

Exhibit 78



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From: Mark Behan <mark.behan@behancom.com>
To: jwtighe@gw.dec.state.ny.us
CC: dan.fitzgerald@behancom.com; john.brodt@behancom.com; msgerstm@gw.dec.st...
Date: 5/9/2013 1:41 PM
Subject: Re: NYCO Conf. Call w/Peter Goodwin
Attachments: 130503-PROTECT-NYCO-Memo.pdf; pastedGraphic.tiff

Thanks very much, Julie. Protect's Memo of Opposition enclosed.
Mark

Mark Behan

President

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On May 9, 2013, at 10:58 AM, Julia Tighe wrote:

> As discussed, attached is the memo in opposition we received from Adirondack Wild.
>
>
> Julie Tighe
> Director, State Legislative Affairs
> Office of Legislative Affairs
> New York State Department of Environmental Conservation
> 625 Broadway, 14th Floor
> Albany, New York 12233
> 518-402-2797
> cell 518-813-1664
> fax 518-402-9016
>
>
>>>> Carolyn Markiewicz 5/6/2013 9:30 AM >>>
> Conf. Call in # - 1-866-394-2346
> Code - 3199482056
>
> <Memorandum of Opposition NYCO amendment 2013.doc>



May 3, 2013

Memorandum of Opposition

**CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY
proposing an amendment to section 1 of article 14 of the constitution, in
relation to a land exchange, in the state forest preserve with NYCO
Minerals, Inc. (S.4688-2013/No Assembly Companion)**

Second Passage for Proposed Constitutional Amendment

This bill seeks second passage to 2012 legislation (S. 7654/A. 10641) that passed both the Assembly and Senate. The 2012 action constituted “first passage” of this proposed Constitutional Amendment. The proposed amendment requires “second passage” in either 2013 or 2014.

Protect the Adirondacks opposes the proposed Constitutional Amendment (S. 4688) to Article XIV of the State Constitution, the “Forever Wild” Clause, to allow NYCO Minerals, Inc., a private mining company in Willsboro, New York, to undertake exploratory drilling on a tract of 200 acres of Forest Preserve located in the Jay Mountain Wilderness, Town of Lewis, Essex County, referred to as Lot 8. If the results are positive, the proposal would authorize conveyance of the Forest Preserve to the company, which would operate an open pit wollastonite mine thereon, in exchange for unidentified lands elsewhere.

Protect the Adirondacks has reviewed the bill language and Bill Justification and finds that the justification includes numerous misstatements, while omitting critical information. The Bill Justification simply does not accurately portray the situation. This proposed Constitutional Amendment also breaks with historic precedent because it would be the first Forest Preserve Constitutional Amendment to be undertaken for private commercial gain rather than for a public municipal purpose.

Bill Justification is Inaccurate and Misleads

The Bill Justification is misleading and contains inaccurate information or omits other important information.

The Bill Justification states:

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The Lewis mine produces 60,000 tons of wollastonite annually - a little more than 8% of the annual worldwide production. However, NYCO's mine is approaching the end of its pit life because the wollastonite vein extends onto adjacent Forest Preserve land.

This statement is misleading. In fact, NYCO manages two mines in Lewis, not one. One mine is located on Seventy Mountain, which is referred to as the Lewis Mine, and delivers enough ore to its processing plant in Willsboro New York to produce significantly more than the 60,000 tons of finished product stated above.

The first paragraph also states "However, NYCO's mine is approaching the end of its pit life because the wollastonite vein extends onto adjacent Forest Preserve land." Again, there is no mention that NYCO has second fully developed mine, known as the Oakhill mine, less than two miles from the Lewis mine. NYCO sought and received numerous state permits and built the Oakhill mine because of the declining reserves at the Lewis mine; see pictures attached.

The Bill Justification also states:

NYCO mines wollastonite on a 260-acre tract in the Town of Lewis, Essex County, with processing facilities in Willsboro, Essex County. It has 95 full time employees and has an annual payroll of \$4,600,000. It has 63 vendors within a 100 mile radius and spends \$2,300,000 locally per year. It pays \$260,000 in local taxes.

This statement is misleading. First, as of January 2013 (Adirondack Park Agency permit 99-9II), NYCO's Lewis mine was an 89.9-acre open pit mine area (54 acres developed) on a 260-acre tract. The Oakhill mine, less than 2 miles away, was originally permitted as a 31-acre open pit mine site on a 455-acre tract. The mine site has been expanded since 2002 and is now over 50 acres in size.

NYCO owns and manages two mines with over 700 acres in the Town of Lewis.

The Bill Justification also states:

Indirect economic benefits to the area are considerable. Thus, the closure of the Lewis mine would have devastating effects on the local economy. Ninety-five full time jobs and significant tax revenue would be lost in one of the more economically depressed area of the State.

