



Draft Record of Decision

United States
Department of
Agriculture

Forest Service

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NorthMet Project Land Exchange



Superior National Forest

St. Louis and Lake Counties, Minnesota



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Introduction

This Draft Record of Decision (draft decision or DROD) documents a draft decision for a land exchange between PolyMet Mining Inc. (PolyMet) and the Superior National Forest and is based on the Final Environmental Impact Statement (FEIS) for the NorthMet Mining Project and Land Exchange. The lands considered for conveyance to PolyMet are National Forest System (NFS) lands and administered as part of the Superior National Forest. The lands are underlain by the NorthMet ore body.

PolyMet controls the mineral rights to the NorthMet ore body through long term mineral leases and proposes to build an open-pit mine to recover these minerals. The United States owns the remainder of the property rights, including the surface that would be removed to access the minerals as proposed by PolyMet.

This land was purchased by the United States Forest Service (USFS), for National Forest purposes, under the authority of the Weeks Act. The USFS has taken the position that the mineral rights that were reserved when lands were conveyed to the United States in 1935 do not include the right to surface mine as proposed by PolyMet. Due to the inconsistency between National Forest management objectives and PolyMet's intended mining operations, in the absence of such an exchange, the Forest Service is not willing or able to authorize such private, surface mining operations on lands of the Superior National Forest.

PolyMet disagrees with the USFS position and argues that the mineral rights it seeks to utilize provide for access to the minerals by any mining method, including open pit or surface mining. This conflict raises the possibility of litigation that has no certain outcome and could set a judicial precedent regarding other Weeks Act lands acquired in the same deed.

A land exchange would eliminate this fundamental conflict.

A final decision on the land exchange will not authorize PolyMet's mining proposal to occur. Other governmental entities have the responsibility and authority to make decisions related to permitting the mining project, primarily the State of Minnesota and the U.S. Army Corps of Engineers (for specific permits, see FEIS Table 1.4-1). The Forest Service assumes no responsibility for enforcing laws, regulations or policies under the jurisdiction of other governmental agencies.

In the land exchange, the federal government will acquire other land that will be managed as a part of the Superior National Forest and maintain surface resources that can be managed for multiple resource values.

My draft decision is limited to whether or not to authorize the land exchange pursuant to 36 CFR 254 Subpart A. This document describes my draft decision, rationale for the draft decision, and alternatives considered in reaching the draft decision on the land exchange.

Purpose and Need for the Land Exchange

The purpose and need for the land exchange is to eliminate the conflict between PolyMet's desire to surface mine and the USFS ownership and management of NFS lands, by exchanging federal lands for non-federal lands that have equal or greater value. Section 3.3 of the FEIS provides a detailed description of the proposed land exchange. As stated at FEIS Section 1.3.2.2:

“The purpose for the USFS is to meet desired conditions in the Superior National Forest Land and Resource Management Plan (Forest Plan) (USFS 2004b), including ensuring the proposed land exchange Proposed Action eliminates existing conflict and ensuring mineral resources are produced in an environmentally sound manner contributing to economic growth.

In regards to desired conditions for land exchange and mineral development, the Superior National Forest’s Forest Plan includes the following direction:

“D-LA-1 – The amount and spatial arrangement of National Forest System land within the proclamation boundary of the Forest are sufficient to protect resource values and interests, improve management effectiveness, eliminate conflicts, and reduce the costs of administering landlines and managing resources.” (Forest Plan, Land Adjustment, pg. 2-51)

“D-MN-2 – Ensure that exploring, developing, and producing mineral resources are conducted in an environmentally sound manner so that they may contribute to economic growth and national defense.” (Forest Plan, Minerals, pg. 2-9)

PolyMet intends to exercise private mineral rights that were reserved when lands were conveyed to the United States and has proposed the development of a surface mine. This land was purchased by the USFS, for National Forest purposes, under the authority of the Weeks Act. The USFS has taken the position that the mineral rights that were reserved do not include the right to surface mine as proposed by PolyMet. PolyMet disagrees with the USFS position and argues that the mineral rights it seeks to utilize provide for access to the minerals by any mining method, including open pit or surface mining. This conflict raises the possibility of litigation that has no certain outcome and could impact tens of thousands of acres of other National Forest System lands conveyed under the same deeds. A land exchange would resolve this fundamental conflict.

