

5. LOCAL AGREEMENT AND CONDITIONAL LAND USE PERMIT

Section 5 gives the background and events leading up to the signing of the Local Agreement and the Conditional Land Use Permit. In addition, it includes a list of all major provisions of those documents. The Agreement specifically addressed alleviating the impact of the mine by establishing programs that would enhance the local economy and provide for long-term economic gains. The Permit covered all phases of the operation: construction, mine operation, and mine closure. Many of the requirements of the Conditional Land Use Permit are also stipulated in the Local Agreement. See Appendix A for a copy of the Local Agreement and Conditional Land Use Permit.

5.1 BACKGROUND

The signing of the Local Agreement and Conditional Land Use Permit between Kennecott Minerals Company and the three local units of government, Rusk County, City of Ladysmith, and Town of Grant, took place August 1, 1988. However, many years of protests, hearings, and meetings led to the establishment of these two key documents.

Kennecott began collecting data in 1970 for the Environment Impact Report that they were required to file with the Wisconsin Department of Natural Resources. During this same time period, Kennecott began lobbying the state legislature to pass a mining taxation code and regulatory framework, both of which were essentially nonexistent at the time. A resolution was passed by the legislature that levied a 1.1 percent production tax on copper (6:37).

The Environmental Impact Report was eventually submitted by Kennecott to the DNR in June of 1974. After review by the various departments within the DNR, and a DNR request for more information and clarification on some parts of the report, an addendum to the report was submitted in February 1975 (5:15).

Heavy protests by strong environmental conscientious groups were taking place all over the United States. Concerns were voiced from several sources regarding the Flambeau Mine project. The State was concerned with protection of the quality of the air, land, surface waters, groundwater, as well as any wildlife, plants, and fish. The local units of government and communities were also concerned with the protection of the water quality including private local wells. Furthermore, their concerns involved maintaining or improving the quality of life in the area, the employment of local people, and guarantees that tax dollars from the mine would be returned to the local economy. In addition, Native Americans had concerns about the adverse effects to local fishing in the Flambeau River.

In March 1976, a public hearing hosted by the WDNR was held in Ladysmith on the adequacy of the Draft Environmental Impact Statement. This hearing is mandated by the Wisconsin Environmental Policy Act and is cited by company and state officials as an effective means of incorporating public testimony into the permit process. However, many residents of the local communities felt excluded from the public participation process because the DNR hearing examiner only allowed the Kennecott lawyer to question the witnesses, which were all Kennecott's witnesses and supported the EIS (6:38).

In September 1976, the Final Environmental Impact Statement was issued by the WDNR. Applications for mining permits were then submitted by Kennecott.

A local anti-mining coalition, the Rusk County Citizens' Action Group, in the months following the WDNR hearing, voiced their concerns about the inadequacy of the EIS and other issues. Eventually, the Rusk County Board unanimously passed a temporary moratorium on mining in the County. Since Wisconsin law requires that a mine comply with zoning regulations from all affected communities, the hearing examiner was forced to table the permit hearings indefinitely and the permit applications were eventually dismissed (6:38). During the later half of 1976, copper prices went down and Kennecott decided in late 1976 to defer the project.

In 1986 when copper prices were up again, Kennecott reexamined the economics of the Flambeau ore deposit. Based on a new estimate of the size and value of the deposit, Kennecott

renewed its efforts to gain a DNR permit for the mine. However, the company could not proceed without first gaining approval from the local units of government surrounding the Flambeau site (6:39). Plans for the Flambeau Mine and its operation were redesigned to meet the requirements of the local units of government that would result in protection of the area groundwater, the Flambeau River, and meet the requirements of the State of Wisconsin from the standpoint of environmental protection (3). Even though the Town of Grant had already voted to deny a mining permit until further study of the proposal, Kennecott continued their efforts to obtain a DNR permit.

In 1987, then Wisconsin Governor Thompson appointed an Ad Hoc Task Force to review local concerns that had been raised about the proposed mine. The gubernatorial task force, which included citizens and local officials from Rusk County, convened and met over a three month period. Its final recommendation was that representatives from Rusk County, the City of Ladysmith, and Town of Grant meet with representatives from Kennecott Minerals to determine whether or not they could reach some formal agreement that would address their mutual concerns. A negotiating committee was formed and began meeting in October 1987. After 10 months of negotiating on a point by point resolution of their concerns, an agreement was reached (10:2). The Local Agreement set forth certain environmental and economic guarantees, which covered everything from mine start up to closure.

Two significant pieces of legislation were soon introduced and passed in the Wisconsin Legislature. The Metallic Mining Reclamation Act (MMRA) requires three public hearings on three separate occasions during a mine permit process: with the Notice of Intent, the Draft EIS, and the Master Hearing. Public comment on mine proposals is to be solicited and considered at these meetings. Furthermore, the MMRA specifies that local communities have the power to influence the mine permit process through Wisconsin Statutes 144.838 and 144.839. These statutes authorized local communities to establish “local impact committees” that would be given the power to negotiate binding and legal agreements with mining operators, such as Kennecott Minerals. In addition to the authorization to form such a negotiating committee, Wisconsin Statute 144.838 grants local communities the power to seek funds to offset the costs associated with planning and negotiations. However, the State was not prepared to offer financial or

technical assistance to such a committee and, thus, residents were advised to seek funds from Kennecott to form such a committee. Kennecott offered to pay a certain amount to cover these costs, but only after the negotiations were complete and the Local Agreement was signed (6:39).

