League of Women Voters of Minnesota Records

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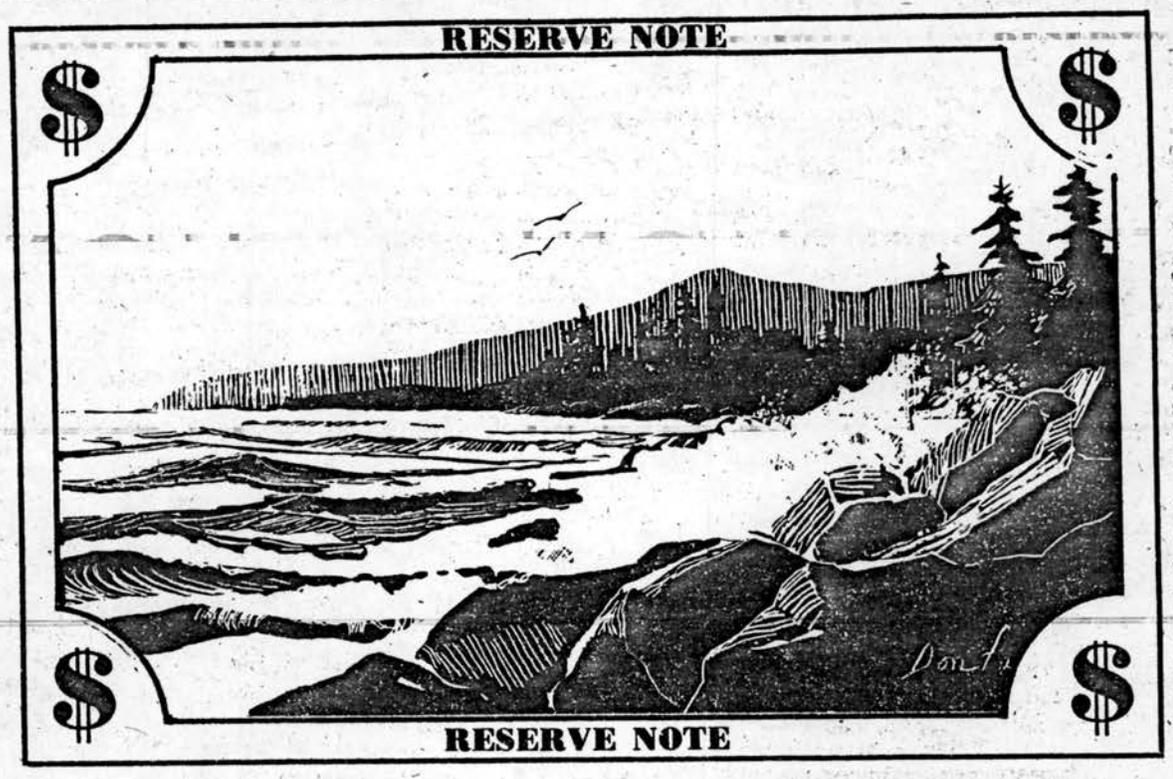

LAKE SUPERIOR'S NORTH SHORE ...
HOW MUCH IS IT WORTH TO YOU?

After years of dumping its wastes into Lake Superior, Reserve Mining Company is under court order to either switch to onland dumping or close down.

As the price of its compliance, Reserve insists on using a site 2 ½ miles above the scenic North Shore of Lake Superior. For them, it is the cheapest, most convenient alternative. For Minnesota, it is an environmental disaster.

The Sierra Club and Save Lake Superior Association intend to go to the State Supreme Court to prevent the siting of a tailings dump at Milepost 7. They will represent the best interests of Minnesota's environment against what is cheapest and most convenient for Reserve and its out-of-state owners.

The groups and individuals who have purchased this ad hope that you will help in funding this Supreme Court battle.

Don't let Reserve sell the North Shore short.

Make your tax-deductable check payable to:

"PROJECT ENVIRONMENT FOUNDATION"

818 Midland Bank Building, Mpls., MN, 55401

This ad brought to you through the concern of: Clear Air, Clear Water Unlimited—Izaak Walton League of Minnesota—League of Women Voters of Minnesota—MECCA—Save Lake Superior Association—Sierra Club, North Star Chapter—and several concerned individuals—

League of Women Voters of Minnesota, 555 Wabasha Street, St. Paul, Minnesota 55102

Testimony given by Mrs. William Brascugli, Water Resources Chairman, League of Women Voters of Minnesota, at the Lake Superior Enforcement Conference, May 13, 1969, Hotel Duluth, Duluth, Minnesota

I am Mrs. William Brascugli, Water Resources Chairman of the League of Women Voters of Minnesota. I am also representing Mrs. Thomas Irvine, Water Resources Chairman of the League of Women Voters of Michigan.

The League of Women Voters of the United States has studied the use and preservation of the nation's water resources since 1956. It is our belief that it is becoming increasingly important for water users to discharge water in as much the same condition as it was withdrawn as is possible. Two years ago local Leagues across the country in 1,250 communities expressed to the national Board their conviction that the pollution of our waters must be controlled. They agreed 1) that control of wastes should be considered one of the costs of production and 2) that new industrial plants, from the beginning of their operation, should be required to meet high water quality standards without financial aid from federal funds. When an industry is unduly penalized with relation to its competitors by undertaking to clean up present operations, we have supported government aid where necessary. When pollution control occasions a greater cost to the consumer, we are prepared to work toward public acceptance of that cost.

We appreciate the value of commitment on the part of local and state governments to set and maintain the highest possible standards. But we also recognize the fact that powerful political and industrial interests may exert strong pressures, making it difficult to enact and carry out pollution abatement programs on the state and local level. For this reason, we believe that the federal government has an important role to play in protecting the broadest public interest when state or local efforts fail. Certainly the quality of the water in Lake Superior should be a matter of interstate, and even international concern. How well we take care of Lake Superior, perhaps our most beautiful natural resource, will affect the future of at least three states and Canada.

The economic development of Lake Superior is just beginning. Plans are being made for more extensive tourist business, for increased taconite production, for a gaseous diffusion plant on the Knife River by the Atomic Energy Commission, and for the prospect

of extensive copper-nickel production in northern Minnesota. There is even talk of a canal connecting Lake Superior with the Mississippi River. If we do not set and enforce high standards, Lake Superior is certain to be destroyed. Furthermore, because of the low rate of turnover of Lake Superior water (90% turnover in 500 years), unlike that of the other Great Lakes, the destruction will be practically irreversible.

For these reasons we urge:

1. That all industries and municipalities now dumping into Lake Superior be immediately and thoroughly evaluated.

2. That the burden of proof be placed upon the industry or municipality. Discharging should not be allowed to proceed awaiting proof of damage. The dumping should not be permitted unless it is demonstrated to be harmless Reasonable doubt should be sufficient to stop discharging.

3. That uniform standards should be set for all comparable industries. One industry should not enjoy an economic advantage over another by virtue of its failure to clean up. It has come to our attention that other taconite producers in Minnesota, U.S. Steel at Virginia and Erie Mining Company at Hoyt Lakes have been required to operate with completely closed systems in order not to pollute nearby lakes. We cite this to demonstrate that tailings are considered pollutants in those instances and also that such a closed system is feasible. It appears to us that the state has established a double standard, one for U.S. Steel and Erie Mining Company and another for Reserve Mining Company.

4. That the precedent setting nature of the decisions being made at this conference be recognized. Variances permitted now may be multiplied many times as new communities or industries develop.

We wish to reiterate a plea we have made to our Pollution Control Agency at two recent hearings. Minnesota is on a continental divide. Our waters are replenished by rain, and we receive most of them pure. Before they leave our borders they have been stamped as sewer or resource. Of all states our water quality should be the easiest to guarantee. Social responsibility demands our sending it on to our neighbors containing as few poisons as possible.

FEB 1 ? 1977

4739 Sullivan Way
Santa Rosa, California 95405 · Feb. 16, 1977

Harriett Heit, Executive Director
League of Women Voters of Minnesota
555 Wabasha St.
St. Paul, Minnesota 55102

Dear Harriett:

Thank you for your letter and enclosures about the action you have taken about the Reserve Mining Company's dumping in Lake Superior. It is such a flagrant demonstration of industry's distorted view of what is most important that it certainly seems an appropriate time for the League to exercise its "clout." You have good company, too, in your action.

I can understand the dismay of the Silver Bay League — it's hard to get one's perspective straight when the local League's survival seems threatened. But when the state has recommended a substitute location for dumping and the only protest is a matter of greater expense to the Reserve company

their position seems way out of focus. It is discouraging, isn't it?

Thank you for writing me.

Sincerely,

Hope Washburn

Give my love to all my friends there.

FEB 17 1977

LEAGUE OF WOMEN VOTERS
SILVER BAY, MINNESOTA 55614

February 14, 1977

Minnesota League of Women Voters
Ms. Jerry Jenkins, President
555 Wabasha
St. Paul, Minnesota 55102

To the Board of Directors:

After two meetings of the Silver Bay Board of the League of Women Voters, it continues to be the unanimous opinion of the Board and general membership, that an error was made in judgment to commit the League of Women Voters of Minnesota to support "Project Environment Foundation" in opposition to Mile Post 7.

We were appalled that none of the Board had read the entire transcript of the Sixth Judicial District Court's decisions which is what you are opposing when you take this to the Supreme Court.

Where can you justify "ACTION" with these credentials? How can we remain a believable force in the community when we jump on a band wagon without even knowing the tune that is being played?

Our board listened very carefully to the tape of the conference call between our President, Gwen Smith and State Board Members, Jerry Jenkins, Helene Borg, and Mary Poppleton and rather than strengthen your position, the Board was more convinced that their protest would stand and they would continue to fight for League's principles.

We thank you for you concern about our future safety. We have lived in Silver Bay, some of us for more than twenty years, and we are all well aware of all the ills that everyone fears may befall us--but do you think for one minute, that any of us would jeopardize our lives and those of our children if we truly believed all the "goobliedook" that we read in the papers? Do you really believe that we are so insensitive to our environment and to the needs of our families that we would not be leading the parade to stop Reserve Mining from going to Mile Post 7?

We've had pressures put on us, too, to take a stand on Reserve Mining Company, and don't think it hasn't been hard not to buckle under the pressure, but we made a commitment to League and we explained our position to the community, according to League rules and they understood and believed in the League because we didn't compromise our principles.

We've had plenty of pressure, too, not knowing from one day to the next what our future holds for us. We believe their are rational ways to implement programs, in keeping with the environment, without destroying the entire financial base of a community. We also have a "Human Resources" study and maybe the state League could do a study on Silver Bay on that score.

As you have learned, we are not puppets. We do not follow the leader unless we believe the leader is right. We are thinkers and doers. Why didn't you ask us what our feelings were? We do not have anyone from the northern part of the State on the Minnesota Board, but we did expect fair treatment and fair representation. Our Board feels we did not get this from the State.

The Silver Bay League has nothing to lose. We have already lost our financial base in the community for our Finance Drives, so it was the unanimous decision of the Silver Bay Board to fight this latest infringment on League policy to the end. If nothing else, we will at least save face in our own community.

Very truly yours,

SILVER BAY LEAGUE OF WOMEN VOTERS

Prepared for the board by:

Dorothy M. Cox

Dorothy M. Cox

Approved by:

Gwen Smith, President

& Board of Directors

cc: National Board
Mid-Mesabi League of Women Voters
Hibbing League of Women Voters
Duluth League of Women Voters

enc: *Addendum*
Statement to United States League of Women Voters
Court File No. 05598

42 Garden Drive
Silver Bay, Minnesota
February 7, 1977

FEB 9 1977

Jerry Jenkins, President
League of Women Voters of Minnesota
555 Wallace
St Paul, Minnesota 55102

copies to:
Poppleton
Cushing
Reeves
Borg

Dear Ms Jenkins:

As a member of the League of Women Voters, Silver Bay, I am very disturbed about the ad sponsored by the "Project Environment Foundation" which appeared in the Minneapolis Tribune, Sunday, February 6, 1977, page 15A. The ad was purchased by the foundation but "brought to us through the concern" of several organizations, including the League of Women Voters of Minnesota.

This foundation is supporting a cause which the League has not to my knowledge ever studied or taken a consensus on. I have always understood the League did both, study and take a consensus on an issue, before taking a stand. But to do neither one and publically take a stand destroys my faith in the League's principles.

Unless an immediate retraction is forthcoming I intend to withdraw my membership from the League of Women Voters.

Sincerely yours,
Mrs. Gail Carlson

FEB 9 1977

Copies to:
Poppleton
Borg ✓
Cushing
Reeves

98 HAYS CIRCLE SILVER BAY, MINNESOTA 55614

Mr. Jenkins -

Has the League of Women Voters changed their by-laws concerning taking a stand on an issue without study or consensus? Is it still permissable to use League funds in a law suit?

The League in Silver Bay has lost its creditability and our financial support because of the ad in the Minneapolis Sunday Tribune. We thought this whole question regarding Reserve had been settled some years ago at a meeting in Ashland, Wisc. with Leagues from Minn. Michigan & Wisc in attendence - You, at that time I believe, were Silver Bays board consultant. The consensus at that meeting was that unless all the leagues surrounding Lake Superior agreed on a study & came to a decision that the League could not take a stand against Reserve.

As a Charter member and Past President of The D.B.L. of W.V. I believe this ad to be against League principals + an illegal use of League funds. I am no longer a member of League - having resigned last summer following the disgraceful handling of a MPCA meeting by Marion Watson, whom I had admired until then. It is hard to answer questions like - "Is That the way your Target to handle issues in League"? "Is That how a Chairman is supposed to act?" etc etc.

I still have been a strong supporter for basic League Teaching + Training. But if this is the way League is going - I'm glad I'm no longer a member + I will fight the League when I can.

I Think a strong retraction in The papers of Mine + a rebuke to whoever allowed This to be publish is in order

Mrs. James W. Gray Jr.

P.S. There has been no study on Reserve or on any land disposal of tailings!

HB

FEB 9 1977

Mems to: Peggy Thompson
From: Judy Matosich
Re: Provisional L.W.V. of Grand Rapids.
League of Women Voters of Minn. + Reserve Mining.

Date: Feb. 7th

D.R. treasurer Elsie Kirkes resigned, apparently because of other involvements. Nancy Swigert, who is also secretary, will temporarily fill position. Hibbing treasurer Marlyn Davis gave them several tips on bookeeping. They really needed help as they had nothing but a checkbook at the time.

There seems to be some confusion as to when the state pledge + nat. P.M.P. will be due. Would you please let them know.

Attendance at the combined evening unit is still very poor. They have about 30 members in this unit, most of whom are working. Hope that they aren't going to lose these people.

Our local league reaction to the paid news ad concerning Reserve Mining + Milepost 7 was not exactly one of joy. It would have been better if some notice had

been given prior to the ad. As many of our Contributors to the local finance drive are mining companies or mining industry related businesses & it is felt that there may be some confusion as to how the contribution may be used. Our board is planning to launch the drive next week.

Perhaps League could best serve the Community at this time by informing citizen as to why Milepost 7 is ~~not~~ thought to be environmentally unsafe. We need more facts!

It is not necessarily objection to League's taking a stand on this issue but to the way in which it was handled. It really should be the Action Committee's duty to consult with local leagues who may be affected by their decision. Reading a newsad is not the way in which local boards should become informed as to a State position!

FEB 2 2 1977

LEAGUE OF WOMEN VOTERS OF DULUTH

222 GREYHOUND BUILDING
DULUTH, MINNESOTA 55802

February 17, 1977

Ms. Jerry Jenkins
555 Wabasha
St. Paul, Minnesota 55102

Dear Jerry:

I have been directed by the Duluth LWV to write the State Board concerning the recent State action on the Reserve Mining Company's proposed tailing site near Silver Bay.

The Duluth Board has written the Silver Bay League expressing our concern with the process the State League used in taking action on an issue not itemized in our position, involving local Leagues.

We would like to suggest improved communications between State and local Leagues by reviewing or re-evaluating the process used in drawing up guidelines or criteria for such action.

Sincerely yours,

Dorothy Nelson

Dorothy Nelson
President, LWV of Duluth

cc: Ruth Clusen, LWVUS
Gwen Smith, Silver Bay LWV
Elaine Higgins, Mid-mesabi LWV
Carole Peloquin, Hibbing LWV

DN/mwk

FEB 22 1977

LEAGUE OF WOMEN VOTERS OF DULUTH

222 GREYHOUND BUILDING
DULUTH, MINNESOTA 55802

February 18, 1977

Ms. Gwen Smith, President
League of Women Voters of Silver Bay
Silver Bay, Minnesota 55614

Dear Gwen:

In regard to the Reserve matter, this is to clarify the fact that the Duluth LWV has no position on the tailings site and has never testified on that point.

We are very sympathetic with your concerns regarding the manner in which this issue was handled by the State LWV.

We have communicated with State and have mailed you a copy of their incomplete response to our questions. We will continue communicating with them and will be waiting National's response to your appeal.

Sincerely,

Dorothy Nelson

Dorothy Nelson
President, Duluth LWV

DN:mh

cc: Mid-Mesabi LWV
Hibbing LWV
State LWV
National LWV

FEB 2 8 1977

League of Women Voters of the Mid-Mesabi

"Action without Study is Folly, but Study without Action is Futile."

February 21, 1977

Minnesota League of Women Voters
Ms Jerry Jenkins, President
555 Wabasha
St. Paul, Minnesota 55102

To the Board of Directors;

This letter is written in response to the action of the State Board regarding the ad placed in the Minneapolis Tribune, dated February 6, 1977, supporting Milepost 7 in the Reserve Minning issue, and the impact it has had on our area and League.

Rather then a few active members making the decision under the influence of the public and our financial supporters, it was decided to take the matter to our local unit meetings before taking any action. True to League principles, our members discussed the relative merits of action vs inaction. Twenty-five of thirty-five members participated in the discussion and unanimously came to consensus regarding the enclosed reolution and how to handle the matter. They also instructed me, as president, to write for answers to several questions.

The very first question asked by all members was why weren't the leagues affected by this decision notified? The feeling that answers such as I received when I talked to the State office, for example: - not enough time, I forgot, or that we were a company town influenced by the mining industry, were not adequate for a decision of this magnitude or responsible answers for a State Board member to respond. The members felt the State Board could have at least evaluated our imput as was done in "Ban the Can" action.

If there was so much pressure from Leagues "dowm there", couldn't we have been notified to form a taskforce to compile imformation and/or do a mini emergency study? We have been sitting up here watching and waiting out the judicial procedings, with many members interested in the ultimate outcome on both sides of the fence. Over the years we have been assured that no study- no action on the Reserve issue. Because of conversations and correspondence with Dorothy Nelson, President of the Duluth League of Women Voters, I question the accuracy of the statement that pressure was being put on the State board by the Duluth League,

Why were we not imformed by the State EQ chairperson that a coalition had been formed via her Board Memo reports, so at least the local league presidents and board members would be aware of possible action? When we have reached our position on energy, is the State Board going to respond to pressure again that will affect local leagues in the power corridors and other areas without consulting them?

Jerry Jenkins, in her letter of February 14th, states "the League must speak with one voice". Is this actually what has happened or is the State Board speaking for the metro-area? and forgetting that there are imformed and active leagues all over the state, North, South, East and West. Now Silver Bay, Hibbing and Mid-Mesabi Leagues, after the state board has assembled their forces, are being told the decision was based on the land, air, and water positions. These are responses they should have imparted with specifics to those of us involved immediately. Were the following facets of the Nat'l land position t taken into consideration:

- Foster cooperation among agencies and among levels of government in establishing mechanisms that ensure consideration of all public and private rights and interests affected by the land use decisions.

- Assure consideration of human needs - social, environmental, and economic.
- Provide for an appeals board to arbitrate conflicts among governmental bodies and between citizens and governmental bodies.

There we are quoted by-laws like LWV-Mn, Article XI, section 6. Are not the Priniciples of League just as valid, or are they just applicable to local, state and Nat'l government, not the League? What about "In League - Guidelines for League Boards", page 41?

> "Assuming the members are knowledgiable and back the action to be taken, Leagues can undertake action at the Local, Regional, and/or at State level under Nat'l positions without prior clearence from the Nat'l board. If the action involved effects governmental jurisdiction beyond the league desiring to take action; clearence and concurrence must of course be obtained from the leaque boards at the appropriate jurisdictional level. AS issues grow more interrelated and complex, one leagues position on an issue may differ from another on the same issue. This does not mean an impasse instead each league should imform the others about any contemplated activities so that the leagues involved can voice their feelings and concerns and can analyze and discuss the possible impact of proposed action in the affected community."

As far as all coalitions are concerned see "In League - Guidelines for League Boards" page 38. "Consider coalitions temporary cooperation, not bondage." My members stressed the importance of all leagues being kept aware of coalitions formed at the state level which may affect them.

In conclusion the site of reserve minings dumping grounds is neither here nor there at this time, as it is at present in the hands of the State Supreme Court. The stand the State Board has taken is very ill-timed for who in the league has studied this issue, pro or con, milepost 7 vs milepost 20, the magnitude and ramifications or impact of a decision suchas this, that will affect so many people and more then one leagues membership and community.

In dismay and disillusionment,

Elaine E. Higgins, President
League of Women Voters of the Mid-Mesabi

Copies to:
LWV of Silver Bay
LWV of Hibbing
LWV of Duluth
LWV OF THE U.S.

League of Women Voters of the Mid-Mesabi

"Action without Study is Folly, but Study without Action is Futile."

RESOLUTION REGARDING THE STATE BOARDS ACTION ON THE RERVE MINING ISSUE OF TAILING SITES

WHEREAS neither the League of Women Voters of Minnesota, nor the League of Women Voters of the Mid-Mesabi has made a study of the relative merits and demerits of the two proposed sites for dumping wastes from the taconite plant at Silver Bay, and

WHEREAS we believe that action without study is contrary to League principles,

THEREFORE BE IT RESOLVED: that while the League of Women Voters of the Mid-Mesabi continues to support sound environmental safeguards, we completely disassociate ourselves from the precipitous and immature action of the persons responsible for news articles that imply our participation in a statement approving one side over the other.

News Release to Lake County News, Duluth News + Mpls Tribune

The Silver Bay League of Women Voters today issued a strong protest over the League of Women Voters of Minnesota participation as one of the sponsoring organizations of "Project Environment Foundation" as advertised in the Sunday Minneapolis Tribune, February 6, 1976.

In a special membership meeting held at the Municipal Building, the the Silver Bay League unanimously agreed that the State Board's participation in the project is completely against all League principles. Not one League in the whole United States--we repeat, not one League has made a study on Reserve Mining Company and especially as it pertains to Mile Post 7 or Mile Post 20.

For the State Board to take a stand against Mile Post 7 without a sustained study and group discussion and to take a position without consensus which comes only after careful study of the facts and free discussion in which expression of all points of view has been encouraged (pro and con) is in complete violation of all League by-laws.

No study was made, no consensus was taken, no position was reached, therefore the League of Women Voters of Minnesota is in error when they sign as supporters against Mile Post 7.

The Silver Bay League was not even notified directly that such action would be taken.

The Silver Bay League has demanded an immediate retraction and withdrawal of the State Board as a supporting organization.

Silver Bay women act against LWV

SILVER BAY—The Silver Bay League of Women Voters (LWV) has issued a strong protest against the Minnesota LWV's support of a group opposed to the Milepost 7 site for Reserve Mining Co.'s onland tailings disposal.

The Silver Bay league, following a special meeting Monday, demanded the immediate retraction and withdrawl of the state board's support of Project Environmental Foundation because it violates league rules.

The state board has refused and the Silver Bay unit is appealing to the national LWV board. If it is turned down, the Silver Bay unit will probably disband.

Dorothy M. Cox, public relations chairperson for the Silver Bay LWV, said the state board's action violates LWV bylaws in the following ways:

• Before the league can take a stand on an issue, both sides must be studied and the members must discuss it and vote to determine the league's stand. The Reserve question has never been studied by any LWV chapter in the state or nation.

• The bylaws also state that if there is a local league involved in the issue, it must be notified of the LWV stand. The Silver Bay unit learned of the state board's support of the anti-Milepost 7 forces in an advertisement in the Minneapolis newspaper Sunday.

• An agreement was made in a meeting of Minnesota, Wisconsin and Michigan leagues held in Ashland five years ago that no stand would be taken on Reserve unless all the effected leagues had taken part in the decision. The state LWV decision violates that agreement, Cox said.

The state board contends its stand is based on a study of clean air and clean water and that the Ashland agreement was made when the league was far more conservative and less active than now.

Cox said the Silver Bay unit has gotten support for its stand from the Hibbing and Virginia LWVs but hasn't heard from the Duluth unit.

She believes the Silver Bay unit will disband if the national board does not uphold its stand.

"We're not going to support an organization that's trying to put us out of work," she said.

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Hibbing LWV also bucks state unit's stand

HIBBING — The Hibbing League of Women Voters (LWV) has jointed the Silver Bay and Mid-Mesabi LWV chapters in opposing the Minnesota LWV's stand against use of the Milepost 7 sight site for taconite tailings disposal.

The northern Minnesota chapters learned of the stand in an ad in the Minneapolis Sunday Tribune on Feb. 6. The ad opposed Milepost 7 and was signed by a number of environmental groups and the LWV of Minnesota.

The Hibbing unit opposed the action because the league has never made a study of the Reserve Mining Co. case. It also said it was irregular and not in accordance with league principles for the state organization to take a stand without consulting anyone.

Women's league stance angers Silver Bay unit

The state League of Women Voters' support of legal efforts to prevent Reserve Mining Company's disposal of taconite wastes at Milepost 7 has drawn the fire of league members in Silver Bay, Minn., Reserve's base of operations.

The Silver Bay league demanded the immediate withdrawal of the Minnesota League's sponsorship of "Project Environment Foundation," a nonprofit organization established to raise money to oppose in the Minnesota Supreme Court Reserve's Milepost 7 dumping plan.

The protest was triggered by a foundation advertisement in the Minneapolis Tribune Sunday.

The chapter said supporting Project Environment Foundation "without a sustained study and group discussion" violated "all league by-laws."

But Helene Borg, action chairman of the state league, said there was ample precedent for sponsorship of the foundation and that no retraction would be forthcoming.

Silver Bay LWV clarifies news report

Editor: This letter is to correct a couple of errors in the article about the Silver Bay League of Women Voters (Feb. 9 News-Tribune).

I had said, "It was league policy and common courtesy that a local League is notified if any action which directly involves them is taken by the state board." I did not say it was in the bylaws as was reported.

I did not say, "We're not going to support an organization that is trying to put us out of work," as was reported. I did say we would find it difficult to conduct a finance drive in Silver Bay and ask people to support us in view of the recent events.

Our fight is not for Reserve Mining Co. Our fight is for league principles. As close as we are to the Reserve situation, the Silver Bay League of Women Voters has never taken a stand for Reserve.

We believe the time for action is after an in-depth study of both sides of the issue. We also believe the reputation and strength of the League of Women Voters is in this very meticulous process of reaching a consensus. We believe the league has stood all these years because of these very high standards— that no matter who serves on the board, the format remains the same: study, study, study; a pro and con presentation, a consensus, and then action.

Without these standards, the credibility of the League of Women Voters is destroyed.

DOROTHY M. COX
Public relations chairperson,
Silver Bay League of Women Voters
Silver Bay

TAPE TRANSCRIPT OF CONFERENCE PHONE CALL

PARTICIPANTS: Minn. League of Women Voters Board Members - Silver Bay League President
Jerry Jenkins, Pres. Gwen Smith
Mary Poppleton, EQ Chairperson
Helene Borg, Action Chairperson

The following telephone conversation took place in response to the Silver Bay Leagues' request for an explanation of the State Board's action on the Reserve Mining Co. issue. The State League had joined a coalition against the Mile Post 7 tailings disposal site. Because of the time element involved we have selected specific areas of the Court's findings to answer the statements of the State Board members in the telephone conference. On the following pages are portions that can be referred to and are numbered as references. The entire conversation is not included - mainly just those portions where the State Board members were explaining their impressions on the Mile Post 7 site.