In the absence of such an exchange, the Forest Service is not willing or able to authorize such private, surface mining operations on lands of the Superior National Forest, due to

the inconsistency between National Forest management objectives and PolyMet's intended mining operations.

The Forest Service is willing to consider conveying the land to PolyMet in exchange for land of equal value that would become a part of the Superior National Forest. Such an exchange would give PolyMet the property rights it needs to pursue its surface mining proposal, while at the same time allowing the Forest Service to be compensated by acquiring other land, of equal value, that could be managed as a part of the Superior National Forest. See Section 2.3.3 for more information.”

Setting

Northeastern Minnesota is beautiful. People love to live here, raise families, earn livings, and enjoy their lives. People love to come here to rejuvenate and recreate. Lives here are connected to the land economically, emotionally, and spiritually. People care what happens to their communities and their environment.

Northeastern Minnesota is unique. Its forests are diverse, widespread, scenic, and full of water. Water permeates and distinguishes the forests' ecological qualities. Our forests may be defined by mixtures of conifers and hardwoods, but they are special because of the thousands of lakes, streams, and wetlands. Water is always very close, flowing on and below the surface, flowing to either side of the Laurentian Divide to Lake Superior or Hudson Bay.

This amazing ecological landscape was the catalyst for the establishment of the Superior National Forest, a large part of the ecologic and economic landscape in northeastern Minnesota. Throughout its existence, the Superior has had an important role in the region's forestry, recreation, wildlife, fishery, wilderness, and mineral resource management. Beginning in 1909, by a series of Presidential proclamations, about 42% of current Superior National Forest lands were reserved from the public domain. As such, they have been continuously owned by the United States. The remaining 58% of Superior National Forest lands were acquired through purchase, donation or exchange. These lands were patented (first conveyed) by the United States to non-federal owners. Thereafter, title was transferred between non-federal parties, until the lands were again acquired by the United States to administer as part of the NFS. After land has been patented, it is possible for individual property rights to become separated through a deed reservation or conveyance of a partial interest. In Minnesota, it is not uncommon for mineral rights to have been historically severed from the remainder of property. The result is that the mineral interests are held by someone other than the surface owner.

The Secretary of Agriculture is granted the authority to acquire lands through various acts of Congress. On the Superior National Forest, many lands were purchased pursuant to the Act of March 1, 1911, also known as the Weeks Act. 16 USC 515. This Act authorizes the Secretary of Agriculture to purchase forested, cutover, or denuded lands within the watersheds of navigable streams as may be necessary to regulate the flow of navigable streams or for timber production.

It also authorizes the exchange of national forest land or timber having acquired land status for non-Federal lands. 16 USC 516. All of the national forest lands in the federal parcel proposed for exchange in this project have Weeks Act status pursuant to The Weeks Act Status for Certain Lands Act of September 2, 1958 (16 USC 521a).

Non-Ferrous Mining Proposed

Northeastern Minnesota holds the Mesabi Iron Range. For nearly 10,000 years Native Americans in the western Lake Superior basin quarried and produced tools from silica-rich lithics (stone) such as Knife Lake Siltstone and cherts from the Gunflint and Vermilion Iron Formations. In addition, Native Americans also extracted and produced tools and non-utilitarian items from near-surface copper deposits along the shores of Lake Superior and utilized glacially redistributed copper in a much wider area.

For the past 100 years commercial iron (ferrous) mining and mineral exploration have also been economic forces and ways of life here. Iron Range mining is clearly evident across the region and a prominent part of the landscape. Exploration activities are well known and they have identified extensive copper-nickel deposits within the Duluth Complex geologic formation. The Duluth Complex extends across the region arcing from Duluth to Hoyt Lakes, crossing the United States-Canadian border, to Thunder Bay, Ontario. It contains one of the world's largest known undeveloped accumulations of copper-nickel-platinum-group-metals (PGMs).

Most of the known copper-nickel-PGMs in the complex are found in dispersed deposits along the northern margin of the complex. NorthMet is one of these deposits and it is the first site in Minnesota proposed for extracting commercial, non-ferrous, metals from the Duluth Complex. PolyMet controls 100 percent of the NorthMet ore body through long-term mineral leases. The company proposes to build an open-pit mine to recover these metals.

