

**MEMORANDUM OFFERED IN OPPOSITION TO THE DECISION OF THE U.S.
FOREST SERVICE TO WITHDRAW 234,328 ACRES OF FEDERAL LANDS IN THE
RAINY RIVER WATERSHED FROM MINERAL ENTRY AND DEVELOPMENT**

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I

INTRODUCTION

On January 5, 2017, the United States Forest Service (USFS) submitted an application to then Interior Secretary Sarah Margaret “Sally” Jewell proposing a withdrawal of approximately 234,328 acres of National Forest System (NFS) lands within the Rainy River Watershed in the Superior National Forest (SNF), in Northeastern Minnesota, from disposition under United States mineral and geothermal leasing laws, subject to valid existing rights. Further, the USFS intends to amend the Superior National Forest Land and Resource Management Plan to reflect the withdrawal. *See*, 82 Fed. Reg. 4282, 4284

The 234,328 acres of federal mineral lands to be withdrawn from mineral development pursuant to the January 13, 2017 *Application for Withdrawal* are located within the Rainy River Watershed of the Superior National Forest in Cook, Lake and Saint Louis Counties, Minnesota, located adjacent to the Boundary Waters Canoe Area Wilderness (BWCAW) and the Mining Protection Area, in Northeastern Minnesota. *See*, *Id.*

The *Application for Withdrawal* by the USFS is a Notice of Intent to prepare an Environmental Impact Statement. The Draft EIS is expected to be completed by June 2018 and

the Final EIS is expected to be completed by January 2019. The preparation of an environmental impact statement, documenting the information and analysis is necessary to support a decision on withdrawal, and to support an amendment to the Superior National Forest Land and Resource Management Plan. The USFS acknowledged that its withdrawal application subjects the NFS lands to “temporary segregation for up to 2 years from entry under the United States mineral . . . leasing laws.” *See, Id.*

This Memorandum is offered in opposition to the decision of the USFS to withdraw the NFS lands from mineral development for a 20-year term, and its refusal to renew two leases of federal mineral lands held by Twin Metals Minnesota (TMM). If the withdrawal application is not rescinded, it will stifle job creation and cause further harm to local economies and K-12 education in Minnesota.

II

FACTS REGARDING THE JANUARY 13, 2017 WITHDRAWAL APPLICATION SUBMITTED TO THEN INTERIOR SECRETARY SALLY JEWELL BY THE USFS

On **April 15, 2015**, Congresswoman Betty McCollum (D-MN), responding to and on behalf of anti-mining activists, introduced the National Park and Wilderness Waters Protection Act (H.R. 1796). The Act would withdraw all federal lands in the Rainy River Watershed from the mining laws, the mineral leasing laws, and the laws governing the disposal of mineral materials, subject to valid existing rights. The Act also would impose additional restrictions on the issuance of any lease or permit for mineral related activities.

In a **February 2, 2016**, letter to the Secretaries of Agriculture and Interior and the Director of CEQ (Council on Environmental Quality), Congresswoman McCollum urged them “to immediately take action to protect two of America’s natural treasures – the BWCAW and Voyageurs National Park.” Specifically, Congresswoman McCollum requested the denial of TMM’s requested lease renewals and administrative withdrawal of federal lands in the Rainy River Watershed of the Superior National Forest. (Thomas L. Tidwell (Chief/USFS) letter to Neil Korneze (Director, BLM) p. 19, December 14, 2016)

On **March 6, 2016**, in collusion with anti-mining activists, without notice or a hearing and contrary to the Minnesota Constitution and the laws of Minnesota, Governor Mark Dayton wrote Ian Duckworth, Chief Operating Officer, Twin Metals Minnesota:

“Thank you for taking the time to meet with Commissioner Landwehr, [Minnesota Department of Natural Resources] our staff, and me on February 17, 2016, about Twin Metals’ operations in northeastern Minnesota and its desire to access state land to advance its mining proposal.

