catching the ball; but think of everything else that has to go right for that to happen. The offensive line has to block, Aaron has to find a passing lane, and the receiver has to get open. Now imagine the chance of success if Aaron is wearing a blindfold and has a 40-foot wall in front of him. **SB 395 is the blindfold and the wall.**

There are many environmental protections that are far more than numeric standards. They include policy guidance, rules for public involvement and details on how, when, and where standards are enforced. SB 395 guts existing mining law in all these ways. For example, it reduces protections for wetlands by removing the more protective comprehensive standards for mining and replacing them for the current minimums in state law – minimums that were designed for parking lots and strip malls, not mining that has more extensive and significant wetlands impacts<sup>5</sup>. It severely restricts the public’s voice

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<sup>4</sup> Newland Bowker, Lindsay & Chambers, David M., *The RISK, PUBLIC LIABILITY, & ECONOMICS of TAILINGS STORAGE FACILITY FAILURES*, July 21, 2015

<sup>5</sup> Wisconsin Wetlands Association, *Testimony on Senate Bill 395*, September 7, 2017

in the process by removing the required contested case hearing *before* permit decisions are made and forces the public to incur the costs of challenging permits in court, and prohibits the hearing examiner from stopping any mining activity while challenges are underway,

SB 395 reduces protections in other ways: it eliminates the prohibition on groundwater pumping over 100,000 gallons per day for mining even if the pumping affects drinking water supplies or public waters like rivers, lakes, and streams. It allows destructive “bulk sampling” of up to 10,000 tons of ore without requiring an Environmental Analysis or Environmental Impact Statement. It repeals the Irrevocable Trust rule that requires funding for all long-term contingencies after mining is finished.

**MYTH #3: Current mining law is a ban or moratorium.** The Prove It First law – often called the mining moratorium – is only a permit requirement that an applicant mining company demonstrate successful examples of sulfide mining elsewhere in North America. By letting the mining industry off the hook, SB 395 proves the industry either can't find an example to meet the standards or are they are unwilling to defend the poor track record for their operations.

The language of the law was a compromise meant to give the industry a real chance of meeting the requirements. It allows an applicant to use examples from anywhere in the US and Canada, meaning a huge number of potential examples from two countries that should be using the best technology and practices. A single mine meeting the law (i.e. the same mine both operating for 10 year and being closed for 10 years without polluting) would be a true test of whether or not the industry can safely mine in sulfide ores but the law allows the use of two mines to meet the standards.

**MYTH #4: The example mines submitted by Nicolet Minerals in 1999 could have met the law.** The research done by both the DNR and independently demonstrated that the mines would not qualify. After review, the DNR formally rejected the Sacaton Mine on May 30, 2002.<sup>6</sup> Independent review also found significant groundwater pollution from the mine.<sup>7</sup> A review of the permitting record of the Cullaton Lake Mine found in 2003 that the mine was a documented source of significant pollution.<sup>8</sup> The McLaughlin Mine is not yet closed and is not anticipated to be fully reclaimed until 2021.<sup>9</sup> It has documented instances of large exceedances of surface water quality standards for arsenic, chromium, copper, lead, manganese mercury, lead, iron and zinc. It also has chronically degraded groundwater beneath the tailings and waste rock dumps.<sup>10</sup>

**MYTH #5: Mining companies are unable to conduct exploration here due to the law.** As recently as 2012-13, Aquila Resources was conducting exploration drilling at two deposits it either owns or controls in Wisconsin. Aquila is the company behind the controversial Back Forty sulfide mine proposal on the Menominee River. In fact, Aquila – which helped draft SB 395 – is also a direct beneficiary of the bill

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<sup>6</sup> *DNR communication*, Larry Lynch to Gordon Reid, Nicolet Minerals, May 30, 2002

<sup>7</sup> *Evaluation Of Application To Use The Sacaton Mine In Arizona To Meet Wisconsin Mining Law – WIS. STATS. § 293.50 – By Nicolet Minerals Company*, Southwest Research and Information Center, May 2004

<sup>8</sup> Arthur Harrington & John Clancy, Godfrey and Kahn, SC letter to DNR Secretary Scott Hassett, April 24, 2003

<sup>9</sup> Waste Discharge Requirements for McLaughlin Mine, California Regional Water Quality Board, Feb. 2, 2012

<sup>10</sup> Kuipers, J.R., Maest, A.S., MacHardy, K.A., and Lawson, G. 2006. *Comparison of Predicted and Actual Water Quality at Hardrock Mines: The reliability of predictions in Environmental Impact Statements*

since it is the only company with known interests in Wisconsin and it has stated that the ore from one of its deposits could be processed at the Back Forty facility.

**MYTH #6: The Flambeau mine was successful so the law should be repealed and “The DNR gave the mine a clean bill of health.”<sup>11</sup>** The Flambeau mine fails the requirements of the law for several reasons. A DNR assessment of the mine led to the determination that Stream C, a tributary of the Flambeau River was polluted by the mine<sup>12</sup>. The assessment revealed the mine was a chronic pollution source: *“monitoring done at the site between 2002 and 2011 showed that Stream C and its contributing drainageways contained copper and zinc concentrations that frequently exceeded acute toxicity criteria (ATC). On average, copper exceeded ATC’s in 92% of samples.”* That stream is now designated as impaired by the EPA<sup>13</sup>.

The mine is still not fully reclaimed today - 20 years after it closed and does not have a final Certificate of Reclamation from the DNR. This fact alone means the mine does not have a “clean bill of health.” Water treatment to mitigate pollution to Stream C continues to date and sampling in 2017 showed that the copper levels continue to exceed the acute toxicity criteria for the stream.

Even if one believes, despite these facts, that the Flambeau mine was “successfully reclaimed,” it was a unique mine that tells us little about how to safely mine in sulfides. It was very small and short-lived (3 operating years) compared to most sulfide mines and there was no ore processing at the site. In fact, the company called it the “world’s smallest and newest copper mine” when it opened in 1993. The company avoided the most difficult management issue for metallic sulfide mining: safely storing mine wastes and tailings that cause acid mine drainage. It exported the ore to Canada for processing. Waste rock from the mine produced acid shortly after being exposed to air and water during mining and was later dumped into the mine pit and covered. Independent research has found that groundwater quality data shows contaminants that greatly exceed baseline data and water quality and aquatic life criteria<sup>14</sup>.

**MYTH #7: Wisconsin has “world-class” potential for mining.** This statement is highly speculative and not supported by facts including any known economic or viable deposits waiting for a company to exploit them. Mining proponents have been making this statement about Wisconsin’s potential since the 1970’s to justify investments in their efforts and to gut environmental protections. While exploration for metallic deposits in Wisconsin has identified a number of small deposits, it is well known that they are low grade and uneconomic. Many deposits are found in lands too wet or near sensitive resources to be developed. Still, there is nothing in state law to bar additional exploration and public policy would be better served if we left existing protections in place given there have been no new deposits discovered, let alone proposed for mining.

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<sup>11</sup> Senator Tom Tiffany, SB 395 Hearing testimony, 9/7/17.

<sup>12</sup> Surface Water Quality Assessment of the Flambeau Mine Site, Wisconsin Department of Natural Resources, April 2012.

<sup>13</sup> Decision Document for the Approval of Wisconsin’s 2012 list of impaired waters with respect to Section 303(d) of the Clean Water Act, United States Environmental Protection Agency, June 25, 2014.

<sup>14</sup> Moran PhD., Robert E., *Flambeau Mine: Water Contamination and Selective “Alternative Facts”* Summary, 2017



**MYTH #8: Mining in Wisconsin could be a billion-dollar industry.** The only support for this statement is the speculation that there might be economic ore deposits that have yet to be discovered (see above discussion of “world class” potential). But there has been recent exploration and still no significant new deposit has been identified in the state for decades. The support for an estimate of a “billion-dollar industry” appears to come from applying economic estimates from mining in other states. There is no real economic or geologic analysis or studies that support the wild numbers being thrown in support of SB 395. Passing SB 395 using this logic would be the public policy equivalent of stating that your team will win the Super Bowl this year before you’ve even drafted any players.

**MYTH #9: Tourism is “not a bread and butter industry”.**<sup>15</sup> Senator Tiffany made this comment in support of SB 395 and potential mining jobs. The truth is that the sustainable tourism economy here supports thousands of jobs and reached \$20 billion in 2016, up \$700 million from 2015 as reported by the State Dept. of Tourism. One in twelve jobs in the state is sustained by tourism. Mining threatens the natural resources that support and sustain our tourism economy for a handful of potential jobs, boom and bust economies, permanent land destruction, and mining wastes that can require perpetual treatment and care to contain pollution. These impacts threaten the quality of life in Wisconsin that will attract needed workers to the state.

**MYTH #10: The Flambeau mine was an economic success:** There is no evidence that the mine created any lasting positive economic impact in Rusk County. It operated for 3 years and common sense tells us that a mine (any business, really) that employed less than 70 people for such a short time is incapable of generating any lasting or significant economic development. Nothing changes the fact that all mines are ultimately boom and bust and do not create long-term economic development.

The fact is that Rusk County before, during, and after the mining years ranked at the bottom or near the bottom of all 72 WI counties for several key economic standards: overall unemployment rate, individual poverty level, children living in poverty, and per capita income<sup>16</sup>. There is no question that the mine had a short-term positive economic impact but there’s no objective statistical evidence showing the mine had any lasting economic impact beyond the short operating time frame.

**MYTH #11: We should mine in Wisconsin with its great environmental laws instead of other countries with less regulations.** Beyond the sheer irony of the statement when used to justify weakening our protections, this slogan simply defies logic. Mining companies in other parts of the world don’t halt production just because an operation opens in WI or anywhere else in the US where environmental protections are stronger. The only factors driving mining production are market forces such as demand, prices, forecasts, and profit expectations by shareholders.

**MYTH #12: Modern society relies on metals so we must mine in WI.** This slogan is a transparent attempt to gain public acceptance for a controversial and destructive industrial activity for profit. No one is disputing the fact that modern society is dependent on abundant metals but there is no shortage of base metals.

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<sup>15</sup> *In Wisconsin, GOP pushes to end sulfide mining moratorium*, Todd Richmond, AP, Sept. 24, 2017

<sup>16</sup> Data sources: US Census Bureau, Wisconsin Departments. of Workforce Development, and Revenue.

For example, annual US copper production is enough to cover around 70% of our needs. We import the rest but we also export approximately half as much as we import<sup>17</sup>. There is no shortage of copper and world-wide reserves are estimated at around 3.5 billion tons while annual usage is around 19 million tons meaning more than 180 years of reserves at current usage rates. Copper is also an easily recycled metal. Precious metals such as silver and gold are most commonly used for jewelry; a consumer preference but not a societal requirement. Senator Tiffany eludes to the need to mine so we have sufficient strategic minerals for our economy, however, none of the deposits in Wisconsin contain strategic Rare Earth metals or even base metals in short supply or with limited reserves.

**MYTH #13: Mining in Wisconsin will supply companies like Foxconn.** This is another highly misleading slogan that ignores the reality that the global economy and markets control the flow of minerals from mining to manufacturing. Manufacturers purchase metals via contracts on the open market where they can get the best price, not because of some loyalty to a specific manufacturer or consumer.

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**The opposition to SB 395 is growing.** The long list of opposition consists of over 50 statewide and regional environmental and conservation organizations, mayors, tribes, and more, including:

- Wausau Mayor Robert Mielke,
- Stevens Point Mayor Mike Wiza,
- Wisconsin Rapids Mayor Zachary Vruwink,
- Trout Unlimited,
- River Alliance of Wisconsin,
- The Nature Conservancy,
- The Great Lakes Inter-Tribal Council,
- The Menominee Nation,
- The Mole Lake Sokaogon Chippewa,
- Oneida Nation,
- Wisconsin League of Conservation Voters,
- Wisconsin Association of Lakes,
- Natural Resources Defense Council

**SB 395 as amended remains poor public policy designed to benefit an industry with a failed track record.** It specifically appears to benefit a single company, Aquila Resources, which collaborated on the development of the bill. **The Sierra Club urges legislators to reject this special interest giveaway bill** that is unlikely to create economic development while endangering our sustainable and thriving tourism and agriculture economies.

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<sup>17</sup> U.S. Geological Survey, Mineral Commodity Summaries, January 2017

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*Milwaukee*

Herbert V. Kohler  
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Eddie Brengel Radtke  
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*Oregon*

Testimony in Opposition to Assembly Bill 499  
Assembly Labor Committee  
October 13, 2017  
Paul Heinen  
State Government Relations Director  
The Nature Conservancy

Chairman Kulp and Members of the Assembly Labor Committee. My name is Paul Heinen and I am here today representing The Nature Conservancy of Wisconsin. In Wisconsin, our science based organization has 20,000 members and works with businesses, conservation groups, sportsman groups, landowners, elected officials and individuals to conserve the lands and waters on which all life depends.

**We are opposed to Assembly Bill 499.** The bill would make siting and permitting a sulfide mine anywhere in Wisconsin easier by changing a number of provisions in the current mining law.

The Nature Conservancy is not anti-mining. We recognize that metals like copper, lead and zinc are important to our economy. We are, however, in favor of protecting Wisconsin's natural resources, and we are concerned that this legislation, if passed, won't adequately protect the lands and waters we depend on for our health, our economy, and the quality of life we enjoy here in Wisconsin.

All mining has some impacts on our air, land and water. Sulfide mines are particularly dangerous due to the nature of the ore being extracted. These include heavy metal contamination of lakes, rivers and groundwater; acid rain; and the lowering of water levels in lakes, rivers and groundwater aquifers.

In the past, mining companies have not always taken responsibility for cleaning up mine pollution, and efforts to hold them accountable have not always

been successful. Ignoring a company's past mining practices and releasing them from clean-up responsibility after a mine is closed amounts to forgetting the past and putting the future at risk. This is not a good idea, particularly with sulfide mines. We want to avoid this type of situation in Wisconsin.