After the passing of the state legislation, the Local Agreement was submitted for discussion and debate to the Ladysmith City Council, the Town of Grant Board, and the Rusk County Board of Supervisors. Each of these elected public bodies held hearings, talked to their constituents, and debated the merits of the Local Agreement. In addition to the local units of government hearings and the two public hearings held by the Governor's Task Force, there were eight public hearings on permitting the Flambeau Mine. In total, more than 500 people spoke at these hearings (12). During these hearings, Kennecott's management went on record stating that they would follow best management practices, use state-of-the-art technologies to ensure maximum degree of environmental protection, and go beyond standard compliance whenever feasible.

Despite an astonishing amount of local testimony against the mine and accusations by Kennecott lawyers of legal threats, the Local Agreement and Conditional Land Use Permit were finally signed by the local impact (negotiating) committee on August 1, 1988. Subsequently, it was ratified by overwhelming majorities in all the local jurisdictions: the Rusk County Board approved it 14-4 (two members were absent and the chairman elected not to vote); the Town of Grant Board approved it 3-0; and the Ladysmith City Council approved it 6-1.

On January 14, 1991, the State of Wisconsin's Hearing Examiner concluded that Flambeau Mining Company had met the requirements of all local, state, and federal laws and should receive the permits required to operate and reclaim the mine. A total of 11 permits and approvals were required to begin construction. The permits contained more than 200 conditions requiring additional monitoring and operational safeguards.

5.2 REVIEW OF LOCAL AGREEMENT AND CONDITIONAL LAND USE PERMIT

The Local Agreement is a legally binding contract between Rusk County, the City of Ladysmith, Town of Grant and Kennecott Explorations (Australia) Ltd. for development of the Kennecott

Flambeau Mine. All the parties are bound by the provisions of the Agreement and can be prosecuted for failure to comply with any of the provisions. The Agreement is unique in that it legally binds Kennecott to agreements that exceed Wisconsin's stringent mining and environmental laws. Experts in and outside the mining industry applauded this unprecedented agreement between a mining company and the elected officials of the local units of government in which the mine is located. It has been suggested that it could become a model for protecting the rights and meeting the concerns of local citizens in mining developments in other parts of the nation (10:1).

In addition to addressing the environmental issues and operational limitations, the purpose of the Local Agreement was to alleviate future mining impacts to the local area by establishing programs that would enhance the local economy and provide sustainable economic development to the local communities. The major provision in the Agreement designed for developing alternative economic activities was the direct tax payments to the local units of government guaranteed by Kennecott regardless of whether the mine made a profit.

In representing the interests of local residents, the Local Agreement negotiating committee members focused on five major points of concern (10:2). Following are those five points:

1. That the mine would have to meet all of Wisconsin's very tough environmental and mining requirements so that the Flambeau River, the wetlands, the groundwater, and the fish and wildlife would not be harmed.
2. About jobs for local people and, if for some reason the mine did not make a profit, what would happen to the surrounding communities' share of the mining taxes.
3. What would local residents do if for some reason their wells were affected.
4. About safety and the noise from mining operations affecting people at night.
5. A guarantee that the value of the property in the area would be protected.

Each of these five concerns was responded to by Kennecott and covered in the Local Agreement and Conditional Land Use Permit. It should be noted that none of the parties could agree to something which would violate any state laws or DNR requirements with regard to the mine (12). Major provisions of the Local Agreement and Conditional Land Use Permit are as follows:

- All necessary licenses and permits from the DNR shall be secured by the owners of the mine.
- The operation of the mine will comply with all DNR regulations applicable to the mine site and facilities. Copies of any documents applying for exemptions by Kennecott must be furnished to the local impact committee.
- The operator shall take preventative measures to minimize surface water runoff or erosion by finish grading and seeding completed areas of the mine according to an acceptable closing plan.
- The open pit shall be no greater than 40 acres and shall be excavated to a depth of no more than 225 feet below the existing grade.
- There will be no conversion from an open pit to deep shaft mineral mining.
- There shall be no smelting, concentrating or refining of ore on the mining company's land or in Rusk County.
- There will be no major expansion of the mine without reopening the Local Agreement and any land use permits granted.
- The mine area shall, at all times during the construction, operations, and closure phases of the project, be enclosed by a security fence with security gates of sufficient strength to control access to the mine.

