



MININGMINNESOTA

RESPONSIBLE DEVELOPMENT
of NATURAL RESOURCES

January 19, 2022

VIA E-MAIL

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Re: Superior National Forest Withdrawal Application

MiningMinnesota is committed to promoting sustainable and environmentally responsible mining of copper, nickel, and precious metals in the state. To accomplish that goal, MiningMinnesota works with local citizens, businesses, and other organizations to grow Minnesota's economy and create jobs through the responsible development of natural resources. MiningMinnesota's members comprise a diverse coalition of organizations, companies, and individuals who are committed to using innovative mining practices to improve the economies of northeastern Minnesota and the rest of the state. Included among the organization's membership are companies engaged in the exploration and development of nonferrous minerals in Minnesota and companies that provide supplies and services to the companies performing this exploration and development work. Its members have been active in exploring the Superior National Forest for decades. Consistent with its mission, MiningMinnesota

and its members have a significant interest in ensuring that the mining process in the state is conducted in an innovative, efficient, and environmentally responsible manner.

COMMENTS

MiningMinnesota urges the Bureau of Land Management (“BLM”) and the Secretary of Interior to reject the United States Forest Service’s (“USFS”) application for withdrawal of lands in the Superior National Forest (“SNF”) from mineral leasing. The lands of the United States, including the SNF, are held for the benefit of all, governed by laws passed by the people’s representatives. The laws governing mineral leasing on public lands are ultimately designed to facilitate development of natural resources to benefit the public. Mine permitting is likewise governed by a numerous state and federal statutes that ensure mining is safe, efficient, and that mine lands are reclaimed after the resources are obtained.

Both the leasing and permitting process are long and arduous for the participants. They occupy considerable agency time. While these laws and processes are not perfect, they are long established, providing a predictable framework. Companies can invest, knowing the rules. Agencies can act judiciously and fairly, following those rules. The natural resources owned by the United States can be both developed and protected. To that end, the leasing laws and the permitting laws occupy different areas and serve different purposes.

The proposed withdrawal upends this established process and division of labor. First, it is unclear whether the Secretary of Interior even possesses the legal authority

to withdraw parts of the SNF from mineral leasing. Even if it is legal, the withdrawal process is not intended to effectuate the kind of environmental protection envisioned here; that is the role of the environmental statutes and their enforcing agencies, both state and federal. Mining can be done safely in the SNF. Minnesota has the knowledge, workers, and the environmental protection apparatus to do it. MiningMinnesota urges BLM and the Secretary to reject the proposed withdrawal application.

I. The Proposed Withdrawal is Potentially Illegal.

This proposed withdrawal follows a similar withdrawal application filed in 2017 then subsequently cancelled in 2018.¹ MiningMinnesota submitted comments to that earlier withdrawal application, and resubmits them here as **Exhibit 1**. Those comments set forth the legal arguments against a blanket withdrawal of the SNF from mineral leasing. As explained in those comments, a withdrawal may violate the Federal Land Policy Management Act.² More generally, the proposed withdrawal is contrary to the purpose behind the web of statutes that govern the leasing of minerals owned by the United States: the development of natural resources for the benefit of the public. Mining in Minnesota's Superior National Forest is expressly permitted by the MN National Forest Leasing Act, 16 U.S.C. § 508(b).³ What's more, the National Forest Management Act commands the USFS keep the national forests open for resource development.⁴

¹ USFS 2021 Withdrawal Application at 7.

² **Exhibit 1**, MiningMinnesota 2017 Comments at 5-8.

³ *Id.* at 8-10.

⁴ *Id.* at 13.

Further, the Multiple-Use Sustained Yield Act, or MUSYA, does not permit USFS to simply privilege one use of the natural forest, such as recreation, over mineral development.⁵

Those arguments from the prior comment need not be restated at length; they remain as true today as they were in 2017. Taken as whole, the statutes make it clear that mineral development on public lands of the United States is the default, if it can be done while protecting the environment. The question of environmental protection, however, is not, and should not be, defined by the USFS interpreting broad land use statutes. There is an additional host of specific environmental statutes meant to assure that mining takes place only if it can be done safely. The next section explains why that aspect of the national policy also counsels against this proposed withdrawal.

II. The Proposed Withdrawal Offers No Additional Protection to the BWCAW.

The USFS's withdrawal application makes clear that the withdrawal is intended to protect the Boundary Waters Canoe Area Wilderness ("BWCAW").⁶ The USFS notes several potential problems associated with developing mineral resources, including: the potential for "permanently stored waste";⁷ the potential failure of containment measures of that waste;⁸ that the mine might require perpetual maintenance;⁹ and an

⁵ *Id.* at 13-15.