“Last Monday morning, I called the Director of the Bureau of Land Management (BLM) to discuss the importance of the BWCAW to Minnesotans. I apprised the Director of my strong opposition to mining in close proximity to the BWCAW. I was informed that the BLM is in the process of making a determination pertaining to the renewal of Twin Metals’ federal lease holdings. I believe that the BLM decision will offer further guidance on the future of mining in the area.

“In light of my concern about using state lands to advance mining operations in close proximity to the BWCAW and given the uncertainty surrounding Twin Metals’ federal mineral leases, I wish to inform you that I have directed the [Minnesota] DNR not to authorize or enter into any new state access agreements or lease agreements for mining operations on those state lands.” (cc: Commissioner Tom Landwehr, Department of Natural Resources).

In a **March 8, 2016** letter by Interior Department Solicitor Hilary C. Tompkins to BLM State Director Ms. Mouritsen, Ms. Tompkins instructed the Director that the BLM can deny renewal of Twin Metal’s 1966 mineral leases, MNES-01352 and MNES-01353.

A **June 3, 2016** letter from BLM State Director Ms. Mouritsen, directed Ms. Atkinson, Regional Forester in Milwaukee, WI to do the following:

Dear Ms. Atkinson:

“As you know, the Bureau of Land management has been considering an application by Twin Metals Minnesota (TMM) to renew its two existing mining leases (MNES 1352 and MNES 1353. The USDA Forest Service is the surface management agency for the lands where these two leases are located, and the BLM has jurisdiction over the mineral rights.

“In processing the pending application, the BLM identified the need for a legal opinion to determine whether TMM has a non-discretionary right to renew the two leases. The Department of the Interior’s Office of the Solicitor examined the issue and determined that TMM does not have a right to the automatic renewal of the leases; rather, the government has discretion to decide whether to grant or deny the application for renewal.

“In light of the legal determination that the government has discretion in granting or denying the TMM lease renewal application, . . . the BLM requests that the USDA Forest Service provide, in writing, a decision on whether it consents or does not consent to renewal of the leases.”

On **June 13, 2016**, the United States Forest Service issued a media release, announcing a 30 day period for public input and that a listening session would be held in Duluth, MN on July

12, 2016. After being publicly criticized for scheduling only one listening session in Duluth, a second listening session was held in Ely, MN on July 19, 2016.

On **September 12, 2016**, Twin Metals Minnesota filed a lawsuit in U.S. District Court in Minnesota to affirm and protect its federal mineral rights in Northeastern Minnesota. The lawsuit challenged the opinion by Interior Department Solicitor Hilary C. Tompkins that it can deny renewal of Twin Metal’s federal mineral leases, MNES-01352 and MNES-01353.

On **December 14, 2016** Thomas L. Tidwell, Chief, United States Forest Service wrote Neil Kornze, Director, BLM, in Washington, DC:

“The [USFS] has considered the environmental conditions, nature and uses of the BWCAW by the public and tribes, economic benefits of mineral development and wilderness recreation, potential environmental consequences of mineral development on the leases, public opinion, rarity of copper-nickel sulfide ore mining in this region, and current laws and policy to inform the agency’s decision.

Based on this analysis, I find unacceptable the inherent potential risk that development of a regionally-untested copper-nickel sulfide ore mine within the same Watershed as the BWCAW might cause serious and irreplaceable harm to this unique, iconic, and irreplaceable wilderness area. Therefore, the [USFS] does not consent to renewal of Preference Right leases MNES-01352 and MNES-01353. A summary of the basis for my decision follows.”

In a **December 15, 2016** letter, Ms. Mouritsen, State Director, Eastern States Office, BLM advised Mr. Ian Duckworth, Twin Metals Chief Operating Officer, that, “I hereby reject the application for renewal of Preference Right Leases MNES 01352 and MNES 01353.