This statement is also misleading. NYCO isn't going anywhere. It has made a considerable investment in its Willsboro processing plant and it owns two open mines and over 700 acres in Lewis. In 2006, NYCO submitted to the Adirondack Park Agency (APA) *NYCO Minerals Inc., 25-Year Plan-Lewis and Oakhill Mines*, which detailed a seamless transition from the Lewis mine to the Oakhill mine and continuous operations until beyond 2030.

Any statement in this bill that NYCO will leave the state if this Constitutional Amendment is unsuccessful is simply false. NYCO's future is not contingent on this proposed Constitutional Amendment. Its 25-year plan submitted to the APA detailed its

plans to transition from the Lewis mine to the Oakhill mine.

Note that a recent APA Permit (96-76FR2) issued to NYCO in 2009, stated that 180,000 tons of aggregate overburden is removed from the Oakhill mine site annually by a long-term subcontractor, which makes 91 truck trips per day to haul this material. NYCO is, in effect, using its second mine as a large gravel pit selling 180,000 tons of overburden bedrock each year.

The APA awarded NYCO a permit for the second mine – the Oakhill mine – in the late 1990s because NYCO stated at that time that reserves in the Lewis mine were running short. At the time NYCO sought a permit for its second mine at the Oakhill, NYCO was emphatic that it would not operate two mines simultaneously.

NYCO has received a string of permit amendments and new permits for the Oakhill mine to build a new access road, increase the amount of aggregate its subcontractor removes, conduct late season mining activities, build wetlands, and an assortment of other mine related activities. NYCO has made a major investment in building and readying the Oakhill mine for wollastonite extraction. The Oakhill mine is a fully functioning mine. NYCO has been planning for years to transition wollastonite mining activities to Oak Hill.

The Bill Justification also states:

NYCO's main competition comes from China, India, Finland, and elsewhere in the United States. In order to remain competitive, NYCO must mine as efficiently as possible and ensure customers of long-term reserves. However, recovery from the Lewis mine is now low, as NYCO approaches the end of pit life.

This statement is not accurate. NYCO's 2006 25-year plan states that the percentage of wollastonite in the Oakhill mine is higher than the Lewis mine (see pages from the 25-year report 3-3 and 3-4 with comparative charts for wollastonite percentages attached). It is simply not an accurate statement that NYCO will suffer in efficiency if it has to transition, as it has long planned to do, from the Lewis mine to the Oakhill mine.

The Bill Justification is riddled with inaccurate and misleading statements that are contradicted based on NYCO's 25-year long-term plan and the dozens of APA permits that have been issued for NYCO's mining operations at its two mine sites in the Town of Lewis.

This Constitutional Amendment Sets a Terrible Precedent of Exchanging Public Lands for Private Commercial Gain

This proposal sets a poor precedent for making the Forest Preserve available for private commercial gain and should be rejected for the following reasons.

1. The proposal is totally contrary to "Forever Wild," the only Article of the Constitution adopted unanimously by the Delegates to the Constitutional Convention of 1894, the first 54 words of which remain unchanged to this day.

2. The proposal is totally contrary to the consistent theme of the few amendments enacted since: each was limited in scope; each was in furtherance of a public, not a private purpose (expansion of a town cemetery, expansion of a public airport, needed improvements for a public water supply, minimization of public utility routes and impacts, among others), and each resulted in a net benefit to the Forest Preserve.
3. NYCO has long planned to transition from its current Lewis mine, which borders the Forest Preserve. NYCO has better options other than utilizing the Forest Preserve. NYCO has \$100 million worth of state-of-the-art processing equipment at its current plant in Willsboro. In the late 1990s, NYCO sought and received a permit for a new open pit mine at a location near its existing mine in the Town of Lewis from the Adirondack Park Agency and Department of Environmental Conservation. At the time of the hearing, NYCO believed it had less than five years of material left to mine and needed a new site to justify major plant upgrades. It received all necessary permits. NYCO has prepared the new site on Oakhill for mining wollastonite. NYCO has also entered into a long-term contract to supply aggregate from overburden bedrock on this site, which has helped to remove overburden. NYCO has a clear alternative other than using the Forest Preserve.
4. NYCO estimates that Oak Hill would yield ore for at least 16-21 years. NYCO also own 455 acres around the Oak Hill mine, which contains wollastonite reserves, far beyond the current mine pit of 54 acres.

Continuation of Lewis Mine allows NYCO to Delay Closing and Restoration Costs

As long as NYCO keeps its Lewis mine open it does not have to reclaim and reforest the site as is required under various state and federal laws/permits. Such a delay is a large short-term cost-savings for the company.