- Flambeau Mining shall install, maintain, and utilize surface water containment systems and a mine water treatment facility to protect the groundwater and surface water of the county in accordance with certain specifications.
- All transportation of ore away from the site shall be via railroad. To achieve this, a rail spur to the main line shall be constructed at the mining company's expense.
- Access to and from the mine will be limited to State Highway 27 via Blackberry Lane, unless a new access road is constructed entirely at the expense of the mine operator. The maximum number of access roads will be two unless a road is built from State Highway 27 to be used as access to a possible mine overlook.
- Certain limitations were stipulated regarding the location, height, and size of any buildings constructed on the active mine site. For each building constructed, sufficient off-street parking shall be provided for employee, agent, and guest automobiles and trucks.
- 300,000 tons of ore shall be the approximate projected amount of ore to be shipped from the mine each year.
- An area to allow visitors to park and observe the mining operation shall be provided.
- Blasting, crushing, and rail shipping shall be limited to daylight hours, Monday through Saturday only.
- Explosives will be a fertilizer base explosive consisting of ammonium nitrate and fuel-oil and/or dynamite. Any change to this form of explosive must be approved before use.
- The County Zoning Administrator shall have inspection powers and authority as outlined in the Permit for the purpose of determining compliance with the terms of the Permit.

- Mine trucks are to be confined to the mine site except in an emergency. In the event that trucks are used, certain restrictions are to be followed. Dust control from ore transportation, either by rail car or truck, must be in effect at all times.
- An average of 75 percent of all the mine workers shall be persons who have resided in or within 10 miles of the Rusk County border for a period of at least one year prior to hiring. This includes anyone hired directly by Flambeau Mining or by any contractor/subcontractor hired by Flambeau.
- Not less than six groundwater monitoring well clusters shall be constructed within the active mine area. These wells shall be tested on at least a quarterly basis and if water quality does not meet standards, certain defined procedures and measures shall be taken.
- Private off-site wells in a designated well guarantee area around the mine site will be tested, monitored, and guaranteed for 20 years after the mine ceases to operate.
- Property values in a designated area around the mine will be guaranteed for 20 years after the mine ceases to operate. Baseline property value appraisals will be paid for by the Flambeau Mining Company.
- A Local Mining Impact Committee shall be formed consisting of the chief elected official of the City, Town, and County or their designee (s) who possess no conflict of interest. This committee will monitor the ongoing status of the mining operation, hold public meetings, and report findings to the participating local units of government. Per Diem and travel expenses shall be paid by Flambeau Mining.
- Flambeau Mining Company will continue to run its water treatment facilities even if the mine closes temporarily.

- After completion of mining operations, the local units of government have the right of first refusal based on the highest bid received on any property (land, facilities, equipment) being sold by the Flambeau Mining Company.
- Upon conclusion of its mining phase, the mining company shall back fill the open pit according to a plan approved by the DNR.
- Prior to the construction phase of the mine operation, Flambeau will take an inventory of the existing vegetation. During the closure phase of the mine operation, Flambeau shall re-vegetate all disturbed sites in the active mine area. Flambeau will remain responsible for and insure viability of what it has planted for a period of 20 years.
- Prior to commencing mining operations, Flambeau will submit to the Local Impact Committee a copy of a closing plan for the mine.
- Flambeau agrees to lease to the participating local units of government, the following parcels for \$1.00: 1) A parcel on the north side of the former “Sisters’ Farm” for use as a city outdoor recreation area and, 2) Flambeau River frontage adjacent to the end of Blackberry Lane for park purposes, which is the Town responsibility.
- Flambeau Mining will reimburse the participating local units of government for municipal costs and expenses incurred during negotiations up to the sum of \$60,000.
- For a period of 25 years, the mining company agrees to indemnify and hold harmless the participating local units of government from any or all liability as a result of claims, demands, costs, or judgments against them arising from the negotiation of this agreement. In addition, the mining company shall support, defend, and/or reimburse the participating local units of government for 75 percent of any legal expenses incurred with regard to the above mentioned actions.

- After the DNR issues the mining permit, but before mining begins, the mining company shall provide to the participating local units of government a certification that a bond payable to the DNR in the amount required under NR132 has been secured. The company must annually certify that it is in compliance with NR132 and it must maintain the bond for 30 years after closure of the mine.
- Under certain circumstances outlined in the Agreement, the participating local units of government or Kennecott may request that the Agreement be opened for renegotiation by serving a petition upon the other party.
- The Agreement is contingent upon the issuance of a conditional land use permit for the Mine.
- A minimum of \$1.5 million (indexed for inflation) shall be paid in local taxes to the participating local units of government: Rusk County, the City of Ladysmith, and Town of Grant, regardless of copper price or profits. In 1993 dollars this amount is closer to \$2.5 million.
- The participating local units of government shall not oppose the development of the Mine or take any action to unreasonably delay or stop construction of the Mine.
- The provisions in the Agreement do not prohibit or restrict the participating local units of government from participating in the DNR permit hearing process.

The Local Agreement allowed for variances in the language of the Agreement, but those variances can only address the operation of the mine and/or the language of the Agreement. All such changes must be agreed to by all parties to the Agreement. Appendix A contains a copy of the Local Agreement and the Conditional Land Use Permit.