Overview of Agency Consideration for the Proposed Mining

Between 2005 and 2009, the U.S. Army Corps of Engineers (USACE) and the Minnesota Department of Natural Resources (MDNR), as Co-leads evaluated PolyMet's original mining proposal (see Figure DROD-1). This process culminated in October 2009 with the publication of the NorthMet Project Draft Environmental Impact Statement (DEIS) that analyzed the project as it was then proposed by PolyMet. After issuing the DEIS, the Co-lead Agencies—responding to public, other state and federal agencies' comments and concerns, including the United States Environmental Protection Agency and tribal government—developed an alternative proposal in consultation with PolyMet that sought to resolve several major environmental concerns and permitting barriers raised during the DEIS process. This alternative was subsequently adopted by PolyMet and became the current NorthMet Mining Project Proposed Action. During review of the DEIS it was determined that the land exchange was a connected action to the mining proposal. Under state and federal regulations, multiple actions or projects that are connected

actions must be considered in total in preparing an EIS¹. As a result, in 2010, the USFS joined as a third Co-lead Agency for the purpose of analyzing the Land Exchange Proposed Action as a connected action to the mining proposal. Since that time, the three Co-lead Agencies have engaged in a joint federal-state process to consider PolyMet's project proposal and the land exchange (see Figure DROD-1). Coincident review of these connected actions contributed to the Co-lead Agencies' decision to prepare a Supplemental Draft Environmental Impact Statement (SDEIS). The SDEIS included updated analysis of environmental impacts based on the revised NorthMet Mining Project Proposed Action and added the Land Exchange. It was published in December 2013 and public comments were solicited during a 90-day comment period ending in March 2014.

The Final Environmental Impact Statement (FEIS) was developed to address public comments received on the SDEIS and to inform the completion of the Co-lead Agencies' EIS process under the National Environmental Policy Act (NEPA) and the Minnesota Environmental Policy Act (MEPA).

Guidance in the Forest Service Land Exchange Handbook 5409.13, Section 33.41 states:

Land exchanges convey land, interests in land, and the resources associated with them. However, the act of conveyance has no environmental effects. Therefore, the environmental analysis should focus on the future use and management of the lands acquired and conveyed and the effect of the exchange on the lands that adjoin them.

The FEIS discloses the effects of the land exchange and the mining project and informs my draft decision on the land exchange.

¹ Connected actions are described in the Council on Environmental Quality NEPA Regulations at 40 CFR 1508.25 as: "(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they: (i) Automatically trigger other actions which may require environmental impact statements. (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously. (iii) Are interdependent parts of a larger action and depend on the larger action for their justification."