Lewis Mine is a Burden on Neighboring Residential Landowners near Mine and Along the Truck Haul Route; Oakhill Mine is Designed to Alleviate Negative Impacts on Residential Landowners

In the late 1990s, the APA conducted a full adjudicatory public hearing where dozens or neighboring property owners intervened. The Lewis mine exists in close proximity to a number of private residences. The Oakhill mine is further removed so blasting and mine operations will not be as disruptive.

Moreover, the road access to the Lewis mine involves a long, steep, narrow road populated with residential properties. The Oakhill mine has an extensive private road that accesses a major state road. The Oakhill mine is much safer and much less of a burden on residential properties near the Lewis mine or along the truck haul route.

Conclusion

This Constitutional Amendment is predicated on misleading and omitted information. This is not the way to evaluate important matters dealing with the public "Forever Wild" Forest Preserve.

The Forest Preserve was born out of decades of exploitation of the North Woods by private interests. It was made part of the very covenant between government and governed to protect it from despoliation in disregard of future generations. The "Forever Wild" Constitutional protections should not be amended now to fulfill the commercial interests of a mining company.

Protect the Adirondacks is a private grassroots environmental organization dedicated to the protection of the Adirondack Park.

For more information: Peter Bauer, Executive Director (518) 685-3088.

##

From: Peter Goodwin <peter.goodwin@nycominerals.com>
To: Robert Davies <rkdavies@gw.dec.state.ny.us>, Mark Buckley <mark.buckley@...>
CC: Julia Tighe <jwtighe@gw.dec.state.ny.us>, Kathleen Moser <kmmoser@gw.dec...>
Date: 5/31/2013 4:25 PM
Subject: RE: FYI

Who is "The Assembly" ?

-----Original Message-----

From: Robert Davies [mailto:rkdavies@gw.dec.state.ny.us]
Sent: Friday, May 31, 2013 4:18 PM
To: Mark Buckley; Peter Goodwin
Cc: Julia Tighe; Kathleen Moser
Subject: FYI

Thanks Mark. I wanted to let you both know that we have heard the Assembly considers next Friday to be a drop dead date. We need to have the firmest written commitment (Option on the land is what we are hearing will be required) on the Ward property for the Assembly to move this forward. Since we are meeting with the Council on Wednesday, it would be very important to have a written commitment/Option by Wednesday for that meeting. How are the discussions with Ward coming?? We are going to try and get a letter of intent from the NE Wilderness Trust about the 260 acres they own next to the 2 NYCO parcels.

Robert K. Davies
Director, Division of Lands & Forests
New York State Forester
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Albany, NY 12233-4250
Phone: 518-402-9405
Fax: 518-402-9028

>>> Buckley Mark <mark.buckley@nycominerals.com> 5/31/2013 3:33 PM >>>
Rob,

fyi

Mark J. Buckley, P.E.
Environmental, Health, Safety and Quality Manager Americas Region

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Visit our new website at www.sandb.com<http://www.sandb.com/>

From: Buckley Mark
Sent: Friday, May 31, 2013 3:08 PM
To: 'Francis Sheehan'
Cc: Davies Robert <rkdavies@gw.dec.state.ny.us>

Subject: RE: NYCO land swap

Francis,

Attached is a picture of Derby Brook looking west (upstream). This stream would be the dividing line between the property we propose to keep on the north of the brook (on right in the picture) and the land we propose to deed over to the state on the south (on left in the picture). The parcel this picture depicts is the 300 acre NYCO (Derby Brook) parcel.

Regards,

Mark J. Buckley, P.E.

Environmental, Health, Safety and Quality Manager Americas Region

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Visit our new website at www.sandb.com<http://www.sandb.com/>

From: Francis Sheehan [mailto:fesheeha@gw.dec.state.ny.us]

Sent: Friday, May 31, 2013 2:18 PM

To: Buckley Mark

Cc: Davies Robert <rkdavies@gw.dec.state.ny.us

Subject: NYCO land swap

Mark: I work for Rob davies and am working on the land swap piece and got your excellent write-ups for the Toms Hill and Derby Brook parcels---good stuff! just what I need.

I am told that two Ward Lumber pieces on the north side of Jay Mountain are also in the mix.....Can you get descriptions of these, along with NYCO's tract to the northeast that is also in the mix?.....and photos of all your properties and the Ward Lumber pieces? Thx a million.....crunch time!!!!!!!!!!!!!!

From: Julia Tighe
To: Mark Buckley; Peter Goodwin; Robert Davies
CC: Kathleen Moser
Date: 5/31/2013 5:01 PM
Subject: RE: FYI

More specifically, the Chair of the En Con Committee and central staff.

>>> Robert Davies 5/31/2013 4:32 PM >>>

The NYS legislative branch that is waiting to learn what properties are available as potential swaps for lot 8.

Robert K. Davies
Director, Division of Lands & Forests
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