Prop 5 Opponents Challenge DEC To Prove Enforcement Of State Laws

by Pat Bradley,
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In November, New York voters approved a constitutional amendment that allows a mining company in the Adirondacks to expand its wollastonite mine onto 200 acres of forest preserve land in exchange for 1,500 acres of forest land. Groups that oppose the idea are asking the Department of Environmental Conservation to confirm that the agency will enforce all other relevant laws.

Earlier this month, the New York State Department of Environmental Conservation announced its intent to issue a draft temporary permit authorizing NYCO Minerals to do mineral sampling on the land that would be transferred to the company. In her letter to the DEC, Earthjustice Northeast Office Managing Attorney Deborah Goldberg notes that while Lot 8 is no longer protected as forever wild, it is still subject to all other state laws. "This land is in the Adirondack Park and the Adirondack Park Agency Act has
specific provisions protecting the land. Pursuant to that act there is a state land management plan and there’s also specific unit management plans that the Jay Mountain Wilderness Area in which this land is located. In addition to that in the environmental conservation law there are protections for forest preserve lands and specifically for wilderness lands, as there are under the regulations that implement that law. So there are both statutory and regulatory provisions that still apply, notwithstanding the amendment."

The groups working with Earthjustice are the Atlantic States Legal Foundation, Sierra Club Atlantic Chapter, Protect the Adirondacks and Adirondack Wild Friends of the Forest Preserve, all of which opposed passage of Proposition 5. Adirondack Wild Partner Dan Plumley says they recognize that the amendment passed that could allow a land swap, but it did not change existing environmental law. "DEC and APA and the state have a pretty significant procedure to go through to ensure that the Jay Mountain Wilderness Area and its unique resources are fully protected. The referendum by the people of NYS did not obviate or eliminate any of those requirements."

The environmental groups that supported the land swap are reviewing the letter and its implications. Adirondack Council Spokesman John Sheehan says they are reviewing the Earthjustice brief, but NYCO must comply with all applicable laws. "Our expectation was that all laws would be followed and that any legal requirements that had to be dealt with as a result of what NYCO wanted to do on the property would be handled in a proper way."

Adirondack Mountain Club Executive Director Neil Woodworth is also in the midst of analyzing the Earthjustice letter. While he has yet to reach a conclusion regarding the analysis in the letter, he says it has been clear that NYCO would have to comply with a number of laws to move forward. "We always expected that NYCO would have to comply with all the applicable laws that would be required to do what they want to do. The constitutional amendment removed the bar of the constitution to mining on Lot 8. But it was not a get there free provision that exempted them from other environmental laws that clearly apply to the situation."

The DEC emailed a statement to WAMC stating: “DEC will proceed with a transparent public process that will comply with all laws and regulations pertaining to this matter.” Earthjustice has requested a response from the DEC within 15 business days.