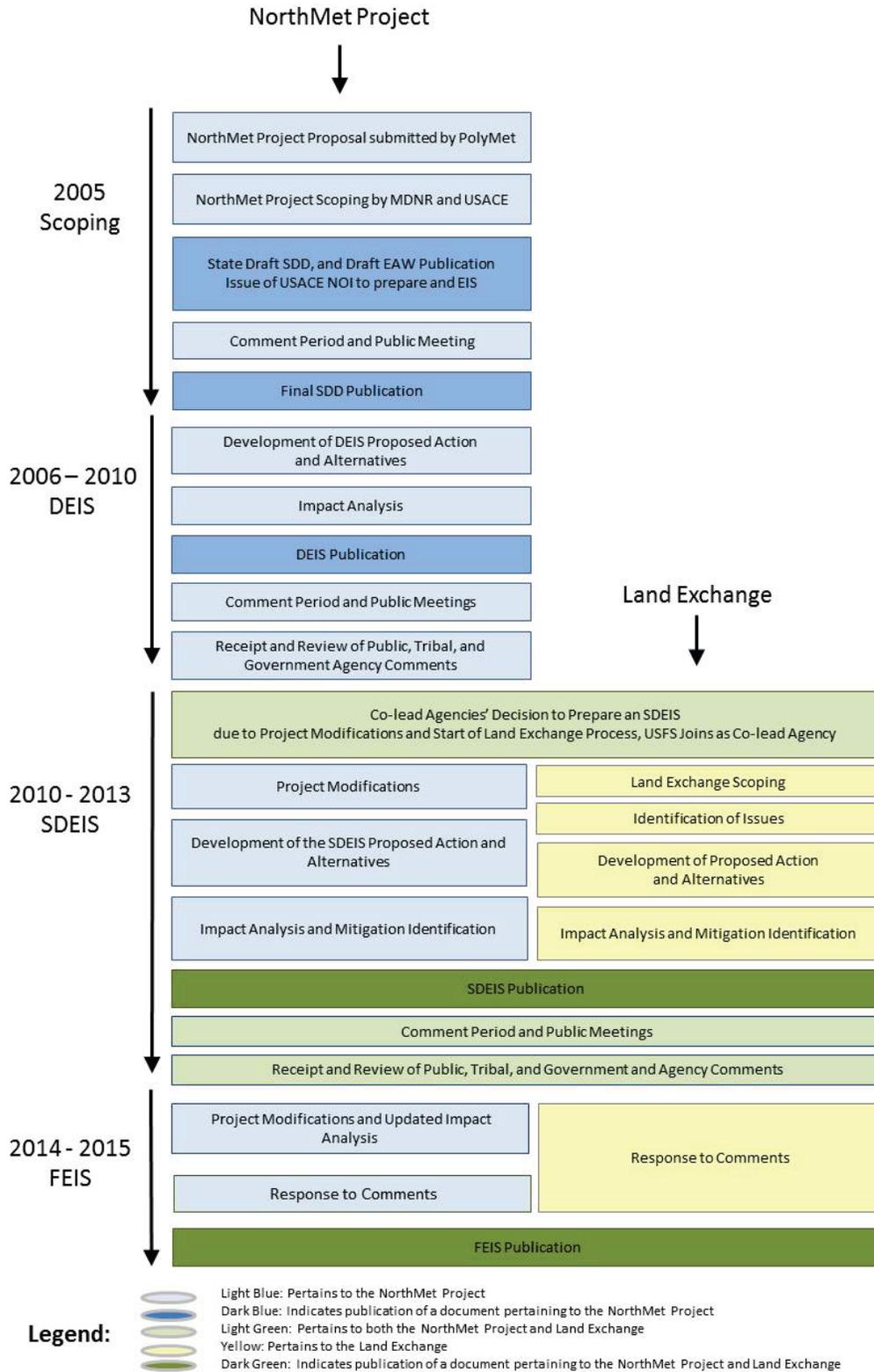


Figure DROD-1. NorthMet Mining Project and Land Exchange EIS Development Process

Draft Decision

Throughout this draft decision, the real estate parcels are described using General Land Office (GLO) acreages and aliquot parts. The General Land Office (now incorporated into the Bureau of Land Management) was an office of the United States government in charge of the survey, sale or other disposition, and patenting of public lands. GLO surveys are the official record of the boundaries and contents of public lands. For this reason, the legal land descriptions of the parcels considered for exchange are based on GLO records. Such records may not match the acreage of effects analysis presented in the FEIS because those analyses were performed using Geographic Information System (“GIS”) data. GIS data are computed geometrically using mapping software. They provide a reasonable estimate of effects and the differences between alternatives. In this draft decision, unless acreage figures are noted as GLO, they are GIS acres based on effects analysis in the FEIS. Acreage figures are described in whole numbers in this draft decision; a summary of land parcels may be found in DROD Table 1. The complete legal description of the lands is attached in DROD Appendix A (federal lands) and DROD Appendix B (non-federal lands).

The FEIS Land Exchange Proposed Action includes five non-federal tracts and one federal tract for exchange (see FEIS Section 3.3.2 and FEIS Table 3.3-2). My draft decision is to implement the Land Exchange Proposed Action with modification.

Based on the current real estate appraisal, the Land Exchange Proposed Action was modified. The one modification I am making to the Land Exchange Proposed Action is that Tract 5, McFarland Lake, is not included in the exchange. The Land Exchange Proposed Action as modified includes the acquisition of four of the non-federal tracts in exchange for the federal tract. By eliminating Tract 5, the Land Exchange Proposed Action as modified reduces the cash equalization payment under equal value requirements of 36 CFR 254.3. Tract 5 was identified as lowest priority in part because it has no wetlands which would help meet the requirements of Executive Order 11990 regarding no net loss of wetlands to the federal estate (Non Federal Parcel Prioritization document, project record). Dropping additional tracts to completely eliminate the need for any cash equalization is not possible as the remaining tracts are necessary to meet Executive Order 11990 (Forest Service Land Exchange Handbook 5409.13, Section 33.43c). See DROD Table 1 and DROD Map 1 for the tracts included in my draft decision.