While several changes in the bills concern us, The Nature Conservancy is particularly concerned about the removal of the Irrevocable Trust Fund for mining damage. The Irrevocable Trust Fund was specifically created by the Legislature as a savings account that would last in perpetuity and be available to pay for cleaning up damage caused by mining even years after the mine was closed. The Trust Fund protects taxpayers from having to pay the cost of future clean up should the mining company fail to do so.

Current Wisconsin mining laws contain the provisions that allow professional staff to design and set standards for operation of a mine that will be economically viable and still do the least environmental damage. The law also contains the long-term Irrevocable Trust Fund that provides all Wisconsin citizens with a guaranteed clean-up fund that will always be there. We ask that you not vote for Assembly Bill 499 that takes away these safeguards and unnecessarily puts our lands, waters and future at risk.



# Wisconsin Chapter of The Wildlife Society

P.O. Box 863, Madison, WI 53701-0863

[www.witws.org](http://www.witws.org)

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October 11, 2017

Wisconsin State Assemblyman Rob Hutton  
Assembly District 13  
Room 220 North  
State Capitol  
P.O. Box 8052  
Madison, WI 53708

Senator Tom Tiffany  
Senate District 12  
Room 409 South  
State Capitol  
Madison, WI 53707-7882

Dear Assemblyman Hutton and Senator Tiffany:

I am writing to both of you as a representative of the Wisconsin Chapter-The Wildlife Society (WCTWS), a group of state, federal, and tribal Wisconsin professional educators, wildlife managers, and wildlife researchers

Both of you co-sponsored introduction of a bill in August, 2017, that would repeal the existing prohibition on issuing sulfide ore mining permits by the Wisconsin DNR. Current law prohibits DNR from issuing any permits for the purpose of mining sulfide ore.

The above bill that I am addressing is Assembly Bill 499; the WCTWS **opposes** passage of Assembly Bill 499 because of the environmental hazards to groundwater and wetlands, which would seriously harm both humans and wildlife if the bill passes.

Thank you for the opportunity to comment on this bill.

Sincerely,

CHARLES M. F. H.

Member- Wisconsin Chapter-The Wildlife Society

October 13, 2017

**OPPOSE INDUSTRIAL ACID MINING Bills AB499 & SB395**

**Memo To:** Senator Tom Tiffany and the Sporting, Heritage, Mining & Forestry Committee

**From:** Michelle Guilette  
13027 Birch Bay Rd.  
Winchester, WI 54557

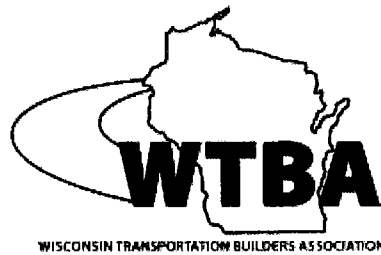
I am strongly opposed to lifting the moratorium on Acid Mining in the State of Wisconsin. The acid runoff shall pollute our ground and surface water devastating Northern Wisconsin's streams rivers and lakes. This type of mining per scientific papers written by geologists and hydrogeologists point to other more appropriate mine sites within the United States including mines run by Rio Tinto. The top 20 mines in the United States doing this type of mining are in the following areas:

1. Greenlee County, AZ
2. Salt Lake County, UT
3. Pinal County, AZ
4. Yavapai County, AZ
5. Grant County, NM
6. Pima County, AZ
7. Silver Bow, MT
8. White Pine, NV
9. Gila County, AZ
10. San Juan County, UT
11. Graham County, AZ
12. Mohave County, AZ
13. Cochise County, AZ

Do you see a pattern here? I do, dry desert climate, little water!

Senator Tiffany, you think our flag is misrepresented by having a miner on it because we don't mine anymore. Well at the time that flag was initiated we mined for lead! We don't do that anymore either. So, maybe it's time to hire a good graphic designer and change our flag or just acknowledge the flag with the miner on it is part of our past history and be thankful for that!

Kill this Bill!



To: Members of the Assembly Committee on Labor

From: Pat Goss, Executive Director

Date: October 13, 2017

Subject: WTBA Testimony in Support of Assembly Bill 499

On behalf of the members of the Wisconsin Transportation Builders Association (WTBA), we are pleased to submit testimony in support of Assembly Bill (AB) 499 that eliminates the moratorium on nonferrous metallic mining.

WTBA is hopeful that AB 499 is the first step in helping spur economic activity here in Wisconsin. By eliminating the current moratorium, companies can begin to consider mining in Wisconsin. Should a company choose to invest here in Wisconsin, WTBA members are ready to help provide the workforce necessary to do the job.

Nonferrous metallic mining adds a whole other, untapped sector of the economy in Wisconsin. With the potential of mining, is the potential of good paying jobs that will have a positive effect on Wisconsin's economy. WTBA members stand ready to assist in anyway possible to help AB 499 find its way to the Governor's desk.

Thank you to Chairman Kulp for holding a public hearing on this bill. We applaud Representative Hutton, Senator Tiffany and the other co-sponsors of AB 499 for their leadership on this issue. If you have any questions, please do not hesitate to contact me at 608-256-6891 or [pgoss@wtba.org](mailto:pgoss@wtba.org).



**Wisconsin Rural Water Association**  
350 Water Way • Plover, Wisconsin 54467  
715-344-7778 • Fax: 715-344-5555 • E-mail: wrwa@wrwa.org

To: Members, Assembly Committee on Labor  
From: David Lawrence, Executive Director, Wisconsin Rural Water Association  
Date: October 13, 2017  
Subject: Request for amendment to Assembly Bill 499

---

Wisconsin Rural Water Association (WRWA) asks the committee to amend Section 44 of the bill to require that whenever the Department of Natural Resources (DNR) determines a mine project will harm public water supplies, DNR shall obtain written approval from the affected local water utility of any DNR proposed mitigation conditions.

WRWA is a nonprofit organization representing 676 community water and wastewater systems in Wisconsin providing services to over four million Wisconsin residents. We submit these comments for information only but ask the committee to consider our request to amend Section 44 of Assembly Bill 499 to ensure public water supplies will be protected.

Existing law prohibits groundwater withdrawal for mining purposes if “to the unreasonable detriment of public or private water supplies or the unreasonable detriment of public rights in the waters of the state.” Wis. Stat. §293.65 (3)(b). The bill provides an exception to this standard, allowing DNR to impose permit terms to mitigate identified detriments to water supplies or public rights in the waters of the state. Such permit conditions must “ensure that the withdrawal or dewatering will not result in the unreasonable detriment of public or private water supplies or the unreasonable detriment of public rights in the waters of the state.”

The bill provides examples of conditions that may be included, such that a requirement that the permit applicant provide a temporary replacement water supply of similar quality. These examples highlight our concerns; that is, despite requiring permit terms to negate the unreasonable detriment, providing replacement water supply of similar quality, such as bottled water, could prove inadequate for affected communities.

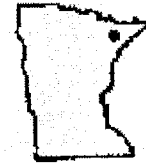
To address our concerns, we request an amendment at the end of Section 44 that would provide:

The department shall obtain written approval from the affected local water utility of any permit condition(s) intended to address an unreasonable detriment of public water supplies.

We are working with the authors on such amendment and appreciate the committee’s consideration of this important issue.



# City of Babbitt



Telephone 218-827-3464  
Fax 218-827-2204  
E-mail: [andrea@zupnorth.com](mailto:andrea@zupnorth.com)  
Website: [www.babbitt-mn.com](http://www.babbitt-mn.com)

71 South Drive  
Babbitt MN 55706

Mayor – *Andrea Zupancich*  
Clerk-Treasurer – *Cathy Bissonette*

Councilor: *Glenn Anderson*  
*Jim Lassi*  
*Richard Huoivenen*  
*Terry Switajewski*

October 10, 2017

The Honorable Senator Tom Tiffany  
12th Senate District

Via email: [Mitchel.Ohly@legis.wisconsin.gov](mailto:Mitchel.Ohly@legis.wisconsin.gov)

Dear Senator Tiffany:

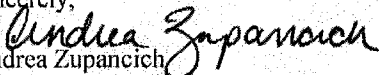
As the Mayor of the City of Babbitt, Minnesota I write this letter in full support of Mining in our City, District, State, and Country. Our city has a rich mining history that exists cohesively with the abundant natural amenities that are also attractive to the tourism industry. But tourism is not sole answer. It should not be the “cake” It should be the “icing on the cake” to our towns in regards to jobs. Tourism jobs are too undependable and unreliable. We need something steady. We need those good paying Mining jobs, not only for our Cities, but for National and Economical Security as well.

For our community to continue to thrive, we **NEED** these jobs. If the mine(s) were to shut down, the town would be swallowed up. It would not be able to continue on. Based on our location in the state, that is what we have to offer here for jobs. There is limited transportation, we are not on a seaway / port and we are literally at the end of the road. Transportation cost end up being too high for manufactures to build facilities in our ‘neck of the woods’. Now if we were to open up a few mines, lets expand on that. House values would go up, the schools would start thriving again and be able to offer so much more for classes, sports and activities for our children, other business would open up providing even more job opportunities and oh so much more. And we know that for a fact, because we unfortunately have experienced the exact opposite effect when the mine closed down in the 80’s. Business closed, schools closed, and house prices plummeted and the population of our town dropped in half. We would welcome and love to see that regrowth again.

And, it’s not just the Mining Jobs, it’s the effect on the entire region those jobs have. It’s the children those families bring to our school, sports, and activities. It’s the other businesses that rely on those families whether it’s the bank, the post office, the grocery store, the gas station, the hair dresser or the day care provider. ALL are affected by these jobs. Not to mention the spin off business resulting from Mine work. Mines help create thousands of good-paying mining or mining-related jobs in our region for generations to come. And our areas are rich in high demand minerals.

The City of Babbitt commends your leadership and supports the efforts to bring mining one step closer to becoming a thriving industry not only in the Great Lakes Region of Minnesota, Wisconsin, and Michigan but to our wonderful Country as well.

To demonstrate our support, we have attached past resolutions from our City Council all in support of mining. Please let me know if we can be of any further assistance in moving this matter forward. Again, I commend you on your efforts and hope you are successful! I can be reached at 218-749-0159.

Sincerely,  
  
Andrea Zupancich  
Mayor

***Babbitt – The Home of Taconite, the Heart of the Steel Industry***  
***Future Home of Minnesota’s Precious Metals***

RESOLUTION 2011-21

RESOLUTION FROM CITY OF BABBITT IN SUPPORT OF NON-FERROUS MINING IN ST. LOUIS COUNTY

WHEREAS, non-ferrous ores contain metals used in daily life – copper, nickel, cobalt, platinum, palladium and gold – and found in countless products, including cell phones, computers, joint replacements, electrical wiring, hybrid cars and catalytic converters, and

WHEREAS, the United States does not meet its domestic demand for these valuable metals, importing from 40% to 95% of the metals it uses, often from countries with little or no environmental regulations; and

WHEREAS, pollution from unregulated mines joins a global pool that deposits contaminants around the world; and

WHEREAS, current non-ferrous mining operations planned for St. Louis County must meet strict state and federal laws to protect human health and the environment, including the preparation and regular updating of detailed closure plans along financial resources designated to pay for such closure; and

WHEREAS, the first non-ferrous mining operation planned for St. Louis County anticipates construction of a \$600 million project providing more than 1.5 million man hours of labor for skilled trades over two years, and is expected to provide 400 stable jobs at completion with an annual payroll of \$40 million, with an anticipated 500 more spin-off jobs in St. Louis County alone generating more than \$242 million in economic benefits in the county.

NOW THEREFORE, BE IT RESOLVED, that the City of Babbitt declares its support for the various non-ferrous mining initiatives currently planned for development in St. Louis County, Minnesota, and will consider all opportunities to assist the success of these projects, whenever appropriate, contingent upon the approval of all federal and state environmental permits necessary for these projects to move forward.

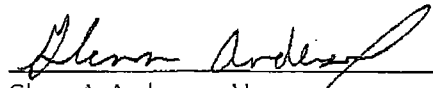
It was moved by Lassi, supported by Fitzpatrick, to adopt the above motion by the City Council of the City of Babbitt, Minnesota, St. Louis County on this date of December 19, 2011.

Ayes: Councilors Fitzpatrick, Hoheisel, Marinao, Lassi, and Mayor Anderson


Nays: None

Absent: None

Motion declared carried unanimously.

  
Glenn A. Anderson, Mayor

Attest:

  
Debbera J. Marinao, Deputy Clerk-Treasurer

**RESOLUTION NO. 05-10**  
**A RESOLUTION SUPPORTING THE POLYMET PROJECT**

**WHEREAS**, PolyMet Mining Corp proposes to operate a copper - nickel mine within the City of Babbitt and a processing facility at Hoyt Lakes, and

**WHEREAS**, PolyMet is in the process of completing necessary environmental studies and permit applications, and

**WHEREAS**, The proposed PolyMet process is more energy efficient and will utilize new technologies to reduce air and water emissions compared to standard copper operations thus benefiting the global environment, and

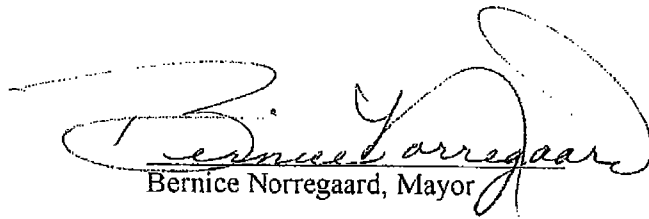
**WHEREAS**, This project is expected to create several hundred full time jobs and generate tax revenues plus other economic benefits to be shared by the State of Minnesota and businesses and citizens throughout the region,

**NOW THEREFORE BE IT RESOLVED**, that the City of Babbitt hereby supports PolyMet's application for permits and plans to build a mine and plant to produce copper, nickel and other metals at Babbitt and Hoyt Lakes.