Gwen: Have you read the transcripts from the, from the three judge panel? The decision?
Mary: I haven't read the full transcripts, but I've read summaries,

Gwen: --I believe according to our understanding from your article, the ad in the paper that you are definitely opposed to Mile Post 7.
Helene: Uh huh. The way we understand that is that is the same water table thing as Lake Superior. That the water actually flows in that direction and would require daming to--in order to dump there and that. (See ref # 1 and #4)

Helene: That the water ultimately would go that way anyway and also, of course, you have the additional hazards of the dam. Do you realize that two of those broke in the last couple of years, the samekind of dam? That they're proposing there. (The dams proposed arenot the same kind of dam - see comparison of types of dams and ref. #1)

Helene: You might have a waterfall in Silver Bay. (please see enclosed map showing that water from the dam could not ever flow to Silver Bay)

Mary: Well, it would totally flood Silver Bay. Of course, one of the other concerns regarding that is that if they do go to that site and they do put up the dam up that the dam is going to require extensive maintenance to make sure there isn't a tragedy and there is no guarantee that Reserve Mining Co. isgoing to be in Minnesota. And I mean that they're going to leave as soon as the mining is petered out and they what's going to happen to that dam--what's going to happen to that whole area?
(See ref. # 1, 2, 3 & 4)

Mary: I can recall a phone call I had gotten from the EQ Chairman from Duluth who was practically in tears saying, "Why isn't the State League doing something? Do you realize the psychological damage of thoseof us up here who have to go and buy drinking water and have to go and get water out of the public drinking fountains and drinking spouts?" She said, you just don't know what it's doing to the people of Duluth. Why aren't you doing anything?"
(We have checked with the Duluth League and they cannot substantiate this statement. As far as their members were concerned, no such call was ever made.)

Presented below are parts of the findings from the Sixth Judicial District Court, County of Lake, Court File No. 05598, 05606, 05607 & 05602 which will help show that, had even a minimum of study been done, the State Board would not - could not have taken the action they did. No questions or inquires were directed to any member of the Silver Bay League of Women Voters concerning any of the facts of the Reserve Mining Company issue. We were not asked for any copies of the Court's proceedings, indeed, we were not even aware that there was any interest by the League of Women Voters of Minnesota in the outcome of the lengthy litigation.

"Finally, this Court deems it appropriate to suggest that the national interest now calls upon Minnesota and Reserve to exercise a zeal equivalent to that displayed in this litigation to arrive at an appropriate location for an on-land disposal site for Reserve's tailings, and thus permit an important segment of the national steel industry employing several thousand people to continue in production. As we have already noted, we believe this controversy can be resolved in a manner that will purify the air and water without destroying jobs." (Id at 540).

DAM SAFETY

REFERENCE NO. 1

One of the principal reasons advanced by the hearing officer and the agencies for a denial of the Mile Post 7 permits is the possibility of a dam failure. In our opinion, their findings of Fact and Conclusions are based not only on unsubstantial evidence but on almost no evidence at all. The safety and stability of the dams are not contested by any party, and the record of the administrative hearing is devoid of any evidence that the Mile Post 7 site would not be safe. The hearing officer ignored the "rule of reason" in arriving at his findings and conclusions on this issue .

The record is replete with statements and admissions of all of the experts, both Reserve's and the State's, to the effect that if these dams were built according to design, and all unexpected contingencies were properly met, that the dams could not fail. The agencies retained three widely-recognized geotechnical consulting firms, each condecting independent evaluations. Their experts, W. A. Wahler, Professor Leo Casagrande, and Dr. Jemes Hamel, dam desigh consultants, studied the Mile Post 7 dam proposals of Reserve and concluded that the proposed dams would be safe. Two other qualified dam design consultants, including an engineer retained by the United Steelworkers of America, intervenors, joined in that conclusion. ... And so it appears to this court that beyond any reasonable doubt, this dam will not fail....By definition, a <u>safe</u> dam cannot fail.

AIR QUALITY

REFERENCE # 2

No state or federal ambient air standard has been promulgated for amphibole fibers. Based on present data, the ambient air of the communities of Silver Bay, Babbitt, Hoyt Lakes, Hibbing, Virginia and Mountain Iron have essentially comparable levels of asbestiform fibers. Amphibole fibers have been identified and reported in ambient air samples from Duluth, St. Paul, and Marshall, Minnesota

/The ambient air in Silver Bay, based on an annual geometric mean basis, is very close to background conditions, that is, naturally existing conditions.

The Air Quality staff of PCA has concluded that primary and secondary total suspended particulate (TSP) standards and provisions of agency regulation APC-6 can be met at all sites, including Mile Post 7, during operations. ... It is undisputed that neither the

Continued on next page

construction nor the operation of the Mile Post 7 project, with the contemplated mitigation measures, will violate any applicable air quality regulation--including those relating solely to potential fugitive dust. Moreover, the air quality staff of the PCA concluded that Mile Post 7 is a reasonable tailings site, and that the selection of that site could form the basis for the resolution of this case.

NATURAL RESOURCES

REFERENCE # 3

Land use considerations should have presented a significant impediment to the selection of Mile Post 20 if credence were given to state consultant Barton-Aschman & Associates, Inc., and their land use expert, Mr. Dennis Hawker. State-retained Dennis Hawker testified that Mile Post 20 "goes completely contrary to the principle of consolidation of land use activities and that you are opening up a third area to mining activities;" that the "introduction of a mining activity into the (Mile Post 20) area in between Reserve's current operations of mining activity and their plant in Silver Bay is another disadvantage of the Midway alternative;" that Mile Post 20 is a "violation of the principle of consolidation of manageable land uses" that Mile Post 20 "represents a new and different area as relates to this mining industrial use;" that Mr Hawker would not recommend Mile Post 20 for that purpose as relatesto the application of the policy of consolidation; and finally, that to the extent Mr. Hawker would discourage the introduction of mining uses into the Mile Post 7 area, it could not be considered opening up an entirely new area to mining industrial uses; and there is "no specific written state policy of either the Department of Natural Resources or the other state agencies which says that mining industrial uses shall not be undertaken" at Mile Post 7. Mr. Hawker did not testify that Mile Post 20 was preferable, but did testify that Mile Post 20 was inconsistent with land use principles.

The state Environmental Policy Act mandate is to "encourage productiveand enjoyable harmony between man and his environment;" and to "maintain conditions under which man and nature can exist in productive harmony and fulfill thesocial, economic andother requirements of present and future generations of the state's people;"

A statistical description of the effects of a termination of Reserve on the economy of Northeastern Minnesota and the entire state in general, fails to adequately describe the true impact of a Reserve shutdown. As a practical matter, a shutdown would virtually destroy the economic well-being of several thousand families. ...It would also be impossible for most of the residents to continue to live in thier homes since most would be forced to move to distant areas to seek new employment.

Certainly, no one who is at all concerned about our natural heritage can be elated over the use of any part of out lands as a tailings disposal dump. The realities of life, however, demand that these basins be located someplace, and that choice must be made objectively, taking into consideration both the environment and the economy upon a rational balance.

Setting aside all considerations of dam safety, air quality, natural resources, and economic feasibility of the Mile Post 20 site, we have before us the question of implementation of that site. It seems clear to us that whether or not Mile Post 20 is a feasible and prudent alternative, in its totality, its availability is of crucial significance. The average land exchange has taken four to five years. Examples of actual land exchange time: Inland Steel - 5 yrs. Erie Mining - 7 yrs. and still not completed. U.S. Steel - 5 yrs. to date with approximately two years to complete.

Continued

PERMIT CONDITIONS

REFERENCE # 4

Any possible or reasonable concerns about the future of Reserve's Mile Post 7 plan were eliminated by the unequivocal acceptance by Reserve and its shareholders, Armco and Republic, on July 1, 1976, of the permit conditions demanded by the PCA Board and Staff. These stringent permit conditions make the following controls binding on Reserve;

a) The permit shall be limited to a specific five-year term.

b) Armco and Republic shall be co-permittees with Reserve Mining Co.

c) The permittees shall assume all risks and liabilities arising from the implementation of the Mile Post 7 on-land disposal site and system.

d) The permittees shall be required to perpetually maintain the tailings basin site to insure the integrity of the basin structures and to prevent the deposited tailings from re-entering the air and water of the state.

e) All tailings except those used for dam and dike construction shall be placed underwater in thetailings basin during operations to the maximum extent possible with all exposed tailings to be adequately vegetated as soon as possible. Upon termination, the entire tailings basin shall be totally vegetated as soon as possible using the then best available technology.

f) All tailings shall be disposed of in the Mile Post 7 permitted on-land tailings disposal system facility. The permittees shall be prohibited from using or allowing any other person or governmental entity to use tailings for any other purpose.

g) The permittees shall be required to apply the best available technology to maintain air quality and to comply with all applicable laws and regulations, specifically including Minn Reg. APC 1 and APC 6 and such other standards which now or in the future may apply to the permittees' tailings. This technology shall include specifically, but not exclusively, the use of spray water and effective and non-polluting chemical binders and other dust retardants on all access and haul roads. In addition, only containerized or indoor and totally covered tailings stockpoles shall be permitted outside the disposal ares.

h) The permittees shall be required to apply the best available technology to maintain water quality and to comply with all applicable laws and regulations, specifically including Minn Reg WPC 14 and such other standards which now or in the future may be applied to the permittees ' tailings. This technology shall include specifically, but not exclusively, the following:

   1) The tailings disposal system shall be operated as a closed system including the collection of seepage and surface runoff for return to the basin.

   2) A dual pipeline system with required controls, spill detection devices, emergency catchment basins and other protective devices.

   3) Any water discharge from the tailings or catchment basin shall be treated to the extent necessary to conform to all present and future water quality standards.

i) The permittees shall be required to monitor the Mile Post 7 basin structures and the air and water in and adjacent to the tailings disposal area for the purpose of enabling any reaction to any potentially hazardous condition. The permittees shall establish an air and water monitoring program to be approved by the Minnesota Pollution Control Agency and shall operate this monitoring program with the capability of providing information necessary for rapid response in applying mitigating measures and procedures. Such air and water monitoring shall include but is not limited to the identification and counting of fibers by such methods as x-ray diffraction, electron microscopy or any other methods as the PCA may specify.

j) Reasonable costs for monitoring and analysis beyond the routine compliance monitoring conducted by the PCA shall be borne by the permittees.

K) Dam design, construction and operations consistent with the recommendations of the Minn. Pollution Control Agency Staff and the state's consultants. The reasonable costs of such consultants shall be borne by the permittees.

LEAGUE OF WOMEN VOTERS
SILVER BAY, MINNESOTA 55614

February 14, 1977

Minnesota League of Women Voters
Ms. Jerry Jenkins, President
555 Wabasha
St. Paul, Minnesota 55102

To the Board of Directors:

After two meetings of the Silver Bay Board of the League of Women Voters, it continues to be the unanimous opinion of the Board and general membership, that an error was made in judgment to commit the League of Women Voters of Minnesota to support "Project Environment Foundation" in opposition to Mile Post 7.

We were appalled that none of the Board had read the entire transcript of the Sixth Judicial District Court's decisions which is what you are opposing when you take this to the Supreme Court.

Where can you justify "ACTION" with these credentials? How can we remain a believable force in the community when we jump on a band wagon without even knowing the tune that is being played?

Our board listened very carefully to the tape of the conference call between our President, Gwen Smith and State Board Members, Jerry Jenkins, Helene Borg, and Mary Poppleton and rather than strengthen your position, the Board was more convinced that their protest would stand and they would continue to fight for League's principles.

We thank you for you concern about our future safety. We have lived in Silver Bay, some of us for more than twenty years, and we are all well aware of all the ills that everyone fears may befall us--but do you think for one minute, that any of us would jeopardize our lives and those of our children if we truly believed all the "goobliedook" that we read in the papers? Do you really believe that we are so insensitive to our environment and to the needs of our families that we would not be leading the parade to stop Reserve Mining from going to Mile Post 7?

We've had pressures put on us, too, to take a stand on Reserve Mining Company, and don't think it hasn't been hard not to buckle under the pressure, but we made a commitment to League and we explained our position to the community, according to League rules and they understood and believed in the League because we didn't compromise our principles.

We've had plenty of pressure, too, not knowing from one day to the next what our future holds for us. We believe ~~their~~ there are rational ways to implement programs, in keeping with the environment, without destroying the entire financial base of a community. We also have a "Human Resources" study and maybe the state League could do a study on Silver Bay on that score.

As you have learned, we are not puppets. We do not follow the leader unless we believe the leader is right. We are thinkers and doers. Why didn't you ask us what our feelings were? We do not have anyone from the northern part of the State on the Minnesota Board, but we did expect fair treatment and fair representation. Our Board feels we did not get this from the State.

The Silver Bay League has nothing to lose. We have already lost our financial base in the community for our Finance Drives, so it was the unanimous decision of the Silver Bay Board to fight this latest infringment on League policy to the end. If nothing else, we will at least save face in our own community.

Very truly yours,

SILVER BAY LEAGUE OF WOMEN VOTERS

Prepared for the board by:

Dorothy M. Cox

Dorothy M. Cox

Approved by:

Gwen Smith, President

& Board of Directors

cc: National Board
Mid-Mesabi League of Women Voters
Hibbing League of Women Voters
Duluth League of Women Voters

enc: Addendum
Statement to United States League of Women Voters
Court File No. 05598

TO: United States League of Women Voters c/o Ruth Clusen, President

FROM: Silver Bay League of Women Voters

SUBJECT: "Project Environment Foundation"

DATE: February 15, 1977

1. The Reserve Mining Company situation is very close to us since we live in Silver Bay. The Silver Bay League of Women Voters has never made a statement in support of Reserve Mining because it would have been against all League traditions--no study--no comment. As private,invidual citizens we were not bound by this rule.

2. Prior to 1971, we had one other occasion to protest to the State Board on a position by Mary Brascugli, then the State Environmental Equality Chairman for a statement made at a public hearing in Dluth in the name of the League of Women Voters of Minnesota, against Reserve Mining Company, also without any forewarning to the local League. That problem was resolved.

3. In 1971, at a tri-state meeting (Minnesota, Michigan, Wisconsin) held in Ashland, Wisconsin, chaired by Mary Ann McCoy, then Minnesota State President. After a day of debate and discussion, a set of ground rules was set up that hereafter, no League on any level would comment or make a statement on any Lake Superior problem without presenting it to the other Leagues involved and without unanimous agreement by that group. (League around Lake Superior.)

4. The Reserve Mining Company problem of site selection was heard by a hearing officer and Mile Post 7 was denied. Reserve appealed to the District Court--(Sixth Judicial District) with three judges, Donald C. Odden, Nicholas S. Chanak, and C. Luther Eckman, hearing evidence on both sides--under oath, in a court of law. On January 31, 1977, the judges released their decision. The State of Minnnesota Pollution Control Agency and Department of Natural Resources were ordered in two separate 51-page briefs to issue permits for Milepost 7.

5. The case was appealed to the Minnesota Supreme Court. The Minnesota League

of Women Voters joined that group to appeal--in essence, disputing the decision of the District Court.

6. Yet, by their own admission in a taped phone conference with Silver Bay League President, Gwen Smith, the Minnesota State Board Members: President, Jerry Jenkins, Environmental Quality Chairman, Mary Poppelton; and Action Chairman, Helene Borg, admitted they had not read the DISTRICT COURT DECISION. We assume, then, that none of the other State Boards read the decision, either.

7. Our question is "How can any League, local, state, or national, take a position without having done at least a cursory examination of the facts?

8. As far as we know, the Minnesota League of Women Voters Board has never examined either disposal site. They have not read the Court brief, we are again assuming that they haven't read any of the lengthy briefs on the hearings held in Silver Bay and St. Paul and that they also did not attend any of these hearings. So again, we are assuming that all their "knowledge" was gained through hearsay, newspaper articles, T.V., and pressure groups, rather than an in-depth factual study of both sides of the issues. This is certainly not in keeping with League Policy of study and consensus.

9. To approach a problem under a broad umbrella position may be sanctioned by both the State and National Boards, <u>but</u> we believe before an endorsement can be made, one must at least know what one is endorsing.

10. We believe an error in judgment was made the Minnesota League of Women Voters. We believe they bowed under pressure, without forethought or due process. We believe the State Board jumped on the bandwagon without knowing which tune was being played.

11. The ad in Minneapolis Tribune cost well over a thousand dollars. We are informed it cost $1,444.00. We want to know what the League's fair share is on that bill and where the approval was given for this substantial expenditure.

We also believe we should know who made the motion, who seconded it, and who voted for or against publicly joining the coalition in opposition to the Sixth District Court's decision. We believe that this this should have been a "Board" decision, on record in the minutes, and the Leagues in the area of the decision should have been notified.

12. As members of the Minnesota League of Women Voters, who have never reneged on their financial pledge to the State, we believe we are entitled to have some input in to that decision. We should have at least known that such action was forthcoming. We were SHOCKED to read "OUR" position in the Minneapolis Tribune on Sunday, February 6, 1977. Had the State League arrived at their decision through conventional League procedure, we would have abided by that decision. We may not have been happy about it, but we would not have publicly denounced it. We would have followed League rules. We believe communications between the State Board and ours is at an all-time low.

13. We believe that all precepts of League procedure have been violated and that the credibility of the League will be destroyed if we allow this type of action to continue. We believe the strength of the League is in this very meticulous process of reaching a consensus and position, and that without it, we all lose our credibility.

14. The Silver Bay League of Women Voters stands on its protest of the Minnesota League of Women Voters support of Project Environment Foundation. We might add "UNANIMOUSLY" stands.... We ask the National Board and the State Board to read the two enclosures: Transcript of phone conference, and Court File No. 05598, Sixth Judicial District Court's decision and then PROVE to us that we are wrong.

SILVER BAY LEAGUE OF WOMEN VOTERS
Silver Bay, Minnesota 55614

PREPARED FOR THE BOARD by Dorothy M. Cox, Public Relations Chairman

LEAGUE OF WOMEN VOTERS OF MINNESOTA
555 WABASHA • ST. PAUL, MINNESOTA 55102 • TELEPHONE (612) 224-5445

February 28, 1977

Dorothy Nelson, President
League of Women Voters of Duluth
2730 Branch
Duluth, MN 55812

Dear Dorothy,

I deeply regret that Silver Bay, Duluth and other LWV's in your area did not receive prior notice on the decision to include the League of Women Voters of Minnesota on the ad regarding Milepost 7.

I agree that improved communication is desirable. A clear understanding of policies and procedures is also desirable. There are no excuses I can offer. The diversity and complexity of issues, the interrelatedness of positions, and the way we work through committees and by delegating responsibilities in this age of parttime volunteers are all factors in the recent state action to support the coalition's ad. Again, this is not said by way of making excuses. If anything, it's a partial explanation of why it happened the way it did.

I'm sorry it sounds feeble, but I mean it strongly and sincerely. Unfortunately I can't undo what was done, erase it, or heal the wound. I'm not an expert in the tailings site issue itself. I've had years of experience in LWV organization, but that doesn't make me an expert in that either. As we pick up the pieces, we have learned a lot. In my optimistic moments I believe that the recent events may have constructive results, but it will take time and caring.

Jean and I will see you the end of this month. Maybe it will be spring?

Best regards,

Jerry Jenkins, President
League of Women Voters of Minnesota

J:M
cc: Ruth Clusen, LWVUS
Gwen Smith, Silver Bay LWV ✓
Elaine Higgins, Mid-Mesabi LWV
Carole Peloquin, Hibbing LWV

League of Women Voters of the United States 1730 M St., NW, Washington, D.C. 20036 (202) 296-1770

March 7, 1977

Mrs. Gwen Smith
President
League of Women Voters of Silver Bay
Silver Bay, MN 55614

Dear Ms. Smith:

I am writing in response to the memorandum submitted to me by the League of Women Voters of Silver Bay. I apologize for the delay in my response, but I have been out of the country on a trip sponsored by the U.S. Information Agency.

Let me begin by noting that the problem of the state League's sponsorship of the "Project Environment Foundation" ad and your League's opposition to their action is one that can only be resolved between the League of Women Voters of Silver Bay and the League of Women Voters of Minnesota. Although the state League based its decision on national water, air and land use positions, it came to its conclusions about Reserve Mining on its own--without consultation with the national board or staff. If the state board continues to affirm its decision, it would not be my role to ask them to retract their sponsorship of the "Foundation's" ad.

The most regrettable aspect of the situation was the failure of the state board to notify affected local Leagues--in advance of the ad's appearance--of its decisions. I have since seen copies of correspondence from Jerry Jenkins, president of the League of Women Voters of Minnesota, to members of the Silver Bay League in which she expressed the state board's regret for not notifying you about the forthcoming ad. It is, of course, a basic League policy that all decisions be communicated widely before action is taken, and unfortunately, in this instance, the state board did fail to follow the policy.

It does seem to me that the Minnesota League should have let the Silver Bay League--the one most deeply affected by its decision--know what decision it had reached about the Reserve Mining Company, how that decision had been made and what action it planned to take. Your League could then have expressed its views and been prepared for the effects of the ad if the state League still chose to sponsor it.

I do hope that communications between the League of Women Voters of Silver Bay

and the League of Women Voters of Minnesota can be quickly restored. We all share so many common goals and must keep ties to one another strong if we are to achieve them.

Sincerely,

Ruth C. Clusen

Ruth C. Clusen
President

April 4, 1977

State Board of Directors
League of Women Voters of Minnesota
555 Wabasha
St. Paul, Minn. 55102

Dear Leaguers:

We have observed with concern the controversy regarding the LWVMN action on the Reserve Mining tailings disposal. We have tried to remain rational and objective in viewing how this action affects League -- the local Leagues most directly involved, the credibility of League study and action, and the alienation and distrust of state League by many members. We believe it is important for others to understand the way we view the entire situation.

The LWVMN joined a coalition opposing Milepost 7 as an "environmental disaster". When questioned on the action, state board members said it was based on our water, air and land use positions. We still do not know what data was used nor what portions of our positions apply.

We are not in disagreement with the principle of LWV taking stands on the basis of "umbrella" positions. It is impossible to thoroughly study, as an organization, every particular case of concern, reach a consensus and then act. But when we have an "umbrella" position we have an obligation to the organization and society to determine that a particular situation does indeed fall under that position. For example, to take action on the position of equality of opportunity we must first determine that inequality does exist or threatens to exist. In determining this we must consider the views of those in a position to know, a spectrum of experts. We must not act only on emotional response nor uninformed pressure.

Let us look at each of these national Natural Resource positions in light of the views of the experts as reported in the Sixth Judicial District Judge's opinion of January 1, 1977.

Does Milepost 7 present a danger of dam failure and resultant water pollution?

> "The record is replete with statements and admissions of all the experts, both Reserve's and the State's, to the effect that if these dams were built according to design, and all unexpected contingencies were properly met, that the dams could not fail."

Does fugitive dust from Milepost 7 present an air pollution hazard?

> "The air quality staff of the PCA concluded that Mile Post 7 is a reasonable tailings site, and that the selection of that site could form the basis for the resolution of this case."

Is Milepost 20 a better land use choice than Milepost 7?

> "State-retained expert Dennis Hawker . . . did not testify that Mile Post 20 was preferable, but did testify that Mile Post 20 was inconsistent with land use principles."

If this is what the experts for both the state and the company have said in sworn testimony, why is LWVMN opposing Milepost 7? Why wasn't the Judges' decision read prior to taking action? On what expert data was this decision based?

Now to the matter of the LWVMN action being taken without notifying, let alone consulting, the local Leagues of the area. The explanation we have received is that they didn't know when the ad was going to run and they got busy with other things. We are only a phone call away from the state office. For approximately $1.60 per local League (total cost $6.40) we could have been advised immediately that they had made this decision. Comparing the $6.40 cost with LWVMN's share of the total ad cost of $1,444.00, and the cost of postage, conference phone calls and sheer wear and tear on all LWV members, the $6.40 appears miniscule. Our LWV principles state: "The LWV believes that democratic government depends upon the informed and active participation of its citizens and requires that governmental bodies protect the citizen's right to know by giving adequate notice of proposed actions, holding open meetings and making public records accessible." It seems that what we expect of government we should be able to expect from LWV.)

The LWVMN Board Memo of February, 1977, began with the following chastisement of our area Leagues:

> "The action taken by placing our name on an ad opposing Milepost 7 resulted in a public denunciation by affected Leagues. This action necessarily calls for a reminder of national and state bylaws: 'Article XI, Section 6, . . . Local Leagues and inter-League organizations may act only in conformity with, or not contrary to, the position taken by the League of Women Voters of Minnesota.' There are times when an issue we support affects contributions to local Leagues. This is unfortunate, but if we are to be an active, viable state League, we must act on state issues we deem important."

We are well aware of these bylaws and believe that the actions taken by the Silver Bay, Hibbing and Mid-Mesabi Leagues can more appropriately be defined as opposition to state method rather than statements "contrary" to position. These Leagues did not state support for Milepost 7 nor for Reserve Mining Company. Their concern is with fact and LWV principles, as is ours.

The Board Memo further states that the Board "reaffirmed" its position on the ad. It is our understanding that the deicison to join the ad was not a board decision but a decision by some board members. The board thus could affirm its members' actions but not reaffirm its own actions.

The Minnesota Natural Resource chairperson said that League had done nothing on the Reserve issue for seven years. To set the record straight, during the past seven years the LWV Duluth has consistently testified at public hearings, with state's advance knowledge and assent and notification to Silver Bay League, that Reserve's tailings disposal in Lake Superior must stop and that a reasonable safe disposal site must be obtained. We left it to the experts and the courts to determine what that safe disposal site was.

What can now be done to repair some of the damage done by state's action? It appears that we must accept the explanation of human error that resulted in Leagues not being notified of the anticipated action. Further, we must take steps to emphasize the importance of notification to avoid a repeat situation. It also appears reasonable that until we are provided with legitimate data refuting the expert testimony cited in the judges' opinion we must maintain our position that state action was not taken on the basis of fact. If any League can take action in our name without knowing the facts and without believing it necessary to be able to fully explain their actions, then we question that this action has any credibility and we do not wish to be associated with it.

It is unfortunate that circumstances have compelled us to spend so much of ourselves on this issue. However, we believe the ramifications of this situation and how it is resolved are important to all of us who care so deeply about our organization. We await your response to our questions and concerns.

