



Mine opponents find both good and bad in judge's decision

NWF and partners pleased with Eagle Rock protection, will appeal remainder of decision

MARQUETTE, MICH. (August 18) – Administrative Law Judge Richard Patterson announced today that he will uphold permits issued to Kennecott Eagle Minerals Company by the Michigan Department of Environmental Quality in 2007, with one critical exception that could nix the project or at the very least require a major overhaul of the mining plan. Nonetheless, the petitioners in the case will likely appeal the portions of the permits not struck down or modified. Attorneys say the contested case record provides a remarkably strong basis for appeal.

In his decision, Patterson recommended moving the mine's portal, or entryway, from Eagle Rock, a sacred outcropping with spiritual importance to local Native American tribes. Patterson stated that Kennecott and the MDEQ "did not properly address the impact on the sacred rock outcrop known as Eagle Rock" and suggested moving the mine's entry portal away from the rock.

Michelle Halley, attorney for the National Wildlife Federation, said: "Kennecott has claimed for years that Eagle Rock is the only possible location for the mine's portal. Without that option, this mine could be halted or, at the very least, require a complete overhaul of the mining plan. We are pleased that Eagle Rock will be protected, assuming MDEQ Director Steve Chester follows the judge's recommendations on this issue."

Patterson's decision comes in the form of a recommendation to Chester. According to law, the parties in the case will have an opportunity to file exceptions to the judge's recommendations by submitting a written document outlining those components with which they agree or disagree. Once Chester has received the exceptions, he will issue his final decision. Chester is not obligated to follow Patterson's recommendations.

"While the protection of Eagle Rock is fantastic, it doesn't address most of the technical deficiencies we outlined in the course of the contested case. Therefore we will almost certainly appeal the final agency decision should Director Chester adopt the judge's recommendations on the remaining issues," Halley stated.

The decision is the latest development in a series of legal challenges to prevent a foreign mining company with a deeply troubled environmental and human rights history from blasting a risky metallic sulfide mine beneath the Salmon Trout River in the central Upper Peninsula. Petitioners in the case are the Keweenaw Bay Indian Community, Huron Mountain Club, National Wildlife Federation and Yellow Dog Watershed Preserve.

In most areas, the judge's recommendations failed to address issues that are important to protect workers and the environment. Halley, who said she is still reviewing all of the specifics of the decision, went on to say that NWF will address its concerns in written exceptions presented to the MDEQ and ultimately through appealing Chester's final decision if it comes to that.

“We put on a solid case and created a factual record that will support appealing the remainder of the permit provisions that Judge Patterson left unaddressed. Many of those are too important to be overlooked and if they should remain unaddressed by Director Chester, we are prepared to appeal,” Halley stated.

“This ruling does not change our firm belief that the decision to permit this mine violates the law,” said **Andy Buchsbaum, regional executive director of the National Wildlife Federation’s Great Lakes Regional Center**. “We remain committed to protecting the people, economy and wildlife of Michigan from this risky type of mine that has proven deadly to rivers, streams and communities in other states.”

During oral arguments in the summer of 2008, NWF and its partners presented more than two dozen witnesses in a variety of technical disciplines. At the time, Halley remarked “the testimony in this case has done nothing but demonstrate Kennecott’s substandard job in preparing the application and the slipshod review by the DEQ. Testimony at the hearing from Kennecott, MDEQ and our experts proves time and time again that the proposed mine is unsafe for humans and the environment.”

Perhaps most stunning was the admission of MDEQ employee Joe Maki, leader of the mining review team that ultimately recommended approval of the mining permit. Asked under oath if he had applied mining law Part 632’s critical standard which states that the company must prove it will not pollute, impair, or destroy natural resources, Maki stated simply “I did not.” Asked if the mining review team had applied that standard, he said “I don’t believe so, no.”

Should MDEQ Director Chester act on Patterson’s recommendation regarding Eagle Rock, Kennecott will remain stymied and cannot conduct mining operations until a new mining plan is submitted and approved. In addition, the U.S. Environmental Protection Agency must still decide whether the company could obtain necessary federal permits.

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