**ALSO, BE IT FURTHER RESOLVED**, that the Minnesota Pollution Control Agency and other agencies issuing permits expedite the permitting process to the maximum extent possible within the laws and regulations of the State of Minnesota.

The foregoing resolution, offered by Councilor Denny, and upon the motion, supported by Councilor Pierron, was declared adopted this 6th day of July, 2005 by the following roll call:

Ayes: Councilors Denny, Lassi, Marinaro, Pierron, and Mayor Norregaard  
Nays: None  
Abstain: None  
Absent: None

  
Bernice Norregaard, Mayor

Attest:



Peter L. Pastika  
City Administrator

## Resolution 09-14

### A RESOLUTION SUPPORTING POLYMET MINING

**WHEREAS**, PolyMet Mining Corp proposes to operate a copper, nickel and precious metal mine within the Babbitt City Limits and operate a processing facility at Hoyt Lakes, and

**WHEREAS**, PolyMet Mining has completed a Draft Environmental Impact Statement (DEIS) for the proposed project, and

**WHEREAS**, State of Minnesota and Federal Agencies have requested public comments on the DEIS, and

**WHEREAS**, This project is expected to create 500 construction jobs and 400 full time jobs and generate tax revenues plus other economic benefits to be shared by Local Communities including Babbitt, the State of Minnesota and the Federal Government, and

**WHEREAS**, The metals to be produced by PolyMet are an integral part of a modern society and are necessary for such environmental applications as catalytic converters, wind farms, and electrical wiring, plus other uses such as cell phones and computers, and

**WHEREAS**, The United States, for domestic use, currently imports between 40 and 90% of the metals to be produced by PolyMet thus contributing to a growing national trade deficit, and

**WHEREAS**, Similar sulfide type ore mines and plants are operating in similar climates and conditions in Canada and other part of the world demonstrating that the PolyMet mine and plant can be operated in an environmentally responsible manner,

**NOW THEREFORE BE IT RESOLVED**, that the City of Babbitt hereby supports PolyMet's plans to build a mine in Babbitt and a renovate a plant in Hoyt Lakes to produce metals necessary to a modern society,

**ALSO BE IT FURTHER RESOLVED**, that the City of Babbitt believes the DEIS should receive a determination of adequacy.

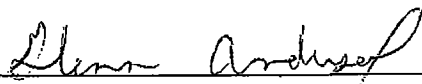
The foregoing resolution, offered by Mayor Anderson, and upon the motion, supported by Councilor Castellano, was declared adopted this 7th day of December, 2009, by the following roll call:

Ayes: Councilors Hoheisel, Kinzer, Marinaro, Castellano, and Mayor Anderson

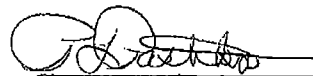
Nays: None

Absent: None

Attest:



Glenn Anderson, Mayor



Peter L. Pastika, City Administrator

BABBITT CITY COUNCIL  
REGULAR MEETING  
April 6, 2009

It was moved by Kinzer, supported by Anderson, to adopt Resolution 09 -03 as follows

**RESOLUTION 09-03**

**A RESOLUTION OF NONSUPPORT FOR HF 0916 AND SF 0845  
PROPOSING ADDITIONAL CONTROLS ON MINING OPERATIONS  
IN MINNESOTA**

WHEREAS, The Minnesota House of Representatives and Senate are considering bills, HF 0916 and SF 0845 respectively, that would further regulate mine operations and closures in Minnesota, and

WHEREAS, The State of Minnesota, acting through the Department of Natural Resources and Minnesota Pollution Control Agency, already regulates mine operations and closures in the State under existing statutes and rules, and

WHEREAS, Those regulations currently in place already require permits and financial assurance for both ferrous and nonferrous mining operations, and

WHEREAS, Language in the proposed bills would not allow Best Available Practices such as post closure water treatment and discharge already required in current mining permits, and

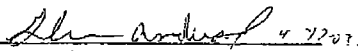
WHEREAS, Current ferrous mines provide both employment and taxes that benefit the Local, Regional and State economies, and

WHEREAS, Proposed nonferrous mines will provide a sustainable economic base for local economies in Northeast Minnesota with tax benefits flowing through the entire Region and State


NOW, HEREBY BE IT RESOLVED, by the City Council of the City of Babbitt, as follows: The City of Babbitt DOES NOT support the bills HF 0916 and SF 0845.

FURTHERMORE, These proposed bills are redundant and would only serve to limit mining operations and the attendant benefits in for all of Minnesota

Ayes: Councilors Castellano, Marinaro, Kinzer, Hoheisel, and Mayor Anderson  
Nays: None  
Absent: None

  
Glenn Anderson, Mayor

Attest:

  
Pete Pastika, City Administrator

## RESOLUTION NO. 08-16

### A RESOLUTION SUPPORTING THE PROPOSED FEDERAL LAND SALE TO POLYMET MINING

**WHEREAS**, PolyMet Mining Corp proposes to operate a copper - nickel mine within the City of Babbitt and a processing facility at Hoyt Lakes, and

**WHEREAS**, proposed mining and processing operation will create about 400 direct and over 1000 spin-off jobs in northeast Minnesota and provide tax revenues to the Local, State and Federal Governments, and

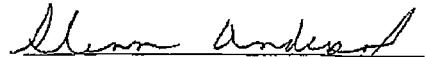
**WHEREAS**, as part of the project development, PolyMet has proposed to purchase approximately 6700 acres of land from the U.S. Forest Service for the mining operations, and

**WHEREAS**, the money received from the land sale would allow the Forest Service to land parcels including wetlands that are contiguous more consistent with the forest plan.


**NOW THEREFORE BE IT RESOLVED**, that the City of Babbitt hereby supports the proposed land exchange

The foregoing resolution, offered by Mayor Anderson, and upon the motion, supported by Councilor Marinaro, was declared adopted this seventh day of July by the following roll call:

Ayes: Castellano, Hoheisel, Marinaro, Anderson  
Nays: Negley  
Abstain: None  
Absent: None

  
Glenn Anderson, Mayor

Attest:

  
Peter L. Pastika  
City Administrator

**RESOLUTION NO. 03-26  
TO COMMENCE A JOINT CITIZENS' GROUP TO EVALUATE  
TECK COMINCO'S PROPOSED PROJECT AND OTHER ISSUES RELATED TO  
ECONOMIC DEVELOPMENT IN AND AROUND THE  
CITIES OF BABBITT AND HOYT LAKES**

**WHEREAS:** The Cities of Babbitt and Hoyt Lakes have been advised by Teck Cominco, a Canadian-based integrated natural resource company, that they are pursuing the development of the Mesaba Project in Minnesota; and

**WHEREAS:** The Mesaba Project would use an hydrometallurgical technology developed by Teck Cominco that extracts high-purity copper and nickel from ores in the region of the two cities without the use of a smelter; and

**WHEREAS:** The Mesaba Project would use the former LTV site near Hoyt Lakes and experienced work force and other infrastructure in the area of the two cities; and

**WHEREAS:** When fully operational, the Mesaba Project could employ up to 1,000 individuals and the expected life of the ore deposit is 30 years; and

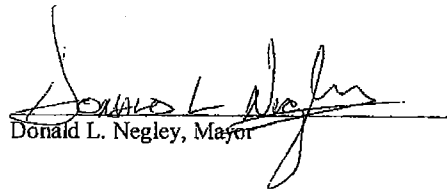
**WHEREAS:** Such new jobs would generate many issues for the two communities to consider to assure economic stability and a healthy environment during the life of the mine and for years after; and

**WHEREAS:** A Citizens' Group, involving representatives from both communities and the region as a whole, would provide a forum for reviewing the Mesaba Project not only from an environmental review standpoint but also community and economic development and sustainability standpoints as well as for any other issues identified by the Group that should be addressed.

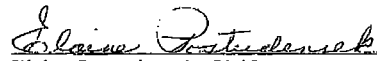
**NOW THEREFORE BE IT RESOLVED:** The City of Babbitt supports the formation of a Citizens' Group for the purposes identified herein and directs its formation and further delegates to its mayor the right to appoint, in conjunction with the mayor of the City of Hoyt Lakes, volunteer individuals to represent the communities and region on such Citizens' Group and requests that such Citizens' Group provide periodic updates to the City Council on its work.

The foregoing resolution offered by Mayor Negley, and upon the motion, supported by Councilor Niss, was declared adopted this 21<sup>st</sup> day of January 2003, by the following roll call:

Ayes: Councilors Buck, Maddern, Niss and Norregaard and Mayor Negley  
Nays: None  
Absent: None

  
Donald L. Negley, Mayor

Attest:

  
Elaine Postudensek, CMC  
City Clerk-Treasurer

**CITY OF BABBITT  
RESOLUTION NO. 2013-08**

**Resolution SUPPORTING THE EMERGING STRATEGIC METALS MINING INDUSTRY IN  
NORTHEASTERN MINNESOTA AND JOBS FOR MINNESOTANS**

Resolved by the City Council of the City of Babbitt, that

**WHEREAS**, The emerging strategic metals mining industry in Northeast Minnesota promises thousands of new direct and indirect jobs for our region for generations to come; and

**WHEREAS**, Northeast Minnesota strategic metals reserves are estimated to give us one of the largest, and only current domestic sources of nickel, along with some of the most significant sources of copper, cobalt, platinum and palladium in the world; and

**WHEREAS**, New and emerging technologies look to augment the positive economic development and job creation directly related to strategic metals mining with spin-off industries which can employ significant numbers of people right here on the Iron Range; and

**WHEREAS**, We know that strategic metals mining will have a positive impact on local tax revenues and education funding in Minnesota as well as on the development of countless products such as wireless devices, catalytic converters, hybrid cars and other emerging "green economy" needs; and

**WHEREAS**, Modern mining companies operating in Northeast Minnesota utilize advanced technology to protect our environment, and all companies will be required to meet Minnesota's rigorous environmental standards and guidelines to assure that our air and water quality standards are protected; and

**WHEREAS**, our national security interests are served by meeting our strategic metals needs domestically rather than relying on almost exclusively on imports; and

**WHEREAS**, Jobs for Minnesotans, a coalition of business, government and labor actively supporting responsible mining in the state and a 501C-4 corporation, has been created to strengthen support for strategic metal mining projects.

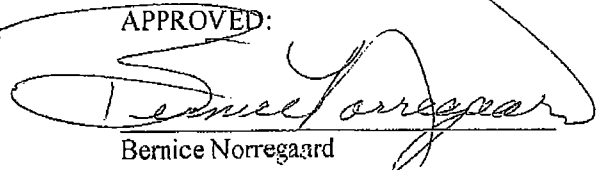
**NOW THEREFORE BE IT RESOLVED**, that the City of Babbitt through its Mayor and City Council strongly support the emerging strategic metals industry across Northeast Minnesota.

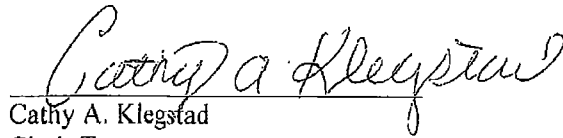
**BE IT FURTHER RESOLVED** the City Council of the City of Babbitt endorses their membership into *Jobs for Minnesotans* effective this date.

Moved by Lassi, supported by Zupancich, that the above resolution be adopted this 7th day of August, 2013.

APPROVED:

ATTEST:

  
Bernice Norregaard  
Mayor

  
Cathy A. Klegstad  
Clerk-Treasurer

(City Seal)



**CITY OF BABBITT**

**RESOLUTION NO. 2015-20**

**RESOLUTION OF SUPPORT FOR THE POLYMET MINING PROJECT  
FOR LOCAL GOVERNMENTS**

**WHEREAS**, THE City of Babbitt is aware that the PolyMet mining project, which is not located in the Boundary Waters watershed, is proceeding through the joint State and Federal environmental review and permitting process; and

**WHEREAS**, the metals that PolyMet will mine are essential for daily life – copper, nickel, cobalt, platinum, palladium and gold – found in countless products including cell phones, computers, joint replacements, medical treatments and devices, wind turbines and catalytic converters; and

**WHEREAS**, the combination of strict Minnesota regulations and PolyMet's commitment to mining in a way that protects the environment will serve as a global template for responsible, ethical and successful mining practices; and

**WHEREAS**, the proposed mining and processing operation will create 360 direct jobs and over 600 indirect jobs in St. Louis County alone; and

**WHEREAS**, it is anticipated that the PolyMet Mining project will require 2 million hours of labor during its construction phase; and

**WHEREAS**, PolyMet Mining will diversity and expand the economy by contributing millions of dollars to local cities, school districts and the State through net proceed taxes, occupation taxes, and sales tax; and

**WHEREAS**, PolyMet Mining will enter into a land exchange with the U.S. Forest Service that will result in approximately 6,700 acres of new, formerly private lands, being opened to public recreation;

**NOW, THERE, BE IT RESOLVED**, that the City of Babbitt strongly supports the PolyMet mining project.

It was moved by Councilor Switajewski , supported by Councilor Roseth, to adopt the foregoing Resolution No. 2015-20 on this 5<sup>th</sup> day of August, 2015.

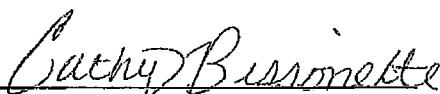
Ayes: Councilors Marinaro, Switajewski, Roseth, and Acting Mayor Lassi

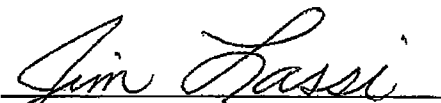
Nays: None

Absent: Mayor Zupancich

Motion declared carried.