Sincerely,

Shirley Berdie
Shirley Berdie
3920 Rockview Court, Duluth 55804

Prudence Cameron
Prudence Cameron
10969 Stoney Point Drive, Duluth 55804

Margaret Hokkanen
Margaret Hokkanen
5720 Oneida Street, Duluth 55804

Mary Pooley
Mary Pooley
2914 Greysolon Road, Duluth 55812

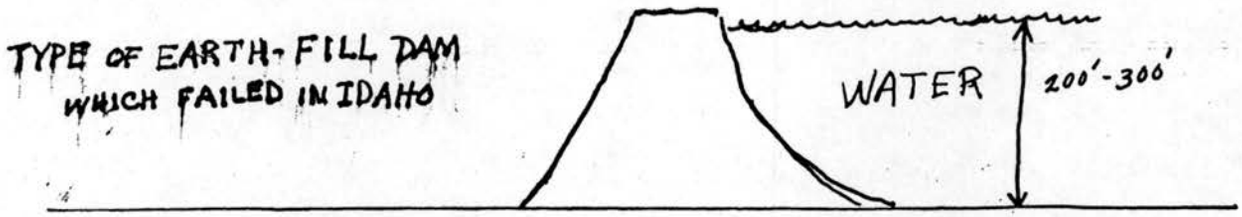
Margaret Seitz
Margaret Seitz
4333 Oneida Street, Duluth 55804

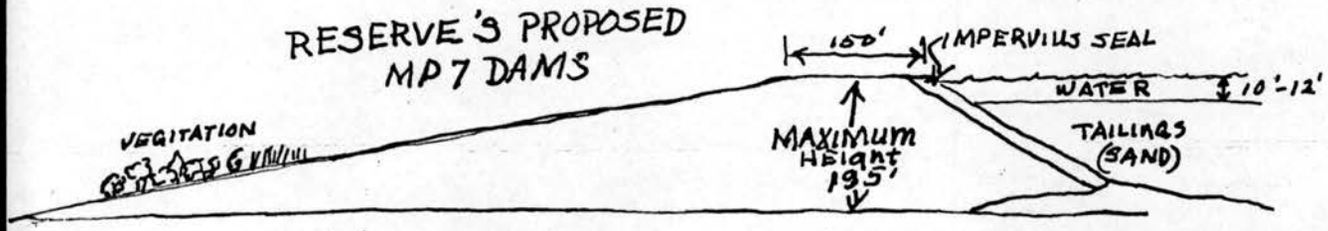
Adele Unzen
Adele Unzen
3026 Branch Street, Duluth 55812

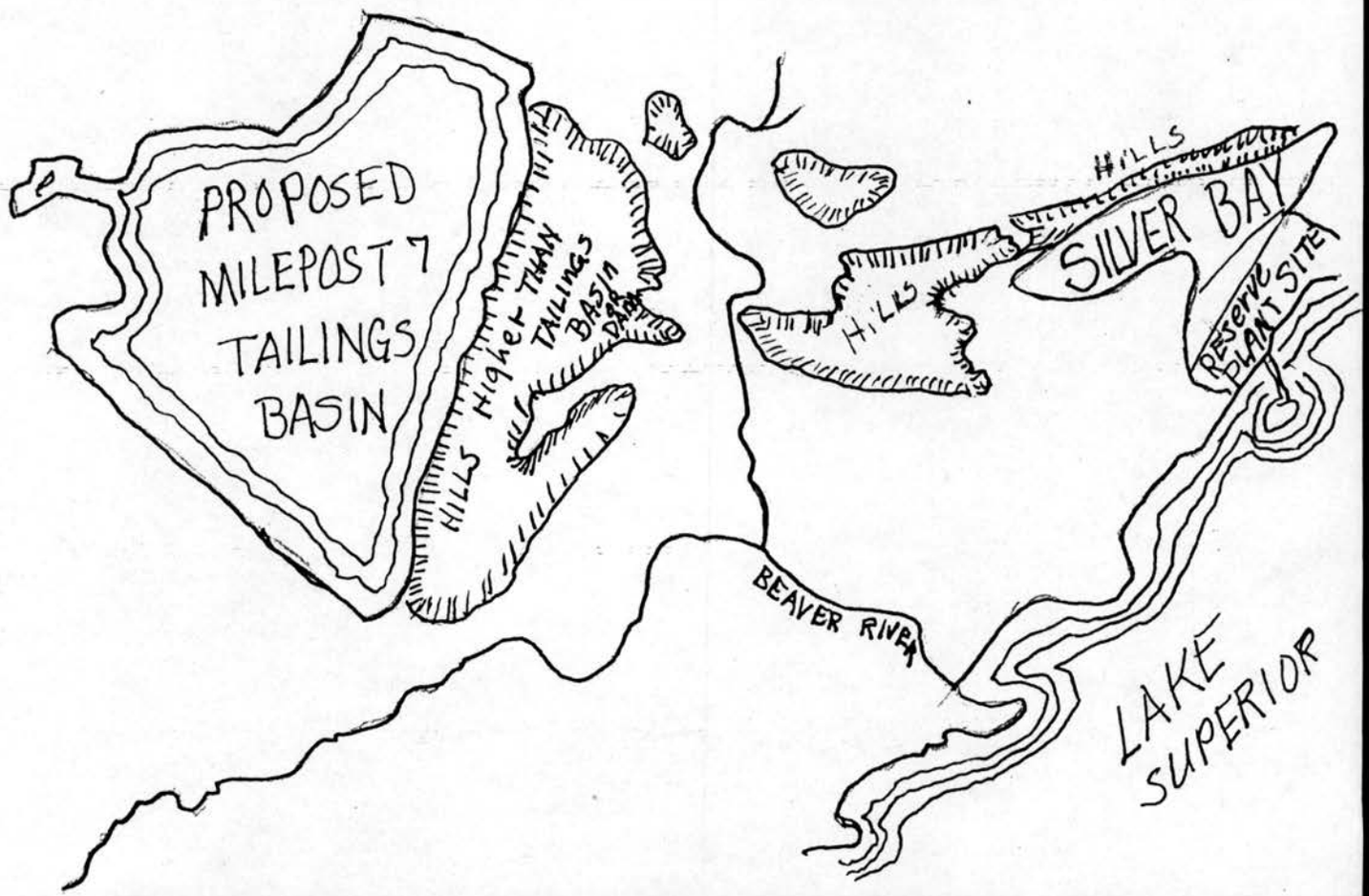
CC: LWVUS
LWV Duluth
LWV Silver Bay
LWV Hibbing
LWV Mid-Mesabi

COMPARISON OF DAMS AND TOPOGRAPHY OF THE SILVER BAY AREA

"Silver Bay is a "Jewel" nestled among high rock hills in a natural amphitheater that parallels Lake Superior".....







League of Women Voters of the Mid-Mesabi

"Action without Study is Folly, but Study without Action is Futile."

RESOLUTION REGARDING THE STATE BOARD ACTION ON THE RESERVE MINING ISSUE OF TAILINGS SITES

WHEREAS NEITHER THE LEAGUE OF WOMEN VOTERS OF MINNESOTA, NOR THE LEAGUE OF WOMEN VOTERS OF THE MID-MESABI HAS MADE A STUDY OF THE RELATIVE MERITS AND DEMERITS OF THE TWO PROPOSED SITES FOR DUMPING WASTES FROM THE TACONITE PLANT AT SILVER BAY, AND

WHEREAS WE BELIEVE THAT ACTION WITHOUT STUDY IS CONTRARY TO LEAGUE PRINCIPLES,

THEREFORE BE IT RESOLVED: THAT WHILE THE LEAGUE OF WOMEN VOTERS OF MID-MESABI CONTINUES TO SUPPORT SOUND ENVIRONMENTAL SAFEGUARDS, WE COMPLETELY DISASSOCIATE OURSELVES FROM THE PRECIPITOUS AND IMMATURE ACTION OF THE PERSONS RESPONSIBLE FOR NEWS ARTICLES THAT IMPLY OUR PARTICIPATION IN A STATEMENT APPROVING ONE SIDE OVER THE OTHER.

HOW WOULD YOU FEEL IF YOUR MOTHER STABBED YOU IN THE BACK?

For the past 18 years or so, the Silver Bay League of Women voters has zealously and idealistically guarded all the precepts and principles set forth by the League of Women Voters. We looked to the State Board for guidance and direction and we're always amazed and impressed with the vast knowledge that this august body seemed to encompass.

All our illusions and ideals were shattered in one fell swoop on February 7, 1977, when, without any warning or pre-information, the Silver Bay League read the ad, "Project Environment Foundation" (copy enclosed) in the Minneapolis Tribune.

The local residents were up in arms. The once honored and respected name, League of Women Voters, became a dirty word--not because the State League was opposing Reserve Mining Company, but because the State Board had not done a study on either Milepost 7 or Milepost 20. Our people knew this, because they had pressured us to take a stand. Our answer always was and still is--NO Study, No consensus, NO Action.

Our grief is deeper than this. We adhered to all the rules of the League. We often felt exiled and out-voted, because we were so "Out-state" and so small. We often did not agree with the consensus and position, but following League rules, we went along with the majority--speaking with one voice.

After February 7, when the State Board violated all the known precepts on which the League was founded, we could no longer remain silent. We were chastised for "Speaking out publicly". Can you imagine, we were chastised for doing exactly what the State Board, our leader and guide and mother had done. Are there two sets of rules which we must live by? Do the <u>rules</u> only apply to local leagues?

We believe we had a legitimate gripe. We believe we were given a "song and dance" that would make even a small child wonder where the "wisdom" went.

The irony of it all is,that none of the three board members, President Jerry Jenkins; Action chairman, Helene Borg, and Enviromental Quality Chairman, Mary Poppelton, had read the 8th district court decision, which was in essence what they were disputing when they moved to support an appeal to the Supreme Court. Because of pressure, partisanship, and prejudice, the State Board joined a coalition, but didn't do their homework. We can't understand how any League--local, state, or national could take a position with these credentials.

Jerry Jenkins, in the March-April Minnesota VOTER says on working in coalitions, "Certainly if we're going to have differences and division, we'd prefer that they not erode the strength and unity of the League. We have policies and procedures to help us avoid stress and intra-league conflict, but the process involves human beings and human beings make mistakes."

We can understand that, but all the Silver Bay League asked was that these same human beings who violated League principles and who erred in judgment be big enough and wise enough to swallow their pride and admit publicly that a mistake had been made and then publicly withdraw from the coalition. "Working with other organizations exemplifies cooperation--not bondage."

We know League members are busy, but we ask, in the interest of League, that you read the material we are enclosing to bring you up to date on what happened to the Silver Bay League. Because our mother stabbed us in the back, the Silver Bay League will cease to exist. Today it was Silver Bay. Tomorrow it may be you!!

TO: United States League of Women Voters c/o Ruth Clusen, President

FROM: Silver Bay League of Women Voters

SUBJECT: "Project Environment Foundation"

DATE: February 15, 1977

1. The Reserve Mining Company situation is very close to us since we live in Silver Bay. The Silver Bay League of Women Voters has never made a statement in support of Reserve Mining because it would have been against all League traditions--no study--no comment. As private,invidual citizens we were not bound by this rule.

2. Prior to 1971, we had one other occasion to protest to the State Board on a position by Mary Brascugli, then the State Environmental Equality Chairman for a statement made at a public hearing in Dluth in the name of the League of Women Voters of Minnesota, against Reserve Mining Company, also without any forewarning to the local League. That problem was resolved.

3. In 1971, at a tri-state meeting (Minnesota, Michigan, Wisconsin) held in Ashland, Wisconsin, chaired by Mary Ann McCoy, then Minnesota State President. After a day of debate and discussion, a set of ground rules was set up that hereafter, no League on any level would comment or make a statement on any Lake Superior problem without presenting it to the other Leagues involved and without unanimous agreement by that group. (League around Lake Superior.)

4. The Reserve Mining Company problem of site selection was heard by a hearing officer and Mile Post 7 was denied. Reserve appealed to the District Court--(Sixth Judicial District) with three judges, Donald C. Odden, Nicholas S. Chanak, and C. Luther Eckman, hearing evidence on both sides--under oath, in a court of law. On January 31, 1977, the judges released their decision. The State of Minnnesota Pollution Control Agency and Department of Natural Resources were ordered in two separate 51-page briefs to issue permits for Milepost 7.

5. The case was appealed to the Minnesota Supreme Court. The Minnesota League

of Women Voters joined that group to appeal--in essence, disputing the decision of the District Court.

6. Yet, by their own admission in a taped phone conference with Silver Bay League President, Gwen Smith, the Minnesota State Board Members: President, Jerry Jenkins, Environmental Quality Chairman, Mary Poppelton; and Action Chairman, Helene Borg, admitted they had not read the DISTRICT COURT DECISION. We assume, then, that none of the other State Boards read the decision, either.

7. Our question is "How can any League, local, state, or national, take a position without having done at least a cursory examination of the facts?

8. As far as we know, the Minnesota League of Women Voters Board has never examined either disposal site. They have not read the Court brief, we are again assuming that they haven't read any of the lengthy briefs on the hearings held in Silver Bay and St. Paul and that they also did not attend any of these hearings. So again, we are assuming that all their "knowledge" was gained through hearsay, newspaper articles, T.V., and pressure groups, rather than an in-depth factual study of both sides of the issues. This is certainly not in keeping with League Policy of study and consensus.

9. To approach a problem under a broad umbrella position may be sanctioned by both the State and National Boards, <u>but</u> we believe before an endorsement can be made, one must at least know what one is endorsing.

10. We believe an error in judgment was made the Minnesota League of Women Voters. We believe they bowed under pressure, without forethought or due process. We believe the State Board jumped on the bandwagon without knowing which tune was being played.

11. The ad in Minneapolis Tribune cost well over a thousand dollars. We are informed it cost $1,444.00. We want to know what the League's fair share is on that bill and where the approval was given for this substantial expenditure.

We also believe we should know who made the motion, who seconded it, and who voted for or against publicly joining the coalition in opposition to the Sixth District Court's decision. We believe that this this should have been a "Board" decision, on record in the minutes, and the Leagues in the area of the decision should have been notified.

12. As members of the Minnesota League of Women Voters, who have never reneged on their financial pledge to the State, we believe we are entitled to have some input in to that decision. We should have at least known that such action was forthcoming. We were SHOCKED to read "OUR" position in the Minneapolis Tribune on Sunday, February 6, 1977. Had the State League arrived at their decision through conventional League procedure, we would have abided by that decision. We may not have been happy about it, but we would not have publicly denounced it. We would have followed League rules. We believe communications between the State Board and ours is at an all-time low.

13. We believe that all precepts of League procedure have been violated and that the credibility of the League will be destroyed if we allow this type of action to continue. We believe the strength of the League is in this very meticulous process of reaching a consensus and position, and that without it, we all lose our credibility.

14. The Silver Bay League of Women Voters stands on its protest of the Minnesota League of Women Voters support of Project Environment Foundation. We might add "UNANIMOUSLY" stands.... We ask the National Board and the State Board to read the two enclosures: Transcript of phone conference, and Court File No. 05598, Sixth Judicial District Court's decision and then PROVE to us that we are wrong.

SILVER BAY LEAGUE OF WOMEN VOTERS
Silver Bay, Minnesota 55614

PREPARED FOR THE BOARD by Dorothy M. Cox, Public Relations Chairman

LEAGUE OF WOMEN VOTERS
SILVER BAY, MINNESOTA 55614

February 14, 1977

Minnesota League of Women Voters
Ms. Jerry Jenkins, President
555 Wabasha
St. Paul, Minnesota 55102

To the Board of Directors:

After two meetings of the Silver Bay Board of the League of Women Voters, it continues to be the unanimous opinion of the Board and general membership, that an error was made in judgment to commit the League of Women Voters of Minnesota to support "Project Environment Foundation" in opposition to Mile Post 7.

We were appalled that none of the Board had read the entire transcript of the Sixth Judicial District Court's decisions which is what you are opposing when you take this to the Supreme Court.

Where can you justify "ACTION" with these credentials? How can we remain a believable force in the community when we jump on a band wagon without even knowing the tune that is being played?

Our board listened very carefully to the tape of the conference call between our President, Gwen Smith and State Board Members, Jerry Jenkins, Helene Borg, and Mary Poppleton and rather than strengthen your position, the Board was more convinced that their protest would stand and they would continue to fight for League's principles.

We thank you for you concern about our future safety. We have lived in Silver Bay, some of us for more than twenty years, and we are all well aware of all the ills that everyone fears may befall us--but do you think for one minute, that any of us would jeopardize our lives and those of our children if we truly believed all the "goobliedook" that we read in the papers? Do you really believe that we are so insensitive to our environment and to the needs of our families that we would not be leading the parade to stop Reserve Mining from going to Mile Post 7?

We've had pressures put on us, too, to take a stand on Reserve Mining Company, and don't think it hasn't been hard not to buckle under the pressure, but we made a commitment to League and we explained our position to the community, according to League rules and they understood and believed in the League because we didn't compromise our principles.

We've had plenty of pressure, too, not knowing from one day to the next what our future holds for us. We believe ~~their~~ there are rational ways to implement programs, in keeping with the environment, without destroying the entire financial base of a community. We also have a "Human Resources" study and maybe the state League could do a study on Silver Bay on that score.

As you have learned, we are not puppets. We do not follow the leader unless we believe the leader is right. We are thinkers and doers. Why didn't you ask us what our feelings were? We do not have anyone from the northern part of the State on the Minnesota Board, but we did expect fair treatment and fair representation. Our Board feels we did not get this from the State.

The Silver Bay League has nothing to lose. We have already lost our financial base in the community for our Finance Drives, so it was the unanimous decision of the Silver Bay Board to fight this latest infringment on League policy to the end. If nothing else, we will at least save face in our own community.

Very truly yours,

SILVER BAY LEAGUE OF WOMEN VOTERS

Prepared for the board by:

Dorothy M. Cox

Dorothy M. Cox

Approved by:

Gwen Smith, President

& Board of Directors

cc: National Board
Mid-Mesabi League of Women Voters
Hibbing League of Women Voters
Duluth League of Women Voters

enc: *Addendum*
Statement to United States League of Women Voters
Court File No. 05598

SILVER BAY LEAGUE OF WOMEN VOTERS

ADDENDUM

LWV- MINNESOTA
2/14/77

Because of the time element involved in the Silver Bay League of Women Voters' protest, we have selected specific areas of the Judge's decision to confirm our position and to answer the questions of the State Board in the telephone conference of February 9, 1977. We certainly hope, however, that the State Board will read it in its entirety--we believe it is important.

II Dams - Page 15, 16, 17, & 18.

III Air Quality 18-32

IV Natural Resources (Our note--Land Use) Pages 32-35

V Page 37 (Our up-date of figures for your information- 1976 See Below)

VI Alternatives and Implementation -Starting Page 39 We refer you especially to Page 40 (Last paragraph) and Pages 41 & 42.

VII Permit Conditions- Page 44, 45, 46.
Note "a" (No other mining company has had to submit to such a stringent time limit.
"d" Note especially the word "perpetually"
"e" (Upon termination*****)
"g" "h" "i" "j" "k"

X Conclusions

- - - - - - - - - - - -

***V 1976 Figures: Reserve's 1976 payroll, including benefits: $58.5 million
Reserve's estimated state and local tax liability: $16.2 million
Reserve employees paid more than $3 million in Minnesota withholding and over $7 million was witheld for federal income taxes.

The company spent 72.7 million in 1976 for materials & supplies much of it in Northeastern Minnesota and the state in general.

STATE OF MINNESOTA

COUNTY OF LAKE

DISTRICT COURT

SIXTH JUDICIAL DISTRICT

Reserve Mining Company,

Petitioner,

-vs- COURT FILE NO. 05598

Minnesota Pollution Control Agency,

Respondent.

Republic Steel Corporation,

Petitioner,

-vs- COURT FILE NO. 05606

Minnesota Pollution Control Agency,

Respondent.

Armco Steel Corporation,

Petitioner,

-vs- COURT FILE NO. 05607

Minnesota Pollution Control Agency,

Respondent.

City of Silver Bay, City of Beaver Bay, Town of Beaver Bay, Lake County, St. Louis County, Northeastern Minnesota Development Association (NEMDA), Duluth Area Chamber of Commerce, City of Babbitt, Range League of Municipalities, Lax Lake Property Owners Association, and the Silver Bay Chamber of Commerce,

Petitioners,

-vs- COURT FILE NO. 05602

Minnesota Pollution Control Agency,

Respondent.

DATES OF TRIAL: November 3, 4, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 23, 24, 29, 30, and December 1, 2, 3, 1976.

Submitted December 27, 1976.

Duluth, Minnesota

APPEARANCES:

On Behalf of the Petitioner Reserve Mining Company

Edward T. Fride
Maclay R. Hyde
Raymond L. Erickson
Timothy Butler
O. C. Adamson II

On Behalf of the Attorney General, State of Minnesota

Morris M. Sherman
James Schoessler
Edward Moersfelder

On Behalf of the Respondent Minnesota Pollution Control Agency

Eldon Kaul
Paul Zerby
John Mark Stensvaag
Alan R. Mitchell

On Behalf of the Petitioner Armco Steel Corporation

G. Alan Cunningham
John Gordon

On Behalf of the Petitioner Republic Steel Corporation

William T. Egan
Timothy Thornton

On Behalf of the Petitioner Northeastern Minnesota

Wayne G. Johnson
Keith M. Brownell
Bruce L. Anderson
Steven J. Seiler
John M. Donovan

On Behalf of the Intervenor United Steelworkers

Jack Engberg

On Behalf of the Intervenor MPIRG and MECCA

Elliot C. Rothenberg

On Behalf of the Intervenor Sierra Club and Save Lake Superior Association

Charles K. Dayton

Heard before a panel of three district judges: Odden, Chanak, Eckman.

The above entitled matter was instituted by Petitioners Reserve Mining Company, Republic Steel Corporation, Armco Steel Corporation and the several Northeastern Minnesota political subdivisions and organizations pursuant to M.S.A. Section 115.05 as an appeal from the denial by the Minnesota Pollution Control Agency (hereinafter "PCA") of Petitioners' application for permits to construct and operate a taconite tailings disposal facility at a location described as Mile Post 7 in Lake County, Minnesota. The Court considered the administrative record certified to it, the testimony and exhibits presented to it in hearings commencing on November 3, 1976, and concluding on December 3, 1976, and briefs of counsel.

OPINION

This case involves one of two separate appeals by Reserve Mining Company, Armco Steel Corporation, Republic Steel Corporation, Intervenors United Steelworkers of America AFL-CIO and Northeastern Minnesota Development et al from the denial of the applications by Reserve for permits to construct and operate an on-land tailings disposal facility at Mile Post 7. Reserve has applied for and been denied permits by both the Commissioner of the Department of Natural Resources (DNR) and the Pollution Control Agency (PCA). The hearing officer who conducted the combined hearings below was appointed by both the DNR and the PCA. The findings, conclusions and recommendations of the hearing officer were made both in his capacity as a DNR hearing officer and as a PCA hearing officer.

Since both agencies averred that their decision to deny the Mile Post 7 permits were based upon the hearing officer's findings and conclusions and upon the record before him, judicial review of those decisions necessarily involve a review of that

record before him and the hearing officer's findings and conclusions based thereon. To this extent, judicial review of the DNR's and PCA's decisions rest upon an identical basis. However, this Court, pursuant to the application of Petitioners under M.S.A. 115.05(7), determined to and did hear and consider additional evidence in its judicial review of the PCA's decision.

For the purposes of conciseness and clarity, appellants in this opinion shall be referred to as "Reserve", the Minnesota Department of Natural Resources shall be referred to as "DNR", and the Minnesota Pollution Control Agency shall be referred to as "PCA."

Reserve's appeal of both agencies' decision to deny their application for permits to Mile Post 7 reaches this Court as part of a chain of legal events going back several years. Reserve's application for permits for Mile Post 7 and the agency's decisions to deny the permits is viewed in light of several years of controversy and judicial determinations.

After approximately two and a half years of controversy in Federal administrative and State court proceedings over the continuation of Reserve's discharges into Lake Superior, the matter was placed before the United States District Court for the District of Minnesota in February of 1972. The case was assigned to the Honorable Miles Lord, Judge of that Court, who assumed jurisdiction by virtue of a suit brought by the United States against Reserve at the request of the Environmental Protection Agency. The object of the suit was abatement of Reserve's discharges.

Trial in Federal Court began in August of 1973 and proceeded for approximately nine months. During that time massive amounts of testimony and evidence was considered by Judge Lord, much of it relating to the asbestiform nature of Reserve's discharge and the health effects of exposure to that discharge. In

April of 1974 Judge Lord ordered Reserve's discharges halted immediately. The United States Court of Appeals stayed the injunction until it could consider Reserve's appeal on the merits. Reserve Mining Company v. U. S., 498 F.2d 1073 (Eighth Circuit, 1974). In March of 1975 the Court of Appeals upheld the order of the Federal District Court but modified the timetable for abatement. Reserve Mining Company v. EPA, 514 F.2d 492. The Court of Appeals ordered that Reserve must be given a reasonable time to construct tailings disposal facilities on land. It is acknowledged that the findings of the Circuit Court of Appeals are binding upon the administrative agencies and upon this Court.

The U.S. Circuit Court of Appeals deemed it appropriate to state:

> "Finally, this Court deems it appropriate to suggest that the national interest now calls upon Minnesota and Reserve to exercise a zeal equivalent to that displayed in this litigation to arrive at an appropriate location for an on-land disposal site for Reserve's tailings, and thus permit an important segment of the national steel industry employing several thousand people to continue in production. As we have already noted, we believe this controversy can be resolved in a manner that will purify the air and water without destroying jobs." (Id at 540).
>
> "Minnesota, of course, in ruling upon any proposed on-land disposal site, must abide by the basic principles of due process of law." (Id at 540).

As directed by the Circuit Court of Appeals, Reserve on the 18th day of November, 1974, submitted applications to the PCA and to the DNR for all necessary and appropriate permits for the construction and operation of an on-land tailings disposal facility at a site designated as Mile Post 7. The permit hearings commenced on June 28, 1975. Consistent with applicable regulations, the hearings were concurrent and conducted under the authority of the DNR, PCA and Environmental Quality Council (EQC).

On May 26, 1976, the hearing officer published findings,

conclusions and recommendations to deny Reserve's application for permits for an on-land disposal site at Mile Post 7. On June 15, 1976, the PCA voted not to accept or approve the findings, conclusions and recommendations of the hearing officer to the extent that said findings constituted a rejection of the Mile Post 7 site. Thereafter, on July 1, 1976, the Commissioner of Natural Resources accepted the decision of the hearing officer as a final determination regarding the issuance of permits for Mile Post 7 by the DNR. On July 1, 1976, the PCA reversed its decision of June 15, 1976, and voted to accept the findings, conclusions and recommendations of the hearing officer and to deny Reserve's applications for air and water permits for the Mile Post 7 facility. It is from the denial of the necessary PCA and DNR permits that Reserve et al brings these appeals.

I. SCOPE OF JUDICIAL REVIEW

We are confronted by the claim of PCA that M.S. 15.0425 establishes the applicable scope of review, as opposed to the claim of Reserve that M.S. 115.05, subd. 7, sets the applicable standard of review. These statutes were in issue when the Supreme Court considered the petitions of PCA and DNR, and intervenors, seeking a Writ of Prohibition prohibiting this Court from enforcing the provisions of its order entered on September 15, 1976, which authorized the parties to present additional evidence and to pursue discovery procedures. Those petitions were denied. This Court was of the opinion that, at least, those aspects of M.S. 115.05, subd. 7, were laid to rest.

Apart from the matters of additional evidence and discovery, PCA now contends that the portion of M.S. 115.05, subd. 7, prescribing the "lawful and reasonable, and is warranted by the evidence" test has been replaced by the "arbitrary or capricious" test which is part of M.S. 15.0425. For ease of reference, we set forth both statutes.

M.S. 115.05, subd. 7, provides:

"The appeal shall be heard and determined by the court upon the issues raised by the notice of appeal and return according to the rules relating to the trial of civil actions, so far as applicable. The court of its own motion or on application of any party may, in its discretion, take additional evidence on any issue of fact or may try any or all such issues de novo, but no jury trial shall be had. If the court shall determine that the action of the commission appealed from is lawful and reasonable, and is warranted by the evidence in case an issue of fact is involved, the action shall be affirmed. Otherwise, the court may vacate or suspend the action appealed from in whole or in part, as the case may require, and thereupon the matter shall be remanded to the commission for further action in conformity with the decision of the court." (Emphasis added).

M.S. 15.0425 provides:

"In any proceedings for judicial review by any court of decisions of any agency as defined in Minnesota Statutes, Section 15.0411, subdivision 2 (including those agencies excluded from the definition of agency in section 15.0411, subdivision 2) the court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

(a) In violation of constitutional provisions; or

(b) In excess of the statutory authority or jurisdiction of the agency; or

(c) Made upon unlawful procedure; or

(d) Affected by other error of law; or

(e) Unsupported by substantial evidence in view of the entire record as submitted; or

(f) Arbitrary or capricious."

We continue to be of the opinion that M.S. 115.05, subd. 7, as it existed prior to August 1, 1976, is applicable in this case notwithstanding the repeal of that section by Minn. Laws 1976, Chapter 76, Sec. 8. Our basis for that conclusion has previously been set forth on pages 13-15 of our memorandum attached to our

Order of October 14, 1976. We find ourselves fully in accord with arguments advanced by Reserve in its Memorandum, pages 7-25, addressed to the Supreme Court in opposition to the petitions for writ of prohibition.

That being our opinion, we next consider whether the four cases cited by PCA compel us to reverse our position.

PCA contends that the clearest decision on point is Minneapolis Van & Whse. Co. v. St. P. Terminal Whse. Co., 288 Minn. 294, 180 N.W. 2d 175 (1970), involving an appeal of a decision of the Public Service Commission under a statute containing the "lawful and reasonable" language. There the court said

> "Appellant contended before the district court and here that §15.0425 governs the scope of judicial review of the commission's decisions, including the findings of fact. We agree . . .
>
> Prior to the enactment of §§15.0424 to 15.0425 of the Administrative Procedure Act in 1963, the scope of judicial review of orders of the commission, as well as the procedural requirements for perfecting an appeal to the district court, was governed by §§216.24 and 216.25. . .
>
> . . (T)he enactment of §15.0425 of the Administrative Procedure Act in 1963 . . was unmistakably intended by the legislature to make uniform the scope of judicial review of the decisions of all administrative fact-finding agencies, including those of the commission. This legislative intent is made clear by the language of §15.0425, which specifically includes every agency defined by §15.0411, subd. 2. . . (T)he legislative intent (is) that the decisions of every agency defined by §15.0411, which expressly includes "any state *** commission," should be reviewed in accordance with the rule prescribed by §15.0425."

As we read that case, it merely held that M.S. 15.0425 governed the scope of judicial review of the Public Service Commission decision, including the findings of fact. There the question was whether under that statute it was sufficient to sustain under the "any evidence" rule or whether the "substantial evidence" rule was embodied in M.S. 15.0425(e). Because the district court affirmed on the basis of "some evidence", there was reversal. To like effect is Quinn Distributing Co. v. Quast Transfer, Inc., 288 Minn. 442, 181 N.W. 2d 696.

