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August 24, 2017

VIA ECF

The Honorable Joan N. Ericksen
United States District Judge
300 South Fourth Street, Suite 12W
Minneapolis, MN 55415

Re: *WaterLegacy v. USDA Forest Service, et al.*,
Civil No. 17-cv-00276.

Dear Judge Ericksen:

The Federal Defendants provide this update letter with permission from chambers (granted August 24, 2017) and as a courtesy to the Court.

As Your Honor is aware, Plaintiff has asked that the Court enjoin the Forest Service from, *inter alia*, entering into an exchange agreement with Defendant-Intervenor PolyMet Mining, Inc. (Docket No. 8). Such an agreement is a routine step following a decision such as the January 2017 NorthMet Project Land Exchange decision. The exchange agreement is preliminary to, and different from, the actual transfer of title to the properties subject to the land exchange.

The parties addressed certain details of the proposed exchange agreement during the April 28, 2017 preliminary injunction hearing, including the fact that the Forest Service and PolyMet have finalized language for the agreement to include a litigation contingency provision, which the undersigned counsel read into the record. That provision appears as the first paragraph on page 3 of the finalized (but not yet executed) exchange agreement, attached to this letter. The language allows the Forest Service to “delay or suspend action on [the] exchange” to comply with court orders. Accordingly, execution of the agreement will cause no damage to Plaintiff.

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In the absence of the Court's ruling on WaterLegacy's request for preliminary injunction, the Forest Service wishes to inform the Court that it intends to sign the exchange agreement on August 31, 2017. Reasons for this timing include, but are not limited to, the need to obligate funds prior to the end of the fiscal year.

Respectfully,

GREGORY G. BROOKER
Acting United States Attorney

s/ David W. Fuller

BY: DAVID W. FULLER
Assistant U.S. Attorney

Encl.