Specifically, my draft decision for the Land Exchange Proposed Action as modified includes²:

² FEIS Section 3.3.2.1 provides further details on the federal tract and FEIS Section 3.3.2.2 provides further details on the non-federal Tracts 1, 2, 3 and 4.

1. The United States will convey 6,650 acres (GLO) of federal land located in St. Louis County, Minnesota. DROD Table 1 and DROD Map 2 provide detailed information on the size and location of the federal tract.
2. The United States will acquire 6,690 acres (GLO) of non-federal lands. DROD Table 1 and DROD Maps 3 and 4 provide detailed information on name, size, and location of the non-federal tracts.
3. Existing reservations and third party equities on the federal tracts include the following list³. The footnotes explain what would occur under my draft decision:
 - FLPMA Road Easement issued to Northshore Mining Corp.⁴
T59N, R13W Sections 4 &5
T60N, R13W Sections 33 & 34
 - FLPMA Power Transmission Line issued to Northshore Mining Corp.⁵
T59N, R13W Sections 4 &5
T60N, R13W Sections 33 & 34
 - Electric Transmission Line issued to Minnesota Power⁶
T59N, R13W Sections 17 & 18
4. Final implementation of the land exchange is contingent upon a 30-day oversight by the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry (Section 17(b) of the National Forest Management Act of 1976). In addition, Secretary of Agriculture approval is required for Weeks Law land exchanges when the value of the Federal land is \$250,000 or more (FSH 5409.13 Section 35.1).
5. This land exchange meets the value requirements of 36 CFR 254.3. For the Land Exchange Proposed Action as modified, the value of the non-federal lands is within 25% of the value of the federal land (FSH 5409.13 Section 34.1). The federal lands have an appraised value of \$3,658,000 and the non-federal lands have an appraised value of \$4,083,000. A cash equalization payment of \$425,000 will be made to the non-federal party as provided under 36 CFR 254.12. The cash equalization that will be made as part of this draft decision is 11.6 percent of the value of the federal land.

³ There are no existing reservations or third party equities on the non-federal tracts.

⁴ PolyMet has agreed to honor existing uses by Northshore Mining Corp. The Forest Service authorization would be terminated.

⁵ PolyMet has agreed to honor existing uses by Northshore Mining Corp. The Forest Service authorization would be terminated.

⁶ PolyMet has agreed to honor the existing use by Minnesota Power. The Forest Service authorization would be amended to remove the section that crosses federal land to be exchanged.

6. Most mineral rights within the federal lands to be exchanged are privately held. The United States owns 181 acres (GLO) of mineral rights on lands that are not part of the NorthMet Mining Project Proposed Action mine pits but are included in the exchange. The USFS would reserve these federal mineral rights, which are located near the eastern boundary of the federal lands north of Dunka Road and near the southeast corner of the federal lands south of Dunka Road (see FEIS, Figure 3.2-3).

7. The United States will acquire mineral rights on the Hunting Club lands (Tract 4). Mineral rights on Tracts 1, 2 and 3 will remain held by non-federal parties after the United States acquires the surface ownership.

DROD Table 1. Description and Acreage of Tracts⁷ Included in the Land Exchange Proposed Action as Modified Draft Decision

Tract	Parcel Name	Description (4th P.M.)	Total Acres (GLO)
Federal lands		T.60N., R13W (Secs. 33-35) T.59N, R.13W (Secs. 1-6) T.59N, R.12W (Sec. 6) T.59N, R.13W (Secs. 7-12) T.59N, R.12W (Sec. 7) T.59N, R.13W (Secs. 17, 18)	6,650.2
Non-federal lands			6,690.4
Tract 1	Hay Lake Lands	T.59N, R.16W (Secs. 9, 16, 19, 20-22, 27-33)	4,651.5
Tract 2	Lake County North	T.57N, R.12W (Secs. 5, 6)	199.5
	Lake County South	T.56N, R.9W (Sec. 17)	120.0
Tract 3	Wolf Lands 1	T.57N, R.11W (Sec. 8)	120.0
	Wolf Lands 2	T.58N, R.10W (Secs. 10, 14, 15, 22, 23)	760.0
	Wolf Lands 3	T.59N, R.9W (Secs. 30, 31)	279.4
	Wolf Lands 4	T.59N, R.9W (Secs. 7, 8, 17, 18)	400.0
Tract 4	Hunting Club Lands	T.66N, R.17W (Sec. 7)	160.0

⁷ See DROD Appendices A (federal lands) and B (non-federal lands) for land lists which include legal descriptions.