Though the scope of judicial review is prescribed by M.S. 15.0425, nonetheless the "lawful and reasonable" test remains effective. In re Application of Northwestern Bell Telephone Co., ___ Minn. ___, 246 N.W. 2d 28, involved an appeal from an order of the district court remanding the case to the Public Service Commission for further proceedings. Bell challenged the order on the ground that M.S. 237.25 provides specifically for judicial review of commission orders in telephone rate proceedings. The statute provided that if evidence was erroneously rejected, the reviewing court could remand. No evidence was erroneously rejected, therefore, Bell argued that the reviewing court not remand as is provided by M.S. 15.0425. The Supreme Court held that even though M.S. 15.0425 was applicable to judicial review of telephone rate proceedings the powers conferred in M.S. 237.25 are cumulative rather than exclusive.

The fourth case cited by PCA is State, Dept. of Natural Resources, by Robert Herbst v. City of White Bear Lake, (filed Nov. 19, 1976). Although PCA relies upon that case for the proposition that M.S. 15.0425 provides the standard, a careful reading of that decision prompts us to observe that Justice Scott stated:

> "The district court's review of the commissioner's (DNR) decision is restricted to the question of whether the decision is 'lawful and reasonable; or 'unjust, unreasonable, or not supported by the evidence' M.S. 105.47."

This was so notwithstanding M.S. 15.0425 and the fact that the district court used the terms "arbitrary, capricious, unjust, unreasonable and is not supported by the evidence" in its conclusions, and the appellate court used the terms "arbitrary and capricious" in its decision. For the foregoing reasons we have no difficulty in reconciling M.S. 15.0425 and M.S. 115.05, subd. 7, so as to make applicable the "lawful and reasonable"

standard stated in White Bear Lake, supra, which involved M.C. 105.47 and not M.S. 115.05, subd. 7.

As recently as January, 1976, Justice Yetka in State by Pollution Control Agency v. United States Steel, ___ Minn. ___, 240 N.W. 2d 316, at 319, n. 4, stated, in effect, that an appeal under M.S. 115.05, subd. 7, provides for a standard of review whereby the district court must determine whether the PCA order was "lawful and reasonable" and whether the "factual findings were warranted by the evidence".

It is further observed that even the Administrative Procedure Act preserves the parties' various rights when granted by other statutes. M.S.A. §15.0424(1) in defining the application of judicial review of agency decisions states:

> "*** but nothing in this section shall be deemed to prevent resort to other means of review, redress, belief or trial de novo provided by law now or hereafter enacted:***"

Thus, pursuant to §115.05(7), this Court must determine whether the PCA's decision is lawful and reasonable and supported by the evidence. Conversely, the decision cannot be affirmed if the decision is unlawful or unreasonable or not supported by the evidence.

There appears to be no precise statutory definition of the "lawful and reasonable" standard of review as distinguished from the "arbitrary and capricious" standard which is employed in a number of statutes such as the Administrative Procedure Act, M.S.A. §15.0425. However, the case law reveals that the courts uniformly have given the phrase "lawful and reasonable" its customary and usual meaning. Thus, in Save our Ten Acres v. Kreger, 472 F.2d 463, 466 (5th Cir, 1973), the Court noted that the "reasonableness" standard of review is a "more penetrating inquiry" than the "arbitrary and capricious" or abuse of discretion standard of review. Similarly, the Eighth Circuit has

expressly recognized that the "rule of reasonableness" is a different and more thorough standard of review of an agency's decision than the "arbitrary, capricious and abuse of discretion" standard under the Administrative Procedure Act. See, Minnesota Public Interest Research Group v. Butz, 498 F.2d 1314, 1320 (8th Cir. 1974). In commenting on Butz, the Court in Morgan v. United States Postal Service, 405 F. Supp. 413, 422, (W.D. Mo. 1975), noted:

> "Obviously, a reasonableness standard involves a much stricter scrutiny of the agency decision than an arbitrary, capricious test." (Emphasis added).

It follows that the "reasonable and lawful" test of M.S.A. §115.05(7) requires this Court to engage in a "thorough, probing in-depth review" of the PCA's decision denying Reserve's permit applications. See, Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 415, 91 S.Ct. 814, 823, 28 L.Ed.2d 136, 153 (1971). Additionally, the Minnesota Supreme Court has held that, where a permit denial is involved, "fundamental fairness *** demand(s) a stricter standard of review in the district court." Corwine v. Crow Wing County, 244 N.W. 2d 482, 486, (Minn. 1976).

Whether one defines the standard under M.S. 15.0425 or M.S. 115.05, subd. 7, under either statute the hearing officer's findings of fact are measured by the "substantial evidence test", and his findings involving policy determinations, risk analysis and predictions based on the frontiers of scientific knowledge must be subjected to the "thorough, probing and in-depth review" provided for by the "lawful and reasonable" statutory standard. While the Court must respect the decisions of the administrative agencies, nevertheless, a searching judicial scrutiny of how and why the agency determinations were actually adopted is required by the statute.

We view that by the "substantial evidence" test is meant: 1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; 2) more than a scintilla of evidence; 3) more than "some evidence"; 4) more than "any evidence"; and 5) evidence considered in its entirety. There are correlative rules or principles that must be recognized by a reviewing court, such as: 1) unless manifestly unjust, inferences must be accepted even though it may appear that contrary inferences would be better supported; 2) a substantial judicial deference to the fact-finding processes of the administrative agency; and 3) the burden is upon the appellant to establish that the findings of the agency are not supported by the evidence in the record, considered in its entirety.

Specifically, the legislature has declared that decisions of agencies such as the PCA and DNR must be "consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction." M.S.A. §116D.04(6). (Emphasis supplied).

The question of whether the agency's decision is reasonable turns on whether the agency gave impartial, objective and proper consideration to the evidence presented and properly analyzed the risks and environmental impacts presented by the construction of the Mile Post 7 site. In other words, the reasonableness of the permit denials turns upon whether the agency employed the "rule of reason" in ascertaining the environmental effects and risks as well as the economic benefits associated with the construction at the Mile Post 7 site.

In testing the reasonableness of the agency decision denying the permit applications, particular emphasis must be given in this case to the hearing officer's concern with imagin-

ary or speculative possibilities. It is well established that an environmental impact statement need not discuss "either insignificant matters, such as those without import, or remote effects, such as mere possibilities unlikely to occur as a result of the proposed activity." EDF v. Corps of Engineers, 348 F. Supp. 916, 933 (N.D. Miss. 1972), aff'd., 492 F. 2d 1123 (5th Cir. 1974). This is so because the adequacy and content of an environmental impact statement and an agency decision based upon that impact statement is determined by the "rule of reason". Lathan v. Brinegar, 506 F.2d 677, (9th Cir. 1974).

Applying the rule of reason, the courts have consistently refused to require that environmental impact statements discuss possible but remote and speculative consequences. This refusal has occurred despite the fact that the courts have recognized that the purpose of an environmental impact statement is to disclose in sufficient detail to the decision makers the environmental consequences of a proposed development. In reality it is an identification process. See Calvert Cliffs' Coord. Com. v. AEC, 449 F.2d 1109 (D.C. Cir. 1971). Remote and speculative contingencies are simply not proper subjects of consideration by environmental permitting agencies. This is so because "(t)here is a point at which the probability of an occurrence may be so low as to render it almost totally unworthy of consideration". Caroline Environmental Study Group v. United States, 510 F. 2d 796, (D.D. Cir. 1975).

Similar to the National Environmental Policy Act, the Minnesota Environmental Policy Act, M.S.A. c. 116D, does not require the decision making agency to explore every extreme possibility which might be conjectured. Rather, M.S.A. c. 116D requires that the agencies merely consider alternatives that exist or are likely to exist. When an agency goes outside of the requirements of the Minnesota Environmental Policy Act and becomes preoccupied with remote contingencies, then the agency violates the rule of reason, and hence, its decision is unreasonable.

Perhaps the best summary of the rule of reason is contained in the legislature's declaration of environmental policy: "*** to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations ***". M.S.A. §116D.02(1).

The foregoing discussion is pertinent to judicial review of the administrative record. When, however, the District Court exercises its statutory power to hear additional evidence (as we have in the instant case), our scope of review of factual findings is accordingly broadened. A recent example of this procedure occurred in Reserve Mining Company v. Minnesota Pollution Control Agency, 294 Minn. 300, 200 N.W. 2d 142, 146 (1972), in which the Supreme Court held:

> "*** the legislature has unquestionably conferred upon the trial court the right to take additional evidence and, derivatively, to make findings with regard to that evidence. *** Consequently, after the trial court had heard the additional evidence and made the appropriate findings, it should, under the provisions of the Water Pollution Control Act (M.S.A. §115.05(7), have remanded the matter to the PCA for further action in conformity with the decision of the trial court."

Thus, in respect to the hearing officer's findings (as adopted by the PCA) this Court is empowered to determine whether or not those findings are reasonably supported by the evidence in the administrative hearing and in the District Court hearing. If all such evidence does not reasonably support a finding, then the finding must fall and -- in domino fashion -- the conclusions and recommendations based upon that finding must also fall.

In its brief, pages 28-39, PCA contends that the application of M.S. 115.05, subd. 7, allowing "findings" by the district court on additional evidence taken, as approved by the

Supreme Court in Reserve Mining Co. v. MPCA, supra, raises the issue of constitutionality. We decline to consider that issue for several reasons: 1) at no time prior to the filing of its brief did PCA raise the issue of constitutionality and for that reason Reserve did not address the issue in its brief and our order did not provide for a responsive brief; 2) the PCA is a state agency represented by the attorney general (M.S. 8.06); and 3) it has been, at least, customary for the attorney general to defend the constitutionality of statutory enactments.

We trust that we have sufficiently identified the parameters of our scope of review of the administrative record separately, and jointly with the additional court evidence. We now pass on to substantive matters.

II. DAM SAFETY

One of the principal reasons advanced by the hearing officer and the agencies for a denial of the Mile Post 7 permits is the possibility of a dam failure. In our opinion, their Findings of Fact and Conclusions are based not only on unsubstantial evidence but on almost no evidence at all. The safety and stability of the dams are not contested by any party, and the record of the administrative hearing is devoid of any evidence that the Mile Post 7 site would not be safe. The hearing officer ignored the "rule of reason" in arriving at his findings and conclusions on this issue.

It is well established in both Minnesota and federal law that an agency's decision must not be made upon "remote effects." In North Suburban and Sanitary District v. Water Pollution Control Commission, 281 Minn. 524, 162 N.W. 2d 249, the court illustrated the unreasonableness of an agency when it prohibits legislative activity, regardless of its harmless effects and the safety factors incorporated into the project. The court held that the decision of the agency was unreasonable because it

hinged upon contingencies that were "so remote and so unlikely to occur that we believe that factors which counterbalance them prevail."

Several federal cases demonstrate the unreasonable nature of the hearing officer's and agencies' determinations regarding the safety of the Mile Post 7 dam. North Anna Environmental Coalition v. U.S. Nuclear Regulatory Commission, 533 F. 2d 655, held that the regulations do not require totally risk-free siting.

Nader v. Ray, 263 F. Supp. 946, says that "absolute certainty or 'complete', 'entire', or 'perfect' safety is not required." See also Citizens for Safe Power, Inc. v. Nuclear Regulatory Commission, 524 F. 2d. 1291. In the case at hand, the standard of "absolute safety" set by the hearing officer and agencies is, per se, unreasonable.

The record is replete with statements and admissions of all of the experts, both Reserve's and the State's, to the effect that if these dams were built according to design, and all unexpected contingencies were properly met, that the dams could not fail. The agencies retained three widely-recognized geotechnical consulting firms, each conducting independent evaluations. Their experts, W. A. Wahler, Professor Leo Casagrande, and Dr. James Hamel, dam design consultants, studied the Mile Post 7 dam proposals of Reserve and concluded that the proposed dams would be safe. Two other qualified dam design consultants, including an engineer retained by the United Steelworkers of America, Intervenors, joined in that conclusion. The Steelworkers Union went to this expense over concern for the safety and welfare of their employees and families. Despite this unanimous testimony of five nationally and internationally recognized dam experts that Reserve's proposed facility at Mile Post 7 would be "safe beyond human doubt," the hearing officer imposed the burden upon Reserve to further establish absolute safety, that is, that it eliminate the remote

possibility of dam failure.

And so it appears to this Court that beyond any reasonable doubt, this dam will not fail. So it follows that the speculative catastrophic results from a failure could not occur. Yet, in spite of this overwhelming evidence, the hearing officer, in his Memorandum of June 29, 1976, stated that "All experts agree that safe dams do fail." There is no evidentiary support for that statement. By definition, a safe dam cannot fail. If this were to be an acceptable theory, no project would be permitted, and the wheels of industry and progress would grind to a halt.

Paradoxically, the hearing officer and agencies, while they find no substantial evidence of dam failure, choose to deal at length on "effects of dam failure." The hearing officer rationalizes this inconsistent hypothesis by the repeated finding that consequences of dam failure at Mile Post 20 would be less as an alternative site, and that because of its location alone, Mile Post 20 is preferable. (See Conclusion 11.) This theory is based on two assumptions, both of which are untenable because not valid: (1) That Mile Post 20 is a feasible and prudent alternative, and (2) that Mile Post 20 is available. Very limited environmental impact studies of Mile Post 20 have been made. The availability from the U. S. Forest Service of Mile Post 20 is questionable. It should be noted that the ultimate rejection of Mile Post 7 is based consistently throughout on the assumption that Mile Post 20 is a feasible and prudent alternative. It must be concluded, therefore, that the preference of Mile Post 20 over Mile Post 7 is not based upon substantial evidence when viewed in its entirety. This issue of alternatives is discussed more fully in this Opinion in a separate section.

Finally, the health, safety, and welfare of the people would be insured by dam construction and maintenance under the power and authority of PCA to monitor and oversee the most minute

execution thereof. This would be guaranteed by the conditions of the permit to Mile Post 7 which were agreed upon between Reserve and the PCA on July 1, 1976, as set forth in detail elsewhere in this Opinion. The denial of the permit on the ground of dam safety is not based upon substantial evidence, and is, therefore, unreasonable and an error of law.

III. AIR QUALITY

Consideration of air quality requires a review of factors involved, including potential dust sources, dust mitigation, fugitive dust measures, amphibole fiber estimates, air quality comparisons, health, projections of dust emissions, and fiber counting.

The air quality impacts projected in the administrative record are all based on a computer modeling system called a "Climatological Dispersion Model" (CDM). Essentially, air quality impact analysis involves estimation of total suspended particulates (TSP) which could be emitted during the construction and operation of a taconite tailings basin at any of the sites, and the estimation of the number of amphibole fibers which could be contained in the estimated TSP. In order to obtain the full air quality impact, the estimated TSP level is added to the levels of TSP known to exist, or estimated to exist, at each of the tailings basin sites. According to the PCA, only in the case of Silver Bay and Hoyt Lakes were actual TSP measurements used in the determination of the existing air quality, while the existing air quality at the other population centers considered were based on "pure estimates." The CDM was only used to estimate the incremental increase in TSP that would occur, and thereafter various conversion factors were utilized to convert incremental increases in the TSP levels into increases in amphibole fiber counts, i.e., the number of amphibole fibers contained in the estimated level of TSP generated by the tailings basin operation. In terms of computer

modeling, the consultants of both the state and Reserve used the CDM, although significant differences existed in the input by the consultants into the CDM.

Fugitive dust is the suspended particulate matter that is generated from an exposed surface of material which is acted upon either by mechanical forces or by the wind. Mechanical forces include various man-made activities such as construction, grading and vehicle hauling. In general terms, three factors can affect or influence emission rates: (1) the size of the open or exposed area; (2) the frequency or level of the mechanical activity operating on the exposed area; and (3) mitigation measures. Insofar as the size of the open or exposed area is concerned, the key factors which influence fugitive dust emissions are the properties of the emitting surface, such as the silt content (the fraction of particles smaller than 75 microns) and the moisture content of the emitting surfaces. The lower the silt content and the higher the moisture content, the greater resistance to the development of fugitive dust conditions. These various emission factors and subfactors are input data in the computer model as are meteorological data pertaining to the predominant wind direction, wind velocity, precipitation frequency and regional climatology. As a result of these various data inputs, the computer program attempts to forecast ambient dust concentrations at preselected ground level locations, assuming a worst-case situation. Estimates are also made as to the effects on fugitive dust resulting from the application of mitigating factors.

Duluth meteorological data for the Mile Post 7 site was used since it was the only data available. Mr. Peter Gove, Executive Secretary of the PCA, testified near the completion of the administrative hearing:

> "* * * An unequivocal prediction of what total suspended particulate levels will be with each alternative are not possible with existing deficiencies in background data and the qualifications placed on emission projections." (HT. 17,694)

All the parties recognized that air modeling was subject to substantial margins of error.

As with prediction of TSP, the estimation of amphibole fibers was also imprecise. Mr. Gove stated:

> "* * * Variations in methodology of fiber counting and measuring have made it difficult to accurately determine existing and projected levels of asbestiform fibers in the ambient air."

No state or federal ambient air standard has been promulgated for amphibole fibers. Based on present data, the ambient air of the communities of Silver Bay, Babbitt, Hoyt Lakes, Hibbing, Virginia and Mountain Iron have essentially comparable levels of asbestiform fibers. Amphibole fibers have been identified and reported in ambient air samples from Duluth, St. Paul, and Marshall, Minnesota.

The ambient air in Silver Bay, based on an annual geometric mean basis, is very close to background conditions, that is, naturally existing conditions. Annual geometric mean concentrations of TSP are well below the primary standard of PCA's Minnesota Air Pollution Control Regulation (APC) 1 (75 micrograms per cubic meter) and the secondary standard of APC 1 (60 micrograms per cubic meter).

The Air Quality staff of PCA has concluded that primary and secondary total suspended particulate (TSP) standards and provisions of agency regulation APC-6 can be met at all sites, including Mile Post 7, during operations.

Construction activity, transporting and movement of coarse tailings, and wind action, would have the potential of generating fugitive dust with distribution outside the limits of the tailings area. Mr. Tibor Kosa, Chief of the Engineering Section, Division of Air Quality, PCA, testified as follows:

> "Any potential problem with fugitive dust would be more of enforcement, not of technology, because the technology is available."

The PCA's air regulation APC 6 provides as follows:

> "(a) No person shall cause or permit the handling, use, transporting, or storage of any material in a manner which may allow avoidable amounts of particulate matter to become airborne.
>
> (b) No person shall cause or permit a building or its appurtenances or a road, or a driveway, or an open area to be constructed, used, repaired or demolished without applying all such reasonable measures as may be required to prevent particulate matter from becoming airborne. The Director may require such reasonable measures as may be necessary to prevent particulate matter from becoming airborne, including, but not limited to, paving or frequent clearing of roads, driveways and parking lots; application of dust-free surfaces; application of water; and the planting and maintenance of vegetative groundcover."

Dust mitigation measures include 1) physical means such as water, 2) chemical binders such as Coherex which is biodegradable with no detrimental effects, and 3) vegetation. Covering of tailings with water is a most effective means of eliminating potential fugitive dust. PCA's Division of Air Quality staff was of the opinion that vegetation is the most effective long-term method of controlling and mitigating potential fugitive dust, and that vegetation can be effectively grown on tailings.

In Finding 55 the hearing officer states:

> "Use of water sprinkling or chemical treatment can reduce, but cannot eliminate fugitive dust. Evidence of the quantitative effectiveness of revegetation of dam slopes in reducing fugitive dust is lacking."

By this finding the hearing officer establishes as the criterion of review an absolute 100% mitigation factor, that is, "eliminate" all fugitive dust. Such a standard is unreasonable. Equally unreasonable is the finding on revegetation. This finding totally ignored Reserve's success of excellent vegetative cover on its experimental revegetation plot utilizing Reserve's coarse tailings. The success was achieved in a single growing season.

Reserve, after testing, abandoned its air elutriation,

a process to remove fine particles from the coarse tailings so that the particles cannot become a source of fugitive dust. The process would not remove the fines unless the tailings were artificially dried, which fact demonstrates, that in and of itself, this moist condition would effectively prevent potential fugitive dust from the coarse tailings.

By finding in Findings 67, 68, 69, and 70, that the estimates of total expected fugitive dust emissions by both Reserve and the State were in error in that they understate the levels of emissions which he feels could reasonably be expected to occur, the hearing officer does so without an evidentiary basis. Such findings cannot stand. CDM's developed by both the State's and Reserve's consultants were conducted on a "worst-case" basis. In its judgment the PCA staff was prepared to grant air quality permits for Mile Post 7, and, as stated at the administrative hearing by Mr. Gove:

> "The MPCA staff concludes that subject to the conditions stated by the MPCA water quality and air quality staffs and confirmation of the feasibility, safety, and fiber reduction from placing the coarse tailings under water, that Mile Post 7 is a reasonable site for tailings deposition."

As mandated by the Federal Court, Reserve and PCA entered into an Air Quality Stipulation Agreement whereby discharges at the plant site would be abated. According to the testimony of Mr. Kosa, PCA Division of Air Quality, no other mining company in the world installed such efficient pollution control equipment for their pelletizing machines. As a consequence, he estimated a reduction in TSP from the processing plant from the present estimated 65.8 tons per day to less than probably 2 tons per day.

Findings 82 and 83 fail to consider that the referenced Reserve estimates preceded the submersion under water of the coarse tailings and the dust mitigation benefits of that modification. TSP from the plant would be reduced as stated above.

The maximum TSP in Silver Bay through implementation of Mile Post 7 would be 1.2 micrograms per cubic meter on an annual average basis. There is no evidence that the 1.2 micrograms per cubic meter is equal to one-half of the "background" TSP level. The annual TSP level of Duluth, the official "background" site for northeast Minnesota is 19 micrograms per cubic meter.

Findings 74, 75, 76, 77, 78, 79 and 80 pertain to the estimation of amphibole fiber levels. Dr. Brown of the Mayo Clinic testified in the federal proceedings that with respect to both air and water, the level of fibers is not readily susceptible of measurement; that it is reasonable to assume an error in counts of fibers at least nine times on the high side to one-ninth on the low side; that there were incredibly large errors; and that he has little confidence in the estimate of the numbers.

In 1975 the Court of Appeals commented as follows:

> "The first issue was addressed at length in our stay opinion. We noted there the great difficulties in attempted fiber counts and the uncertainties in measurement which necessarily resulted. 498 F.2d at 1079-1080. Commenting on these difficulties, Dr. Brown stated that the fiber counts of the air and water samples could establish only the presence of fibers and not any particular amount, i.e., such a count establishes only a qualitative, and not a quantitative, proposition. The district court recognized these difficulties in counting fibers and observed that '(t)he most that can be gained from the Court (ordered) air study is the very roughest approximation of fiber levels.' 380 F. Supp. at 49.
>
> "The experts indicated that the counting of fibers represents a scientifically perilous undertaking, and that any particular count can only suggest the actual fiber concentration which may be present." Reserve Mining Company v. Environmental Protection Agency, 514 F.2d 492 at 511 (8th Cir. 1975)

The hearing officer's Findings 76 and 80 accepted Dr. Cook's method of estimating the number of fibers based on computation of the total fiber mass and average fiber size, reasoning

that the estimates "probably more accurately reflect the actual number of fibers present, but proof is more difficult". Such an approach requires that the total fiber mass of a dust sample be known and that the mean fiber mass of the fibers comprising that mass also be known. This assumptive approach requires various assumptions, such as, that the dust is composed of an assumed amount of tailings, that the assumed amount of tailings has an assumed amount of amphibole material, that the assumed amount of amphibole material in the assumed amount of tailings has an assumed amount of fibrous particulates, and that the assumed amount of fibrous particulates in the assumed amount of amphibole material in the assumed amount of tailings has an assumed mean fiber mass. There is "some evidence" to support such findings but, in our considered judgment, it does not rise to the level of "substantial evidence".

That each step of the computation had inherent factors of over-and-under estimation was acknowledged by the state's consultants who utilized this technique in assuming a fiber conversion factor.

We note that in Finding 80 the 975,000 "fiber" figure relates to "total fibers," and includes fibers which were positively identified as non-amphibole. For that reason the 975,000 figure cannot be used to convert TSP into amphibole fibers. Dr. Cook acknowledged that the 2,900,000 figure was biased high.

Air quality comparisons bring us to Finding 109, and Conclusions 3 and 4. Estimations of TSP and amphibole fibers are for the purpose of comparing the effect of each of the alternative sites on a series of population centers.

In choosing the data developed by the state the hearing officer concludes that TSP would be three times higher at Silver Bay if Mile Post 7 were in operation as opposed to Mile Post 20. The significance of the estimated air quality impacts must be

considered. Predicted contribution of TSP to the air of Silver Bay during operations at Mile Post 7 was three micrograms per cubic meter, while the operation of Mile Post 20 would contribute but one microgram per cubic meter. The state's air quality consultant rounded off all of the estimated "Existing Air Quality" levels to the nearest five micrograms per cubic meter "(s)imply because air quality can change within any given locality over a fairly short distance." It seems obvious that when it is permissible to round-off several micrograms per cubic meter of total suspended particulates, the significance of comparable quantities of TSP is seriously questioned.

Mr. Gary Eckhardt of the PCA's Division of Air Quality testified in substance that in the area of thirty-nine micrograms per cubic meter, the data is accurate to plus or minus 15%, and that at around 100 micrograms per cubic meter better accuracy would be expected. This is so, he testified, because the sampling technique for the high volume sampler appears to have a detectable limit around five micrograms per cubic meter and is affected greatly at that point by such things as humidity, barometric pressure corrections and temperature corrections. With these factors in mind it would seem unreasonable to determine a comparison based upon a mathematical difference of two micrograms per cubic meter of potential fugitive dust, even if the validity of the data is assumed.

In the related field of fiber counts, the error factors are so large that "one might see as much as two orders of magnitude difference in reported fiber counts." (The range from 10,000 to 1,000,000 is two orders of magnitude). At the end of the administrative hearing the PCA staff position was:

> "The MPCA staff cannot at this time determine the significance of the difference in ambient asbestiform fiber levels at population centers with the coarse tailings submerged at all sites."

On the health aspect the hearing officer refers to applicable air quality portions of the federal decision, 514 F.2d 492, in Findings 53 and 84, and bases Conclusions 1 and 2 thereon. As we view the excerpts selected, we do not believe that they are representative or that they place the health issue in an appropriate perspective.

Reserve was ordered by the federal court, 514 F.2d 492 at 538-39, as follows:

> "Reserve, at a minimum, must comply with APC 1 and 5. Furthermore, Reserve must use such available technology as will reduce the asbestos fiber count in the ambient air at Silver Bay below a medically significant level. According to the record in this case, controls may be deemed adequate which will reduce the fiber count to the level ordinarily found in the ambient air of a control city such as St. Paul."

The hearing officer has postulated (Finding 84) that "the projected level of fibers in the air at Silver Bay after implementation of the Mile Post 7 proposal would be at least comparable to the levels found by the federal courts to be a potential health hazard". The Eighth Circuit Court of Appeals determined the present levels of fibers in Silver Bay to be 0.0626 fibers per cubic centimeter (cc.) (62,600 fibers per meter cubed) with a 95% confidence interval of from 0.0350 to 0.0900 fibers (cc.) (thirty-five thousand to ninety thousand fibers per meter cubed). 514 F.2d 492 at 511.

The State projections for the Mile Post 7 operations were 0.085 fibers per cc. (85,000 fibers per meter cubed) for years 1 to 10 and from 0.097 to 0.292 fibers per cc. (97,000 to 292,000 fibers per meter cubed) during the 10 to 40-year operation period.

The projected increase from 97,000 fibers per meter cubed at year ten to 292,000 fibers per meter cubed at year 40, given in H. Exh. 274, is essentially due to the projected increase in the area of exposed coarse tailings in stockpile from zero

acres after ten years to 1920 acres at 40 years. The revised design under which the coarse tailings stockpile was a source of fibers was eliminated by placing the coarse tailings under water in the basin. The design change also eliminates the projected fiber increase after the tenth year.

In Finding 84 the hearing officer failed to quantify the amount of the projected level of fibers to which he has reference. Having in mind that the administrative record establishes that fiber estimating has inherent error factors which can render 10,000 fibers and 1,000,000 fibers to be "comparable", there is difficulty in determining the meaning of the term "at least comparable".