Attest:

  
Cathy A. Bissonette, Clerk-Treasurer

  
Acting Mayor Lassi

RESOLUTION NO. 2016-03  
CITY OF BABBITT

RESOLUTION REQUESTING GOVERNOR DAYTON ALLOW TWIN METALS  
TO ACCESS STATE LANDS

**WHEREAS**, Twin Meals is a responsible and valued company residing in Ely, Minnesota, contributing to local employment, charitable organizations, and property taxes,

**WHEREAS**, in a time of a struggling economy and widespread layoffs in the mining industry, the future potential of copper, nickel and precious metals mining development would greatly benefit the economy of Minnesota;

**WHEREAS**, Twin Metals has followed closely all laws and regulations concerning the environment and performed all work to date to the highest professional standard;

**WHEREAS**, Governor Dayton's denial of permits to access State owned property will lead to additional layoffs for Twin Metals and all of their supporting businesses and negatively impact Babbitt, Ely, and the State of Minnesota;

**WHEREAS**, the final decision concerning the approval of the Twin Metals project will only come after a rigorous and thorough review of the project based on science and fact, and Governor Dayton's refusal to allow access to State lands will not allow the process to move forward,

**NOW, THEREFORE BE IT RESOLVED**, that the City Council of the City of Babbitt, Minnesota, requests Governor Dayton reverse his decision and allow Twin Metals to continue their work and allow access to State owned lands. Without this approval the project may die, and the largest economic development project in the area in the past 50 years will be lost.

It was moved by Marinaro, supported by Switajewski, to adopt Resolution No. 2016-03 on this 16<sup>th</sup> day of March, 2016.

Ayes: Councilors Roseth, Lassi, Switajewski, Marinaro, and Mayor Zupancich  
Nays: None  
Absent: None

Motion declared carried.

  
Andrea E. Zupancich, Mayor

Attest:

  
Debbera J. Marinaro, Deputy Clerk-Treasurer

**RESOLUTION NO. 2016-04  
CITY OF BABBITT**

**RESOLUTION IN SUPPORT OF ACCESS AGREEMENT ON STATE LANDS**

**WHEREAS**, There are more than 4 billion tons of copper, nickel, platinum, palladium, gold and other metal resources contained in northern Minnesota's Duluth Complex, the largest known undeveloped deposit of strategic metals in the world and;

**WHEREAS**, Demand for strategic metals continues to grow domestically and globally as nations invest in the emerging green energy economy and;

**WHEREAS**, The Twin Metals Minnesota project will create thousands of construction jobs and hundreds – potentially thousands – of long-term mining jobs. The PFS (Project Feasibility Study) Technical Report estimates the TMM Project will create approximately 850 full-time jobs when the mine is in operation, and will generate some 12 million labor hours during a roughly three-year construction period. According to a University of Minnesota Duluth study, the Project would generate approximately 1,700 – 1,900 additional indirect jobs in the region's economy and;

**WHEREAS**, Twin Metals and its predecessor Duluth Metals Limited have been conducting environmental studies and assessments for more than five years – and those efforts will continue during development of the MPC (Mining Plan of Operation). Environmental information from in and around Twin Metals Minnesota's land and mineral assets will feed into the formal, Draft Environmental Impact Study (DEIS) that will be conducted by state and federal agencies. Key environmental issues include: surface water quality and hydrology, threatened and endangered species, air quality, plant life, wetlands and socio economic factors and;

**WHEREAS**, In the Mining and Minerals Policy Act of 1970, Congress declared that it is the continuing policy of the Federal Government, in the national interest, to foster and encourage private enterprise in (among other goals) the development of domestic mineral resources and the reclamation of mined land. This Federal policy obviously applies to National Forest System lands and;

**WHEREAS**, The U. S. Forest Service recognizes the importance of National Forest System mineral resources to the well-being of the Nation, and encourages bona-fide mineral exploration and development.

**WHEREAS**, Royalties from the Twin Metals Minnesota project will contribute significant revenues to Minnesota's K-12 public schools through the Minnesota Permanent School Fund, and;

**WHEREAS**, In 1858, Minnesota received a large land grant from the federal government with the intent that the lands provide a long-term source of funds for public education in the state. Today, Minnesota owns 2.5 million acres of school trust land, which generates royalties for the Permanent School Fund from the timber and mining industries. The Minnesota Department of Natural Resources (DNR) is responsible for managing the school trust land for "maximum long-term economic return."

**WHEREAS**, Currently, the Minnesota Permanent School Fund has assets of approximately \$800 million, which generates an average annual payment of \$25 million to public schools throughout the state. In a recent analysis by the Minnesota DNR, it is estimated that new strategic metals mining (copper, nickel, platinum, palladium and gold) in Minnesota could generate \$2.5 billion in additional royalties for the Permanent School Fund over a 10 year period, significantly increasing the annual financial support provided to Minnesota schools.

**THEREFORE BE IT RESOLVED**, that the board of directors for the Range Association of Municipalities & Schools respectfully disagrees with the position taken by Governor Dayton in denying the approval of the state land Access Agreement to Twin Metals MN, as they were negotiated by his agency and Commissioner Landwehr of the Department of Natural Resources, and be it further resolved that RAMS respectfully requests that the Governor reconsider his position and allow his agencies to act in the best interest of Minnesotans and in particular those in northeastern Minnesota where mining has been successfully and environmentally co-existing with our wonderful natural beauty and wilderness for over a century while serving as the very foundation of our economic base.

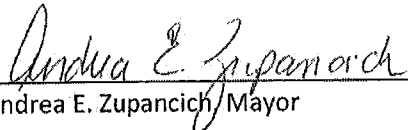
It was moved by Marinaro, supported by Switajewski, to adopt Resolution No. 2016-04 on this 16<sup>th</sup> day of March, 2016.

Ayes: Councilors Roseth, Lassi, Switajewski, Marinaro, and Mayor Zupancich

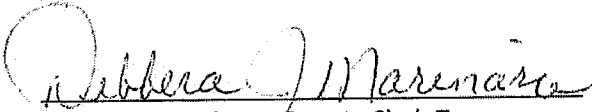
Nays: None

Absent: None

Motion declared carried.

  
\_\_\_\_\_  
Andrea E. Zupancich, Mayor

Attest:

  
\_\_\_\_\_  
Debbera J. Marinaro, Deputy Clerk-Treasurer

**RESOLUTION NO. 2016-01  
BABBITT ECONOMIC DEVELOPMENT AUTHORITY**

**RESOLUTION REQUESTING GOVERNOR DAYTON ALLOW TWIN METALS  
TO ACCESS STATE LANDS**

**WHEREAS**, Twin Meals is a responsible and valued company residing in Ely, Minnesota, contributing to local employment, charitable organizations, and property taxes,

**WHEREAS**, in a time of a struggling economy and widespread layoffs in the mining industry, the future potential of copper, nickel and precious metals mining development would greatly benefit the economy of Minnesota;

**WHEREAS**, Twin Metals has followed closely all laws and regulations concerning the environment and performed all work to date to the highest professional standard;

**WHEREAS**, Governor Dayton's denial of permits to access State owned property will lead to additional layoffs for Twin Metals and all of their supporting businesses and negatively impact Babbitt, Ely, and the State of Minnesota;

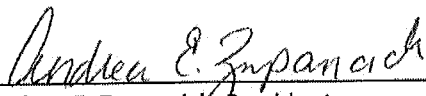
**WHEREAS**, the final decision concerning the approval of the Twin Metals project will only come after a rigorous and thorough review of the project based on science and fact, and Governor Dayton's refusal to allow access to State lands will not allow the process to move forward,

**NOW, THEREFORE BE IT RESOLVED**, that the Babbitt Economic Development Authority of the City of Babbitt, Minnesota, requests Governor Dayton reverse his decision and allow Twin Metals to continue their work and allow access to State owned lands. Without this approval the project may die, and the largest economic development project in the area in the past 50 years will be lost.


It was moved by Swiajewski, supported by Roseth, to adopt Resolution No. 2016-01 on this date of March 16, 2016.

Ayes: Members Roseth, Lassi, Switajewski, Marinaro, and President Zupancich  
Nays: None  
Absent: None

Motion declared carried.

  
\_\_\_\_\_  
Andrea E. Zupancich, President

Attest:

  
\_\_\_\_\_  
Debbera J. Marinara, Deputy Clerk-Treasurer

13-Oct-2017

To: Assembly Ck on Labor  
Re: Assembly Bill 499

All mining affects groundwater (gw). <sup>for example,</sup> All Coners eventually leak because geologic formations are constantly moving. (Have you noticed those relentlessly widening cracks in your driveway?) It's not a matter of 'if'. It's a matter of when.

There are two components to gw: capacity and quality. In California gw capacity has been permanently reduced when overpumping allowed geologic overburden to collapse the pore space needed for gw storage and flow.

Luckily, our Wisconsin (WI) glacial heritage provides us with abundant water bearing strata near the surface so most overpumped WI aquifers can recharge. However, once polluted, gw quality will not recover until after the next ice age.

When I was young our state was renowned for its gw. Few states had abundant, high quality gw.

Gw is probably our most valuable 'mineral' resource. However there are recent studies that rank WI as having the 3<sup>rd</sup> most polluted gw in the U.S., largely due to the eventual infiltration from agricultural runoff.

Similarly to ag runoff, all mining affects gw.  
It's not a matter of 'if'. It's a matter of when.

Submitted by: Hugh F. Schmidt  
1 Veslun Pl

Madison, WI 53705-1074  
hfschmidt@wisc.edu



American Exploration &  
Mining Association

10 N Post St. Ste. 305 | Spokane WA 99201-0705  
P. 509.624.1158 | F. 509.623.1241  
info@miningamerica.org | www.miningamerica.org

**Testimony of Laura Skaer  
Executive Director  
American Exploration & Mining Association  
In Support of Assembly Bill 499**

Representative Kulp, and members of the Committee, the American Exploration & Mining Association (AEMA) offers this testimony in support of Assembly Bill 499, especially the repeal of WIS. STAT. §293.50, the Mining Moratorium section. AEMA, headquartered in Spokane, Washington, is a 122-year-old, 2,000 member, national association representing primarily the hardrock mining industry with members residing in 42 U.S. states, including Wisconsin, seven Canadian provinces or territories and 10 other countries. AEMA is the recognized national voice for exploration, the junior mining sector and maintaining access to public lands and represents the entire mining lifecycle from exploration to reclamation and closure. Our broad-base membership ranges from exploration geologists and small miners to the largest mineral producers in the country.

AEMA was formerly known as the Northwest Mining Association, and in October, 1998, became the first U.S. mining trade association to adopt a Statement of Environmental Principles. Those principles are included with this testimony. I would like to highlight three of the nine principles.

- That from project inception through closure, potential environmental impacts should be comprehensively identified, and appropriately evaluated, managed and mitigated;
- That environmental protection not just compliance with statutory and regulatory requirements should be the goal, and that technically and economically sound improvement in environmental performance should continually be sought and implemented;
- That the understanding should be promoted through educational programs and other means, within and beyond the mining industry, that mining and environmental protection are compatible, and that mineral products make possible both the development of our society and the mitigation of modern society's impact on the environment.

While we were the first mining association to adopt environmental principles, today, these principles guide every aspect of mining from exploration through development, construction, operation and closure.

We have a history with this provision of Wisconsin law. In 1997, I participated in a conference in Milwaukee entitled *Environmentally Responsible Mining: The Technology, The People, The Commitment*. The conference demonstrated that modern mining is environmentally responsible mining. Our Association also opposed the Mining Moratorium provision when it was debated and adopted in 1998. Nicolet Minerals was a member and we supported their efforts. Two of our members prepared the report that was filed on behalf of Nicolet Minerals to meet the unnecessary requirements of the law. The Moratorium was irrelevant and unnecessary then and even more antiquated and unnecessary now. Irrelevant because a sulfide ore body in the desert of Arizona or the frozen tundra of the Arctic provides no useful environmental information for a sulfide ore body in Wisconsin.

Repealing the Mining Moratorium allows each mine to be evaluated on its own merits, as was the case when the Flambeau Mine was originally permitted. It also is the case in every state that has mining operations from sulfide ore bodies as well as the two federal land management agencies, the Bureau of Land Management (BLM) and the United States Forest Service (USFS). No other jurisdiction or regulatory body in the U.S. or Canada bans mining from sulfide ore bodies. A ban is unnecessary because if a mining company can't demonstrate that its mine plan will comply with all applicable environmental laws and regulations, then it won't receive a permit; and that is how we strongly believe it should be.

The Mining Moratorium is unnecessary to protect Wisconsin waters and the environment, and it certainly does not help grow the Wisconsin economy. Wisconsin's stringent water quality standards and reclamation requirements combined with modern mining technology and practices will protect the environment.

Wisconsin has a rich mining history dating back to the 1820s. Environmental regulation of mining, like any other industrial activity, did not begin until the late 1960s and early 1970s with the adoption of the National Environmental Policy Act (NEPA), the Clean Water Act (CWA), the Clean Air Act (CAA) and other environmental statutes. In other words, there was more than 140 years of mining in Wisconsin and the United States prior to the enactment of the first environmental law. As the attached White Paper, *How Changing Values and Changing Law Caused Hardrock Mines to Design, Build and Operate for Long-term Closure and Reclamation: a Federal and State Regulatory Success Story* documents, the development and evolution of federal and state programs for hardrock mining and milling facilities is a success story of environmental protection.

Since 1990, the BLM and the USFS have approved more than 3,300 mine plans of operation, and none of those mines are on the U.S. Environmental Protection Agency's National Priority List (NPL) of environmental cleanup sites.<sup>1</sup> This is in stark contrast to mines designed and built prior to 1970 when there were no regulatory approvals for such facilities and societal values were much different. Thus, the claim that mining from sulfide ore bodies cannot be done in a safe and environmentally responsible and protective manner is patently false.

In 1999, The National Academies of Sciences/National Research Council (NRC) produced a comprehensive report at the request of Congress entitled *Hardrock Mining on Federal Lands* to assess

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<sup>1</sup> BLM response dated June 21, 2011 and Senator Vilsack response dated July 20, 2011 to a March 8, 2011 letter from Senator Lisa Murkowski (R-AK) which asked how many mining and beneficiation plans of operation has your agency approved since 1990, and how many of those sites have been placed on the CERCLA (Superfund) NPL. The BLM answered 659 and zero. The USFS answered 2,685 and zero.



the adequacy of the regulatory framework for hardrock mining on federal lands. The peer-reviewed report found:

The overall structure of the federal and state laws and regulations that provide mining-related environmental protection is complicated but generally effective.

...simple: one-size-fits-all” solutions are impractical because mining confronts too great an assortment of site specific technical, environmental and social conditions. Each proposed mining operation should be examined on its own merit....<sup>2</sup>

The development of effective hardrock mine regulation and reclamation did not occur overnight. An important aspect of this development was a major shift in societal values from industrial and manufacturing to a need to protect our environment from industrial and manufacturing pollution. This change in societal values is described in the White Paper and is reflected in our Association’s Statement of Environmental Principles and in the robust laws and regulations Wisconsin relies on to protect its own environment.

Hardrock mines designed and built prior to 1970 were developed to maximize production and minimize cost with little or no regard for environmental values. By the mid-1990s, mines were being designed, built and operated for long-term closure and protection of the environment. It was a continual learning process. It is important to highlight this regulatory success story because one cannot rationally use information about environment issues, closure and reclamation costs from hardrock mines designed and approved prior to the 1990s to evaluate today’s mining projects. As I recall the debate over the Mining Moratorium, the proponents cited historic, pre-regulation legacy mining issues to support the Moratorium. This is the equivalent of showing a picture of a 1957 Chevrolet Bel Air and stating that it does not have seat belts, air bags, pollution control devices or meet CAFE requirements, and therefore GM should not be allowed to produce new cars in 2017.

Given Wisconsin’s strong mine regulatory and financial assurance program, the fact that each hardrock mine is unique in terms of geology, geography and climate, and the fact that modern mines are not on EPA’s NPL, it is time to repeal the Mining Moratorium and allow Wisconsin’s professional regulators to do their job and examine each new mine proposal on its merits, as the NRC recommended in 1999.

Wisconsin is a state rich in important non-ferrous minerals such as copper, zinc and lead. Mining is an important economic contributor to local communities, states and nationally. Nationwide, metal mining has a direct and indirect contribution to gross domestic product of almost \$155 billion. Average wages at hardrock mines across the country are \$85,000 plus benefits. These are true generational family wage jobs, especially for rural Wisconsin.

Mining also has one of the highest indirect job multipliers in the world.<sup>3</sup> The mining industry not only creates mining jobs, but also generates employment indirectly by stimulating demand for goods and services. Mines spend millions of dollars on equipment, maintenance, food and other services and often use local contractors and suppliers. This creates jobs indirectly in processing and manufacturing mined goods, transportation, and providing equipment and services to the mining industry. The success

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<sup>2</sup> *Hardrock Mining on Federal Lands*, National Academy Press (1999) at Page 5.

<sup>3</sup> Investment Climate Advisory Service (IC), Sectoral Licensing Studies: Mining Studies, 2009, World Bank Group

of many companies with a strong presence in Wisconsin, like Komatsu Mining Corp. and Caterpillar, depend on a strong and vibrant mining industry.

Generally, the amount of indirect employment generated by a mine exceeds its direct employment. For example, case studies found that for every job directly created by the Yanacocha mine in Peru, 14 jobs were indirectly created.<sup>4</sup> In addition, the number of indirect jobs increases over time and can stimulate local entrepreneurship and new business development.<sup>5</sup>

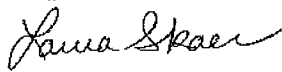
Mining is the beginning of the manufacturing supply chain. In fact, everything begins with mining. Think about all of the products that make modern life possible -- they all came from a hole in the ground. As our country seeks to rebuild its manufacturing base and repair and restore its aging infrastructure, mining will be essential. The United States currently imports 100% of 20 strategic and critical minerals and is more than 50% import reliant on 43 minerals. There are deposits of most of these minerals in the United States, including many in Wisconsin.

Producing minerals in Wisconsin will help reduce America's dependence on foreign sources of minerals, most of which come from China while providing significant economic benefits to the state. But in order to reap the economic benefits of mining, there must be a transparent and fair process for evaluating a mining project on its merits. Today, mining companies will not invest in a project if they are not convinced it can be done economically and safely while protecting the environment. Companies want their projects evaluated with respect to environmental protection in a process that is open and transparent to the public, consistent, and encompasses stringent water quality, air, ecological and land use standards. The U.S. mining industry accepts this and is proud of its record. The industry is only asking that the process be fair, unambiguous and has certainty. This bill will accomplish that by rescinding the Mining Moratorium which is viewed by mining companies, investors and Wisconsin citizens as Wisconsin saying "Wisconsin is not open for business."

Other states such as Minnesota and Michigan have considered similar moratoriums such as Wisconsin's and rejected them. That rejection has proven to be an economic lifesaver for many places in those regions. Those states rightfully trust their regulators to evaluate each project on its merits and assure compliance with all applicable federal and state environmental laws. To this day, the dire predictions of out-of-state anti-mining groups have wholly fallen flat.

The Mining Moratorium has denied northern Wisconsin hundreds, perhaps thousands of high paying jobs. We urge you to rescind the Moratorium and allow Northern Wisconsin to benefit from its mineral wealth by passing AB 499.

Respectfully submitted,



Laura Skaer  
Executive Director

*Note: The footnoted exhibits referenced in this testimony have been provided to Rep. Kulp in his copy of the testimony. Because of their length, Committee Members are urged to request these from Rep. Kulp if you wish to review them.*

<sup>4</sup> World Bank and International Finance Corporation, Large Mines and Local Communities: Forging Partnerships, Building Sustainability, 2002, International Finance Corporation.

<sup>5</sup> *Id.*



www.IBAW.com

David Bartelme  
4634 N. Woodburn St.  
Whitefish Bay, WI 53211

Steve Kohlmann  
Executive Director

October 10, 2017

960 Timber Pass  
Brookfield, WI 53045

CELL: 414-640-5785  
SteveIBAWOffice@gmail.com

The Honorable Thomas Tiffany  
Room 409 South  
State Capitol  
PO Box 7882  
Madison, WI 53707-7882

Dear Senator Tiffany:

My name is David Bartelme, and I reside at 4634 N. Woodburn St. in Whitefish Bay, Wisconsin. I'm writing you to offer my support for the 2017 Senate Bill 395, which I became aware of through the Independent Business Association of Wisconsin (IBAW).

I hold degrees in Chemical Engineering from the University of Washington and a Masters in Business Administration from the University of Alberta. Much of my career has involved working in large industrial manufacturing sites in the energy and extractive industries.

Modern mining companies operate with the goal of minimal environmental impact. They also have deep appreciation for the potential financial consequences of violating the public trust when they fail to be environmental stewards. Current law, prohibiting DNR from issuing sulfide ore body mining permits before determining an example mine has either been in operation for or been closed for 10 years without resulting in the pollution of groundwater, prevents companies and the public from having an informed debate on a potential mine because it deters companies from considering Wisconsin as a place to invest.

Federal and State of Wisconsin environmental regulations currently require approval of a detailed environmental assessment before mining permits can be issued. It is the environment assessment process, agreement to mine design, and mining permit environmental conditions that protect Wisconsin's groundwater. The 2017 Senate Bill 395 repeals unnecessary regulation and provides a signal to the private sector that Wisconsin is open for business. Therefore, I offer my support for the 2017 Senate Bill 395.

Sincerely Yours,

David Bartelme

# WMC

WISCONSIN MANUFACTURERS & COMMERCE

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## TESTIMONY BEFORE THE ASSEMBLY COMMITTEE ON LABOR IN SUPPORT OF ASSEMBLY BILL 499

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Chairman Kulp and Committee Members:

Thank you for the opportunity to testify today. My name is Lucas Vebber and I am the General Counsel and Director of Environmental and Energy Policy at Wisconsin Manufacturers and Commerce (WMC). WMC is the state's chamber of commerce and manufacturers' association. With approximately 3,800 members, we are the largest business trade association in Wisconsin. WMC represents members from all over Wisconsin of all sizes and in every sector of the state's economy. I am here today to testify in support of Assembly Bill 499.

We support this legislation because it will benefit every corner of Wisconsin, open the door to significant investment, infrastructure upgrades and job creation, and will continue to ensure that our state's pristine environment is maintained for future generations.

### I. Background

Wisconsin's mining heritage is well known. Generations of Wisconsinites throughout our state supported themselves, their families and their communities through mining. Even today Wisconsinites manufacture heavy equipment for mining operations around the globe. Wisconsin's legal, scientific and engineering experts provide critical services to ensure mining operations in other states and countries are planned, operated and reclaimed to the highest environmental standards. Wisconsinites who wish to work directly in mining here in our state, however, are prohibited by state law from having that opportunity.

That law, the mining moratorium, was put in place in the late 90s and specifically prohibits a company from applying for a new mining permit. The moratorium has worked; no company has permitted a mine here in Wisconsin in more than 20 years. And just to clarify a lie that's been told by some of the opponents of this bill: the moratorium is just that, a moratorium. It was always meant to be a moratorium. In fact, the title of the statute itself is "Moratorium on issuance of permits for mining of sulfide ore bodies." (See Wis. Stat. § 293.50).

Recently, this Legislature approved a financing package for a historic, once-in-a-generation economic development opportunity. The Foxconn project will transform our state's economy. While centered in southeast Wisconsin, it will benefit

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501 East Washington Avenue, Madison, WI 53703-2914

Phone 608.258.3400 • Fax 608.258.3413 • [www.wmc.org](http://www.wmc.org) • Facebook WisconsinMC • Twitter @WisconsinMC

*Founded in 1911, WMC is Wisconsin's chamber of commerce and largest business trade association.*

communities and employers throughout the state. Mining will do the same for northern Wisconsin, and at no cost to the state. Pass this legislation, and let mining companies enter an in-depth, three year long process to fully vet each project with full public involvement and oversight, and open northern Wisconsin up to incredible new jobs and economic development.

Modern mining would not just benefit those employed by the mine or those companies throughout Wisconsin who supply the mining industry. Mines would require massive infrastructure upgrades. Roads, bridges, rail lines, and energy infrastructure would all need to be upgraded. These infrastructure upgrades would benefit not only the Wisconsin companies who could do the work, but the community members who will utilize them for generations.

## II. Wisconsin's Economy Depends on Raw Materials

There is no doubt that Wisconsin is a manufacturing state. Within Wisconsin we have more jobs in manufacturing than any other sector, and per capita we have more manufacturing jobs than just about any other state. Manufacturing drives Wisconsin and Wisconsin's future is tied to manufacturing. Manufacturing requires raw materials. We cannot make products without something to make them from.

Those materials are going to be mined. With this legislation they could be mined right here in Wisconsin subject to some of the most stringent environmental protections in the world. Without this legislation they will continue to be mined in other countries that do far, far less to care for our environment. Anyone who actually cares about our planet and our environment should be clamoring to have these materials mined here. Instead, we have seen nothing but lies and over-the-top rhetoric from opposition groups trying to mislead the public to scare up more members and donations to pad their own bottom lines.

Wisconsin companies need raw materials. Producing them here is better for the environment, creates more jobs and economic opportunity right here in our home state, and gives Wisconsin manufacturers much greater access to materials.

## III. Modern Mining Is Environmentally Safe and Economically Viable

Wisconsin has not had a metallic mine since the mid-90s. At the Senate's public hearing on the companion to this bill, the committee and the public had an opportunity to see the pristine acreage that was once the Flambeau Mine. It has been more than twenty years since the Flambeau mine was planned, operated, and reclaimed. It has been held up as a model of economic success and environmental protection. If no one told you, you would never know a mine used to be located

there. That is the way it should be, and the way it will continue to be when this legislation passes.

Radical environmentalists have been trying to mislead the public about the Flambeau Mine's legacy. One such group that uses these environmental issues to scare the public and raise money has repeatedly said that "a federal judge found that the mine violated the Clean Water Act 11 times." What they did not tweet was that the Seventh Circuit overturned that judge and found zero violations of the Clean Water Act. Zero.

Another environmental fundraising group has been tweeting pictures of orange rivers claiming that this legislation will somehow lead to "rivers of acid" in our state. Despite their over-the-top rhetoric, Wisconsin law never has, and will never, allow rivers of acid. Take a look at the river in Ladysmith that was located right next to the Flambeau Mine and try to make a serious argument that a mining operation will negatively impact a river. Still, opponents of this legislation will say just about anything to mislead the public into opposing these changes, which is both unfortunate and sad.

Technology continues to advance. We have proven beyond a doubt that mines can operate safely and efficiently here in our state. They've done so for generations, and as recently as twenty years ago, and I guarantee you we could do it even better today. Repeal the mining moratorium and give the industry a chance to permit a project, maintain our pristine environment, and put a whole lot of our friends and neighbors to work in the process.

#### IV. What This Bill Does

With that background, I now turn to what this legislation actually does to open the door to game-changing economic development and career opportunities for northern Wisconsin. Here's an overview of the key sections of this legislation:

##### *1. Repeals the Mining Moratorium*

Wis. Stat. § 293.50 of the statutes, entitled "Moratorium on issuance of permits for mining of sulfide ore bodies" contains the moratorium language. Section 37 of this legislation repeals it outright.

##### *2. Establishes a Bulk Sampling Framework for Metallic Mining*

This legislation creates a process known as "bulk sampling" for metallic mining operations. This would allow a mining company to conduct small-scale exploration

operations to gather information about a potential mine site which ultimately will benefit the permitting process and the environment.

### *3. Makes Certain Application and Timeline Certainty Changes*

The bill establishes deadlines throughout the application process to ensure that whether an application is approved or denied, there is at least some certainty that a final decision will be made. The bill also requires DNR to work towards a memorandum of understanding with the Army Corps of Engineers and other relevant federal agencies to help streamline the regulatory process and reduce costs for everyone.

### *4. Ensures Public Involvement and Due Process of Law*

The bill also maintains strong public involvement with public hearing and contested case requirements. It adds more specific timelines to those in order to ensure that a decision, whether for or against a proposed mining operation, is made within a reasonable period of time.

### *5. Protects Existing Water Supplies*

This legislation makes absolutely no changes to numerical water standards. The same stringent standards will apply after this legislation is signed into law. Additionally, the bill protects existing water supplies by ensuring that any new mining operation has no unreasonable detriment to any public or private water supply.

This legislation also adds some common sense back to our state's regulatory scheme. It limits modeling that may be required for a permit applicant to 250 years, and it applies drinking water standards only to water that could actually be used for drinking water.

### *6. Eliminates Unreasonable and Unnecessary Regulations*

Current regulations require a mining company to maintain an irrevocable trust in perpetuity to be responsible for the mining site. This regulation was in put in place after the mining moratorium was implemented and has never been used on a metallic mine in Wisconsin. This is far beyond what any other state requires, and must be changed. This bill addresses that issue, while maintaining vital protections to make sure our environment is protected well after mining operations have left. The bill authors have worked with a number of stakeholders to come up with a solution that works, and the amendments to the bill reflect even more outreach and compromise.

Lastly, current wetland regulations were enacted after the metallic mining administrative code provisions. This legislation repeals the older metallic mining specific wetland regulations and would subject a metallic mine to the same, more stringent, current wetland requirements that exist for others in Wisconsin.

#### V. Conclusion

This legislation can open the door to significant economic development in Wisconsin. It has been more than 20 years since a mine was permitted in Wisconsin. Our neighbors are jumping at the opportunity to bring in these jobs because they know it can be economically beneficial and environmentally sustainable. We can do the same right here in Wisconsin. We ask that you support this legislation to give mining companies the chance to begin exploring what they could do for Wisconsin.

Thank you for your time, I would be happy to answer any questions that you may have.





# Sinsinawa Dominicans

## Office of Peace and Justice

2117 Monroe Street  
Madison, WI 53711  
708-724-7424

### **Public Hearing: Committee on Labor Industrial Acid Mining Bill (AB 499) Oct. 12, 2017**

I am Sr. Regina McKillip, I am representing the Dominican Sisters of Sinsinawa, Wisconsin. We have served in Wisconsin since 1847, thus we have a long history in our state. Presently we are over 400 sisters; more than half of us live and serve in Wisconsin. I am also representing the Legislative Network members of the Leadership Conference of Women Religious Region IX which covers most of the Women Religious Congregations in Wisconsin.

I am here to express our opposition to the Industrial Acid Mining bill, Assembly Bill 499. It is our understanding that to repeal the "Prove it First" Law would reduce protections and cause immeasurable harm to environment.

As Catholic Sisters we have a deep belief that all of creation is sacred and must be protected. Pope Francis in his latest encyclical, Laudato Si, reminds us of our responsibility to take care of our common home.

*Once we start to think about the kind of world we are leaving to future generations, we look at things differently; we realize that the world is a gift which we have freely received and must share with others. (159)*

We also listen to and are in solidarity with our Indigenous brother and sisters in Wisconsin who understand the long range impact of mining. I wonder how intentional you have been in searching out the oversight and ideas of the 11 Indigenous nations with-in our state borders.

This controversy is not new to us. Before the Prove it First Law was passed in 1998, the Dominican Sisters of Sinsinawa had been active though shareholder advocacy, in challenging the action of mining companies in Wisconsin such as Exxon, Maranda, and Kennecott. Our concern then was the same concern we have today... sulfide mining. According to the Environmental Protection Agency, sulfide mining is the most toxic industry in the United States. This type of mining leaves as a byproduct sulfuric acid, which poisons our water, environment and community. According to the Wisconsin League of Conservation Voters, there has never been a sulfide mine that has not polluted nearby water resources.

We who are impelled by our faith and concern for future generations are opposed to the Industrial Acid Mining Bill AB 499.

Thank you for this opportunity to speak.

SINCE 1998, WISCONSIN'S MINING MORATORIUM LAW HAS PROTECTED OUR PRECIOUS, PRISTINE WATERS FROM ANY NEW, POTENTIALLY POLLUTING METALLIC SULFIDE MINES...



MINING LAWS!?  
WE DON' NEED NO  
STINKIN' MINING  
LAWS!! HO HO HO

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ALARMINGLY, STATE SEN. TOM TIFFANY & HIS BIG BIZ PALS SEEK TO USE A CLOSED METALLIC SULFIDE MINE NEAR LADYSMITH AS AN EXAMPLE OF A RE-CLAIMED MINE... TROUBLE IS, THE TOXIC WASTE NOT SHIPPED TO CANADA HAS BEEN LEAKING INTO THE GROUNDWATER FOR NEARLY 20 YEARS!



AND WORSE, THAT MINE ONLY PRODUCED A FRACTION OF THE TOXIC WASTE THAT ALL FUTURE SITES WILL CREATE, DESTROYING HUNTING, FISHING AND AGRICULTURE ACROSS WISCONSIN!

...DO WE REALLY WANT TO REWARD TIFFANY AND HIS PALS FOR THAT??



October 13, 2017  
<http://wicouncil.tu.org>

Contact: Council Vice-Chair Mike Kuhr  
(414) 588-4281

## **WITU Opposes AB 499, the Sulfide Mining Bill**

Mr. Chairman and Members of the Assembly Committee on Labor, thank you for taking the time today to hear our comments on AB 499 regarding sulfide mining in Wisconsin.

My name is Mike Kuhr, I'm a stay at home father and a small business owner. I'm currently volunteering as the Vice Chair for the Wisconsin State Council of Trout Unlimited. Trout Unlimited is the nation's leading coldwater conservation organization, and here in Wisconsin, we have over 5,000 members working to ensure that future generations have access to cold, clean, fishable water. Last year, our members volunteered over 48,000 hours of their time working on 82 conservation projects, 97 education events, and running 3 veterans service programs at the VA hospitals in Milwaukee, Madison, and Green Bay.

Our members value the recreational opportunities that the woods and waters of Wisconsin offer. We also recognize the economic impacts that trout fishing in particular, and angling in general, provide to our state. A 2013 study by the American Sportfishing Association (the "ASA") found that Wisconsin was the 3rd highest ranked state in the number of non-resident anglers. We know the fishing's good here, and apparently so does the rest of the country. According to the ASA report, angling results in over \$1.4 BILLION of retail sales each year in our state. All told, recreational angling creates over \$2.2 BILLION in annual economic impact for Wisconsin's economy.

In Wisconsin, we've built our economy on three pillars - Agriculture, Tourism, and Outdoor Recreation. Access to clean water has been, and will continue to be, vital to the success of these three industries. AB 499 would jeopardize the health of these economies and the clean water they all rely on by making it much easier to open sulfide mining operations in Wisconsin.

AB 499's proposed changes to the Irrevocable Trust and the elimination of waste disposal fees should raise red flags for anyone in this legislature who is concerned about reducing the tax burden on future generations of Wisconsinites. Long after a mining company has closed operations and left the area, it will become the taxpayer's responsibility to safeguard our communities, our businesses, and our jobs from the toxic mining waste left behind.

The Wisconsin Council of Trout Unlimited ("WITU") is a 501(c) 3 non-profit organization which consists of approximately 5,500 volunteer members in 21 chapters in Wisconsin working to ensure that future generations have access to cold, clean, fishable water. Last year, WITU and its Chapters reported over 48,800 volunteer hours, working on 82 conservation projects, 97 youth education events, and operating 3 veterans service programs.

Wisconsin Trout Unlimited and its members know the threats of sulfide mining are real. In recent years, a Canadian mining company has been exploring the prospects of putting an open pit mine in Marathon County, east of Wausau, in what's known as the Reef Deposit. This Deposit sits within 5 miles of two class 1 trout streams – Mole Brook, a tributary to the Eau Claire River, and the iconic Plover River. Our volunteers have spent considerable time and effort over the last two decades working to improve and restore the Plover River north of Stevens Point. The Plover has become a destination fishery and it's a great example of how we partner with local communities and farmers to improve our watersheds.

Wisconsin's "Prove It First" mining law has been safeguarding our woods and waters for over two decades. With all that's at stake, how can we **not** ask a mining company to prove it can operate safely in our state before handing out a mining permit?

AB 499 is a risky proposal that could jeopardize some of our largest economies – Agriculture, Tourism, and Outdoor Recreation. If we're serious about creating a sustainable, 21<sup>st</sup> century economy that our children and our grandchildren can prosper in, we need to be looking to the future, not the past. I urge you to oppose this sulfide mining bill.

Thank you for your time and for your commitment to public service.

Mike Kuhr  
Wisconsin Trout Unlimited  
Council Vice-Chair  
[mikek.trout@yahoo.com](mailto:mikek.trout@yahoo.com)  
(414) 588-4281

The American Sportfishing Association's report entitled "Sportfishing in America" dated January 2013 can be viewed here:  
[http://asafishing.org/wp-content/uploads/Sportfishing in America January 2013.pdf](http://asafishing.org/wp-content/uploads/Sportfishing_in_America_January_2013.pdf)  
Page 5 of the report shows Wisconsin Ranked 3<sup>rd</sup> in the number of Non-Resident Anglers, behind only Florida and Michigan.

The Wisconsin Council of Trout Unlimited ("WITU") is a 501(c) 3 non-profit organization which consists of approximately 5,500 volunteer members in 21 chapters in Wisconsin working to ensure that future generations have access to cold, clean, fishable water. Last year, WITU and its Chapters reported over 48,800 volunteer hours, working on 82 conservation projects, 97 youth education events, and operating 3 veterans service programs.



Representative Bob Kulp  
Chair, Assembly Committee on Labor  
Wisconsin State Capitol  
Room 412 E  
Madison, WI, 53703

October 13, 2017

Re: AB 499

Chairman Kulp and members of the Assembly Committee on Labor, thank you for the opportunity to speak on behalf thousands of River Alliance of Wisconsin members--small business owners, individuals, and more than 80 local watershed protection groups. We ask you to reject AB 499 and the proposed amendments because Wisconsin taxpayers, local businesses and the environment will be exposed to unacceptable risk, with little prospect of widespread economic gains.

All businesses operate with risk but the public bears most of the risks involved in mining. Land is scarred and heavy metals can contaminate lakes, rivers and groundwater that communities rely on.

**Sulfide mining is uniquely dangerous.** Even in the best circumstances, sulfide mines have always polluted in water-rich environments. Ore, when exposed to air and water, can generate sulfuric acid. Cyanide, used in the processing of ore, can leach into local aquifers. The far-from-certain, short-term economic benefits of removing long-standing, bi-partisan protections from mining pollution do not erase the long-term risks to our taxpayers, our environment and our way of life.

The reality is that the short-term benefits the bill's proponents claim, do not hold up to scrutiny. Boosters use the Flambeau mine in Ladysmith, which operated from 1993-1997, as a shining example of sulfide mining success. In 1991, Wisconsin Manufacturers and Commerce's then-President Jim Hanley said the Flambeau project would bring an "economic boost some of our counties need to ensure the future of our children."

Yet, Rusk County, the site of the Flambeau mine, had the highest unemployment rate in Wisconsin during the years the mine operated per the Wisconsin Department of Workforce Development. The number of children living in poverty went up in Rusk County during the mining years. Numbers compiled by the Federal Reserve Bank of St. Louis show that the unemployment rate in Rusk County is lower now (3.8% in July 2017) than at any point during the Flambeau mine's operation.

Despite the scant evidence of economic opportunity for Wisconsin, AB 499 would risk the health of our waters:

- AB 499 repeals the “Prove it First” rules that requires mining operators to demonstrate that similar projects have successfully avoided polluting during operations and for a period after operations have ceased. It’s not a moratorium; these rules ensure that we verify Wisconsin’s public resources are not sacrificed for benefits that go disproportionately to mining companies. Wisconsin's sulfide mining laws were approved 20 years ago in a bi-partisan effort to protect our waters. Since its inception, Wisconsin has not introduced sulfide mine pollution like sulfuric acid and cyanide into local waters and surrounding communities. Governor Walker, Senator Darling and others worked with Democrats and the entire environmental community to pass this common-sense compromise that has protected our water and local businesses that rely on a healthy environment—like tourism and agriculture.

AB 499 limits public input:

- Current law has three hearings: one after the Notice of Intent is issued, one after the draft Environmental Impact Statement is released, and finally the Master Hearing. AB 499 eliminates the Master Hearing where the final EIS is reviewed and where testimony is taken under oath and subject to cross examination.
- It shifts the burden of proof from the applicant by making the public petition for a contested case AFTER DNR issues permits after the Public Information Hearing. It also bars the Hearing Examiner in the contested case from halting any activities by the mining company that have been permitted by the DNR.

AB 499 allows mining interests to risk the health of Wisconsin communities, with limited consequence:

- Removes the Irrevocable Trust Fund which was specifically created by the Legislature as a savings account that would last in perpetuity and be available to pay for cleaning up damage caused by mining even years after a mine is closed. The Trust Fund protects our lands and water and also taxpayers who might otherwise have to pay the cost a mining company’s failures. Even proposed amendments fall short of protecting Wisconsin taxpayers from remediation costs from unpredictable events like hazardous waste spills. This legislation is as likely to expand Superfund sites as mining operations in Wisconsin.