On **January 13, 2017**, the USFS published a Notice of intent in the Federal Register to prepare an environmental impact statement. A summary of the *Application for Withdrawal* submitted to Interior Secretary Sally Jewel, as published in the Federal Register, follows.
82 Fed. Reg. 4282, 4282

DEPARTMENT OF AGRICULTURE

Forest Service

Superior National Forest; Minnesota;
Application for Withdrawal

Agency: Forest Service, USDA

Action: Notice of intent to prepare an environmental impact statement

- The USFS has submitted an application to the Secretary of Interior proposing a withdrawal of approximately 234,328 acres of National Forest System lands, for a 20-year term, within the Rainy River Watershed on the Superior National Forest from disposition under United States, mineral and geothermal leasing laws.
- **The purpose of the withdrawal request is protection of National Forest System lands located in the Rainy River Watershed and preservation of National Forest System lands within the BWCAW, from the potential adverse environmental impacts arising from exploration and development of Federally-owned minerals conducted pursuant to the Federal mineral leasing laws.** (emphasis provided)
- The proposal will include an amendment to the Superior National Forest Land and Resource Management Plan to reflect their withdrawal.
- The request subjects the NFS lands to temporary segregation for up to 2 years.
- The Notice of Intent initiates the scoping process, which guides the development of the EIS.
- A draft EIS is expected to be completed by January 2018 and the Final EIS by January 2019.

The decision made by the USFS during the last several weeks of the Obama administration, to prepare another EIS pertaining to the Rainy River Watershed of the Superior National Forest, will replicate an EIS completed in May 2012.

III

FACTS REGARDING THE MAY 2012 ENVIRONMENTAL IMPACT STATEMENT COMPLETED BY THE USFS/BLM UNDER THE OBAMA ADMINISTRATION

A meeting was held in Duluth, MN in November, 2006, attended by David C. Oliver, then Project Manager and Senior Staff Geologist for Duluth Metals. Also attending the meeting was H. J. Sandri, then Duluth Metals President and CEO. Harry Noyes attended the meeting representing Encampment Resources. Others were present representing mining companies who had gathered to meet in the offices of the U. S. Forest Service in Duluth, MN with James Sanders, then District Forest Supervisor, Superior National Forest. Also attending the meeting was Frank Ongaro, representing the trade association, Mining Minnesota. (Mr. Oliver is presently a resident of Ely, MN and serves as an advisor to various mining companies) (Mr. Ongaro presently serves as the Executive Director of Mining Minnesota, headquartered in Duluth) (Mr. Noyes now resides in Colorado).

The meeting was held in regard to requests by the mining companies to be issued prospecting permits for copper, nickel, platinum and related minerals in the Superior National Forest in Northeastern Minnesota. In recounting what was discussed at the meeting, Mr. Oliver recalls that James Sanders told those assembled that he had been contacted by an anti-mining environmental organization and was told that if the USFS moved forward supporting the issuance of prospecting permits without completing an EIS, that they intended to file a lawsuit. Further, Mr. Oliver recalls, Mr. Sanders told those assembled that he did not have the personnel nor funds available to complete an EIS.

The warning that a lawsuit would be brought against the U.S. Forest Service if an Environmental Impact Statement wasn't completed brought the intended result. Following the meeting in Duluth in November 2006, no prospecting permits were issued, the mineral lands were not opened for exploration and the Notice of Intent to complete an EIS was not published in the Federal Register until December 19, 2008 as required by 43 C.F.R. Sec. 2310.3-1(b)(1). (73 Fed. Reg. 77605).

Further, although 43 U.S.C. Sec 1714(b)(1) provides that National Forest System lands may be segregated from the operation of the mineral leasing laws for a maximum period of two years, the Final EIS was not published until May, 2012, approximately three and one-half years after the Notice of Intent was published in the Federal Register in December 2008. The USFS, failing to comply with 43 U.S.C. Sec. 1714(b)(1), extended the study beyond the two years authorized by the Code, which resulted in the wrongful imposition of a more than 5 year moratorium on mineral exploration on thousands of acres of federal mineral lands within the Rainy River Watershed of the Superior National Forest.