Further, if we assume that the present plant emissions are responsible for the 62,600 fibers per meter cubed found by the Circuit Court for Silver Bay, it follows that the 97% reduction of plant particulates projected by state's witness Mr. Kosa, premised upon the implementation of the Air Quality Stipulation Agreement, will also result in a similar reduction of fibers in Silver Bay from the plant. The calculation projects a reduction to less than 1900 fibers per meter cubed from the plant emissions in Silver Bay.

The sum of the two sources, after the stipulation agreement and implementation of Mile Post 7, projects a fiber level which at a minimum is 75% less than present levels utilizing the state's air quality estimates and achieves this reduction without implementation of the mitigating measures developed as permit conditions by the PCA and accepted by Reserve.

It is undisputed that neither the construction nor the operation of the Mile Post 7 project, with the contemplated mitigation measures, will violate any applicable air quality regulation -- including those relating solely to potential fugitive dust. Moreover, the air quality staff of the PCA concluded that

Mile Post 7 is a reasonable tailings site, and that the selection of that site could form the basis for the resolution of this case.

We are of the opinion that the administrative record has no substantial evidence which would reasonably warrant or justify the rejection of Reserve's Mile Post 7 permit applications on the basis of air quality, either as a single factor or combined with other factors. Such rejection is unreasonable.

Additional evidence received by this court is further supportive of our conclusions.

Dr. Chatten Cowherd testified for the state at the administrative hearing and before this court regarding emission factors of fugitive dust from vehicular traffic, coarse tailings transfer and coarse tailings in place. His testimony at the administrative hearing was relied upon by the hearing officer in Findings 58, 68, 69, 72, 81, and 109.

At trial before this court Dr. Cowherd made the following changes from his administrative hearing testimony:

a) reduced his emission rate for coarse tailings transfer from 0.1 lbs. per ton to 0.07 lbs. per ton;

b) reduced his emission rate for coarse tailings in place from 0.4 tons per acre per year to 0.25 tons per acre per year;

c) reduced his projected TSP levels for Silver Bay from 1.75 micrograms per cubic meter to 0.63 micrograms per cubic meter, a 64% reduction of his original projection.

We especially note that Dr. Cowherd's courtroom projection of 0.63 micrograms per cubic meter of TSP at Silver Bay is now considerably lower than his original projection of 1.0 micrograms per cubic meter of TSP for Mile Post 20, a level originally acceptable to both the hearing officer and the PCA.

It is not deemed necessary to detail the respects in which Dr. Cowherd's testimony in the administrative hearing bore upon the hearing officer's findings, except to say that the figures proferred then are now shown to be in error and overestimated the

levels of the fugitive dust by at least three times.

There are some observations, however, that the complexity of our case would seem to justify. For instance, the relationship between tailings dust emissions and total dust emissions is an important factor in the air quality discussion. It is necessary to know the amount of total TSP which is tailings to determine a proper conversion from total TSP levels to the fiber levels which are likely to occur in the air of Silver Bay or other population centers as a result of the implementation of Mile Post 7 or other sites. During the administrative hearing Dr. Cowherd predicted that during operations at Mile Post 7 the tailings would constitute 71% to 91% of total TSP. This percentage figure included emission from the 1920 acre coarse tailings storage area which has since been eliminated from the Mile Post 7 design. Reserve's expert testified that 28.5% of the total TSP can be attributed to tailings.

Dr. Cowherd now projects a total emission rate from the Mile Post 7 basin of 1948 - 2018 lbs. per day, as compared to his Mile Post 20 projection of 2012 - 2296 lbs. per day, a level that is still higher than his Mile Post 7 projected emission rate.

Significant for related comparison are the results of Dr. Cowherd's CDM testing on an existing, conventionally designed tailings basin, operated by Erie Mining Co. The results show a projected emission rate of 32,500 lbs. per day for that tailings basin.

Also significant, in site selection, is the fact that Mile Post 20 has two to three times the exposed surface area of Mile Post 7. This is significant because emission rates are directly proportioned to the exposed surface area.

Through the additional evidence this court had the benefit of air sampling by Reserve during the summer of 1976. During the two-week shutdown period, the normal background level

of Silver Bay air, including air emissions from the existing delta and pellet storage activities, was determined to be 21 micrograms per cubic meter. During full time summer operations the figure was 38 micrograms per cubic meter, which would indicate that Reserve's present TSP contribution to Silver Bay air is approximately 17 micrograms per cubic meter. Implementation of the Air Stipulation would result in 97% reduction in emissions from the plant.

As calculated through Reserve's expert, the process plant, following the completion of the Air Stipulation, will contribute only 0.5 micrograms per cubic meter TSP to the air of Silver Bay. The Mile Post 7 project will contribute approximately 0.4 micrograms per cubic meter TSP (Dr. Cowherd's projection is 0.63) to the air of Silver Bay. These figures taken together and compared with Reserve's present contribution of TSP to the air of Silver Bay predict an approximate 94% reduction in the quantity of dust that Reserve's present production operations add to the air of residential Silver Bay. This would constitute a significant and substantial reduction in the air emissions as a result of the implementation of the Mile Post 7 project, contrary to Findings 82 and 83.

Further estimates show that assuming a 50% mitigation level, the Mile Post 7 project will contribute approximately 138 lbs. per day of amphibole minerals, with a contribution of only 20 lbs. per day using a 90% mitigation rate. Contrary to Findings 82-84, the Mile Post 7 project will not negate one-half of the benefits flowing from the implementation of the Air Stipulation, but will substantially reduce both TSP and the levels of amphibole material now present in the air of Silver Bay.

When we compare the average TSP level of 65 micrograms (per cubic meter) in St. Paul, 52 micrograms in Duluth, 45 micrograms in Virginia, 46 micrograms in Mountain Iron, 33 micrograms

in Hibbing, 36 micrograms in Hoyt Lakes, 40 micrograms in Ely, 20 micrograms at Duluth's airport, with the predicted TSP in Silver Bay, upon completion of the Air Stipulation and Mile Post 7 implementation, at 22 micrograms per cubic meter, this comparison results as a favorable factor for granting permits at Mile Post 7.

Much of our court testimony was directed to expert scientific evidence by Dr. Philip Cook and Dr. Edward Peters, the former espousing the so-called reconstitution method of sample preparation and the latter preferring the direct transfer method for the purpose of fiber counting by electron microscopy. We are persuaded that there are wide differences in fiber counting techniques and that there is at the present "state of the art" no single definitive standard method of fiber counting which has been accepted by scientists engaged in the analysis of mineral fibers by electron microscopy.

Lack of a standard method for sample preparation and anaylsis lends great weight to the conclusion of PCA staff that present fiber counting methods cannot serve as a regulatory tool. We are left with the fact that the Division of Air Quality of PCA could recommend the issuance of a permit for Mile Post 7 with conditions agreed to by Reserve.

The United Steelworkers' Union's position is that the hearing officer's findings on the questions of dam safety and air quality are not supported by substantial evidence. We have already stated our agreement. What is said in their brief gives an added dimension to our view of the evidence on air quality:

> "The Union submits that the state of the art of fiber counting and the uncertain health effects associated with airborne fibers renders it impossible to state a preference for Mile Post 20 over Mile Post 7 at this time. While it may be assumed that fewer fibers will drift into Silver Bay from Mile Post 20 than from Mile Post 7, no one can ascribe, with reasonable certainty, any significance to that difference. It may ultimately be determined that the fibers are harmless, or if potentially harmful, that

> the number of fibers that arrive at Silver Bay from Mile Post 7 are not medically significant. Conversely, it may ultimately be determined that the number of fibers from Mile Post 20 causes a health hazard, and that the operation at that site must be terminated. As we understand the present views of the authorities as expressed in the record, either determination may be possible. Accordingly, there should be no basis in the record for the rejection of Mile Post 7 or the acceptance of Mile Post 20 on the basis of air quality. It should be noted that Reserve must bear the burdens imposed by that uncertainty, and must comply with future air quality standards when such standards are established. Permit conditions would require such compliance."

We conclude, as we did at the end of our discussion of the administrative record, that there is no substantial evidence in either the administrative record or the additional evidence before this court, or in both, which would reasonably warrant or justify the rejection of Reserve's Mile Post 7 permit applications on the basis of air quality, either as a single factor or combined with other factors.

IV. NATURAL RESOURCES

It is obvious from the hearing officer's conclusions that he predicated his rejection of Mile Post 7 primarily on findings concerning dam safety and air quality, but the agencies argue that each and every finding may be a basis for rejection of Mile Post 7 and preference for Mile Post 20. We do not find it necessary to discuss each and every finding upon which the hearing officer bases his conclusion to establish the environmental superiority of Mile Post 20 over Mile Post 7. It is clear to us that such superiority, if any, is marginal at best, and not supported by substantial evidence.

We will point out, however, the absence of record support for some of the distinctions drawn and conclusions resulting therefrom.

Land use considerations should have presented a significant impediment to the selection of Mile Post 20 if credence

were given to state consultant Barton-Aschman & Associates, Inc., and their land use expert, Mr. Dennis Hawker. State-retained expert Dennis Hawker testified that Mile Post 20 "goes completely contrary to the principle of consolidation of land use activities and that you are opening up a third area to mining activities;" that the "introduction of a mining activity into the (Mile Post 20) area in between Reserve's current operations of mining activity and their plant in Silver Bay is another disadvantage of the Midway alternative;" that Mile Post 20 is a "violation of the principle of consolidation of manageable land uses;" that Mile Post 20 "represents a new and different area as relates to this mining industrial use;" that Mr. Hawker would not recommend Mile Post 20 for that purpose as relates to the application of the policy of consolidation; and finally, that to the extent Mr. Hawker would discourage the introduction of mining uses into the Mile Post 7 area, it could not be considered opening up an entirely new area to mining industrial uses; and there is "no specific written state policy of either the Department of Natural Resources or the Pollution Control Agency or other state agencies which says that mining industrial uses shall not be undertaken" at Mile Post 7. Mr. Hawker did not testify that Mile Post 20 was preferable, but did testify that Mile Post 20 was inconsistent with land use principles.

The land use findings ignore the people living, working and playing on the North Shore. Such is the effect of characterizing Mile Post 7 as a "major new industrial development" which cannot be considered the expansion of an existing land use. One of the most obvious facts in the record is that the Mile Post 7 proposal is only ancillary to an existing industrial facility. Preservation of the community of Silver Bay is certainly in accord with good land use. A consideration of the opinions of those living in the area indicates that Mile Post 7 is both acceptable

and preferred by local government and private citizens. There can be no doubt that if land use is to be a site selection parameter, land use must be considered in light of the existence of the plant in Silver Bay and the people who work and play there. It is significant that this is not a new industry seeking to intrude into a natural resources recreational area, but an ongoing concern of many years.

In view of the entire record, the only finding which can be justified regarding land use considerations is that the Mile Post 7 site is consistent with all applicable laws, rules and regulations and land use policies of state and federal agencies and that Mile Post 20 is not a preferable site because it opens up a third area to industrial mining uses and is inconsistent with principles of land use consolidation. There is no substantial evidence to support the hearing officer's relevant findings and conclusions for the preferability of Mile Post 20 on the basis of land use planning.

While there may be some very insignificant differences with reference to streams, fish, animals, timber and water quality impacts, as between the Mile Post 20 and Mile Post 7 sites, there is no substantial evidence to support the hearing officer's finding that the differences are "substantial". Rejection of the Mile Post 7 site based on such minor differences is unreasonable.

A review of the record and of the various environmental impact statements leaves us with the clear impression that all of the sites are indeed very similar. That point is made particularly clear in the testimony of Mr. Gove, Executive Director of the PCA, on March 11, 1976, when he stated in essence that there is no ideal site for tailings deposition, that whereever tailings are placed that there will be a major impact upon the environment, and that the differences among the various sites discussed at the hearing are indeed small. He concluded that

Mile Post 7 is a feasible site and that the environmental hazards can be minimized by the use of the best available technology.

The record shows that as far as the natural resources are concerned, none of the various factors either singly or combined with others justify or support the conclusion that there is a feasible and prudent alternative to Mile Post 7.

V. ECONOMIC FACTORS

There can be no question from the statutory law and case law that economic factors must be given at least equal consideration in making environmental decisions. 116D.03 (2)(c), 116D.02, subd. 1, 116D.04, subd. 6, 116D.07 (2). In Aberdeen and Rockfish Railroad v. Scrap, 409 U.S. 1207, 93 Sup. Ct. 1 (1972), Justice Berger, then sitting in the Circuit Court, said:

> ". . . Our society and its governmental instrumentalities, having been less than alert to the need of our environment for generations, have now taken protective steps. These developments, however praiseworthy, should not lead Courts to exercise equitable powers loosely or casually whenever a claim of 'any environmental damage' is asserted. . . The decisional process for Judges is one of balancing, and it is often a most difficult task."

Also, in Reserve Mining v. Lord, 514 Fed. 2d 540, the Federal Court stated:

> ". . . Minnesota and Reserve, to exercise the zeal equivalent to that displayed in the Federal litigation to arrive at an appropriate location for an on-land disposing site for Reserve's tailings and thus permit an important segment of the national steel industry, employing several thousand people, to continue in production. As we have already noted, we believe this controversy can be resolved in a manner that will purify the air and water without destroying jobs."

Two separate facets of this issue must be considered: (1) The substantial, additional cost to Reserve by going to Mile Post 20 instead of Mile Post 7, and (2) the economic impact of a shutdown of Reserve's operations upon northeast Minnesota.

It is the first problem, assuming implementation of Mile Post 20, that the governors of Minnesota and other State and Federal officials and industrialists have addressed themselves to in recent months. Reserve has placed itself on record several times, through Armco and Republic, that if denied permits to go to Mile Post 7, Reserve would shut down on the grounds of economic unfeasibility. The hearing officer treats this lightly and considers it a threat only and irrelevant notwithstanding. This Court feels, as do other interested parties, that this "threat" is substantial and must be considered seriously. The hearing officer does, however, in Finding 142, use the term that Reserve "may" be terminated and, in Findings 123 to 140, denigrates the probability of a shutdown. This court is not endowed with the prescience upon which to determine absolutely corporate intentions on closure. To disregard this possibility or probability constitutes a dangerous disregard of reality and, therefore, is unreasonable. There is no dispute in the record as to the economic impact on the residents of northeastern Minnesota and the economy of Minnesota if the plant shuts down. The Court of Appeals emphasized the magnitude of this problem, in 514 Fed. 2d 492, at page 536, in which it stated:

> "As of June 30, 1970 (Reserve) had 3,367 employees. During the calendar year 1969, its total payroll was approximately $31,700,000; and it expended the sum of $27,400,000 for the purchase of supplies and paid state and local taxes amounting to $4,250,000. (Reserve's) annual production of 10,000,000 tons of taconite pellets represents approximately two-thirds of the required p ellets used by Armco and Republic Steel, the sole owners of Reserve, 15% of the production of the Great Lakes (ore) and about 12% of the total production of the United States. Between four and six people are supported by each job in the mining industry, including those directly involved in the mining industry and those employed in directly and indirectly related fields." (514 F.2d 492, p. 536; C.A. 8 (1975))

Those figures may be updated by noting that Reserve's payroll for 1974 was over $46,000,000 and for 1975 over $55,000,000; that it expended the sums of $50,000,000 and $65,000,000, respectively, in 1974 and 1975 for the purchase of materials and supplies, $37,000,000 and $45,000,000 of which were paid to suppliers in the State of Minnesota; that 1974 and 1975 state and local taxes were $7,775,000 and $15,942,000, respectively.

As a result of new legislation, Reserve's state tax liability for 1975 was increased to more than $15,000,000 or approximately double the liability for 1974 and its state and local tax obligations during the next four years will be approximately $70,000,000 or equal to all state and local taxes paid by the company during its first 20 years of operation.

Although the hearing officer has many Findings (143-155) in this regard, he makes no conclusions therefrom.

After making the foregoing findings, the hearing officer commented in his memorandum of May 26, 1976 that the consequences of termination would be "horrendous for a great many people but the Mile Post 7 site would be no more suitable and no more legal." Thus, having recognized the horrendous consequences of termination, the hearing officer removed them from the balance, reasoning that an investment in one of the alternatives would be "prudent" and thus these horrendous consequences would never occur. This refusal to consider the impact on the economy in balancing with environmental impacts is directly contrary to the decision-making process used by the Court of Appeals and mandated under Minnesota Law.

No such rule exists in the applicable statutes. The state Environmental Policy Act mandate is to "encourage productive and enjoyable harmony between man and his environment;" and to "maintain conditions under which man and nature can exist in productive harmony and fulfill the social, economic and other

requirements of present and future generations of the state's people;" and to assure for all "people of the state safe, healthful, productive, aesthetically and culturally pleasing surroundings;" and to give equal consideration to environmental values and economic values. (MSA 116.01, 116D.02 and 116D.03) (Emphasis added)

The environmental policy of the state is further tempered by the provisions of MSA 116.07(6) which requires the exercise of its powers to give "due consideration to the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic and other economic factors and other material matters affecting the feasibility and practicability of any proposed action. . ."

In determining to give little consideration to the consequences of termination, the hearing officer has, in effect, reverted to the original DNR/PCA position that the consequences of termination should not be considered. (DNR/PCA HExh. 103)

A statistical description of the effects of a termination of Reserve on the economy of Northeastern Minnesota and the entire state in general, fails to adequately describe the true impact of a Reserve shutdown. As a practical matter, a shutdown would virtually destroy the economic well-being of several thousand families. The value of homes and other property in the Silver Bay and Babbitt areas would decline drastically, thus reducing the primary asset of thousands of families. It would also be impossible for most of the residents to continue to live in their homes since most would be forced to move to distant areas to seek new employment.

Because of the nature of the work force and the ages of many of the employees, many would find it impossible to obtain suitable reemployment. Of those who might be able to find other jobs, most would be required to accept positions at lower pay

levels than those which they currently enjoy. Valuable seniority rights also would be eliminated for Reserve employees.

Those persons in the 40-60 year age range would find it essentially impossible to ever recover from such an economic loss. It would be most difficult for them to properly contribute to the education of their children. In short, the economic well-being of thousands of families would be virtually destroyed. Unemployment compensation, welfare, and other government aids would be a poor substitute for the people affected.

Certainly, no one who is at all concerned about our natural heritage can be elated over the use of any part of our lands as a tailings disposal dump. The realities of life, however, demand that these basins be located someplace, and that choice must be made objectively, taking into consideration both the environment and the economy upon a rational balance.

We, therefore, find that the hearing officer's failure to make conclusions favorable to Mile Post 7 on this issue is unreasonable, because there is substantial evidence to compel such a conclusion.

VI. ALTERNATIVES AND IMPLEMENTATION

M.S.A. §116D.04(6) provides:

> "No state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct." (Emphasis added)

Since the establishment of a tailings basin at any site will necessarily result in some impairment of water, land and

other natural resources located within the site, the hearing officer was required, as is this Court, to consider the feasibility and prudence of the suggested alternatives to the Mile Post 7 site. The record is rather conclusive that all alternatives except Mile Post 20 have been written off by the experts and the hearing officer. In his Findings and Conclusions, he treats Mile Post 20 as the preferred and feasible and prudent alternative.

Setting aside all considerations of dam safety, air quality, natural resources, and economic feasibility of the Mile Post 20 site, we have before us the question of implementation of that site. It seems clear to us that whether or not Mile Post 20 is a feasible and prudent alternative, in its totality, its availability is of crucial significance.

If an alternative site is not available within "the timeframe of the needs to which the underlying proposal is addressed," such an alternative is remote and speculative rather than prudent and feasible. Natural Resources Defense Council, Inc. v. Morton, 458 F.2d 827, 837-38 (D.C. Cir. 1972). Delay in implementing and making available an alternative precludes that alternative from being feasible and prudent. Fayetteville Chamber of Commerce v. Volpe, 515 F. 2d 1021, 1026-28 (4th Cir. 1975).

In Finding 156, the hearing officer stated that the "time required for the alternative sites is estimated at more than four years." Dennis Hawker of Barton-Aschman and Associates, the State's consultant engaged for the purpose of preparing the State EIS- and the Midway (Mile Post 20) Supplement to the EIS, testified that the procedure for acquiring land within the Superior National Forest is described in Appendix F to the EIS (DNR/PCA HExh. 103). The EIS outlines the nine major steps necessary to acquire federal forest land pursuant to the General Exchange Act, 16 U.S.C. §486.86, and states, in part:

"2. The average land exchange has taken four to five years.

3. Examples of actual land exchange time: Inland Steel - 5 years; Erie Mining - 7 years, and still not completed; U.S. Steel - 5 years to date with approximately two years to complete."
(DNR/PCA HExh. 103, p. F-23.)

The time required to implement the Mile Post 20 facility alone belies its "feasibility." Because of the hearing officer's "offer" of Mile Post 20 as the feasible and prudent alternative site, the Court's consideration herein is largely limited to that site. Although other alternatives have been spasmodically suggested, these have received no serious consideration because of varying insurmountable difficulties with each. It should be stated, however, that what is true in respect to land acquisition to Mile Post 20 is also applicable to two of the other suggested sites with the following acreages of national forest land:

Mile Post 20	6,400 acres
Snowshoe	5,282 "
Colvin	7,468 "

The U.S. Forest Service, in its deliberations of the land exchange application, will consider feasible and prudent alternatives to the applied-for land. In fact, Reserve HExh. 485 indicates that, at least on June 23, 1976, the Forest Service regarded Mile Post 7 as the most acceptable site for the tailings basin. Mile Post 20 was rejected as an alternative by the Draft EIS for a variety of reasons.

If the Mile Post 20 site were to be used, the discharge of tailings to Lake Superior must continue during whatever period of time is necessary to acquire the site, plus the time required to develop the necessary land acquisition and title clearing, preliminary negotiations, one year for development of engineering data information, EIS drafters' archaeological surveying, 24 month plus EIS process, delays occasioned by any administrative

or judicial appeal, and 36-month turn-around construction period before the tailings could be deposited on land. It is recognized that some of these proceedings may be processed concurrently. Utilization of the Mile Post 20 site may require the continued discharge into Lake Superior for approximately six years. It is highly unlikely that the Federal Courts would allow such continued lengthy discharge. More importantly, even if the time to implement alone did not eliminate the Mile Post 20 site as a feasible and prudent alternative, there is no assurance that lands at Mile Post 20 would ever become available. The decisions of the Forest Service, the Secretary of Agriculture, the Congress, and, perhaps ultimately, the Federal Courts, are completely outside the control of the State of Minnesota.

The forced cessation of lake discharge before an on-land site is ready to accept tailings will result in the termination of Reserve's operations. Tailings produced in Reserve's taconite beneficiation process are needed for construction of the on-land disposal facility. Moreover, in the stages while coarse tailings processed will be used for dam construction, the fine tailings produced at the same time must be discharged into the lake.

Pursuant to Judge Devitt's Order of July 7, 1976, and as affirmed by the Eighth Circuit Court of Appeals, Reserve must terminate its discharge into Lake Superior on July 7, 1977. The Appeals Court has the power to extend this deadline if the dispute between the agencies and Reserve over an on-land disposal site is resolved. It is reasonable to assume that the Federal Courts will not indefinitely extend the period of time that Reserve will be permitted to continue the disposal of its tailings into Lake Superior. Thus, for an alternative on-land disposal site to be "feasible and prudent," the site must be available within the relatively short time period that the Federal Courts may allow Reserve to continue its present operation.

PCA's and DNR's determination that Mile Post 20 is an alternative to Mile Post 7 is meaningless, because the State, although it has no duty to do so, cannot deliver the site.

The agencies rely on County of Freeborn v. Bryson, ___ Minn. ___, 243 N.W. 2d 316, as a judicial mandate for their decisions. We understand clearly that it is the duty of the courts to support the legislative goal of protecting our environmental resources. This, of course, is to be done in harmony with the various statutory provisions which the legislature has expressly and contemporaneously embodied in its environmental enactments. M.S. 116D.02, subd. 1, 116D.03(2)(c), 116D.04, subd. 6, 116D.07(2).

We are in complete accord with Bryson, supra, as it applies to the situation there involved. However, we consider it to be distinguishable for the reason that in Bryson, there was an available, feasible and prudent alternative which would have no adverse environmental impact. In the instant case, every site considered is acknowledged by the parties and the hearing officer to have adverse environmental impacts if implemented. As we have concluded in another portion of our memorandum, there is no substantial evidence to support a conclusion that the environmental impact at the proposed Mile Post 7 project is substantially, or even marginally, greater than at any alternative site.

In Bryson, supra, the Supreme Court makes note of Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 91 S. Ct. 814, 28 L. Ed. 2d 136, which involved a statutory proscription that the Secretary of Transportation shall not approve acquisition of public parkland for construction of Federal aid highways unless there is no feasible and prudent alternative. The U.S. Supreme Court stated that the very existence of the statute indicated that protection of parkland was to be given "paramount importance," unless there were truly unusual or extraordinary factors present in a particular case. In the case before us, there is no statutory

proscription dealing specifically with a class of land such as is involved at Mile Post 7, as compared to "public parkland" in Overton Park. Here we have land involved which is similar at all sites, and for that reason it is not necessary that we predicate our decision on the basis of "unusual or extraordinary factors." For reasons stated we find Bryson authoritative but inapplicable.

In summary, we find the time required to implement disposal at Mile Post 20, together with the extreme uncertainty as to whether the site would ever be available, conclusively establishes that the PCA's and DNR's finding that Mile Post 20 is a "feasible and prudent alternative" is not supported by substantial evidence and is unlawful and unreasonable.

VII. PERMIT CONDITIONS

Any possible or reasonable concerns about the future of Reserve's Mile Post 7 plan were eliminated by the unequivocal acceptance by Reserve and its shareholders, Armco and Republic, on July 1, 1976, of the permit conditions demanded by the PCA Board and staff. These stringent permit conditions make the following controls binding on Reserve:

a) The permit shall be limited to a specific five-year term.

b) Armco and Republic shall be co-permittees with Reserve Mining Company.

c) The permittees shall assume all risks and liabilities arising from the implementation of the Mile Post 7 on-land disposal site and system.

d) The permittees shall be required to perpetually maintain the tailings basin site to insure the integrity of the basin structures and to prevent the deposited tailings from re-entering the air and water of the state.

e) All tailings except those used for dam and dike construction shall be placed underwater in the tailings basin during operations to the maximum extent possible with all exposed tailings to be adequately vegetated as soon as possible. Upon termination, the entire tailings basin shall be totally vegetated as soon as possible using the then best available technology.

f) All tailings shall be disposed of in the Mile Post 7 permitted on-land tailings disposal system facility. The permittees shall be prohibited from using or allowing any other person or governmental entity to use tailings for any other purpose.

g) The permittees shall be required to apply the best available technology to maintain air quality and to comply with all applicable laws and regulations, specifically including Minn. Reg. APC 1 and APC 6 and such other standards which now or in the future may apply to the permittees' tailings. This technology shall include specifically, but not exclusively, the use of spray water and effective and non-polluting chemical binders and other dust retardants on all exposed surfaces of tailings and upon all access and haul roads. In addition, only containerized or indoor and totally covered tailings stockpiles shall be permitted outside the disposal area.

h) The permittees shall be required to apply the best available technology to maintain water quality and to comply with all applicable laws and regulations, specifically including Minn. Reg. WPC 14 and such other standards which now or in the future may be applied to the permittees' tailings. This technology shall include specifically, but not exclusively, the following:

1) The tailings disposal system shall be operated as a closed system including the collection of seepage and surface runoff for return to the basin.

2) A dual pipeline system with required controls, spill detection devices, emergency catchment basins and other protective devices.

3) Any water discharge from the tailings or catchment basin shall be treated to the extent necessary to conform to all present and future water quality standards.

i) The permittees shall be required to monitor the Mile Post 7 basin structures and the air and water in and adjacent to the tailings disposal area for the purpose of enabling any reaction to any potentially hazardous condition. The permittees shall establish an air and water monitoring program to be approved by the Minnesota Pollution Control Agency and shall operate this monitoring program with the capability of providing information necessary for rapid response in applying mitigating measures and procedures. Such air and water monitoring shall include,

but is not limited to, the identification and counting of fibers by such methods as x-ray diffraction, electron microscopy or any other methods as the PCA may specify.

j) Reasonable costs for monitoring and analysis beyond the routine compliance monitoring conducted by the PCA or consultants directed by the PCA shall be borne by the permittees.

k) Dam design, construction and operations consistent with the recommendations of the Minnesota Pollution Control Agency staff and the state's consultants. The reasonable costs of such consultants shall be borne by the permittees.