⁶ Withdrawal Application at 3.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

increase traffic and industrial activity.¹⁰ The withdrawal application then provides examples of negative effects on the treaty resources of the Chippewa Bands and the character of the BWCAW.¹¹

These are serious concerns and MiningMinnesota shares them. Our members operate and live in northern Minnesota. Our companies value the wilderness and the rights held by the Tribes in that wilderness, and believe both the resources and the tribal rights must be protected. Where we differ from the USFS is the method of that protection. MiningMinnesota believes that the state and federal environmental statutes are the proper tools to assess mining projects on a case-by-case basis.¹² Each of the harms cited by USFS in the withdrawal application are *possible* harms. These harms *may* happen. The task of minimizing these possible harms belongs to federal and state agencies applying environmental statutes. They, not the USFS, should determine whether mining can be conducted safely, based on application of those laws to the science and technology of a given project.

Those statutes are already being applied to the Twin Metals project, the project the withdrawal application notes as the genesis for USFS's present reversal of its 2018 decision not to withdraw the SNF from mineral leasing.¹³ Twin Metals, though in the

¹⁰ *Id.*

¹¹ *Id.* at 4-6.

¹² MiningMinnesota 2017 Comments at 26-29.

¹³ Withdrawal Application at 9.

early stages of the process, has already studied the hydrology of the proposed mine site¹⁴ and taken steps to ameliorate some of the USFS concerns mentioned above. ¹⁵ For instance, the mine will be below ground, lessening any impact on the surface. Most of the tailings will be stored underground, where containment measures are not needed. Those tailings above ground will be “dry-stacked” to greatly lessen any chance of impacts to surface water and the BWCAW. Twin Metals, in other words, is in the process of proving that its location, design, and plan can satisfy the mining laws and allow the mine to operate safely. The existing framework is already accomplishing the stated rationale for the proposed withdrawal.

The process has only just begun, and multiple environmental statutes remain to be satisfied. Twin Metals will still need to assemble a comprehensive portfolio of air and water permits. The mine will only be sited if it complies with Minnesota's comprehensive siting regulations, Chapter 6132. And then, the federal government will weigh in on the project design. The USFS asserts final consent authority as to whether the mine can open. Above and beyond all the individual permits, Twin Metal's project will need an Environmental Impact Statement under the National Environmental Policy Act. This rigorous, holistic process will surface any of the USFS's possible harms. Twin Metals will address them. If they cannot address them, there will be no mine.

¹⁴August 9, 2017 Memo from Foth Infrastructure and Environment LLC to Twin Metals MN, submitted in comments to the 2017 withdrawal proposal and resubmitted here as **Exhibit 2**.

¹⁵ <https://www.twin-metals.com/learning-center/mine-plan-of-operations/>

Taken together, the numerous federal and state laws that cover mining are the proper tool to assure that mineral development can be done safely. MiningMinnesota's members have followed, and are following, the established environmental framework to prove they can both mine on public lands and protect the environment.

III. The Proposed Withdrawal is Harmful to Northern Minnesota.

Northern Minnesota contains the largest undeveloped deposit of copper and nickel in the United States. In addition to having the deposits, Northern Minnesota and the rest of the state are ideally suited to develop those resources.

First, Minnesota has a long history of academic, industry, and government study of mining in the area proposed for withdrawal. The state universities and government have been studying mining for over half a century.¹⁶ In particular, they have studied the geochemistry of the Duluth Complex.¹⁷ Scientists in Minnesota now possess voluminous information about how rock will react within the Duluth Complex. The long history of iron mining provides a natural laboratory for the science of mining.¹⁸ This data and research will provide the USFS, other federal agencies, and the state of Minnesota, with abundant information to assess impacts from a potential mine.¹⁹

¹⁶ **Exhibit 3**, Brice Aff. ¶¶ 29-33.

¹⁷ See MineralLogic Report, "Summary of Select Public Information on Environmental Geochemistry of Duluth Complex Rock," Aug. 2017. This report was originally submitted as part of the 2017 withdrawal, and is resubmitted here as **Exhibit 4**.

¹⁸ **Exhibit 3**, Brice Aff. ¶¶ 29-33.

¹⁹ For examples, see *id.* at ¶¶ 29-36.

Second, that research has led Minnesota to have some of the strongest environmental regulations in the world. Minnesota legislators live near and within the SNF. Minnesota agencies are answerable to the executive and legislature, who in turn answer to the voters of Minnesota. Because of this, and the state's long experience with mining, Minnesota has first class statutes, regulations and agencies. Of course, MiningMinnesota's members do not universally agree with all of the state's decisions, but Minnesota is well equipped to assure environmentally sound mining within her borders.