In September 2012, almost six years after the mining companies were told in November 2006 that no permits could be issued until the EIS was completed, the BLM finally issued 28 prospecting permits to DMC (USA) Corporation; Twin Metals Minnesota LLC; Lehmann Exploration Management Inc.; Encampment Resources, LLC; and Prime Meridian Resources Inc.

The 318 page *Environmental Impact Statement* published in May 2012 covered 38,545 acres of the Superior National Forest in Cook, Lake, St. Louis and Koochiching counties in Northeastern Minnesota. (*Final Environmental Impact Statement, Federal Hardrock Mineral Prospecting Permits, May 2012*). Excerpts taken from the 318 page EIS are presented below:

Final Environmental Impact Statement, Federal Hardrock Mineral Prospecting Permits, May 2012

Lead Agency
Cooperating Agencies
Responsible Officials

USDA Forest Service
Bureau of Land Management
Tim Dabney, Acting Forest Supervisor
8901 Grand Avenue Place
Duluth, MN 55808

Steven Wells, Deputy State Director
8901 East Wisconsin Avenue, Suite 200
Milwaukee, WI

A. **“Abstract”**

The BLM proposes to issue 29 prospecting permits.” “Recommendations from the Forest Service on conditions of approval for operating plans will be provided.” “These actions are needed because the federal agencies are mandated by Federal law and mineral regulations to facilitate access to federally held mineral resources to continue to meet the nation’s demand for mineral commodities.”

“The Final Environmental Impact Statement (FEIS) includes analysis of projected impacts derived from potential prospecting permit applications and operating plans. This Forest-wide analysis will be considered for use in analysis by the Forest Service and BLM if and as future proposals are received.”

B. **“Summary”** “The presence and abundances of minerals in northeastern Minnesota such as iron ores has been known and mined for well over 120 years and has played a pivotal role in the development of local communities in the region.” “Exploration for hardrock minerals has occurred since 1948 on the SNF (Miller 2002). Exploratory drilling, such as is considered in the proposed prospecting permits and operating plans, is used to determine the extent and location of ore bodies.

C. **“Purpose and Need for Action”** “The purpose of the agencies’ actions is to facilitate exploration for various mineral resources in an environmentally sound manner. The proposed action responds to the federal government’s overall policy to foster and encourage the development of economically sound and stable industries, in the orderly and economic development of domestic resources to help assure satisfaction of industrial, security and environmental needs (Mining and Minerals Policy Act of 1970).”

“The proposed action responds to the overall guidance of the Superior National Forest Plan to ensure that the exploration of federal hardrock mineral resources is conducted in an environmentally sound manner (Forest Plan D-MN-2, page 2-9) and in compliance with the stipulations on the permits and operating plans.”

“This project will analyze both the potential effects of 29 permit applications currently under consideration, and the potential impact of mineral prospecting activity Forest-wide in about a twenty year time frame.” (Emphasis provided)

D. **“Decisions to be Made”** “The Forest Service is the lead agency for this EIS and the BLM is a cooperating agency. As a cooperating agency, the BLM will adopt the FEIS to support their own Record of Decision (ROD).”

“The responsible official for the BLM, the Eastern States Deputy State Director, will decide the following in a Record of Decision: Whether or not to approve 29 federal hardrock mineral prospecting permits with the associated stipulations.”