The decision to reject Reserve's Mile Post 7 plan despite Reserve's agreement to these conditions is unlawful and unreasonable. We find that the above permit conditions are adequate to protect the health, welfare and safety, and all legitimate concerns of the public, as a matter of law.

VIII. ADMISSIBILITY OF RESERVE'S COURT EXHIBITS 104-168, AND MOTION TO REOPEN BY SLSA AND SIERRA CLUB

These documents were obtained by Reserve from PCA files pursuant to this Court's Order to Produce dated October 14, 1976. The PCA and Intervenors, on its behalf, objected to their admissibility on the grounds of lack of relevance, or that they were cumulative and repetitive. The Court has received said documents into evidence, being convinced of their relevance and non-prejudicial effect even though possibly of cumulative or repetitive nature.

We are of the opinion that the offered evidence by SLSA and Sierra Club relates to the execution and implementation of the Air Quality Stipulation Agreement. Any non-compliance therewith is a matter of future consideration between Reserve and the PCA.

IX. DUE PROCESS

1. As stated in our introduction, application for all necessary permits for Mile Post 7 were filed by Reserve with the

state agencies in November of 1974, and hearings on the administrative level were commenced before Hearing Officer Wayne Olson on the 28th day of June, 1975. Since the "Health Issue" was already resolved by the Circuit Court of Appeals, it was agreed and stipulated between the parties that that issue would not be a part of the administrative proceeding since it was res adjudicata.

In the lengthy opinion of the Circuit Court of Appeals, Reserve Mining Company v. EPA, 514 F.2d 492, it was held in substance that Judge Lord of the Federal District Court had abused his discretion in ordering an immediate shutdown of the plant, since the emission complained of did not create an imminent or certain risk of harm to the public but only a potential risk. (Id at 537). They further held that Minnesota had exclusive jurisdiction over disposal sites, but:

> "Minnesota, of course, in ruling upon any proposed on-land disposal site, must abide by the basic principles of due process of law." (Id at 540).

After the State administrative hearings had been in progress for approximately five months, Judge Lord held his "Educational Hearing." The recusal by the Circuit Court of Appeals following this hearing is well documented. Reserve Mining Co. v. Hon. Miles Lord, Judge, 529 F.2d 181. A few excerpts from that case places the concerns of this Court in proper perspective as to what impact, if any, such hearing had on the hearing officer, agencies, their staffs, and other state officials in attendance:

> "In the November proceedings, Judge Lord called and examined the witnesses and interspersed testimony of his own; the trial judge announced on the record that witnesses called by Reserve could not be believed, that in every instance Reserve hid the evidence, misrepresented, delayed and frustrated the ultimate conclusions; and that he did not have 'any faith' in witnesses called by Reserve." (Id. at page 182).

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". . . and that Judge Lord continues to attempt to influence the state administrative process concerning the feasibility and location of the on-land disposal site. Requesting the hearing officer and members of the Minnesota PCA to attend this Court was for the precise purpose of exerting improper influence. . ." (Id page 187).

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"Judge Lord's statements evidence a purposeful intent to influence the state officials to reject the Mile Post 7 site. The District Court's disclaimer of present jurisdiction cannot hide the purpose manifested by what he told the state officials." (Id page 188).

Thus, the U.S. Court of Appeals has already determined that Judge Lord's "Educational Hearing" was held to improperly influence the state administrative process. The question arises as to what influence, if any, did these proceedings have on those who attended, who were active participants in the administrative hearing, such as the hearing officer, Director Gove, and his staff, PCA board members, and staff members of the DNR. This suggests that perhaps the hearing officer's and agencies' decisions, premised upon health issues, and the fact that the Findings and Conclusions minimize favorable reference to Reserve's experts and consultants, owes its origin to the effort of that hearing.

2. The statute governing the conduct of PCA regulatory affairs provides in part as follows:

"All hearings conducted by the Pollution Control Agency pursuant to Chapters 115 and 116 shall be open to the public, and the transcripts thereof are public records. ***" M.S.A. Section 116.075, subd. 1.

In that same regard, MPCA Regulation 9 provides further guidance as to the nature of the public hearings contemplated by the statutory law:

"All hearings required by statute or regulation and all hearings ordered by the agency in its discretion, other than rule-making hearings conducted pursuant to Minn. Stat. Chapter 15 and other than public informational meetings, shall be conducted with the procedure set forth in this rule.

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> No person before this agency shall have his rights, privileges or duties determined without regard to fundamental fairness. To that end, this rule is intended to assure that all parties are provided a just and speedy public hearing." (Emphasis added)

On June 15, 1976, the PCA Board, on a vote of 5 to 4, rejected the hearing officer's Findings and Conclusions and determined to grant all necessary permits for the construction and operation of a tailings basin at Mile Post 7. In order to draft appropriate Findings and Conclusions in support of Mile Post 7, the Board formed a committee of the five supporting their position (Genis Committee) and directed the PCA staff to assist. Under this Court's production order, it is well documented that the PCA staff members were overwhelmingly disappointed by the Board members' decision, and that they supported the hearing officer's recommendations to deny permits to Mile Post 7.

The record reveals that a series of four meetings between the staff and the Genis Committee from June 15 to July 1, 1976, were conducted, but without the benefit of either notice to the parties or the keeping of a formal record. The first of such meetings was held late in the afternoon of June 15, at which time the Committee entered into procedural and substantive discussions with the agency staff. The second of such meetings was held three days later in the offices of Mr. Gove, at which time each Board member agreed to produce a factual basis for his personal reasons for rejection of the hearing officer's Findings and Conclusions. Their personal reasons were distributed to the PCA staff on June 23rd. The third of such meetings was held on June 29th, where it was determined that time pressures and the complexity of the issues compelled the committee to recommend to the Board the adoption of the "Findings" proposed by Reserve. The final meeting was held July 1st, and involved a considerable debate between staff members and the Board members. Again there is no record of what was debated nor is there a transcript of the

comments and ideas then being exchanged.

What is known, however, is that within a few hours after the close of the committee session, two members of the Genis Committee reversed themselves, which in effect gave the Board a majority in adopting the views of the PCA staff and accepting the hearing officer's decision.

3. The hearing officer, in Finding 169, compliments the agencies on their good-faith objectivity. Reserve, however, suggests that certain court exhibits, obtained by this Court's production order, reveal that the DNR staff had expressed determination, before the administrative hearing commenced, to reject Mile Post 7. Also a close review of these produced documents reveal activities and efforts of the PCA staff to persuade the PCA Board to deny the permits to Mile Post 7, and particularly a determined effort on the staff's part to change the Board's June 15, 1976, decision. (Reserve's Exhibits 104 to 163).

Upon a review of the record in its entirety (and the produced exhibits here in question), it is evident that all these extra-judicial hearings, meetings, and correspondence, convey an inference that many of those involved in the administrative proceedings, engaged in activities that cannot be condoned, as within the legislative intent to maintain fundamental fairness and objectivity in their proceedings.

The ultimate reaction of this Court is that this failure corroborates our decision that the Findings of Fact, Conclusions and Recommendations of the hearing officer, and the decisions of the agencies in denying the necessary permits to Reserve for Mile Post 7, were unreasonable and not based upon substantial evidence and thus unlawful.

X. CONCLUSIONS

1. On the basis of the record in its entirety, the Findings, Conclusions and Recommendations of the hearing officer,

and the decision of the PCA based thereon to deny permits for Reserve's proposed Mile Post 7 on-land tailings disposal facility are unlawful, unreasonable and not supported by substantial evidence.

2. Reserve is entitled to an order of this court vacating the PCA decision of July 1, 1976, denying permits applied for by Reserve for an on-land disposal facility at Mile Post 7, and directing the MPCA, upon remand, to issue the permits applied for at Mile Post 7, under such permit conditions as may be mutually agreed upon between the parties.

It is therefore ORDERED:

That the Order of the MPCA dated July 1, 1976, is hereby vacated and the matter is remanded to the MPCA for action forthwith to issue all permits applied for by Reserve for Mile Post 7, subject to such conditions as may be mutually agreed to between the parties, all in conformance with the decision of this Court.

Let Judgment be entered Accordingly.

Dated this 28th day of January, 1977.

BY THE COURT:

Donald C. Odden

Nicholas S. Chanak

C. Luther Eckman

I HEREBY certify that the above Conclusions constitute the Judgment and Decree of the Court.

Larry J. Saur
Clerk of Court

Dated: January 31, 1977

MEMO

From all of the parties and their counsel we have received excellent cooperation and briefs throughout this complex, long and troubling process without easy answers. Due to time constraints self-imposed, the urgings of the parties and the Governor for an expedited decision, and most importantly the urgency of the situation, we have not had the opportunity to more fully set forth in this opinion all of our considerations on this appeal. We have applied weeks of diligent sifting of the references to 18,000 pages of the administrative hearing transcript, thousands of pages of exhibits, 4,000 pages of the court hearing transcript, and a complete reading of over 1,000 pages of final briefs and proposed findings and orders. We found it humanly impossible to read in full within our time frame the numerous legal citations. However, we do feel that we have, consistent with sound judicial responsibility, set forth the basis for our decision sufficiently for the parties and the reviewing court to understand the reasons underlying the final order.

LEAGUE OF WOMEN VOTERS OF MINNESOTA
555 WABASHA • ST. PAUL, MINNESOTA 55102 • TELEPHONE (612) 224-5445

May 3, 1977

Mrs. Ruth Clusen, President
League of Women Voters of the United States
1730 M Street Northwest
Washington, D.C. 20036

Dear Mrs. Clusen:

As per our earlier memo, we are answering some of the points raised by the League of Women Voters of Silver Bay in their 14-point memo to the League of Women Voters of the United States, c/o you, re "Project Environment Foundation," dated February 15, 1977.

The enclosed, detailed background history on Reserve Mining was prepared by Mary Poppleton, LWVMN's Natural Resources Chairperson. In essence, that responds to points 4 - 9 of Silver Bay's memo. As stated in the history, the courts "had no choice but to rule for Reserve Mining under the strict Constitutionality interpretation." We take issue with the courts on the long range environmental and health impacts of Milepost 7, as Mary also details.

As to the other points raised:

1. Needs not, and cannot, be answered by LWVMN.
2. See 1969 testimony by Mary Brascugli attached to History.
3. We find no written set of ground rules resulting from the Ashland, Wisconsin meeting. We did find reference to that agreement in a memo to LWV-Michigan from Mary Ann McCoy dated December 6, 1971 (see enclosed). As stated on page 2, top of page, last sentence, "You will recall that the water position did not involve a land use study by our members; proposals in this case do involve land use, and no present consensus among national League members exist in this regard." There have subsequently been both LWVUS and LWVMN positions on land use.
4. & 5. Answered in the History.
6. Transcripts have been sent to you previously, one done by Silver Bay and one done by LWVMN and mailed to you on March 16.
7. - 10. Although the LWVMN EQ/Natural Resources people and action committee members were not actively visible in their Reserve Mining reviews, i.e. there were not periodic reviews sent to local Leagues from 1971 to the present, it does not mean they were not following the matter. Newspaper accounts and TV reports of the Reserve issue were read and followed; information was obtained from federal sources and was also sent to us by

a member-at-large who now lives in California. Admittedly, the findings by the Sixth Judicial District Court may not have been read ver batim, but the basic findings were known. Our concern was with the environmental issues, not the legal one. Members of the LWVMN have not physically examined either disposal site. However, we did know what and why the action taken was taken. We did not bow to pressure but rather arrived at our own conclusions first. We joined with others for more impact and with full knowledge of "which tune was being played."

11. LWVMN's share for the ad was $100, which was charged to the action part of our budget. Approval for the expenditure came from members of the Action Committee. Action was allocated $4000 in the 1976-77 budget adopted by State Council in April, 1976. Since the Action Committee was well within its budgeted allocation, the expenditure did not need Board approval.

12. Although the League of Women Voters of Silver Bay has never reneged on a financial pledge to LWVMN, they have not accepted the suggested amount of that support since 1970-71, being "short" anywhere from $50 to $214.40. Admittedly they should have been foretold of that ad. We have repeatedly apologized for that oversight. Interestingly, when we asked for their input into our Boundary Waters Canoe Area decision making, we received no response.

13. It seems to me that two sentences from IN LEAGUE, section on Formulating League positions, are appropriate here: "Therefore, it is important to word positions in terms broad enough to enable the League over a period of time to initiate, support or oppose a variety of legislative and/or executive proposals," and "a League may derive a new support position on an issue from elements which relate to that issue in existing League positions."

14. I do not think anyone can prove the rightness or wrongness of either the League of Women Voters of Silver Bay's nor Minnesota's positions on this issue, since one was looking at it from an economic and legal standpoint and the other from an environmental viewpoint. As the saying goes, "it depends on whose ox is being gored." Nothing that we said or didn't say would placate Silver Bay on an issue so close to their hearts and livelihoods. We pray that 20 years from now Silver Bay does not face environmental and health problems from the court's decisions regarding Milepost 7.

Sincerely,

Harriett Herb

Harriett Herb
Executive Director

P.S. In rereading the editorial comment section of Bev. Driscoll's memo to the state Board regarding the Lake Superior Enforcement Conference, we found paragraph 2 about Mrs. Fry, LWV member and Councilwoman, sending letters to the entire town, calling for attendance at the LSEC meeting. of interest.

HISTORY OF RESERVE MINING
April, 1977

In the mid 1940's the natural iron ore deposits of the Mesabi Range were almost depleted. The mining industry and Minnesota were looking for a way to extract ore from vast deposits of low grade taconite ore. The process was perfected by Dr. Edward Davis of the University of Minnesota.

Armco and Republic Steel applied for permits to mine at Babbitt and process at Silver Bay on Lake Superior. A location near Lake Superior was required for processing because of the large amounts of water needed. Because of the topography and cost of an on-land disposal sytem, Reserve asked for a permit to deposit the tailings in Lake Superior.

Reserve contended, in 1947 permit hearings, that the tailings were composed of harmless, naturally occurring materials that would sink immediately to the bottom of Lake Superior.

The disposal permit was granted in 1947 with three conditions: 1) that the tailings would not result in discoloration of water outside the disposal area; 2) that the tailings were not to result in any adverse effects on fish life and public water supplies; and 3) that Reserve was liable for any adverse water quality impacts.

The new plant began its first discharge of tailings in October of 1955. In 1960 the plant doubled in capacity.

During the early 1960's complaints were filed by fishermen who claimed the tailings were reducing their catch and recreational users who claimed the tailings were discoloring the lake.

In 1969 a U.S. Department of Interior report confirmed that the tailings were not sinking to the bottom of the lake. That report led to the convening of an enforcement conference by the Secretary of the Interior to determine if the tailings violated the 1965 Federal Water Pollution Control Act. The conference, in September, 1969, concluded that Reserve's tailings did constitute interstate pollution and directed Reserve to analyze alternatives for the on-land disposal of tailings. (LWV's testimony at this hearing is attached.)

That same year the Pollution Control Agency (PCA) promulgated a regulation to control water pollution to meet the standards of the 1965 Federal Water Pollution Control Act. The regulations set an effluent limitation of 30 milligrams per liter solids for an industrial discharge. At that time Reserve's discharge was 14,000 milligrams per liter. The Agency directed Reserve to comply with the regulation which would have modified or eliminated Reserve's in-lake discharge.

Reserve appealed to State Court, and the Court ruled that the regulation was not applicable to Reserve because of the implementation date and ordered the State to negotiate a variance with Reserve. The Agency appealed that decision to the Supreme Court which reversed the lower court's decision on applicability but still directed the State to negotiate a variance. These negotiations were stopped when Federal proceedings against Reserve began in 1972.

As directed by the enforcement conference, Reserve studied on-land disposal sights and rejected them all, stating it would only use deep-piping into Lake Superior.

The Environmental Protection Agency served Reserve with a 180-day notice for violation of the 1965 Federal Water Pollution Control Act.

In February, 1972, the U. S. Justice Department filed suit against Reserve citing violations of the 1965 Federal Water Pollution Control Act, the 1899 Refuse Act,

and the Common Law of Nuisance. Pre-trial proceedings delayed the start of the Federal Trial before Judge Miles Lord until June, 1973.

This trial, which began as a water quality impairment matter, changed when EPA and PCA investigations linked asbestos-like fibers in North Shore drinking water to Reserve's tailings discharge.

It was alleged that Reserve's taconite ore deposit contained the mineral cummingtonite-guinerite that, when fractured in the mining process, produced microscopic fibers that physically and chemically resembled commercial asbestos fibers. Medical research had established that the inhalation of asbestos fibers caused cancer.

Judge Miles Lord found in April, 1974, that Reserve was emitting asbestiform fibers into these discharges. He shut the plant down on April 20, 1974. (See attached testimony on health hazards from asbestos fibers.)

Two days later the Court of Appeals stayed the judge's order and held that a health hazard has not been demonstrated. While the Court of Appeals did not support Judge Lord's order to shut down the plant, the Court did require Reserve to promptly submit a plan to dispose of its tailings on land.

The first site proposed, the Palisades Creek Area immediately adjacent to the plant, was rejected by the State as unacceptable from an environmental standpoint. It has since been designated a State Park.

The Court of Appeals then encouraged Reserve to apply for the site known as Mile Post 7. This site is 7 miles inland from Silver Bay. The State preferred a site nearer the mine site at Babbitt. However, the State indicated that it would hold hearings on the Mile Post 7 site to determine if permits could be issued.

In March of 1975, the Court of Appeals ruled that Reserve's discharges did contain asbestiform fibers and that abatement was justified. However, the Court found that the health danger was not imminent. Reserve was told to install air pollution equipment at the Silver Bay plant immediately, since the Court found the threat to health from air pollution greater than water pollution.

These filters are not yet operational.

Reserve was given one year to negotiate with the State for an on-land site for the tailings. The Court also ruled that if Reserve and the State could not agree on a site within one year, the company would then have one more year to shut down.

The administrative hearing on the Mile Post 7 site before the PCA and Department of Natural Resources (DNR) began in June, 1975, and ended in June, 1976. While the hearing was proceeding, the jurisdiction of the Federal Court over the case continued, and during that time Judge Lord ordered Reserve to pay the costs to filter drinking water in Duluth and other North Shore communities to remove the asbestiform fibers. During a November, 1975, hearing on the subject of filtration costs, Judge Lord made statements about Reserve and its parent companies that led the Court of Appeals to remove him from the case in January, 1976. Judge Edward Devitt, assigned to replace Judge Lord by the Court of Appeals, required Reserve to pay for the cost of providing bottled water for Duluth and other North Shore community residents.

Since then, Federal funds have been provided to Duluth and four other Minnesota communities that depend on Lake Superior for their drinking water to construct permanent water treatment plants.

Judge Devitt also fined Reserve nearly a million dollars for violations of Minnesota water quality standards and ordered the company to pay the legal fees of the plaintiffs in the federal case. It is one of the largest court-ordered fines to date in the U.S. in a pollution case.

In May of 1976, the hearing officer assigned to the Mile Post 7 permit hearing recommended to the PCA and DNR that the Reserve application for permits at Mile Post 7 be rejected 1) because of the potential for failure of the several tailings dams at Mile Post 7, dumping the impounded tailings into Lake Superior and threatening public safety and property; 2) because the asbestos-fiber laden dust blowing off the tailings basin to Silver Bay could all but cancel any improvements in air quality at Silver Bay from the plant stack improvements now under construction and, thereby, cause adverse effects on health; and 3) because Reserve could afford to build at a site further inland at the Milepost 20 site. The DNR and the PCA accepted the hearing officer's recommendation.

Reserve immediately appealed the rejection of the permit applications for Mile Post 7 to State District Court. They also appealed Judge Devitt's fine to the Court of Appeals.

In judging the economic factors involved in both sites, the hearing officer found that Reserve is making around $40 million a year in net profits. The state estimated that the Mile Post 20 site would cost Reserve close to $386 million. Reserve claimed that it would cost $440 million - $138 million more than Mile Post 7.

The annual rate of return on investment by Reserve at Mile Post 20 was estimated by the state to range from 17.3% to 23.3%, while at the Mile Post 7 site this range was estimated to be 22.3% to 27.6%.

The state's consultants concluded that Mile Post 20 could be financed by Armco and Republic, which own Reserve, and this site would give Reserve a reasonable and adequate rate of return.

On January 28, 1977, the District Court ruled in favor of the Mile Post 7 site. The LWVMN and other groups at that time expressed support of an appeal of the decision to the State Supreme Court.

We feel the Mile Post 7 site is too close to Silver Bay and Lake Superior.

There is no guarantee that even a well constructed dam will not fail given the right circumstances. Reserve Mining agreed to abide by the Court's ruling that they perpetually maintain the dam site. Past performance leads us to wonder about the good faith of this agreement.

The problem of fugitive asbestiform dust blowing from the site continues to be troublesome. The Court transcript says, "Lack of a standard method for sample preparation and analysis lends great weight to the conclusion of PCA staff that present fiber counting methods cannot serve as a regulatory tool." We are now again faced with a situation where we have a possible serious health hazard and no good way to monitor it.

The DNR has great concern that asbestiform fibers leaching from the tailings basin may be reintroduced into Lake Superior.

Both sites have environmental problems, but the great advantage of Mile Post 20 is that it is further away from people and therefore does not pose as great a threat to environmental health.

An instructor in Environmental Health at the University of Minnesota has stated that the Courts had no choice but to rule for Reserve Mining under the strict Constitutionality interpretation. This interpretation guarantees freedom of employment and location. Certainly the framers of the Constitution had no idea that industrialization and technology would outstrip man's ability to cope with its ramifications.

There is a new publication of the National LWV entitled Of Mice and Men: Health Risks and Safety Judgement. It says:

> "Safety issues will always provoke controversy because there are so many unknown factors as well as so many different points of view.....How safe is safe enough is more of a social question than a scientific one. There are few things of more concern to men and women than their health and those factors that affect it.....We do not need a degree in science to hold and express deep convictions on the degree of risk or uncertainty that we will accept from potentially dangerous products and other substances or how much we are willing to pay in order to reduce the risk. This should always remain a subject of intenst public scrutiny and debate."

Testimony on Health Factor of Asbestos Fiber

Reserve contended that the level of exposure to people inhaling or ingesting fibers from its discharge was not sufficient to pose a hazard; therefore, no health problem could logically be associated with the discharge. It supported the testimony of Dr. Arnold Brown, Chairman of the Department of Pathology and Anatomy at the Mayo Clinic, who was Judge Lord's court-appointed witness. It was Dr. Brown's belief that asbestos fibers are present in the lungs of most urban adults throughout the country and that such fibers have been detected in beer, wine and ginger ale. He felt it was impossible to predict an increased incidence of cancer simply by virtue of the presence of the fibers in the air or water. However, he stated:

> "The fibers should not be present in the drinking water of the people of the North Shore.....The presence of a known human carcinogen is in my view a cause for concern, and if there are means for removing the human carcinogen from the environment, that should be done."

Speaking for the government was Dr. Irving J. Selikoff, director of the Environmental Sciences Laboratory at the Mount Sinai School of Medicine in New York. Dr. Selikoff said he had conducted epidemiological studies of four separate groups of factory workers exposed to asbestos. Three of these groups, numbering more than 14,000, showed an excessive rate of death from lung cancer, pleural and peritoneal mesotheliama, asbestiosis and cancer of the stomach, colon and rectum over that projected for these diseases and the population as a whole by the U.S. National Office of Vital Statistics. The deaths did not occur until twenty years or more after the first exposure, and in each group the incidence of cancer was three times greater than expected. He further testified that a distinct public health hazard was posed by the presence of amphibole fibers, morphologically consistent with amosite asbestos, in the Duluth water supply. Amphibole levels in the ambient air at Silver Bay were ten times greater than those measured near insulation spraying sites in New York City, where there is now a ban on asbestos spraying.

Dr. Selikoff's testimony was supported by a number of other government witnesses. Dr. Thomas J. Mason, a statistician with the National Cancer Institute, reported that he had examined cancer mortality statistics for Duluth for the period 1965-1969 and had found 54 excess deaths as compared to the rate for the State of Minnesota. He also testified that rates for cancer of the rectum were increasing in Duluth while national rates have been declining.

Dr. William J. Nicholson, biophysicist and associate of Dr. Selikoff at Mount Sinai, added: "If we wait until we see the bodies in the street, we would then be certain that there would be another 30 or 40 years of mortality experience that would be before us. To wait for deaths would in fact be, from public health considerations, irresponsible."

League of Women Voters of Minnesota, 555 Wabasha Street, St. Paul, Minnesota 55102

Testimony given by Mrs. William Brascugli, Water Resources Chairman, League of Women Voters of Minnesota, at the Lake Superior Enforcement Conference, May 13, 1969, Hotel Duluth, Duluth, Minnesota

I am Mrs. William Brascugli, Water Resources Chairman of the League of Women Voters of Minnesota. I am also representing Mrs. Thomas Irvine, Water Resources Chairman of the League of Women Voters of Michigan.

The League of Women Voters of the United States has studied the use and preservation of the nation's water resources since 1956. It is our belief that it is becoming increasingly important for water users to discharge water in as much the same condition as it was withdrawn as is possible. Two years ago local Leagues across the country in 1,250 communities expressed to the national Board their conviction that the pollution of our waters must be controlled. They agreed 1) that control of wastes should be considered one of the costs of production and 2) that new industrial plants, from the beginning of their operation, should be required to meet high water quality standards without financial aid from federal funds. When an industry is unduly penalized with relation to its competitors by undertaking to clean up present operations, we have supported government aid where necessary. When pollution control occasions a greater cost to the consumer, we are prepared to work toward public acceptance of that cost.

We appreciate the value of commitment on the part of local and state governments to set and maintain the highest possible standards. But we also recognize the fact that powerful political and industrial interests may exert strong pressures, making it difficult to enact and carry out pollution abatement programs on the state and local level. For this reason, we believe that the federal government has an important role to play in protecting the broadest public interest when state or local efforts fail. Certainly the quality of the water in Lake Superior should be a matter of interstate, and even international concern. How well we take care of Lake Superior, perhaps our most beautiful natural resource, will affect the future of at least three states and Canada.

The economic development of Lake Superior is just beginning. Plans are being made for more extensive tourist business, for increased taconite production, for a gaseous diffusion plant on the Knife River by the Atomic Energy Commission, and for the prospect

of extensive copper-nickel production in northern Minnesota. There is even talk of a canal connecting Lake Superior with the Mississippi River. If we do not set and enforce high standards, Lake Superior is certain to be destroyed. Furthermore, because of the low rate of turnover of Lake Superior water (90% turnover in 500 years), unlike that of the other Great Lakes, the destruction will be practically irreversible.

For these reasons we urge:

1. That all industries and municipalities now dumping into Lake Superior be immediately and thoroughly evaluated.

2. That the burden of proof be placed upon the industry or municipality. Discharging should not be allowed to proceed awaiting proof of damage. The dumping should not be permitted unless it is demonstrated to be harmless Reasonable doubt should be sufficient to stop discharging.

3. That uniform standards should be set for all comparable industries. One industry should not enjoy an economic advantage over another by virtue of its failure to clean up. It has come to our attention that other taconite producers in Minnesota, U.S. Steel at Virginia and Erie Mining Company at Hoyt Lakes have been required to operate with completely closed systems in order not to pollute nearby lakes. We cite this to demonstrate that tailings are considered pollutants in those instances and also that such a closed system is feasible. It appears to us that the state has established a double standard, one for U.S. Steel and Erie Mining Company and another for Reserve Mining Company.

4. That the precedent setting nature of the decisions being made at this conference be recognized. Variances permitted now may be multiplied many times as new communities or industries develop.

We wish to reiterate a plea we have made to our Pollution Control Agency at two recent hearings. Minnesota is on a continental divide. Our waters are replenished by rain, and we receive most of them pure. Before they leave our borders they have been stamped as sewer or resource. Of all states our water quality should be the easiest to guarantee. Social responsibility demands our sending it on to our neighbors containing as few poisons as possible.

League of Women Voters of Minnesota, 555 Wabasha, St. Paul, Minnesota 55102

Memo To: League of Women Voters of Michigan
(Copies to League of Women Voters of Wisconsin, Leagues around Lake Superior, League of Women Voters of the U.S.)