Rationale for the Draft Decision

In describing this draft decision, I considered the environmental effects of each alternative disclosed in the FEIS for the land exchange and the mining project. I considered how well each alternative would meet the USFS's Purpose and Need identified in Section 1.3.2.2 of the FEIS. I have consulted with tribal governments about their interests regarding land in the 1854 Ceded Territory. I have carefully reviewed the project record, including the comments submitted on the scoping report and the SDEIS. I considered all of the issues raised, scientific information in the project record, resource specialist input to the FEIS, competing interests and values of the public, and the interactions between various resources and interests following the direction of 36 CFR 254, Subpart A.

As I considered the analysis in the FEIS and the project record, including the Major Differences of Opinion (FEIS Chapter 8 and Appendix C), along with public comments, I recognize that large scale mining operations such as the proposed NorthMet mine are not without inherent risk and uncertainty. I also recognize that as I craft this draft decision there are unknowns, such as the myriad of final permitting and financial assurance specifications for mining activities on the land to be conveyed. However, through the permitting process administered by the U.S. Army Corps of Engineers, Minnesota Department of Natural Resources, Minnesota Pollution Control Agency, Minnesota Department of Health and other government entities; legal requirements for the protection of the environment and human health and financial assurance will be met (FEIS Section 1.4.4 and Table 1.4-1; FEIS Table 7.2.4-1).

Compliance with regulation and law related to development, construction, operation and reclamation of mining activities on the land to be conveyed is not discretionary and my reasonable assumption as I move forward with consideration of the effects and draft decision on the land exchange is that the mandatory requirements of relevant policy, regulation and law related to the mining project will be met. Fulfillment of these responsibilities, as described in the FEIS, is a premise of the environmental effects concerning reasonably foreseeable future use of the federal land to be conveyed to PolyMet under the land exchange. The NEPA requires a "hard look" at potential effects using available information. For this draft decision I particularly looked to the analysis in the FEIS related to potential impacts from the mining project on remaining national forest system lands to inform my draft decision. I believe the FEIS and project record provide that hard look, disclosing potential effects of the construction, operation and reclamation of the proposed mine and of the land exchange. In addition, the FEIS describes monitoring requirements and potential mitigation measures related to the mining project which will ensure continued compliance with regulatory requirements and future protection of National Forest System resources from mining impacts.

While the State of Minnesota, the U.S. Army Corps of Engineers and other government entities will use their own criteria and their distinct regulatory authorities to make their determinations after my draft decision is made, the FEIS and existing body of law provide the information I

need to make a reasoned choice among the alternatives and an informed draft decision on the land exchange at this time.

Forest Plan Direction and Purpose and Need

The land exchange meets the Purpose and Need by meeting desired conditions in the Superior National Forest Land and Resource Management Plan (Forest Plan) (USFS 2004b), including ensuring the land exchange eliminates existing conflict (D-LA-1, Forest Plan p. 2-51). Further guidelines for land exchanges to meet the intent of D-LA-1 are described in Forest Plan Guidelines G-LA-2 and G-LA-3. The land exchange also meets the Purpose and Need by ensuring mineral resources are produced in an environmentally sound manner contributing to economic growth (D-MN-2, Forest Plan p. 2-9).

Forest Plan Desired Condition D-LA-1 states:

“D-LA-1 – The amount and spatial arrangement of National Forest System land within the proclamation boundary of the Forest are sufficient to protect resource values and interests, improve management effectiveness, eliminate conflicts, and reduce the costs of administering landlines and managing resources.” (Forest Plan, Land Adjustment, p. 2-51)

Forest Plan Guideline G-LA-2 provides priorities to guide land acquisitions (Forest Plan pp. 2-51 to 2-52):

Priority 1 (a, b, and c are not listed in order of importance)

1(a) Land needed for habitat for federally listed endangered, threatened, proposed, or candidate species or for Regional Forester Sensitive Species.

1(b) Land needed to protect significant historical and cultural resources, when these resources are threatened or when management may be enhanced by public ownership.

1(c) Land needed to protect and manage administratively or Congressionally designated, unique, proposed, or recommended areas.