E. **“U.S. Forest Service Record of Decision (ROD)”**

“Background Information “ “There are a number of laws that guide the overall Forest Service mission to sustain the health, diversity, and productivity of the Nation’s forests and grasslands to meet the needs of present and future generations.”” “These laws include the Organic Administration Act (Act of June 4, 1897) that set aside and reserved national forests to furnish a continuous supply of timber for the use and necessities of citizens of the United States’ and provided for mineral exploration within the national forest reserves; the Multiple Use Sustained Yield act of 1960 that states the national forests shall be administered for a variety of uses including timber watershed and wildlife and fish purposes, and;” “and the National Forest Management Act of 1976 that states the national forests shall be administered for a variety of uses on a sustained basis to ensure in perpetuity a continuous supply of goods and services to the American people. The Mining and Minerals Policy Act of 1970 states the following:”

“The congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in

- (1) The development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries,
- (2) The orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs.”

“Forest Service Manual 2802 on Minerals Management states it is an agency objective to:

Ensure that exploration, development, and production of mineral and energy resources are conducted in an environmentally sound manner and that these activities are integrated with the planning and management of other National Forest Resources.”

“The Superior National Forest Land and Resource Management Plan (Forest Plan), approved in 2004, embodies not only the provisions of the National Forest Management Act and regulations on Forest Plan implementation , but these other laws as well.”

F. **“Decision Summary”** *“This Record of Decision (ROD) documents my [Timothy Dabney, Acting Forest Supervisor, Superior National Forest] decision to implement Alternative 4 from the Final Environmental Impact Statement (FEIS) for the Federal Hardrock Minerals Prospecting Permits Project which gives Forest Service consent to the BLM issuing 29 prospecting permits,*

and identifies stipulations for use and protection of the national forest system lands involved. (Emphasis provided) I selected Alternative 4 because it best addresses the balance between resource use and resource protection and responds to the noise issue analyzed in the FEIS and other concerns raised in public comment.”

G. Bureau of Land Management Record of Decision

“Rationale:” “Factors considered in this decision include:”

- 1) “The Federal government has a policy of fostering and encouraging private enterprise in the development of a stable domestic minerals industry and the orderly and economic development of domestic resources.”
- 2) “The BLM has a minerals policy that “except for Congressional withdrawals, public lands shall remain open and available for mineral exploration and development unless withdrawal or other administrative action is clearly justified in the national interest.””
3. “The Forest Service has a program policy for minerals management that states “the availability of minerals and energy resources within the National Forests and Grasslands significantly affects the development, economic growth and defense of the Nation. The mission of the Forest Service in relation to minerals management is to encourage, facilitate and administer the orderly exploration, development, and production of mineral and energy resources on National Forest System lands to help meet the present and future needs of the Nation.” “
4. **“Minerals exploration may be conducted in an environmentally sound manner with the application of stipulations shown in the Forest Service ROD, . . . along with State of Minnesota rules for exploratory drilling. Therefore, the decision to issue the permits, subject to the prospecting permit stipulations (Forest Service ROD), . . . will not result in any undue or unnecessary environmental degradation.”** (Emphasis provided)

H. Bureau of Land Management Decision

“Selected Alternative” “Alternative 4” “The SFN [sic?] based its consent decision on the implementation of Alternative 4. This alternative best meets the goals of fostering and encouraging mineral exploration, in an environmentally sound manner, and best responds to issues raised by the public, state, tribal and local governments. Alternative 4 would reduce impacts to the greatest degree of all the action alternatives for the Boundary Waters Canoe Area Wilderness (BWCAW) for drill sites located near the wilderness by requiring maximum limits for sound levels reaching the wilderness.”

“Alternative 4” “The BLM will issue 28 prospecting permits and reject 1 overlapping prospecting permit application (MNES-054233), The issuance of the prospecting permits is in accordance with the Forest Service ROD for the Federal Hardrock Minerals Prospecting Permits FEIS signed May 18, 2012. The 28 prospecting permits will cover approximately 38,545 acres of the Superior National Forest in northeastern Minnesota and include stipulations for use and protection of the NFS lands involved.” (Authorized Officer, Dr. John G. Lyon, State Director, BLM Eastern States, September 20, 2012)