From: League of Women Voters of Minnesota,
Mary Ann McCoy, State President

Re: December 2, 1971, Memo from LWV of Michigan

Date: December 6, 1971

Your suggestion that a reminder of support for Environmental Protection Agency is needed now has much merit, and we shall be pleased to participate in such a communication to the EPA. Your statement that anticipated action might take the form of "immediate support for EPA and their strong and continued enforcement without being stopped by lobbying and political forces" is agreeable to us. We suggest that a draft letter indicating this support be written (presumably by the LWV of Michigan?) and submitted to the various local Leagues and state Leagues around Lake Superior in accordance with the agreement reached at the Ashland meeting November 5, 1971, and stated in the minutes of that meeting. It appears this would be in the nature of the letter sent by the three state Leagues jointly in May, 1971.

In regard to your suggestion to "send out a member Time for Action", someone has to take responsibility for documenting the facts backgrounding the issue on which the T for A is based--in brief: to identify the issue, explain its current status, identify the arguments in favor of the proposed action and the arguments against the proposed action, with accompanying replies to these arguments--all in line with the national position, under which the action is proposed. Again, since Michigan is initiating this proposed action, it would appear that you are prepared to submit this background information to all the local Leagues and state Leagues involved, along with the suggested official letter.

Since discussion at the Ashland meeting resulted in the decision to allow a League veto power, consideration in the wording to enable all Leagues to support the statement is advisable.

Your memo does not indicate that your proposed action includes comment by the League on specific proposals which are apparently still under consideration by EPA, the three states, and the industry itself. It was apparent in our discussions at Ashland that although agreement with the national position on water is present among all those Leagues, there is little agreement upon specific proposals for implementation of pollution control plans. Opportunities for Leagues to read, evaluate, and seek agreement upon the several proposals have not existed, and in this absence, action on specific proposals would appear meaningless and impossible.

Therefore, we conclude that your proposed action in support of EPA and their strong enforcement will be stated in general terms. Actually, we have yet to see a statement of EPA's own choice among the proposals and hence its own stance.

Our state EQ Chairman, Mary Brascugli, points out to us, for instance, that should an on-land disposal of fine tailings and permission to continue dis-

posal of coarse tailings in the lake prove acceptable to EPA and the industry immediate cessation of the fine tailing disposal in the lake (considered a major source of possible pollution) would result. An alternative (enforcement of only on-land disposal) could result in protracted legal contests over a long period of time during which the discharge at current rates of all tailings would continue. Obviously many facts and interpretations are needed in reaching decisions for action on specific proposals, and these facts are unavailable to our members at this time. You will recall that the water position did not involve a land use study by our members; proposals in this case do involve land use and no present consensus among national League members exists in this regard.

In response to your suggestion that the unanimous approval part of the Ashland meeting agreement be reviewed, we regret that no one from the Michigan state Board was present to discuss this question at that time. In an informal agreement such as this one accomplished at Ashland the veto power was agreed to be needed to safeguard local League interests. The alternative is establishment of a formal, structured inter-League organization with an adopted bylaws or agreement submitted to each League prior to organization and including provisions for adoption of items for study, consensus, and action processes--operating the way other inter-League groups do, to safeguard the minority as well as majority opinions, grassroots participation, and the like. Clearly this kind of formal structure was not desired by those participating in the Ashland conference; what did evolve as the informal agreement could be very useful in concerted action based on the national EQ position.

A case in point presented itself at the Ashland meeting when we learned that the city of Marquette's sewer plant is behind in its timetable for compliance with water quality standards in Lake Superior. Presumably all the Leagues could stand with the Marquette League to pressure its city to build the proper sewage treatment plant to comply and perhaps this joint concern might aid Marquette League in what is apparently a not-yet successful struggle to gain compliance within its own municipality.

Rereading Mrs. Donald Clusen's testimony before the House Public Works Committee (9-16-71) and again reading the 1967 statement of position in regard to tax incentives to gain compliance in industry, perhaps this may be a way we may all cooperate to aid EPA in pressing for enforcement. I have not heard reference recently to how national is interpreting the 1967 position--perhaps we might seek such an interpretation when the present study period among the states, EPA, and the industry is concluded?

In summary, we seek clarification of your proposal: Do you propose one official letter to the President, Senators and Representatives of the three states around Lake Superior or a member Time for Action with background information so that local Leagues may write their own letters to their own Senators and Representatives or both an official, multi-League letter and a member T for A? Do you plan to involve writing to all the Senators and Representatives as well as those in the three states?

Home address: Mary Ann McCoy
2312 Lake Place
Minneapolis, MN 55405

Mary Brascugli, State EQ Chairman
1560 6th Ave. North
St. Cloud, MN 56301

FILE COPY

League of Women Voters of Minnesota, 555 Wabasha, St. Paul, Minnesota 55102
August 1971

Memo to: State Board
From: Bev Driscoll, State League's Observer at Lake Superior Enforcement Conference, 4/22-23/71, Duluth
Re: Observer's Report on that Conference.

Lake Superior Enforcement Conference
April 22-23, 1971, Duluth

General Information

Overall attendance was approximately 350 on Thursday with somewhat less on Friday. Duluth LWV was represented by Molly Kohlbry and one other while Silver Bay citizens, including children constituted 60-65% of the audience. Save Lake Superior Association picketed and sold stickers and buttons in the lobby and outside the hotel. The Minnesota conferees were Dr. Howard Andersen, Chairman of the PCA Board, Robert Tuveson and Grant Merritt, Executive Director. Others were Frangos, Wisc.; Wisniewski, Wisc.; Frost, Michigan; Bryson (St. Paul), J. McDonald (Chicago), Stein (Washington, D.C.), and Dominick (Washington, D.C.), Federal. Conference was in session from 9:30 to 5:30 on Thursday with almost two hours for lunch and from 9:30 to 2:30 on Friday with only a ten-minute break.

Conference

Clarence Johannes gave the report of the LSEC's technical committee which had been charged to evaluate Reserve's plan to modify tailings discharge. The report opposed Reserve's plan because it would not establish clear water, would not reduce solids discharged, would not reduce suspended solids discharged, and would discharge an additional flocculant which may or may not turn out to be undesirable. The committee did not suggest any alternate disposal systems to Reserve or give any specific direction to Reserve other than 1. Reserve should design a system to eliminate the above problems.
2. Reserve be given criteria upon which to design a system.
The committee further commented that no doubt environmental trade-offs would be necessary in any disposal system.

Reserve's position throughout the conference seemed to be based on the following premises:

1. No further action should be taken until the Minnesota Supreme Court has ruled.
2. The States are not willing to consider modifications, etc., but are becoming rigid in their position of on land disposal.
3. The situation was being turned into a political problem rather than that of a technical one.
4. No specific criteria have been given to Reserve.
5. Cost for land disposal is too great considering Reserve is suffering from competition, i.e. production will be dropped 10% May 2, 1971.
6. Land disposal will enable continual surface water contamination and create one of the largest (?) dams in the world.

Reserve's comments on Dominick's proposal (delivered by Ed Fride) included that the job of the LSEC was to modify the proposed plan to make it environ-

mentally sound, that the findings of the Minnesota courts do not support Dominick's ideas, that lengthy court proceedings under 10C5 will be the fault of Dominick, that the technical agreement last January was close and is now dissipating under this political action, the Gov. Anderson stated the State of Minnesota wanted to try to solve the problem itself, and that the courts of Minnesota would solve the problem sooner than Dominick's proposal.

Minnesota read a report by the PCA staff (Koonce) discussing in detail and ultimately proposing the following criteria to be adoped by the agency and Reserve (This is a staff and not a board position.)

1. Water Impact
   - meet existing standards
   - minimum discharge to surface waters
   - minimum discharge of chemicals of unknown potential effect
   - minimum appropriation of surface waters
   - esthetically pleasing
2. Other
   - minimal interference with wildlife, recreation, timber production
   - reclamation potential
   - minimum operation and maintenance
   - minimal nuisance potential (dusting)
   - economically feasible
   - versatility to handle expansion, changes
   - maximum reliability
   - minimum construction time

Other problems of freighter dumpage, coal pile diking, etc. were briefly mentioned. Reserve is violating WPC 15 standards of nondegradation, turbidity and discharge limitation of 30 milligrams per liter of suspended solids. Minnesota proposed three ideas to the conference on Friday which were more or less approved but somehow were judged as not very important in light of Dominick's proposal.

1. Evidence shows on land disposal possible, technically, economically feasible, environmentally feasible.
2. Conferees go on record as calling for no more cumping.
3. Conference recommends that EPA immediately seeks revocation of the permit and issue a temporary permit under EPA.

Wisconsin and Michigan supported Minnesota in all its actions and announced their respective governors as favoring on land disposition.

Northern Environmental Council presented an elaborate proposal for on land disposal in the Lax Lake area with technical and financial data - the proposal was complimented as being both competent and constructive by Dominick. Several citizens including the mayor represented Silver Bay and expressed genuine economic concern and steel workers expressing the opinion that there is no pollution.

Dominick statement made as water quality commissioner and said he concluded from all proceedings heretofore that he would recommend that Ruckelshaus invoke the 180 day procedure where the Federal government and Reserve negotiate directly with public hearings and come up with a suitable disposal method or the EPA would go into the federal courts, under the Harbor Act or 10C5. The EPA would employ an independent firm of national importance (some Federal engineers had been out at Reserve that morning). The proposal was obviously a surprise to the conferees and Dominick was subjected to

rather lengthy and probing questions by Frangoes (Wisc.) as to the propriety of his statement and the procedures the federal action would invoke. It was very specifically stated by Dominick (contrary to news reports) that the states would be advised of and invited to the hearings, their views solicited but that the determination was between the EPA and Reserve. Dominick read tentative criteria (which was to be sent to the states and their comments sent back to him) and this criteria might then be a base for future EPA and Reserve action.

Criteria:
- Discharge must eliminate green water
- Discharge must meet nondegradation state and federal standards
- No chemical additives put into Lake Superior
- Maximum recycling of water
- Reduce discharged dissolved solids to lake to maximum extent possible
- Reduce suspended solids discharge to not violate coliform standard
- Complete system by November 23, 1973

Editorial comment

Duluth LWV seemed to be concerned with our action simply because they felt we were asking for on land disposal without a complete study and without a position on land use. Duluth felt that perhaps their EQ study group would be about equally divided and that the rest knew very little about it. Molly did make an interesting comment about our prepared statements saying that often the path of a conference takes such a turn as to make our statement inapplicable or ineffectual - in other words perhaps more freedom should be given the League spokesman within a relatively narrow framework so that she could speak more freely.

Silver Bay was first quite upset by the fact I was wearing the green League button interpreting it as the endorsement by the LWV of the LSEC and its resolutions. Mrs. Fry, LWV and councilwoman, sent out letters to the entire town calling for attendance at the LSEC - she attributes the attendance to those letters distributed by the Scouts and mailed under her signature as an individual. The Silver Bay LWV apparently are satisfied that there is no pollution because their drinking water is of good quality (where is it drawn?) and are really concerned about their economic future. They were also concerned that a NEC woman spoke for the NEC and also identified herself as a LWV - she was from Superior so maybe you won't hear of this!

Minnesotan conferees did, in my judgment, a relatively poor job. They spent about ten minutes discussing whether they spoke for the agency, the conferees, or themselves. They were too wordy and too rambling, they did not stick to the point. They were asked at least twice to prepare written resumes like the other states. When the conference shifted to Lake Superior problems in general Minnesota proceeded to parade mayors of many towns to the stand to explain why they were not complying when for example Wisconsin spent a few minutes outlining compliance or noncompliance and the state's activities in this area. One gets the impression of inefficiency in Minnesota in handling the problems or organizing the data - perhaps in the PCA itself.

April 4, 1977 APR 6 1977

State Board of Directors
League of Women Voters of Minnesota
555 Wabasha
St. Paul, Minn. 55102

Dear Leaguers:

We have observed with concern the controversy regarding the LWVMN action on the Reserve Mining tailings disposal. We have tried to remain rational and objective in viewing how this action affects League -- the local Leagues most directly involved, the credibility of League study and action, and the alienation and distrust of state League by many members. We believe it is important for others to understand the way we view the entire situation.

The LWVMN joined a coalition opposing Milepost 7 as an "environmental disaster". When questioned on the action, state board members said it was based on our water, air and land use positions. We still do not know what data was used nor what portions of our positions apply.

We are not in disagreement with the principle of LWV taking stands on the basis of "umbrella" positions. It is impossible to thoroughly study, as an organization, every particular case of concern, reach a consensus and then act. But when we have an "umbrella" position we have an obligation to the organization and society to determine that a particular situation does indeed fall under that position. For example, to take action on the position of equality of opportunity we must first determine that inequality does exist or threatens to exist. In determining this we must consider the views of those in a position to know, a spectrum of experts. We must not act only on emotional response nor uninformed pressure.

Let us look at each of these national Natural Resource positions in light of the views of the experts as reported in the Sixth Judicial District Judge's opinion of January 1, 1977.

Does Milepost 7 present a danger of dam failure and resultant water pollution?

"The record is replete with statements and admissions of all the experts, both Reserve's and the State's, to the effect that if these dams were built according to design, and all unexpected contingencies were properly met, that the dams could not fail."

Does fugitive dust from Milepost 7 present an air pollution hazard?

"The air quality staff of the PCA concluded that Mile Post 7 is a reasonable tailings site, and that the selection of that site could form the basis for the resolution of this case."

Is Milepost 20 a better land use choice than Milepost 7?

"State-retained expert Dennis Hawker . . . did not testify that Mile Post 20 was preferable, but did testify that Mile Post 20 was inconsistent with land use principles."

If this is what the experts for both the state and the company have said in sworn testimony, why is LWVMN opposing Milepost 7? Why wasn't the Judges' decision read prior to taking action? On what expert data was this decision based?

Now to the matter of the LWVMN action being taken without notifying, let alone consulting, the local Leagues of the area. The explanation we have received is that they didn't know when the ad was going to run and they got busy with other things. We are only a phone call away from the state office. For approximately $1.60 per local League (total cost $6.40) we could have been advised immediately that they had made this decision. Comparing the $6.40 cost with LWVMN's share of the total ad cost of $1,444.00, and the cost of postage, conference phone calls and sheer wear and tear on all LWV members, the $6.40 appears miniscule. Our LWV principles state: "The LWV believes that democratic government depends upon the informed and active participation of its citizens and requires that governmental bodies protect the citizen's right to know by giving adequate notice of proposed actions, holding open meetings and making public records accessible." It seems that what we expect of government we should be able to expect from LWV.

The LWVMN Board Memo of February, 1977, began with the following chastisement of our area Leagues:

> "The action taken by placing our name on an ad opposing Milepost 7 resulted in a public denunciation by affected Leagues. This action necessarily calls for a reminder of national and state bylaws: 'Article XI, Section 6, . . . Local Leagues and inter-League organizations may act only in conformity with, or not contrary to, the position taken by the League of Women Voters of Minnesota.' There are times when an issue we support affects contributions to local Leagues. This is unfortunate, but if we are to be an active, viable state League, we must act on state issues we deem important."

We are well aware of these bylaws and believe that the actions taken by the Silver Bay, Hibbing and Mid-Mesabi Leagues can more appropriately be defined as opposition to state method rather than statements "contrary" to position. These Leagues did not state support for Milepost 7 nor for Reserve Mining Company. Their concern is with fact and LWV principles, as is ours.

The Board Memo further states that the Board "reaffirmed" its position on the ad. It is our understanding that the deicison to join the ad was not a board decision but a decision by some board members. The board thus could affirm its members' actions but not reaffirm its own actions.

The Minnesota Natural Resource chairperson said that League had done nothing on the Reserve issue for seven years. To set the record straight, during the past seven years the LWV Duluth has consistently testified at public hearings, with state's advance knowledge and assent and notification to Silver Bay League, that Reserve's tailings disposal in Lake Superior must stop and that a reasonable safe disposal site must be obtained. We left it to the experts and the courts to determine what that safe disposal site was.

What can now be done to repair some of the damage done by state's action? It appears that we must accept the explanation of human error that resulted in Leagues not being notified of the anticipated action. Further, we must take steps to emphasize the importance of notification to avoid a repeat situation. It also appears reasonable that until we are provided with legitimate data refuting the expert testimony cited in the judges' opinion we must maintain our position that state action was not taken on the basis of fact. If any League can take action in our name without knowing the facts and without believing it necessary to be able to fully explain their actions, then we question that this action has any credibility and we do not wish to be associated with it.

It is unfortunate that circumstances have compelled us to spend so much of ourselves on this issue. However, we believe the ramifications of this situation and how it is resolved are important to all of us who care so deeply about our organization. We await your response to our questions and concerns.

Sincerely,

Shirley Berdie
Shirley Berdie
3920 Rockview Court, Duluth 55804

Prudence Cameron
Prudence Cameron
10969 Stoney Point Drive, Duluth 55804

Margaret Hokkanen
Margaret Hokkanen
5720 Oneida Street, Duluth 55804

Mary Pooley
Mary Pooley
2914 Greysolon Road, Duluth 55812

Margaret Seitz
Margaret Seitz
4333 Oneida Street, Duluth 55804

Adele Unzen
Adele Unzen
3026 Branch Street, Duluth 55812

CC: LWVUS
LWV Duluth
LWV Silver Bay
LWV Hibbing
LWV Mid-Mesabi

H.B.

TAPE TRANSCRIPT

SUBJECT: Conference Phone Call 1:00 p.m. February 9, 1977

PARTICIPANTS: Minnesota League of Women Voters Board Members (3)

Jerry Jenkins, President
Mary Poppleton, Environmental Quality Chairperson
Helene Borg, Action Chairman

(We've tried to be as careful as possible in transcribing the tape. Some parts are inaudible and we will so state.)

Mary: O.K. Since we couldn't come up, we decided this was a good way to handle this.

Mary: Did Ruth Clusen call you last night?

Gwen: No, she didn't.

Mary: O.K. Well, Helene had a conversation with her. Helene, why don't you explain your conversation.

Helene: She was going to--she was out in Airzona. She was at a League membership thing out there. She was going to call you or maybe--maybe you weren't home or something. She--I asked her about the agreements that you said had been made in 1971, I guess.

Gwen: Umhmmm.

Helene: And she said that was when she was Environmental Quality Chairman for National Board and that she didn't remember that at all--but that *she said that* she could possibly have said at the time that she would not take any action under the water quality position unless she contacted you first, but she said since then we've got a land use position and air quality position, so that of course, that didn't hold anymore anyway and she was going to call and explain all that to you.

Gwen: O.K. So under all these positions, you can take a stand?

Helene: Mary, maybe you'd ~~better talk to her on~~ *cover* that. You know these positions better than I do, but ah---

Mary: We felt that we should, simply because we do have these positions. In essence, what we were asking Reserve was nothing more than to be a good citizen of the state and to use the land wisely in a stewardship position, as stated under the National land use position. *And since,* we have gotten requests from the local Leagues, the National Land Use Committee and Hope Washburn to do something *(different order).* ~~The local Leagues out here just simply~~ *We* felt we just could not be silent any longer.

Helene: We have gotten so much criticism from all the other Leagues wondering why in the world we're not taking any action when we have these very specific positions that indicate we should. (Laugh)

Gwen: Have you read the transcripts from the, from the three judge panel? The decision?

Mary: I haven't read the full transcripts, but I've read summaries.

~~Helene: --No, but we read a summary.~~

Gwen: O.K., but you haven't read the actual--would it help if we got copies of those and sent to you--I mean...

~~(Inaudible)~~ *Helene: Well, sure, we'd be glad to read them.*

Mary: O.K.

Jerry: Are these the recent hearings?

Gwen: O.K. Ya that the three Judges in Lake County--that the Lake County Court just handed down.

Jerry: Uh huh.

Gwen: O.K.

Jerry: Uh hah.

Jerry: *And* was this specifically talking ~~about~~ *to* land use or land disposal sites or a *what was the* specific.

Gwen: Yes. I guess so according to -- I believe according to our understanding from your article, the ad in the paper, that you are definitely opposed to Mile Post 7.

Helene: ~~You~~ *Uh huh. The way we* understand that *is that is* the same water table thing ~~is-in~~ *as* Lake Superior. That the water actually flows in that direction and would require damming to--in order to dump there and that.

Mary: (Right)

Helene: That the water ultimately would go that way anyway and also, *of course, you have* the additional hazards of the dam. *Do* you realize *that* two of those broke in the last couple of years, the same kind of dam? *That they're proposing there.*

Gwen: (Laugh)

_____ (Laugh)

Helene: You might have a waterfall in Silver Bay.

Mary: *Well,* it would ~~possibly~~ *totally* flood Silver Bay. *Of course, one of the other concerns regarding that is that* if they *do* go to that site and they do put up the dam up that the dam is going to require extensive maintenance to make sure there isn't a tragedy and there is no guarantee that Reserve Mining Company is going to be in Minnesota. *And I mean that* they're going to leave as soon as the mining is petered out and then what's going to happen to that dam--what's going to happen to that whole area?

Helene: I don't know if the transcript of the Court hearings that you are talking about covered all that sort of thing or not.

Gwen: ~~Yes~~, *Ah,* I believe they do.

Mary: What *is it that* would you like us to do at this point?

Gwen: Well, we feel very strongly that being there was no actual study and consensus that it went against the League principles to come out ~~with this~~ *on a* stand like this without doing a ~~serious~~ study of the issue--the actual issue of Reserve and the tailings and the disposal and the water and the whole works.

Mary: *Well,* if we had to *completely* study every single issue we would never be able

to take any action *because* we would always be studying.

Helene: *See,* we do--we do act on--on general--ah, you know, positions all--all the time in everything we do. We act on equality of opportunity, but we don't ah study every individual case--ah, ~~between~~ you know, between every two people--ah, you know, educational opportunity, we don't study every single school. It would be hopeless. So, we have to use our rather broad position--ah--the position of water *and of* of wise land use, and of course, air quality. All of those are positions that apply in--innumberable situations.

Gwen: O.K. Your position under human resources of unemployment and welfare didn't enter ~~into it~~ all--you, ya----?

Jerry: In the consideration of this?

Gwen: Yes.

Jerry: Oh, no and I think this is why we held off for so long.

Jerry: *Ah, because* the economic implications of this are--ah, you know, ah--are (laugh) dreadful.

Helene: If we hadn't been concerned for your position there in Silver Bay, we would have been acting on this right from the very beginning and--and we still really are concerned for Silver Bay and think that the Mile Post 7 site is not going to be good for you.

Mary: Exactly.

Jerry: Right.

Helene: And so it has really been our concern for your Silver Bay League and *the feelings of* all of you people up there that has really, you know, kind of kept us doing what we've been doing. ~~so I'll go back to the~~ *I know it's been a long* discussion about this. ...*that* ~~it~~ does go back to 1971. *Oh (laugh), before that, I guess.*

Jerry: *Yah, and ah,* I think the--the thing that happens, of course, is *that (ah)* when you elect a board and they have to set policy and ~~feel that~~ *deal with* these broad positions--ah--and *these* committees--and the board go through a wrenching process of trying to decide whether to take a stand or not and--and, you know, this was not done without a lot of soul searching and--*and concern.*

Mary: I can recall a phone call I had gotten from the Environmental Quality Chairman of Duluth who was practically in tears saying, "Why isn't the State League doing something? *She said,* do you realize the psychological damage of those of us up here who have to go and buy water and have to go and get water out of the public drinking fountains ~~inaudible and~~ *and drinking spouts. She said,* you just don't know what it's doing to the people in Duluth. Why aren't you doing anything?

Jerry: *So,* what we're trying to communicate is--~~what we're trying to say is,~~ *that* the pressure has built up and that the ah--policy makers finally ~~thought~~ *decided* that we had to come out in the open and take this stand, *and ah,* you know, it's unfortunate that you weren't pre-warned.

Gwen: Ya, I guess....

Jerry: *The timing thing was bad.* We did not know when the ad was coming out. *And, uh*

Helene: *No.* We thought it was still in the planning stages. We were ~~just~~ as surprised *to see it that soon* as you were. (Laugh) That is one of the problems when we work in coalition. We don't always have the total say on all the details.

Jerry: Right.

Helene: *And* yet we're always encouraged to work in coalitions by the National League and ~~actually~~ it is an effective way to get things done.

Gwen: Well, *(laughs)* I guess I'm kind of at a loss right now. We do have a Board meeting tonight and ah--I'll play this for them and get their direction from there where they want to go.

Helene: What did you do about the thing for the newspaper?

~~Jerry: --(inaudible)--this thing with the newspaper.~~

Gwen: *(Laugh)* O.K. *Our, ah,* it came out in the Lake County paper today and it was in the Duluth paper, however, the Duluth paper reworded it to fit *maybe* the way they wanted it, and it was completely different

Helene: Uhhummm.

Gwen: and Dorothy Cox called down there and *ah* immediately sent a letter to the editor that we wanted to correct the errors *that* they had put in, but the Lake County paper came out exactly the way we had sent it to them.

Helene: UhHumm.

Jerry: This was the same wording that the Minneapolis paper had.

Gwen: UhHum.

Helene: It ~~hasn't been~~ *didn't come out* in the Minneapolis paper.

Gwen: Umhmm. No, I looked this morning and it wasn't *in* there *(laugh).*

Mary: Is it going to be in this afternoon's paper, do you know?

Helene: Laure ~~Servine~~ *Sturdevant does* writes for the morning's edition, so I don't see ~~how~~ *that* it will accomplish anything by having it in the Minneapolis paper--~~so~~ *I think that* in the long run, it would be better not to, but we can't do anything about that. That's up to you, *in Silver Bay,* if you want to retract *it* from the Minneapolis paper.

Gwen: Well, like I said, I'll have to meet with the Board tonight and see what direction they want to go in from here.

Helene: *You know,* it is ~~awfully~~ *always* important that we all keep in mind the *the* all over strength of the League and the national organization and all, that--~~ah~~--on our individual problems that we don't jeopardize that--that was *still is* our big asset--our national credibility. We *So I hope you* keep in mind when ~~we are taking these positions~~ *you're making these decisions.*

Gwen: *Yah, well,* the League up here has completely lost all support in the town--um--and--

Helene: I really sympathize with you. I know that you're in a terrible, terrible position and it's the same way like some of the other League that have the canning factories

in their town and we came out, you know, with this disposable thing, and they were--~~and they were--~~ and they ~~had~~ *have* been in a terrible bind, but when you stand up, ~~you know~~, for principles--ah--you go through these cycles. I can certainly see in your case *it's been miserable*, but I guess it's one of those prices we pay, ~~you know,~~ for trying to better the world or whatever (laugh) we're trying to do (laughter).

Mary: Yes.

Jerry: Whenever you take a stand, we're always--ah--ah--are going to have ~~those~~ *people* who don't agree with you and people are going *to* suffer--unfortunate consequences. That, of course, is what we regret the most. One weighs these things and finally has to come out...

Helene: And we always have to keep in mind ultimately what's ~~happened(?)~~ *best*, you know, not necessarily for ourselves, but for the future. We keep doing that on all our different positions and our actions. It's hard to do, ~~so~~ *but* we just have to try to do what we can. I think that the problem up there ~~is--is being~~ *has been made very* very difficult for every one of you ~~is~~ *and I think* that Reserve could have been more cooperative about it. (?) *But, you know, I don't know all the solutions either.*

Jerry: *Well, of course, in terms of the total community,* it's unfortunate that--ah--the major emphasis ~~was on~~ *in terms of* the economic *base has been one company that certainly diversification is something that businesses and communities and everything else have to pay attention to* ~~thing and (inaudible) something~~ for Silver Bay. (Inaudible)

Helene: What's the ~~feeling~~ *thinking* in Silver Bay on the future *and* on what will happen when Reserve does finally leave?

Gwen: When they leave, I imagine the whole town will *leave* because it's the only industry supporting the town.

Helene: Do ~~you~~ *people* realize that--ah--without that--they won't stay there forever?

Gwen: I don't really know.

Jerry: You mean that Reserve won't stay?

Helene: *Yes,* I ~~guess~~ *think* there has been so much talk about *that,* that *the* taconite isn't going to be available indefinitely.

Mary: *Well, that was one of the big concerns too was that* as a temporary citizen of Minnesota, we ~~are~~ *were* simply asking Reserve to be a good citizen, so that when ~~Reserve does~~ *they did* leave, they ~~won't~~ *would not* leave a horrendous mess behind for the ~~citizens to bear and to get~~ *rest of the people to clear up, that while they were here they acted* responsibly.

~~Helene:~~ *And* that was one of the points that *we've been wrestling with, to ask them to do that.*

Helene: Is there anything else that we can say that *would* help you in dealing with this *whole* situation?, *Gwen?*

Gwen: *Well,* I think at this time, I will just meet with the Board. I have had so many phone calls in the last two days, my head is just spinning..