Priority 2 (a thru f are not listed in order of importance)

Key tracts that would promote more effective management and would meet specific needs for management, such as:

2(a) Land that enhances recreation opportunities, public access, and aesthetic values.

2(b) Land needed to enhance or promote watershed restoration or watershed improvements that affect the management of NFS land riparian areas.

2(c) Environmentally sensitive and/or ecologically rare lands and habitats.

2(d) Wetlands.

2(e) Land and associated riparian ecosystems on water frontage such as lakes and major streams.

2(f) Land needed to achieve ownership patterns that would lower resource management costs.

Priority 3

3(a) All other land desirable for inclusion in the National Forest System.

Guideline G-LA-3 provides priorities to guide land conveyances (Forest Plan, pp. 2-52):

The following National Forest System land is generally not needed for other resource management objectives and is potentially available for conveyance through exchange or other means (not listed in order of importance).

(a) Land inside or adjacent to communities or intensively developed private land, and chiefly valuable for non-National Forest System purposes.

(b) Parcels that would serve a greater public need in state, county, city, or other federal agency ownership.

(c) Inaccessible parcels isolated from other National Forest System land and intermingled with private land.

(d) Parcels that would reduce the need for landline maintenance and corner monumentation, result in more logical and efficient management, and improve land ownership pattern.

(e) Tracts that would be difficult or expensive to manage due to right-of-way problems, complex special use permits, or tracts with significant property boundary issues.

(f) On a case-by-case basis, land beneath or adjacent to resorts and summer home groups, currently under special use permits, may be considered for conveyance.

In regards to desired conditions for mineral development, the Forest Plan states:

“D-MN-2 – Ensure that exploring, developing, and producing mineral resources are conducted in an environmentally sound manner so that they may contribute to economic growth and national defense.” (Forest Plan, Minerals, p. 2-9)

My draft decision to implement the Land Exchange Proposed Action as modified conveys land to PolyMet in an equal value exchange (land plus an equalization payment) for land that will become part of the Superior National Forest. This exchange eliminates the conflict between the

USFS surface management and PolyMet's proposal to surface mine, meeting the intent of Forest Plan Desired Condition D-LA-1.

My draft decision further meets Forest Plan Desired Condition D-LA-1 in the following ways:

- Results in a 40-acre (GLO) net gain in NFS lands (DROD Table 2. DROD Table 2 displays details about outcomes of the Proposed Action as modified).
- Improves the spatial arrangement of NFS lands by reducing the amount of ownership boundaries to be managed by 33 miles (DROD Table 2).
- Improves management effectiveness by exchanging federal lands with no public overland access for non-federal lands that will overall have public overland access, especially for Tracts 1 and 4 (DROD Table 2; see also FEIS Section 5.3.11).
- Results in federal cost savings by eliminating two easements and their associated administration costs (see **Draft Decision**).

The non-federal lands to be acquired meet several of the priorities identified in Forest Plan Guideline G-LA-2. Tract 1, the Hay Lake tract, meets G-LA-2 Priority 1(c) criteria by adding 307 acres to the administratively proposed candidate Research Natural Areas (FEIS Table 5.3.1-1). Candidate Research Natural Areas (cRNA's) are managed by preserving and maintaining areas for ecological research, observation, genetic conservation, monitoring, and educational activities (Forest Plan pp. 3-34 and 3-37). The Hay Lake tract also meets several G-LA-2 Priority 2 criteria for public access, watershed protection, ecologically rare habitats, wetlands, water frontage, and improved ownership patterns. Tracts 2, 3 and 4 meet G-LA-2 Priority 2 criteria for access, wetlands, and improved ownership patterns (FEIS Section 3.3.1.1).

The federal tract to be conveyed meets several of the priorities identified in Forest Plan Guideline G-LA-3. The federal tract to be conveyed is adjacent to intensively developed private land including ferrous mining areas, meeting G-LA-3(a). The federal tract has no public overland access, is mostly isolated from other National Forest System land, and is mostly surrounded by private land; meeting G-LA-3(c). Landlines would be reduced through conveyance of the federal parcel, specifically by including the lands to the west of the mining area, meeting G-LA-3(d). Two easements would be eliminated, meeting G-LA-3(e). See FEIS Section 3.3.1.1.

