

Laura Gauger: In response: Flambeau Mine proves need to preserve Wisconsin's mining moratorium law

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I was a plaintiff in a 2012 Clean Water Act lawsuit against Rio Tinto of London, owner of the Flambeau Mine near Ladysmith, Wis. My three-year legal battle was quite contrary to statements made by Ladysmith City Administrator Al Christianson in his August 15 commentary in WisPolitics.com: "[The Real Flambeau Mine Story.](#)"

Christianson, in an effort to advocate for repeal of Wisconsin's Mining Moratorium Law, described the Flambeau Mine as "environmentally sound" and stated that "mining related problems ... didn't happen." He then suggested our Clean Water Act lawsuit was a waste of time that amounted to no more than trying to prove that "some runoff from a parking lot ... picked up trace amounts of mineral."

Christianson also chided, "Before you draw conclusions about the Flambeau Mine look to see where the information came from." On that point I agree. So please let me set the record straight, using court records, actions taken by the Environmental Protection Agency at the Flambeau Mine, and an April 2017 report documenting surface and ground water contamination at Flambeau authored by Dr. Robert E. Moran, a world-renowned hydrogeologist (<https://remwater.org/>).

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After reviewing Flambeau Mine water quality data on file with the Wisconsin Department of Natural Resources, Dr. Moran concluded (<https://remwater.org/projects/flambeau-mine-ladysmith-wisconsin-u-s/>):

“Flambeau ground and surface water quality is being and has been degraded—despite years of industry public relations statements touting the success of the ... operation. Rio Tinto said in a 2013 public relations (PR) release regarding the Flambeau Mine: “Testing shows conclusively that ground water quality surrounding the site is as good as it was before mining.” In efforts to encourage development of the other metal-sulfide deposits in northern Wisconsin and the Great Lakes region, the industry approach has been to simply repeat this false statement over and over, assuming that repetition will make it believed. Unfortunately, the ... data show otherwise.”

Dr. Moran added: “I know of no metal-sulfide mines anywhere in the world that have met the criteria of Wisconsin’s 1998 moratorium on issuance of permits for mining of sulfide ore bodies without degrading the original water quality, long-term.”

Dr. Moran’s findings in 2017 were consistent with the findings of my legal team in 2012, when we sued Rio Tinto in federal court over surface water contamination at the Flambeau Mine. I was cautiously optimistic going into court because the tributary of the Flambeau River at the heart of our lawsuit recently had been added, on the recommendation of the Wisconsin DNR, to the EPA’s list of “impaired waters” due to high copper concentrations linked to the Flambeau Mine. The levels were out of control because Rio Tinto never obtained an important permit *required* by the Clean Water Act that would have regulated the amount of pollutants getting into the stream.

Christianson branded the lawsuit a “scare tactic.” But, at trial, the U.S. District Court agreed with us and found Flambeau Mining Company (FMC), a subsidiary of Rio Tinto, to be in violation of the Clean Water Act on numerous counts.

My excitement at winning quickly came to an end, however. The decision was challenged and, in a controversial move, the U.S. Court of Appeals let the mining company off the hook. In its ruling, the appellate court did not dispute the tributary was impaired. Rather, it focused on a very narrow issue regarding whether Rio Tinto could be held accountable for the company’s failure to have the federally mandated Clean Water Act permit. The court ruled in the company’s favor because the Wisconsin DNR had never required the permit.

In other words, the appellate court allowed a mistake made by the Wisconsin DNR in its administration of the Clean Water Act to shield Rio Tinto from being held accountable for pollution.

As one of the plaintiffs, I was ordered to pay \$20,500 to the polluter in court costs. Fortunately, I was showered with community support and quickly raised the entire amount.

The Flambeau River tributary remains on the EPA's impaired waters list to this day, despite numerous attempts at passive water treatment. As Dr. Moran observed, "Since 1998, FMC has instituted six different work plans to address this soil and water contamination issue. As of fall 2016, copper levels in the Flambeau River tributary still exceed the acute toxicity criterion, and FMC has not secured a mine reclamation Certificate of Completion (COC) for this portion of the mine site."

The most recent copper concentration in the tributary, immediately downstream of what Christianson claimed to be an "environmentally sound" sulfide mine, was 12 parts per billion (ppb). Earlier levels have registered as high as 88 ppb. The standard set to protect fish is about 4 ppb.

Flambeau ground waters are contaminated as well. After reviewing Rio Tinto's own data, Dr. Moran concluded that "these waters would require expensive, active water treatment to be made suitable for most foreseeable uses. Historically, most such costs are paid by the taxpayers."

Mind you, these levels of pollution are from a tiny, state-of-the-art sulfide mine that operated for only four years. Compare that to the much larger projects coming down the pike for northern Wisconsin if the Mining Moratorium Law is repealed!

Dr. Moran summed it up best in a January 2017 statement: "Wisconsin's "Prove it First" law is the most intelligent and pragmatic legislation intended to protect water quality that I have encountered ANYWHERE in the world, and I have been involved in such activities for more than 45 years in many countries."

As Al Christianson suggested, "Before you draw conclusions about the Flambeau Mine look to see where the information came from." That's why I am siding with those who are fighting to preserve Wisconsin's Mining Moratorium Law.

— *Laura Gauger, of Duluth, was living in northwestern Wisconsin in the 1990s when the Flambeau Mine was built near Ladysmith, Wis. In 2007 she co-authored, with Roscoe Churchill of Ladysmith, a book about the mine that is available at many public libraries and schools throughout the state (["The Buzzards Have Landed! The Real Story of the Flambeau Mine"](#)). Gauger also was a plaintiff in a 2012 Clean*

Water Act case against the mine's owner.