Helene: Yah, I bet it is. I don't envy your position.

Gwen: I will meet with the Board tonight and--ah--*play the recording for them and maybe it will clear up things in their mind and we will know on what direction.*

Tape Transcript - 6

Transcribed by: Dorothy M. Cox

Reviewed by: Gwen Smith

Helene: I think if you - that new book that just came out, IMPACT ON ISSUES, from national, which is really the national program. It replaces the old Study and Action that national -- and the old Documents. It's a big red one. Have you looked at it?

Gwen: Yah.

Helene: Well, anyway, I think if you read the water resources position, the air one and the air quality one and the land use--and I think that you'll see that it really gets to be an overwhelming position of support to do this sort of thing. And I think if your Board is more familiar with those positions, that they'll realize that too. And if they notice the dates which are '72 and '74 and so on, which are after the reference to Ruth Clusen's statement.

Gwen: O.K.

Helene: And I think you can check with her too if you, if that would make you happier, if that would help to explain to them. If you want to make another long distance phone call, I can give you her number out in Airzona.

Jerry: Is she--going to be there?

Helene: I don't know.

Gwen: We had tried to place one to her, and they did give us, the national office gave us a number in, in Arizona, and it was the wrong number.

Helene: Oh, well, I can give it to you. The exchange is 602--and the number is 967-1441. And as of last night she was there at the Fiesta Inn in Tempe, Arizona. And I telked to her, so--she was going to call you, so--.

Gwen: Well--the way my telephone has been ringing.....

Helene: Ummm, she maybe--and she didn't have much time, of course, because she did have to get back to the League meeting.

Gwen: O.K.,--do you know how long she's going to be--?

Helene: No, I don't, I don't have any idea at all. I just tracked her down there.

Gwen: O.K. Well, I, like I said, will talk to the Board tonight and--.

Helene: Yah, and you get in touch with us and let us know what's what. O.K.?

Gwen: O.K.

Jerry: I think, Gwen, that ah, when I talked to Nita Lee, I said that we were much more action oriented than when she and I first started in League and, but I don't want to give the impression that this is all a bunch of new, young, wild-eyed radicalized members, that, ah, there are, you know, long-time League members that also--ah--.

Mary: Are involved.

Jerry: Yah, they want action. They say we have the positions, we have to take a stand.

And, ah, the going in with the clear air, clean/clean water, whatever they're called, coalition--and being, having our name on the ad was a way to take a stand. Ah, we didn't think that it was as irresponsible, ah, as maybe some other ways to take a stand. Ah, as Mary pointed out, the concern about the dam, the monitoring that would be necessary and what happens to Silver Bay when the water table is polluted and you, you know, all of those things, I don't need to repeat what Mary said.

Helene: And we have had communication from the national land use committee, wondering why we haven't done anything, and we've also had communication from Hope Washburn out in California writing wondering--you know, where have you been, what are you doing? So we've, there've been a lot of plusses(?), a lot of local League members, and so it wasn't a, a last ah, inspiration on the part of one Board member or anything.

Jerry: It wasn't one person working alone in a closet. It has been more than that, more a joint decision making.

Gwen: O.K.

Mary: O.K., if we told you everything that you think you'll need. Ah, why, meet with your Board and then get back to us.

Gwen: O.K.

Mary: All right, thank you.

Helene: O.K. Good luck, Gwen.

Gwen: Thank you.

....Goodbyes all around.

LEAGUE OF WOMEN VOTERS OF MINNESOTA
555 WABASHA • ST. PAUL, MINNESOTA 55102 • TELEPHONE (612) 224-5445

March 16, 1977

Gwen Smith, President
League of Women Voters of Silver Bay
27 Field Road
Silver Bay, MN 55614

Dear Gwen,

Thank you so much for having Dorothy Cox send the state Board the letter of February 14, 1977; the transcript of the conference call you, Jerry, Helene and Mary had; the addendum; your statement to the League of Women Voters of the United States; and Court File No. 05598.

Because several of the state Board members were on vacation, and because there was not sufficient time to do a comparison between the several court files involved in the matter of Reserve's on-land disposal sites, the state Board delayed an in-depth review of the issue to a later state Board meeting.

As you know, Helene also taped your conference call. Her tape is apparently longer than yours, so she completed the transcription for all of us. Her additions are in italics. Where her tape differs from yours, we've put yours in with a --- through it.

We are sorry that this has been such an unpleasant, traumatic experience for your League. I've read that if one factually, honestly and objectively analyzes such experiences, one can grow and mature therefrom; perhaps, and hopefully, the same is true for organizations.

Sincerely,

Harriett

Harriett Herb
Executive Director

H:M
cc: LWV-US

President, LWV - Minnesota

League of Women Voters
Education Fund
1730 M STREET, N.W., WASHINGTON, D.C. 20036

March 7, 1977

Mrs. Gwen Smith
President
League of Women Voters of Silver Bay
Silver Bay, MN 55614

Dear Ms. Smith:

I am writing in response to the memorandum submitted to me by the League of Women Voters of Silver Bay. I apologize for the delay in my response, but I have been out of the country on a trip sponsored by the U.S. Information Agency.

Let me begin by noting that the problem of the state League's sponsorship of the "Project Environment Foundation" ad and your League's opposition to their action is one that can only be resolved between the League of Women Voters of Silver Bay and the League of Women Voters of Minnesota. Although the state League based its decision on national water, air and land use positions, it came to its conclusions about Reserve Mining on its own--without consultation with the national board or staff. If the state board continues to affirm its decision, it would not be my role to ask them to retract their sponsorship of the "Foundation's" ad.

The most regrettable aspect of the situation was the failure of the state board to notify affected local Leagues--in advance of the ad's appearance--of its decisions. I have since seen copies of correspondence from Jerry Jenkins, president of the League of Women Voters of Minnesota, to members of the Silver Bay League in which she expressed the state board's regret for not notifying you about the forthcoming ad. It is, of course, a basic League policy that all decisions be communicated widely before action is taken, and unfortunately, in this instance, the state board did fail to follow the policy.

It does seem to me that the Minnesota League should have let the Silver Bay League--the one most deeply affected by its decision--know what decision it had reached about the Reserve Mining Company, how that decision had been made and what action it planned to take. Your League could then have expressed its views and been prepared for the effects of the ad if the state League still chose to sponsor it.

I do hope that communications between the League of Women Voters of Silver Bay

and the League of Women Voters of Minnesota can be quickly restored. We all share so many common goals and must keep ties to one another strong if we are to achieve them.

Sincerely,

Ruth C. Clusen
President

President LWV Minnesota

Xerox for Bd ↓

League of Women Voters
Education Fund
1730 M STREET, N.W., WASHINGTON, D. C. 20036

March 7, 1977

Mrs. Lois Hynes
Treasurer
League of Women Voters of Silver Bay
50 Law Drive
Silver Bay, MN 55614

COPY

Dear Mrs. Hynes:

Your letter and accompanying material were brought to my attention immediately upon my return to the national office from a U.S. Information Agency trip to Spain and Italy. This absence from the office is the reason I've not been able to respond sooner.

I can understand the concerns of the members of your League when they saw the Minneapolis Tribune "Project Environment Foundation" ad carrying the name of the League of Women Voters of Minnesota. On the other hand, I note from Jerry Jenkins, state President, that the state League has since apoligized for its failure to notify your League (or other affected Leagues) of its decision to help sponsor the ad. As you know, it is the general policy of the League at all levels to promote maximum communication as decisions are reached and actions taken. I have no doubt that the League of Women Voters of Minnesota sincerely regrets its oversight.

I urge the League of Women Voters of Silver Bay and the League of Women Voters of Minnesota to reestablish close communications, redognizing that we must all work together to achieve our mutual goals.

Sincerely,

Ruth C. Clusen
President

President, LWV Minnesota

xerox for Bd & Ag

League of Women Voters
Education Fund
1730 M STREET, N.W., WASHINGTON, D.C. 20036

March 7, 1977

Mrs. James Gray, Jr.
98 Hays Circle
Silver Bay, MN 55614

Dear Mrs. Gray:

Your letter about the League of Women Voters of Minnesota's action on Reserve Mining was brought to my attention immediately upon my return to the national office from a Europeon trip for the U.S. Information Agency.

I can understand the concern expressed by you and several other members of your League with regard to the League's endorsement of a "Project Environment Foundation" ad in the Minneapolis Tribune. It is regrettable that all affected local Leagues--particularly yours--were not first notified of the state League's decision to co-sponsor the ad, since it is the standard procedure for the League at all levels to promote maximum communication as decisions are made and action planned. But as you know errors are occasionally made.

I have since received a copy of Jerry Jenkins' letter to you in which she expressed the state's sincere regret for any adverse effects thay may occur because of the state League's participation in the advertisement. While it is impossible to reverse what has already occurred, it would appear that it was the Minnesota League's lack of communication and not its decision-making process that was responsible for any misunderstanding.

I urge the League of Women Voters of Silver Bay and the League of Women Voters of Minnesota to cooperate fully to overcome their differences on the Reserve Mining situation while remembering that we must all move ahead together, working even harder in the future to keep in close touch.

Sincerely,

Ruth C. Clusen
President

President, LWV-Minnesota

League of Women Voters
Education Fund
1730 M STREET, N.W., WASHINGTON, D.C. 20036

March 16, 1977

Mrs. Mickey Judkins
17 Floyd Circle
Silver Bay, MN 55614

Dear Mrs. Judkins:

Thank you for your recent letter discussing your concerns about how the League of Women Voters of Minnesota reached its decision to participate in the Project Environment Foundation.

Since I have not talked to state board members at length about their basis for deciding as they did, I am not in a position to respond to your observation that "they had not done their homework." As you know from your 16 years of League experience, we have always stressed the necessity for going after the facts on an issue through study and discussion before adopting a League position on taking action. While the state League was applying the national air quality, water, and land use positions, I would hope that their decision to take action opposing Reserve's use of the Milepost 7 site was based on a careful consideration of the total situation.

Again let me tell you how sorry I am that you believe you can no longer be a League member nor advise your daughters to join. We are always saddened when internal League disagreements prompt long-term members to leave the organization.

Sincerely,

Ruth C. Clusen
President

MAR 1 1977

Nancy Grimsby
Natural Resources Portfolio
Edina League of Women Voters
5932 Wooddale Ave. So.
Edina, Minnesota 55424

League of Women Voters of Minnesota
555 Wabasha
St. Paul, Minnesota 55102

Attn: Mary Poppleton

Regarding the State Board of League of Women Voters action in placing the name of L.W.V.'s in a advertisement opposing the Milepost 7 site in the Sunday, February 6th issue of the Minneapolis Tribune.

I personally support the State Boards position opposing the Milepost 7 site. However I do take issue to the action taken by the State Board in not adequately informing the local Leagues prior to this public statement of the State League's opposition.

The issue of Milepost 7 has been argued publicly for quite some time. I feel very strongly that the State Leauge Board has had sufficient time to inform League members of their opposition to the Milepost 7 site and on what League position statements they base their opposition. It is disconcerting to League members to have the announcement of their position published in an advertisment of another organization, before they are informed we have a position.

I reiterate, I do feel that the State League Board has adequate League position statements on which to base opposition to the Milepost 7 site. I think however the State Board's lack of communication to the local Leagues of their intentions was unfortunate.

Sincerly,
Nancy Grimsby

Nancy Grimsby

August 9, 1977

Ms. Holly O'Konski
One Rancho Diablo Road
Lafayette, California 94549

Dear Holly,

It took me a while to get your request re Silver Bay answered, because I wanted to talk directly with Helene Borg. She was Action Chairman for the Mn State Board when the occurrence took place. She is now the Mn State President.

I have talked to her and find that events were about as would be supposed after a reading of the papers you sent me. The decision to place the ad was apparently made by the EQ people on the State Board and their action was subsequently approved by the Board. Officers and board members lined up in solid support of the action when the Silver Bay action was brought. There has been no naming of names nor pointing of fingers, and I am sure all concerned hope the incident is closed.

As you know, Silver Bay is a one industry town, and it seems almost inevitable that such a collision would occur. As I look at the events transpiring in the Western states, I can see the possibility of other such misfortunes.

It seems to me that League policy must be spelled out very clearly to cover such confrontations, and that any so-called agreements, such as the one alluded to in 1971 should be matters of record and national Board approval. I refer specifically to page one of the Silver Bay LWV letter to Ruth Clusen, paragraph 3. This would have quite definitely constituted an ILO agreement, and should at least have been treated with the approval and formality of such agreements. Mrs. Clusen was said to have been present at that meeting.

Copy to
Helene Borg

I am sure Helene Borg would be glad to fill in any details you think are missing.

Hope all is well with you and yours, and must thank you again for the impromptu party you gave for us in your room when we were in Washington together.

Warmest regards,

Ann

LEAGUE OF WOMEN VOTERS OF MINNESOTA
555 WABASHA • ST. PAUL, MINNESOTA 55102 • TELEPHONE (612) 224-5445

May 23, 1977

Gwen Smith
27 Field Road
Silver Bay, Minnesota

Dear Gwen and Members of the LWV of Silver Bay,

I tried to reach you several times after I received the minutes of your last two meetings but couldn't seem to make connections. I'm not sure what I was going to say anyway - shed a tear perhaps at the loss of one of our small Leagues, all of whom we really value.

If I thought anything could be salvaged at this date, I'd be there like a shot after Convention. Your minutes made the decision seem very firm, but if you think anything could be gained by a visit, yours is but to ask.

If not, there is some formality that needs to be observed in a request to disband. The first thing you've accomplished - a general meeting at which the members reached their decision. Now we need a formal statement from you describing the situation and requesting permission to disband. We then add our comments and send it on to national. It's the national Board that grants permission to disband. Any remaining funds are sent to state.

I hope all will go well for all of you now.

Sincerely,
Peggy
Peggy Thompson
Consultant

P.S. I'm sending the Convention material so you'll know what's going on.

LEAGUE OF WOMEN VOTERS OF MINNESOTA
555 WABASHA • ST. PAUL, MINNESOTA 55102 • TELEPHONE (612) 224-5445

May 11, 1977

Shirley Berdie
3920 Rockview Court
Duluth, MN 55804

Prudence Cameron
10969 Stoney Point Drive
Duluth, MN 55804

Margaret Hokkanen
5720 Oneida Street
Duluth, MN 55804

Mary Pooley
2914 Greysolon Road
Duluth, MN 55812

Margaret Seitz
4333 Oneida Street
Duluth, MN 55804

Adele Unzen
3026 Branch Street
Duluth, MN 55812

Dear Shirley et al:

This is in response to your letter of April 4 concerning Reserve Mining.

Enclosed is a copy of LWV-MN and US positions on Environmental Quality including those on Air Quality, Water Resources, Solid Waste and Land Use. I have underlined those sections pertinent to the Reserve Mining issue.

Also included is a copy of History of Reserve Mining prepared for the LWVMN and LWVUS by Mary Poppleton, which details the concerns of the LWVMN's Natural Resources Committee. The History is long and more than you need, since you're so close to the situation. However, it's easier just to send the whole thing rather than just the pertinent sections. I've starred those paragraphs, mostly on pages 3 and 4, that seem most appropriate to the issues you raised. As you will note, there is concern that asbestiform fibers leaching from the tailings basin may be reintroduced into Lake Superior. Also the court transcript acknowledges the possibility that present fiber counting methods cannot serve as a regulatory tool.

The LWVMN Natural Resources Committee, and subsequently the Action Committee and Board, were basing their opposition to Milepost 7 on the LWV positions

that we support "a physical environment beneficial to health." The paragraphs on page 4 of the History and the testimony on the Health Factor of Asbestos Fiber address the health issue. The health issue is admittedly not the basis upon which the courts made their ultimate decision.

The cost for the League's share of the ad was $100, which was charged to the action part of the budget. Approval for the expenditure came from members of the Action Committee. Action was allocated $4,000 in the 1976-77 budget adopted by State Council in April, 1976. Since the Action Committee was well within its budgeted allocation, the expenditure did not need Board approval.

As you requested, we are valiantly trying to remember to notify affected Leagues of proposed actions. On the Boundary Waters we asked for input into that decision from the five Leagues most near and most likely to be affected. Hibbing and Mid-Mesabi did respond with input priot to the decision. All LWVs in the area were subsequently notified of the Action Committee's decision to support the Fraser Bill.

I trust that this helps to clarify the points you raised in your April letter and provides the requested information. We apologize for the delay in responding.

Sincerely,

Harriett Herb
Executive Director

H:M
Copies: LWVUS
LWV - Duluth
LWV - Silver Bay
LWV - Hibbing
LWV - Mid-Mesabi

From LWVMN PROGRAM FOR ACTION

ENVIRONMENTAL QUALITY

Support positions adopted through national consensus supporting a physical environment beneficial to health; action to promote wise use of water resources and improvement of water and air quality; support of measures to reduce generation of solid waste. State: Support of an overall land use plan with maximum cooperation and implementation at the regional and local level, with state help in developing and exercising land use management, with opportunity for maximum local decision making, and with regional planning and regulation for matters of more than local concern.

State Positions on Solid Waste

- Support of state government taking measures to reduce the generation of municipal solid waste through research and development of alternatives to sanitary landfills.
- Support of measures to discourage the use of nonreturnable beverage containers.
- Support of flexibility in the establishment and enforcement of standards in solid waste management to allow the state to adopt more stringent standards than federal standards.

State Positions on Land Use

A state plan should:

- be tied closely to integrated planning (e g. human services, highways).
- be coordinated with plans and policies of local and regional agencies.
- require local governments to exercise at least a minimum level of planning and control.
- recognize fragile or historic land, renewable resource lands, and natural hazard lands as critical areas and subject them to at least minimal control.
- require impact statements on major public and private development.
- provide financial aid for research, technical assistance and state data for local and regional governmental units.
- provide authority to local and regional governmental units to exercise innovative planning and regulatory techniques such as land banking, planned unit development, transfer of development rights, timed development ordinances.
- provide for an appeals board to arbitrate conflicts among governmental bodies and between citizens and governmental bodies.

National Positions on Land Use

- Recognition that land is a finite resource and ownership implies stewardship.
- Insurance of effective citizen participation through adequate funding for citizen information.
- Land use related to its inherent characteristics and carrying capacities.
- Consideration of human needs.
- Conservation and wise use of energy incorporated into planning and management.
- Maintenance and improvement of quality of urban communities.
- Insurance of public access to unique recreational areas with regard to carrying capacities.

History

Water: With initiation of a national study of water resources in 1956, local Leagues in Minnesota began to investigate problems in their own communities and in river basins. League has been concerned with the state's role in managing and financing water resource development and has supported state participation in interstate commissions to provide comprehensive planning for boundary waters. Action has included support for the Minnesota Pollution Control Agency in requesting adequate funding, training and certification of sewage treatment plant operators, and state funds for municipal sewage plants. 1973 saw the enactment of many water quality bills supported by League — mandatory shoreland zoning in incorporated areas, broadened definition of public waters to include wetlands, mandatory flood plain zoning, strict drainage controls, statewide water inventory. In the next legislative session there was controversy over the new drainage controls, and bills were introduced to weaken the Department of Natural Resources. League opposed these bills and worked to help the state retain control over public waters. **Air:** In 1971 League reached national consensus on air quality and members testified during legislative hearings on air quality standards. League also supported mandatory vehicle emissions inspection and the disbursement of dedicated highway trust funds to municipalities for mass transit. This latter action emanated from national League guidelines, using positions on Human Resources as well as Air Quality. League has emphasized mass transit as the logical solution to air pollution problems in heavily trafficked areas. **Solid Waste:** Local Leagues studied their communities' solid waste management practices to reach both state and national consensuses during the 1973 legislative session, enabling League to lobby for bills discouraging use of nonreturnable beverage containers and establishing regional resource recovery centers. Current action supports charging a deposit for beverage containers. **Energy:** The national position was reached in 1975 through concurrence. Action included support of bills and sponsorship of an Energy Conservation Conference. State and national consensuses on land use were reached in 1975 after two years of study.

From LWVUS Documents

NATIONAL POSITIONS
ENVIRONMENTAL QUALITY
as affirmed by 1974 convention

Action to achieve a physical environment beneficial to life, including improvement of water and air quality, promotion of wise use of water resources, progress in recycling and reduction in generation of solid wastes.

SOLID WASTE MANAGEMENT
Statement of position
as announced by national board, April 1973:

The League of Women Voters of the United States believes that:

The role of federal government should be expanded, although the major responsibility for solid waste management should remain with the state and local governments.

The federal government should establish policies and programs to increase the demand for secondary materials, to encourage recycling of post-industrial and post-consumer wastes and to reduce the generation of solid wastes.

The federal government should help state and local governments develop recycling facilities and at the same time should encourage private construction and operation of recycling facilities.

The federal government should encourage and support education of the public on these issues.

Amplification of position

In more specific terms, the League supports expanding the role of the federal government to include authority to:
Establish federal criteria and standards for collection and disposal.
Issue regulations based on federal standards for disposal.
Offer federal financial assistance to local governments for disposal.
Intensify research and development for new, improved, less expensive methods of collection and disposal by offering financial and technical aid to governments and industry.

The primary goal of national recycling policies and programs should be to forestall depletion of nonrenewable resources. The concurrent reduction in volume of wastes for which a community must find disposal sites and the recovery of part of community waste disposal costs should be secondary goals.
In order to increase demand for secondary materials, the federal government should:
Equalize tax treatment for virgin and secondary materials by such methods as reduction of tax exemptions for extractive industries and increase of tax exemptions for secondary materials industries.
Equalize transportation costs for virgin and secondary materials.
Increase charges for federal land uses which yield virgin materials.
Reduce subsidies for the use of inorganic fertilizers and/or offer subsidies for the use of compost and sewage sludge.
Offer tax benefits to companies which install equipment that allows use of recyclable materials.

Revise federal specifications for products made of reclaimed materials.
Increase federal government purchase orders for products made of reclaimed materials.
To assist state, local and regional agencies to develop (plan and build) recycling facilities, the federal government should:
Increase its financial aid for research and development.
Increase its technical assistance capabilities.
Offer planning grants to regional and state agencies.
Offer low cost loans.

For construction and operation of recycling facilities:
Industries should invest private capital.
Users should pay fees according to the amount of waste generated.

AIR QUALITY
Statement of position

as announced by national board, April 1971:

The League of Women Voters of the United States believes that control of air pollution is a responsibility to be shared by all levels of government—federal, regional, state and local.

While the federal government should have the major role in setting standards, each lower level of government should have the right to set more stringent standards.

Enforcement should be carried out at the lower levels of government, but the federal government should have ultimate power to enforce standards if the lower levels do not meet this responsibility.

Pollution control should be considered a cost of doing business, but citizens as consumers and taxpayers must expect some costs to be passed on to them.

The public should participate in decisions on all phases of air pollution control.

Amplification of Position

In more specific terms the League supports:

Measures to reduce vehicular pollution, including emission inspection and controls, changes in engine design, fuel type and composition, and development of alternate transportation systems.

Regulation of stationary sources by controls and penalties, including inspection and monitoring, full disclosure of pollution data, and substantial fines.

Policies that accelerate pollution control, including financial assistance.

Efforts to publicize information on air pollution data, hearings, progress on abatement programs, and decisions affecting pollution control.

Increased opportunities for citizen participation in hearings and on decision-making bodies and for easier access to the courts.

WATER RESOURCES
Statements of position

as adopted by 1958 convention:

Support of national policies and procedures which promote comprehensive long-range planning for conservation and development of water resources. Among these policies are: a) better coordination and elimination of conflicts in basic policy at the federal level; b) machinery appropriate to each region which provides coordinated planning and administration; c) cost sharing by government and private interests in relation to benefits received and ability to pay.

as announced by national board, January 1960:

In order to meet the present and future water needs of the people of the United States, the League of Women Voters believes:

A. Over-all long-range planning and development of water resources requires:

1) Better coordination and organization at the federal level.
2) Elimination of inconsistencies and conflicts in basic policy among federal agencies.
3) Federal procedures which provide the Executive and Congress with adequate data and a framework within which alternatives may be weighed and intelligent decisions made.

B. Comprehensive planning, development and water management on a regional basis is essential to the optimum development of the nation's water resources.
1) Such development should meet the particular needs of the region but not be in conflict with the national interest.
2) Machinery is needed, appropriate to each region, which will provide coordinated planning and administration among federal, state and other agencies.
3) Procedures should be established which provide information and an opportunity for citizen participation in policy decisions affecting the directions which water resources development will take.

C. The federal government has a necessary role in financing water resources development, but state governments, local governments and private users should share such costs, as far as possible, based on the benefits received and the ability to pay.

as announced by national board, January 1967:

The League of Women Voters of the United States supports limited federal financial assistance to industry as a means of expediting abatement of water pollution.

Although the League thinks that costs of pollution abatement are a responsibility of the polluter, it acknowledges that some help should be made available because of the urgency and immediacy of the problem and the immense costs involved. League members agree that:

Strict enforcement of anti-pollution measures should accompany financial assistance.

Duration and scope of assistance should be limited.

Criteria for assistance should include consideration of financial need of the company, economic base of the community, area stream standards, extent and complexity of the pollution problem of the company and region.

HUMAN RESOURCES

as affirmed by 1974 convention

Action to achieve equal rights for all, combat discrimination and poverty and provide equal access to housing, employment and quality education.

"Support of equal rights for all, regardless of race or sex" *made explicit in the 1972-74 HR program wording the League's support for equal rights for women. By motion, the 1972 convention authorized support of the Equal Rights Amendment (the constitutional amendment had already been approved by Congress on March 22, 1972 and was undergoing the state ratification process). The 1972 convention also authorized action at the state and local level in opposition to discriminatory practices against women.*

The 1972-74 HR program wording also made explicit the League's "recognition of the special needs of Indians."

EDUCATION, EMPLOYMENT AND HOUSING
Statements of position

as announced by national board, January 1969:

Members of the League of Women Voters of the United States believe the federal government shares with other levels of government responsibility to provide equality of opportunity for education, employment and housing for all persons in the United States. Employment opportunities in modern, technological societies are

closely related to education; therefore, the League supports federal programs to increase the education and training of disadvantaged people. The League also supports federal efforts to prevent and/or remove discrimination in education and employment and housing and to help communities bring about racial integration of their school systems.

Education and Employment Criteria

In evaluating federal programs which have been, or will be, established to provide equality of opportunity for education and employment, the League will support those programs which largely fulfill the following criteria:

The nationwide effort to achieve equality of opportunity in education and employment should include participation of government at all levels and encourage the participation of private institutions.

Programs should be carefully tailored to the educational or employment needs of the people they are intended to reach.

People for whom community action programs are designed should be involved in the planning and implementation of those programs.

The programs should be carried out by personnel competent to meet the specific requirements of their jobs.

Programs should assist people to become self-supporting, contributing members of society.

The programs should be nondiscriminatory.

Research, pilot projects, and continuing evaluation should be encouraged and, where feasible, built into programs.

Programs may be closely related but should avoid unnecessary duplication.

State and local governments should contribute to the extent their resources permit; at the same time, adequate federal funds for the establishment and continuation of programs should be available if necessary.

Fair Housing Criteria

The following criteria should be applied to programs and policies to provide equal opportunity for access to housing, without discrimination based on race, color, religion or national origin:

Opportunities for purchase or renting of homes and for borrowing money for housing should not be restricted because of race, color, religion or national origin.

Responsibility in the nationwide effort to achieve equality of opportunity for access to housing resides with government at all levels and with the private sector—builders, lending institutions, realtors, labor unions, business and industry, news media, civic organizations, educational institutions, churches and private citizens.

The continued existence of patterns of discrimination depends on the covert support of community leaders, institutions and residents. Award or withdrawal of federal contracts and placement of federal installations should be used as levers tto change this covert support.

After positive steps such as mediation and conciliation have been exhausted, the federal government should have the option for selective withholding of federal funds where patterns of discrimination in access to housing occur. In applying the option to withhold funds, the federal government should weigh the effects of its actions on the welfare of lower income and minority groups.

Federal programs should include provisions to guarantee equal opportunity for access to housing. Federal funds should not be used to perpetuate discrimination.

In the enforcement of fair housing laws, speedy resolution should be ensured. Administrative procedures and responsibilities should be clearly defined and widely publicized.

Mediation and legal redress should be readily available. The process should ensure every possible protection for both complainant and persons or institutions against whom complaints are lodged. Avenues for mediation and legal redress should be widely publicized and should be easily accessible.

Funding should be adequate to provide trained and competent staff for public education to inform citizens of the provisions of fair housing legislation, of their fair