IV

SUMMARY AND CONCLUSIONS

In April 2015, collaborating with anti-mining activists, Minnesota Fourth District Congresswoman Betty McCollum (D-MN) introduced a bill to ban mining on all federal lands within the Rainy River Watershed in the Superior National Forest. In March 2016, Minnesota Governor Mark Dayton, in collusion with the anti-mining activists, directed the Minnesota DNR not to authorize or enter into any new state access agreements on state lands in the Rainy River Watershed of the Superior National Forest. Governor Dayton’s unlawful directive prohibits mineral development on approximately 147,600 acres of state owned lands. The 147,600 acres include 95,000 acres of Minnesota Public School Trust Lands. These lands are owned by the state in trust for all public schools of Minnesota. Revenues generated from school trust lands are credited to the permanent school fund managed by the State Board of Investment including royalty payments. The Governor’s wrongful and unlawful directive prohibiting mineral entry and development on School Trust Lands will deny Minnesota schools of millions of dollars of revenues to operate and maintain the public schools.

Following a well-orchestrated, pre-conceived plan, only two days after Governor Dayton’s unlawful directive was issued to the Minnesota DNR, the Interior Department’s Solicitor instructed the BLM state director that the BLM could deny renewal of Twin Metals Minnesota mineral leases. Finally, In December 2016, the BLM notified Twin Metals Minnesota that it would not renew its leases.

In January 2017 the USFS submitted an Application to the Secretary of Interior proposing a withdrawal, for a 20-year term of approximately 234,328 acres of National Forest System lands, within the Rainy River Watershed on the Superior National Forest and published a Notice of Intent in the Federal Register of its intent to prepare an Environmental Impact Statement. The decision made by the USFS to prepare an EIS was made by the previous administration, just 7 days before the Trump administration took office. The decision by the USFS to prepare an EIS will replicate the EIS completed by the USFS in May 2012 and prohibit mineral development on all federal lands within the Rainy River Watershed for at least 2 years, i.e., until at least 2019; and the cost of the aforementioned study will be borne by the taxpayers.

The decisions by the USFS and Minnesota Governor Mark Dayton to prohibit mineral entry and development of federal and state lands in the Rainy River Watershed of the Superior National Forest, prohibits mineral development on over 418,000 acres of land in Northeastern Minnesota. (USFS and Minnesota DNR statistics as of January 20, 2017)

The decision by the Obama administration and its agencies to conduct a study and complete an environmental impact statement *“documenting the information and analysis necessary to support a decision on withdrawal, and to support an amendment to the Superior National Forest Land and Resource Management Plan”*, is a shameless attempt by the anti-mining activists and their federal agency “friends” to pre-emptively quash the development of Twin Metals Minnesota’s proposed project by delaying exploration until at least 2019, and perhaps for an additional 20 years if a moratorium on prospecting is imposed.

The RODs published in 2012 by the USFS and BLM are clear, unambiguous and irrefutable.

“Minerals exploration may be conducted in an environmentally sound manner with the application of stipulations shown in the Forest Service ROD, Attachment 2, along with State of Minnesota rules for exploratory drilling. Therefore, the decision to issue the permits, subject to the prospecting permit stipulations (Forest Service ROD, Attachment 2), will not result in any undue or unnecessary environmental degradation.” (Emphasis provided) (BLM Record of Decision, p. 5, September 20, 2012)

Given that a Final EIS was completed by the USFS in May 2012, following a 5 year study to determine the potential effects of issuing prospecting permits, exploration and mineral development on the Forest lands, the Obama administration’s decision to use its agencies to conduct yet another study and prepare yet another Environmental Impact Statement only 5 years later, is tantamount to a costly fraud perpetrated upon and at the expense of Northeastern Minnesota citizens.

For the reasons set forth herein, the 234,000 acre withdrawal application should be rescinded, the two terminated Twin Metals Minnesota leases should be renewed and the Environmental Impact Statement study should be terminated.