

COPY

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 14

DANE COUNTY

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LAC COURTE OREILLES BAND OF LAKE  
SUPERIOR CHIPPEWA INDIANS,  
SIERRA CLUB, and GREGG MOORE,

ORDER

Petitioners-Plaintiffs,

CASE NO: 91CV2972

vs.

WISCONSIN DEPARTMENT OF NATURAL  
RESOURCES,

Respondent-Defendant,

and

FLAMBEAU MINING COMPANY,

Intervenor-Defendant.

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This Order is hereby entered pursuant to the Court's findings of fact and conclusions of law as set forth at the Court's oral decision on August 29, 1991.

Whereas Plaintiffs-Petitioners filed an Amended Summons and Complaint on August 9, 1991 seeking a Writ of Mandamus, Administrative Review under Chapter 227 Stats., a Writ of Certiorari, or in the alternative Declaratory Relief; and

Whereas Plaintiffs-Petitioners filed a motion for Injunctive Relief on August 9, 1991;  
and

Whereas the parties having submitted briefs and supporting affidavits on the injunctive relief issues; and

Whereas an evidentiary hearing was held on the injunctive relief issues on August 23, 1991; and

Whereas the Court finds that injunctive relief being equitable in nature, the Court does have jurisdiction; and

Whereas the Court finds, for the reasons set forth in the oral decision, that a preliminary injunction is necessary to preserve the status quo; and

Whereas the Court finds there is a lack of other adequate remedy of law; and

Whereas the Court finds that the permanent injunction sought would be, in effect, rendered futile without issuance of a preliminary injunction; and

Whereas the Court finds that, under the requisite standard for environmental cases, the Plaintiffs-Petitioners have met their burden of showing reasonable probability of success on the merits; and

Whereas the Court having balanced the potential hardship to the Respondent-Defendant and the Intervenor-Defendant with the other relevant factors; and

Whereas the Court having considered the public interest and public policy as contained in the Wisconsin Environmental Protection Act;

**NOW, THEREFORE,** the Court orders that a preliminary injunction issue requiring that:

All permits issued which relate to either site preparation or mining operations and activities shall be suspended pending completion of a Supplemental Environmental Impact Study (SEIS) by the Department of Natural Resources (DNR); and

Said Order shall remain in effect until 30 days after completion of the SEIS or until the DNR, based upon the SEIS, makes a decision regarding any particular permit(s) in question; and

The DNR, after consulting with the Petitioners-Plaintiffs and Intervenor-Defendant, shall take any action necessary to protect the affected environment in the meantime whereas some site preparation work has already taken place; and

The DNR shall, no later than September 5, 1991, submit proposals consistent with this Order for interim measures; and

The Court shall retain limited jurisdiction for the sole purpose of ordering or approving appropriate interim measures either by stipulation of the parties or by court decision; and

The Court denies the oral motion of the Intervenor-Defendant for a stay of the preliminary injunction pending appeal, for the reasons set forth on the record; and

The Court denies the written motion of the Intervenor-Defendant, filed August 29, 1991, to permit Flambeau Mining Company to proceed with certain construction during the pendency of the action, including the appeal process; and

The Court orders that the other causes of action filed by the Plaintiffs-Petitioners are hereby dismissed for the reasons set forth on the record; and

**The Court finds that:**

Whereas the permanent injunctive relief sought was the completion of the SEIS and preservation of the status quo pending its completion; and

Whereas the DNR had in fact ordered a SEIS;


**NOW, THEREFORE,** except for retaining jurisdiction for the limited purpose of determination of appropriate interim measures necessary to protect the environment, the issuance of the preliminary injunction combined with the DNR's decision to do the SEIS renders the permanent injunctive relief sought moot;

**And the Court further finds:**

The rest of the action being rendered moot and based upon case law holding that bond is not mandatory in environmental cases for stated public policy reasons, the Court declines to require the Plaintiffs-Petitioners to post bond.

Dated: August 30, 1991

BY ORDER OF THE COURT:



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George A. W. Northrup, Judge  
Circuit Court, Branch 14