Wisconsin wants to keep existing sulfide mining laws intact to protect us from unacceptable pollution. Recent polls conducted by River Alliance of Wisconsin confirmed that the sentiments of our members are shared widely:

- 72% across Wisconsin want to keep bi-partisan "Prove it First" protections;
- 64% believe weakened water protections pose too much risk of exposing families to chemical byproducts of sulfide mining, like cyanide and sulfuric acid
- Strong pluralities do not agree that "streamlined or eliminated environmental regulations will create more mining jobs and help the Wisconsin economy."

AB 499 is unneeded, unwanted and unwise. It is wrong for Wisconsin. We urge you to do what is right and reject AB 499.

Sincerely,

A handwritten signature in black ink, appearing to read "Raj Shukla", with a long horizontal flourish extending to the right.

Raj Shukla

Executive Director



# WISCONSIN LAKES

*We Speak for Lakes!*

716 Lois Dr / Sun Prairie WI 53590

608.661.4313

info@wisconsinlakes.org

October 13, 2017

## TESTIMONY TO ASSEMBLY COMMITTEE ON LABOR IN OPPOSITION TO "PROVE IT FIRST" MINING REPEAL

Good morning, and thank you for the opportunity to testify today on AB499. My name is Michael Engleson, and I am the Executive Director of Wisconsin Lakes. Wisconsin Lakes is a statewide non-profit conservation organization of waterfront property owners, lake users, lake associations, and lake districts who in turn represent over 80,000 citizens and property owners. For 25 years, Wisconsin Lakes has advocated for the conservation, protection, and restoration of Wisconsin's lake resources.

I am here before you today to announce Wisconsin Lakes's opposition to AB499. The Board of Directors of Wisconsin Lakes unanimously voted to oppose this legislation repealing Wisconsin's "prove it first" process to allow non-ferrous mining operations in the state.

The Board did not reach this decision lightly. With a diverse membership of waterfront property owners, lake organizations, and individuals who care deeply about Wisconsin's lakes, we understand the need to balance economic development with conservation efforts, and we recognize that mining efforts such as would be given preference under this bill might give at least a short term economic shot to the locality in which the mine is located.

But part of the mission of Wisconsin Lakes is to work to *protect* our waters from harm, and the risks inherent in rolling back environmental protections as contemplated by this bill simply do not outweigh whatever potential benefits that may or may not arise.

This is because this bill, like Foxconn and other recent legislation, removes much of the upfront permitting and public scrutiny that prevents environmental harms from occurring in the first place. This trend is disturbing and counterproductive, as it shifts the burden to the taxpayers of Wisconsin to clean up an environmental disaster after it happens, rather than ensure it doesn't happen in the first place. Indeed, the damage that could be caused by a single mine, especially one of this type, can be astronomical, and could easily destroy whatever passing economic benefits came before the damage.

To put this into perspective, according to recent economic analyses, recreational and tourism spending could decrease by nearly 50% in an area where water quality is significantly degraded. A study done by Delavan Lake showed a 70% increase in home values on area lakes that had been restored to cleaner conditions. A more recent study by UW-Stout showed that the "lake premium", the value a property receives simply for being waterfront property, with all other pricing factors removed, was \$68,000 on the relatively clean Cumberland Lake, \$49,000 on Chetek (some water

*Wisconsin Lakes is a statewide non-profit conservation organization of waterfront property owners, lake users, lake associations, and lake districts who in turn represent over 80,000 citizens and property owners. For over 20 years, Wisconsin Lakes has been a powerful bipartisan advocate for the conservation, protection, and restoration of Wisconsin's lake resources.*



quality problems), and just \$36,000 in Menomonie on lakes Tainter and Menomin which have significant algae issues. So in Dunn County, where the problem is nuisance algal blooms, not a lake full of sulfuric acid, homes may be valued as much as \$32,000 less than they would be if the lake they are on is clean.

Think then of the potential economic catastrophe to a place like Lake Wausau, a lake potentially in danger of contamination from an upstream spill at one of the currently proposed mine sites. Recreation dollars would diminish. Lakefront property values would drop, along with local property tax collections. The cleanup would be costly and difficult, and the impacts would be felt for much longer than the period the mine would be generating any economic activity.

Our lakes and rivers are a source of sustainable economic activity, if kept clean and safe. Certainly Wisconsin cannot survive on only our strong recreational and tourism economy, but lakes, if protected, endure. Mines come, and then go away. We should protect the long-term, sustainable economic generators before providing handouts to companies that cannot show their practices are safe.

And there, of course, is the rub. Wisconsin law currently provides a blueprint that protects the long term, sustainable economy that our water resources provide, while still allowing safe mining projects to occur. It's the very process this bill seeks to supplant. Which begs the question: if such mining operations are truly safe, why get rid of the process that allows them to prove that they are?

Wisconsin needs economic development. But jeopardizing the long-term, sustainable, bedrock economic activity that comes from clean, safe, and healthy lakes, rivers, and other waters is nonsensical.

AB499, as originally introduced, or with the amendments proposed, simply cannot be modified in a way to adequately protect our lakes, and we urge this Committee to reject it.

Thank you for your time and the opportunity to present our views on this issue..

Testimony on AB 499  
Assembly Committee on Labor  
Hearing 10-13-17

Thank you for allowing me to register my opposition to AB 499.

I have lived in Wisconsin for 65 years. Time and again, I have seen the state invest resources and public money in large corporations, only to see them take the money and, later, run.

There is a better strategy.

Much of Wisconsin's future depends on its scenic beauty and water resources. Consider that a single park, Copper Falls State Park, attracts thousands of tourists every year. I have canoed many of the rivers of Wisconsin, and I can tell you there are dozens of rivers with waterfalls and great scenery. To benefit more from such resources, we need environmentally friendly investment -- especially public transportation -- so that families from densely populated areas can get there for a vacation. Build rail lines and intercity bus services. Make it easy for a family from Chicago to get to a riverside park in northern or central Wisconsin. They'll stay at a private resort or public or private campground. If they go canoeing, they will rent canoes, and the business that rents will take them to the put-in point and pick them up later, 10 miles downstream. They may rent a car, locally. In the fall, they will come for colors and hiking. In winter, for cross country skiing. In the spring, for early flowers, bird watching, and white-water canoeing.

Sulfide mining will ruin the scenery, pollute the water. The best jobs will go to out-of-state specialists. The profits will go out of state. When they close and leave, the taxpayers pick up costs.

If you invest instead in environmentally friendly public transportation, then -- a generation later -- the infrastructure will still be here, the rail lines will be faster, the small businesses across the state will be thriving. They won't leave.

And I've barely touched on water resources. We're seeing pressures from agriculture, another industry that needs good water. Will water polluted by sulfuric acid and cyanide serve as well for irrigating crops?

Dan Cornwell  
Madison



**Written testimony of James Parra, Midwest Environmental Advocates  
Before the Assembly Committee on Labor  
October 13, 2017**

Members of the Committee, thank you for the opportunity to speak to you today. My name is James Parra. I am an attorney at Midwest Environmental Advocates, a nonprofit environmental law center that provides legal and technical assistance to the people and organizations in Wisconsin working for clean air, clean water and clean government.

Midwest Environmental Advocates is opposed to this legislation first and foremost because it would repeal a common sense environmental and public health protection that requires a mining company to actually show, not just say, that sulfide mining can be done safely. This type of protection makes particular sense for an industry like sulfide mining, which "carries with it potential for very serious environmental harm"<sup>1</sup> and an unreliable track record of predicting the likelihood of those harms.

Predictions about the impacts of sulfide mining on the environment and communities are notoriously unreliable. For example, a 2006 study examining "the reliability of pre-mining water quality predictions...in the United States" found that a majority of the mines studied caused pollution in surface and ground waters despite regulators often predicting that the potential for pollution was low. Perhaps most disturbingly, **90% of the mines for which regulators had predicted a low potential for acid mine drainage did in fact develop acid mine drainage.**<sup>2</sup> The "prove-it-first" law reduces some of the uncertainty around predicting the impacts of sulfide and provides assurances to the public that their health and environment can be protected.

Beyond just the repeal of the "prove-it-first" law, Midwest Environmental Advocates opposes AB 499 because it violates the State's responsibilities under the Public Trust Doctrine to protect public water resources from over pumping and depletion; exempts parts of the mining process from important environmental protections; and would further shift the burden and expense of protecting public health and the environment to the citizens of Wisconsin, while at the same time limiting the opportunities for public involvement. A summary of several of Midwest Environmental Advocates' concerns related to each of these points is included below:

- **AB 499 removes protections for both public and private water supplies and public rights in the waters of the State.** Under current law, the Wisconsin Department of Natural Resources (DNR) may not issue a groundwater pumping or mine dewatering permit to a mine operator if the pumping would "result in the unreasonable detriment of public or private water supplies or

<sup>1</sup> Wisconsin Department of Natural Resources, "An Overview Of Mining Waste Management Issues in Wisconsin", p. ii (July, 1995)

<sup>2</sup> Kuipers, et al., "Comparison of Predicted and Actual Water Quality at Hardrock Mines", ES-9 (2006) (available at: <https://www.earthworksaction.org/files/publications/ComparisonsReportFinal.pdf>).

the unreasonable detriment of public rights in the waters of the state.” AB 499 would authorize DNR to issue the permit, even if the pumping would deplete water supplies and impact public resources, so long as the mining company provides a “replacement water supply of similar quality.”

In other words, this bill would authorize a private party to deplete water resources that the State holds in trust for the people of Wisconsin so long as that person replenishes the natural resource with an artificial supply of water. Aside from questions about whether this proposal reflects sound science-based policy, this Committee should give strong consideration to whether such a proposal is consistent with the State’s constitutional responsibilities to protect Public Trust resources.

- **AB 499 and Assembly Amendment 5 create what amounts to a voluntary regulatory scheme for bulk sampling.** The bill requires DNR to adopt “minimum standards” for bulk sampling that “ensure that such activities...will be conducted in a manner consistent with the purposes and intent” the statute. However, there is no way for DNR to ensure that those minimum standards will be met.

Under Assembly Amendment 5, a bulk sampler would be required to obtain a license from the DNR. However, the licensing requirement as proposed in the amendment is superficial at best. DNR is not given the authority to assess whether the bulk sampling plan meets the law’s minimum standards. In fact, DNR would not have the authority to deny a bulk sampling license *for any reason*. Amendment 5 gives absolutely no discretion to DNR, and instead requires DNR to issue a license to a bulk sampler once any other needed approvals have been issued.

The Wisconsin Legislature enacted a similar bulk sampling regulatory scheme for iron mining in 2013. Gogebic Taconite, LLC was the first mine operator to submit a bulk sampling plan for review under the new law. In response to DNR’s request for additional information about the mining company’s bulk sampling plans, Gogebic pushed back citing the limited authority that DNR had to oversee bulk sampling and ensure that the environment is protected:

“The bulk sampling plan itself is not subject to the Department’s approval, nor is there any bulk sampling permit or other approval required. The bulk sampling plan is simply an informational filing by an applicant to enable the Department to specify required permits or approvals...”<sup>3</sup>

Without the authority to approve or deny bulk sampling plans, or even request more information from entities engaging in bulk sampling, DNR cannot ensure that our public resources are being protected.

- **AB 499 exempts bulk sampling from groundwater quantity and quality requirements.** The bill would eliminate DNR’s authority under Wis. Stat. § 293.15(11) to adopt and apply rules establishing groundwater quantity or quality standards for bulk sampling. DNR’s authority to adopt such rules for prospecting and mining remains intact, however AB 499 does not extend

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<sup>3</sup> Correspondence from Timothy J Meyers, Engineer for Gogebic Taconite, LCC, to Wisconsin Department of Natural Resources, dated Jan, 8 2013 (available at: <http://dnr.wi.gov/topic/Mines/documents/gogebic/GTACBulkSamplingResponse20140108.pdf>)

that authority to bulk sampling. This means that no groundwater standards would apply to bulk sampling, including the standards in Wis. Admin. Code § NR 140. (NR 140 specifically states that it does not apply to activities regulated under Chapter 293).

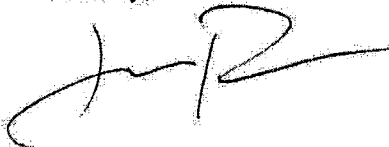
- **AB 499 eliminates the right to a contested case hearing on any decision related to bulk sampling, including decisions on wastewater, stormwater, and wetland fill permits.** By eliminating the right to a contested case hearing, AB 499 effectively prevents any review, whether administrative or judicial, of some permitting decisions. For example, a contested case hearing pursuant to Wis. Stat. § 283.63 is the exclusive means of review of DNR's decision to issue a Wisconsin Pollution Discharge Elimination System (WPDES) permit. Eliminating the public's right to seek review of a WPDES permit would put the State's water permitting program in conflict with federal law. And on this point, the Committee should be made aware of the fact that the U.S. EPA is currently investigating claims that DNR does not have adequate authority to implement the WPDES program consistent with federal law, and is specifically looking at whether Wisconsin provides adequate opportunities for review of WPDES permits.

For other permitting decisions, circuit court review may still be available; however circuit court review is not a new trial, but merely a review of the paper files regarding a permit application decision. The whole point of a contested case hearing is to have a decision made on the basis of sworn testimony and admissible documents, subject to cross-examination, rather than based on unsworn reports and records and people's 3 or 5-minute unsworn comments at a public informational hearing. Eliminating contested hearings would leave no opportunity for anyone to testify under oath, or for DNR or anyone else to cross-examine even a single witness and require them to defend their reports, opinions, or decisions regarding a permit.

The above points do not encompass the entirety of the concerns that Midwest Environmental Advocates has related to AB 499. We share the concerns raised by many of our partner organizations and private citizens, including those related to the loss of the master hearing and reduced protections for wetlands, among others.

For these reasons I strongly urge you not to support AB 499.

