

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WISCONSIN RESOURCES PROTECTION
COUNCIL, CENTER FOR BIOLOGICAL
DIVERSITY and LAURA GAUGER,

Plaintiffs,

v.

FLAMBEAU MINING COMPANY,

Defendant.

ORDER

11-cv-45-bbc

A telephonic pretrial conference was held in this case on May 15, 2012, before United States District Judge Barbara B. Crabb on plaintiffs' motion to determine the issue of burden of proof and order of presentation of evidence as to civil penalties, dkt. #192, and defendant's motion to use the videographic recording of the deposition of Elizabeth Day at trial, dkt. #196. Plaintiffs appeared by Pamela McGillivray. Defendant appeared by Harry Van Camp and Scott Paler.

The case is set for a court trial beginning on May 21, 2012. Counsel predicted that the case would take 7 days to try. The parties informed the court that they are requesting that the trial be bifurcated. The court had no objection. Plaintiff estimates that the liability phase of the trial will take 2-3 days. This phase will be limited to evidence relating to whether the discharges from defendant's biofilter entered Stream C or, if not, whether the

wetland area near the biofilter outlet has a significant nexus to the Flambeau River.

As to the damages phase of the trial, defendant estimates that it will take 4 days to try. It will be defendant's burden to persuade the court to impose civil penalties below the maximum available. Plaintiff is not obligated to present any evidence at this stage of the trial.

Defendant's motion to use the videographic recording of Elizabeth Day's deposition at trial, dkt. #196, was GRANTED as unopposed.

The court confirmed with the parties that trial days will begin at 9:00 and will run until 5:30, with at least an hour for lunch, a short break in the morning and another in the afternoon. No court will be held on the Memorial Day holiday on Monday, May 28, 2012.

Counsel are either familiar with the court's visual presentation system or have made arrangements with the clerk for instruction on the system.

Counsel are to provide copies of trial exhibits to the court on the morning of the first day of trial.

Entered this 15th day of May, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge