



- Fact Sheet on Court Ruling Related to Clean Water Act Lawsuit –

FLAMBEAU COMMITTED TO “PROTECTION OF THE ENVIRONMENT AND PRESERVATION OF WATER QUALITY”

Ruling eliminates any doubts about Flambeau Mining Company’s strong commitment to the environment

Background:

On July 24, 2012, U.S. District Court Judge Barbara Crabb issued her ruling in a 2011 lawsuit against the Flambeau Mining Company that was filed by mining opponents alleging Clean Water Act violations. The Judge’s ruling 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 also questioned the motives of the plaintiffs in bringing the lawsuit. She found that the company protected the environment and preserved water quality, and issued a pro forma fine of \$275. She believes that a fine was required under the Clean Water Act because she ruled the company should have had a permit under federal law for storm water management at its site, rather than the state permit that the company was issued. The company contended that the state permit qualified as the required permit.

Essence of Decision

The essence of the Judge’s decision is best summed up in these key quotes:

- *“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)*
- *“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)*
- *“I will enter judgment for plaintiffs on liability, but I will impose only a pro forma penalty on defendant, 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)*

Other key excerpts from Judge Crabb’s ruling (entire ruling at www.flambeau.com/news.html)

- *“Plaintiffs have failed to show that any violation was serious in nature.” (Decision, Page 32)*
- *“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)*
- *“...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)*
- *“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)*
- *“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)*