Sincerely,



James Parra  
Staff Attorney  
Midwest Environmental Advocates

Susan Amber Johnson  
2113 Mount Zion Avenue  
Janesville, WI 53545-1240  
Phone: 608-758-0973

I came here today to speak against the metallic mining bill which would lift the “prove it first policy.” I am not a lawyer or a scientist, merely a concerned citizen. I was born and raised in Kenosha. I am a fifth-generation Wisconsinite with family living in northeastern Wisconsin. I care deeply about the future of this state. I was always proud of Wisconsin’s conservation heritage. We received this wisdom from our indigenous people. We also had John Muir, Aldo Leopold, Sigurd Olson, and Gaylord Nelson who all claim roots and/or time in Wisconsin. If alive now, they would not recognize their state. As Americans, we have seen over the past thirty years, what happens when corporations are not properly regulated and supervised. They tend to do not do the right thing by the people. There are numerous examples of this happening and tis the reason why we now suffer so much from climate change. In preparation for this hearing, I did a search for information about sulfide and other metal mining. I came across an interesting article published in a source called [Miningtruth.org](http://Miningtruth.org). It was published in 2013 and is called, “Is the Flambeau Mine an Example of a Sulfide Mine that Didn’t Pollute Nearby Waters?” Authors of this article primarily cite a study done by the Wisconsin Department of Natural Resources in 2012. I trust this study because in 2012 the department was composed mostly of scientists. The Flambeau Mine near Ladysmith, Wisconsin is often cited by sulfide mining advocates as their example of a mine that hasn’t polluted nearby waters. This is not accurate! I quote directly from the article:

“What proof is there that Flambeau Mine polluted nearby waters? The Wisconsin Department of Natural Resources (WDNR) has recommended a stream flowing next to the site be designated “impaired” because **it exceeds acute toxicity levels for copper and zinc**. A 2012 assessment by the WDNR found samples from the stream exceeded acute toxicity criteria 92% of the time for copper and 46% of the time for zinc between 2002 and 2011. The Flambeau Mine has also severely contaminated groundwater. Monitoring wells at the mine site show the groundwater contains high levels of manganese, zinc, copper, and sulfates—in some cases hundreds of times higher than drinking water standards. A monitoring well at the edge of the site has also found levels of iron and copper exceeding drinking water standards.”

The Flambeau Mine has shown us that metallic mining that releases acid into the environment is NOT safe. We need to think about safe drinking water now and in the future. Wisconsinites all deserve clean, safe, drinking water. Seven generations out from now, the people will also deserve safe drinking water. I heard others this morning speak about our need to plan for seven generations. I believe that removing the “prove it first policy” will not allow us to accomplish this goal. I love the wisdom of indigenous people. They say, “We do not inherit the Earth from our Ancestors, We borrow it from our Children.” We need to follow this truth and keep our environment in Wisconsin clean and intact for generations to come!





**Oppose the Industrial Acid Mining Bill AB 499**  
**Statement of Jennifer Giegerich, Legislative Director**  
**Wisconsin League of Conservation Voters**  
**October 13, 2017**

Good morning. I am Jennifer Giegerich, Legislative Director for Wisconsin League of Conservation Voters. Thank you for this opportunity to testify on AB 499.

Wisconsin League of Conservation Voters is not opposed to mining. Rather, we are concerned about the considerations and guidelines that will be used by the state when evaluating future mine site proposals. Does the legislation protect public health and natural resources to at least current standards? Does the legislation give citizens and the general public the opportunity to be adequately informed and engaged in decisions that affect their community? In the case of AB 499, the answer is 'no' to both of these questions.

No mining company sets out to pollute. However, the very nature of the toxins used and produced in the process of metallic sulfide mining makes it almost impossible not to. The U.S. EPA has called sulfide mining the most toxic industry in America and estimates that the headwaters of 40% of watersheds in the western United States are contaminated by pollution from hard rock mining. Sulfide mining poisons rivers, disrupts eco-systems, and taints groundwater with heavy metals and carcinogens like lead, arsenic, and cyanide.

Given that metallic sulfide mining is the most toxic industry in America, it is essential for Wisconsin to maintain strong clean water protections and the Prove It First provision of our mining statutes. Unfortunately, AB 499 undermines many of Wisconsin's important mining provisions.

**AB 499 repeals the Prove It First provision of our mining law (Page 32, Section 37).** For 20 years, Wisconsin's waters, public lands, and wildlife have been protected by the "Prove It First" mining law. That provision requires mining companies to provide specific proof a sulfide mine can run for 10 years and be closed for 10 years without polluting groundwater and surface waters with acid drainage.

**AB 499 repeals Natural Resources Rule 132.06, which is the special designation for wetlands specifically under the mining code (Page 37, Section 48).** The mining code outlines detailed wetland protections because, when sulfides in waste rock are exposed to water, they become incredibly toxic. The current law focuses on avoiding mining in sensitive wetlands where sulfuric acid could be produced. SB 395 would allow mining to occur in more wetlands in exchange for wetland mitigation anywhere else in the state. This increases the likelihood we will have more acid drainage problems and increases the destruction of wetlands needed for clean groundwater and clean lakes and rivers.

**AB 499 eliminates a permit for "bulk sampling" activities defined as 10,000 tons (Page 9, Sections 6 & 7).** Metallic sulfide mining by its very nature causes acid drainage when the sulfides in the ore come into contact with water. The bill requires the mining company to develop a plan for their bulk sampling activities rather than having those actions covered by a permit. By eliminating the need for a permit for bulk sampling, you are eliminating all the enforceable water standards that come with a permit. Digging a 10,000 ton hole that would be exposed to weather and other elements is creating the potential for acid pollution.

**AB 499 undermines protections for local communities (Page 35 Section 47).** The bill as drafted removes critical opportunities to challenge accuracy of mining company information and allows mining companies to begin construction even as their permits are being challenged. AB 499 would eliminate the Master Hearing in the mining permitting process. The Master Hearing is where the mining company can be questioned about accuracy of the information that they are submitting to the DNR, which is the basis for their permits. The bill also prohibits a judge from blocking a mining company from proceeding with construction of a mine while they are reviewing the legality of their permits. By allowing construction while a permit is being

reviewed, they are allowing environmental damage that cannot be undone if it is later found that the permit conditions were not adequate (Page 36, Lines 18-21).

**Finally, AB 499 allows mining companies to walk away from financial responsibility for any damage that occurs after the mine has been closed (Page 32, Section 41).** SB 395 eliminates the requirement for a mining company to establish and maintain an irrevocable trust in perpetuity to ensure the availability of funds for preventive and remedial activities, such as responding to a spill of a hazardous substance at the mining site. If we don't require mining companies to have an irrevocable trust in place, and there is a hazardous spill, taxpayers and local communities will be on the hook for dealing with this pollution.

**We ask that you oppose AB 499, which fails the citizens of Wisconsin by removing protections for human health and our natural resources for the benefit of the most toxic industry in America. There are no amendments that can make this bill better. Thank you.**



Dear Senator,

As elected officials in counties, towns, and cities throughout Wisconsin, **we are asking you to oppose SB 395 and reject attempts to weaken Wisconsin's Prove It First mining law.**

For 10 years, Wisconsin's waters, public lands, and wildlife have been protected by the Prove It First mining law. That law requires mining companies to provide specific proof a metallic sulfide mine can run for 10 years and be closed for 10 years without polluting groundwater and surface waters with acid drainage. In 20 years, no mining company has provided this proof.

The U.S. Environmental Protection Agency called the mining of sulfide ore "America's most toxic industry." Waste from sulfide mining includes sulfuric acid, arsenic, mercury, lead, copper, and carcinogens of the highest order. It turns rivers and streams yellow and renders ecosystems into dead zones. Since 1997, the metal mining industry has accounted for 41 percent of all toxic materials reported to the EPA.

SB 395 undermines protections for local communities, in particular, by removing critical opportunities to challenge the accuracy of mining company information and by allowing mining companies to begin construction even as their permits are being challenged. The bill even prohibits a judge from blocking a mining company from proceeding with construction while they are reviewing the legality of their permits.

Please help us keep our communities' strong and healthy by rejecting attempts to weaken the Prove It First mining law and opposing SB 395.

Sincerely,

Lance	Achterberg	Town of Packwaukee Supervisor	Packwaukee
Suzanne	Allen	Town of Pembine Clerk/Treasurer	Pembine
Adrian	Amelse	Town of Liberty Supervisor	Viola
		Vernon County Board District 20	
Steven	Anderson	Town of Stockholm Supervisor	Stockholm
		Pepin County Board Supervisor District 12	
Robert	Bailey	Village of Nelsonville President	Nelsonville
Russell	Bailey	Town of Port Wing Supervisor	Port Wing
Marilyn	Barrett	Town of Luxemburg Clerk	Luxemburg
Bruce	Barton	Town of Germantown Supervisor	New Lisbon
Russ	Bauer	Marinette County Supervisor District 18	Marinette
George	Beasley	Town of Pacific Supervisor	Portage
Cindy	Beier	Town of Ripon Clerk	Ripon

Jeffery	Benton	Town of Russell Supervisor	Bayfield
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Jason	Bergeron	Chippewa County Supervisor District 6	Jim Falls
Mike	Beyer	Town of Maple Valley Supervisor	Gillett
Brian	Bisonette	Sawyer County Supervisor District 9	Hayward
Mike	Bobin	Washburn County Board Supervisor District 1	Minong
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Jim	Brandenburg	Town of Koshkonong Supervisor	Fort Atkinson
Weenonah	Brattset	Town of Palmyra Supervisor	Jefferson
Karen	Brazee	Town of Vinland Treasurer	Oshkosh
Irma	Brockley	Town of Pacific Supervisor	Pardeeville
Roxann	Brue	Town of Dekkora Supervisor	Poynette
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Carla	Carmody	Town of Spring Green Supervisor	Spring Green
Barbara	Ceas	Town of Richmond Clerk	Whitewater
Mark	Christenson	Town of Wheaton Clerk	Chippewa Falls
Thomas	Clark	Jackson County Supervisor	Melrose
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John	Cuccia	Town of Westport Supervisor	Waunakee
Jim	Dier	Town of Hunter Supervisor	Hayward
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Tim	Dornfield	Town of Clyman Supervisor	Juneau
James	Dunning	Eau Claire County Supervisor	Eau Claire
John	Durham	Marathon County Supervisor	Mosinee
Dennis	Dvoracek	Town of Howard Supervisor	Chippewa Falls
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Robert	Elkins	Town of New Glarus Supervisor	New Glarus
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Larry	Fickbohm	Bayfield County Supervisor	Port Wing
Mark	Frank	Town of Leeds Supervisor	Arlington
Mike	Garvey	Town of Black Creek Constable	Black Creek
Judy	Gatlin	Eau Claire County Supervisor	Eau Claire
Dean	Ginther	Town of Springfield Treasurer	Taylor
Toni	Goldschmidt	Town of Wagner Clerk	Wausaukee
Debra	Gotlibson	Town Supervisor	Elk Mound
Kathleen	Gross	Town of Hebron Clerk	Fort Atkinson
Sherry	Gruhn	Town of Yorktown Supervisor	Union Grove

Susan	Haake	Village of Union Grove Fire Commission	Colfax
Karen	Habeck	Town of Howard Clerk	Clintonville
Daniel	Hansen	Town of Pella Clerk	New Richmond
Ken	Hansen	St. Croix County Supervisor	Pine River
Paul B	Hansen	Town of Saxeville Supervisor	Manitowoc
John	Hartzell	Manitowoc County Supervisor	Washburn
John	Hellenbrand	Town of Washburn Supervisor	Marshall
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Karla	Hill	Town of New Holstein Clerk	Lyons
Laverne	Hoitomt	Town of Lyons Clerk	Glenwood City
Larry	Holter	Town of Forest Supervisor	Danbury
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Steve	James	Chippewa County Supervisor	Fountain City
Jennifer	Jensen	Town of Buffalo Chair	Chippewa Falls
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		Town of Menominee Supervisor	
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		Iron County Supervisor	Park Falls

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Sheree	Nelson	Town of Albion Clerk	Eleva
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Brian	Renard	Town of Union Chairperson	Brussels
Robert	Reynolds	Town of Fennimore Chairperson	Fennimore
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Ted	Ritter	Town of St. Germain Supervisor #1	Saint Germain

Lowell	Rivard	Town of Sand Lake Supervisor	Webster
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Gary	Saari	Town of Maple Chairperson	Maple
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Ben	Sawyer	Town of Pine Grove Supervisor	Bancroft
Joe	Schachtner	Town of Star Prairie Supervisor	Somerset
David	Schenk	Town of Sylvester 2nd Supervisor	Monroe
Curtis	Schmidt	Town of Luck Constable	Luck
La Barre	Schreck	Town of Georgetown Supervisor	Kennan
Lloyd	Schultz	Town of Wien Supervisor	Edgar
Tom	Sieber	Brown County Supervisor	Green Bay
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			Washington
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Greg	Steenweg	Town of Langlade Supervisor	Lily
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Duaine	Stillman	Calumet County Supervisor	Appleton
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Dwight	Swenson	Town of Curran Chairperson	Hixton
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Gary	Taxdahl	Barron County Supervisor	Turtle Lake
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Cathy	Thompson	Outagamie County Supervisor	Appleton
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Terry	Tipton	Town of Green Valley Supervisor	Cecil
Jason	Tlachac	Town of Forestville Supervisor	Forestville
Kristy	Trowbridge	Town of Chetek Clerk	Cameron
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Peter J	Vedro	Sauk County Supervisor	Baraboo
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Michael	Yahn	Town of Millston Supervisor	Black River Falls
Dennis	Zahn	Town of Pella Treasurer	Clintonville
Joe	Zaspel	Town of Johnstown Supervisor	Cumberland
Jim	Zittlow	Town of Riverview Supervisor	Crivitz
Lisa	Zunker	Town of Lynne Supervisor	Tripoli