Third, Minnesota has some of the highest labor standards in the nation, with a skilled union workforce ready to get to work on mining projects. Minnesota is, by some measures, among the most unionized states in the country.²⁰ Minnesota's long history of mining has created a seasoned work force and a strong network of suppliers. Mining jobs are not easy, but Minnesota has the right workers with the right skills to do them.

These conditions leave Minnesota poised to create modern, environmentally sound mines. The proposed withdrawal squanders these beneficial conditions. Indeed, the negative consequences of a withdrawal ripple far beyond the mining companies.²¹ The possibility of good paying, steady mining jobs will diminish or disappear. Northern

²⁰ <https://www.bls.gov/news.release/union2.t05.htm> (Minnesota tenth in union membership).

²¹ The economic effects of mining are detailed in a pair of reports by the University of Minnesota-Duluth's Labovitz School of Business and Economics. The reports are available here: <https://lsbe-apps.d.umn.edu/departments/bber/projects/2009MNMiningImpact.pdf> (2009); https://mn.gov/irrrb/assets/The%20economic%20impact%20of%20ferrous%20and%20non-ferrous%20mining_tcm1047-73857.pdf (2012) (last accessed January 16, 2022)

Minnesota's small towns will absorb yet another blow to their economic and social fabric. This blow will land most heavily on Minnesota's schools, which are funded partly by the school trust fund lands located in the region. This withdrawal imperils mineral development on those state lands,²² meaning the schools lose possible revenues from mineral leases.²³ The schools' losses will run to the billions of dollars.²⁴

IV. The Proposed Withdrawal Will Frustrate the Stated Goals of the United States.

The federal natural resource statutes favor mineral development.²⁵ This policy preference is based on sound reasons. The metals at issue here are critical to national security.²⁶ These minerals are also crucial for the national economy.²⁷ They affect the state economy. And every day another reason snaps into sharper focus: these minerals are required to meet the challenge of climate change.

The current President has made laudable commitments to address climate change. The White House released a statement explaining that , President Biden has "set[] 2030 greenhouse gas pollution reduction target aimed at creating good paying union jobs and securing U.S. leadership on clean energy technologies."²⁸ Additionally,

²² MiningMinnesota 2017 Comments at 30-32.

²³ See **Exhibit 3**, Brice Aff. ¶¶ 47-55.

²⁴ *Id.* at ¶ 53.

²⁵ MiningMinnesota 2017 Comments at 18-19.

²⁶ *Id.* at 22-23.

²⁷ *Id.* at 20-21.

²⁸ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/>

the statement underscored that “[c]reating jobs and tackling climate change go hand in hand—empowering the U.S. to build more resilient infrastructure, expand access to clean air and drinking water, spur American technological innovations, and create good-paying, union jobs along the way.”²⁹

MiningMinnesota couldn't agree more. Yet this withdrawal works directly counter to President Biden's stated goals. The SNF minerals are critical to meet the escalating demand for low-carbon technologies like electric vehicle batteries, wind turbines, and solar panels. The U.S. is currently reliant on foreign sources for these minerals. Many of those minerals are located in in countries with poor human rights records. In some cases, their workers toil in dismal and unsafe conditions. Other locations lack proper environmental laws to manage their mines.

The metals in Minnesota and the SNF play a crucial part in advancing President Biden's objectives. They can be mined here, safely, by workers earning a safe and decent living. They can spur innovation and advancements in other, related technologies. They can fill out a shorter supply chain of the minerals companies need to advance the green economy. They can help meet the grave challenges of the coming era.

V. If the Withdrawal Proceeds, MiningMinnesota Urges USFS to Undertake a Full Review.

MiningMinnesota urges BLM and the Secretary of the Interior to reject the withdrawal application. However, if the withdrawal application goes forward,

²⁹ *Id.*

MiningMinnesota urges the USFS to pursue a full Environmental Impact Statement—not an Environmental Assessment—to thoroughly examine the record and all the scientific evidence that would affect this decision. This withdrawal, in other words, should undergo at least the same level of review that faces every single mining project. This review should properly consider the costs to the federal, state, and local government of this withdrawal. This comment has set forth some of these costs, but there are many others.

CONCLUSION

For the foregoing reasons, MiningMinnesota urges BLM and the Secretary of Interior to reject the USFS withdrawal, or for the USFS to cancel the application as it did in 2018. If anything, the stakes have grown only higher in the intervening years. If we can safely develop the minerals that belong to the citizens of the United States, we can and must do so.

Sincerely,



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Enclosures