While my draft decision is for the land exchange only, the future use on the conveyed land, the NorthMet Mining Project, meets the intent of Forest Plan Desired Condition D-MN-2. Based on the mining project design and mitigation as described throughout the FEIS, I believe that all practicable means to avoid and/or minimize environmental harm to remaining national forest lands that might occur from implementing the mining project are incorporated into the design and mitigations as to be implemented in the permitting process (40 CFR 1505.2(c)). Applicable law and regulations for the protection of the environment and human health will be met by the mining project (FEIS Section 1.4.4 and Table 1.4-1; FEIS Table 7.2.4-1). The FEIS also

discloses that the mining project will contribute to the regional economy and provide job opportunities (FEIS Section 5.2.10 Summary).

Public Interest Determination

A land exchange may be approved only when the Forest Service determines that the proposed exchange is in the public interest. 36 CFR 254.13(a).

Pursuant to 36 CFR 254.3(b)(2), to determine that a land exchange “well serves the public interest,” the Forest Service decision-maker must find:

“(i) The resource values and the public objectives served by the non-Federal lands or interests to be acquired must equal or exceed the resource values and the public objectives served by the Federal lands to be conveyed, and

(ii) The intended use of the conveyed Federal lands will not substantially conflict with established management objectives on adjacent Federal Lands, including Indian Trust lands.”

In accord with 36 CFR 254.3(b), in my consideration of the public interest, I must give “full consideration:”

- (1) “[T]o the opportunity to achieve better management of Federal lands and resources;”
- (2) “[T]o meet the needs of State and local residents and their economies;” and
- (3) “[T]o secure important objectives, including but not limited to”
 - a. “[P]rotection of fish and wildlife habitats, cultural resources, watersheds, and wilderness and aesthetic values;”
 - b. “[E]nhancement of recreation opportunities and public access;”
 - c. “[C]onsolidation of lands and/or interests in lands, such as mineral and timber interests, for more logical and efficient management and development;”
 - d. “[C]onsolidation of split estates;”
 - e. “[E]xpansion of communities;”
 - f. “[A]ccommodation of existing or planned land use authorizations (§ 254.4(c)(4));”
 - g. “[P]romotion of multiple-use values;”
 - h. “[I]mplementation of applicable Forest Land and Resource Management Plans;”
and
 - i. “[F]ulfillment of public needs.”

This regulatory framework outlines and defines the relevant considerations for the public interest determination, including those environmental effects, as disclosed by the FEIS, which importantly inform my draft decision.

While my draft decision is only for the land exchange, I have considered the effects of both the mining project and the land exchange as documented in the FEIS in making this public interest

determination. The effects of the mining project along with the conveyance of federal lands are considered for “the resource values and the public objectives served by the Federal lands to be conveyed” (36 CFR 254.3(b)(2)(i)) and “the intended use of the conveyed Federal lands” (36 CFR 254.3(b)(2)(ii)). The non-federal lands to be acquired are considered for “the resource values and the public objectives served by the non-Federal lands or interests to be acquired” (36 CFR 254.3(b)(2)(i)).

Effects of the Land Exchange are disclosed in the FEIS Sections 5.3 and 6.3 and are summarized in FEIS Section 7.3. In particular, Section 7.3.5 of the FEIS (especially Table 7.3.5-1 Public Interest Factors That Must be Considered for the Land Exchange Proposed Action) presents comparison of how the alternatives address the public interest factors for a land exchange. Effects of the Proposed NorthMet Mining Project are disclosed in FEIS sections 5.2 and 6.2 and summarized in section 7.2 (especially Table 7.2.4-1 Comparison of Environmental Consequences by Alternative).

DROD Table 2 displays how all of the public interest factors would be potentially affected by the Land Exchange Proposed Action as modified⁸. The public interest factors are affected in varying ways by the land exchange itself and by the proposed mining project on the conveyed lands. In making my public interest determination findings, I highlight outcomes related to public interest factors I find most relevant to the public interest determination for this land exchange.

Public Interest Determination-Findings (36 CFR 254.3(b)(2))

36 CFR 254.3(b)(2)(i)

I have given full consideration to the factors at 36 CFR 254.3(b) in making this required finding:

“(i) The resource values and the public objectives served by the non-Federal lands or interests to be acquired must equal or exceed the resource values and the public objectives served by the Federal lands to be conveyed”

There are a variety of resources and values both on the lands conveyed and those acquired. In any land exchange there are clearly things “gained” by the federal estate and clearly things “lost” to the federal estate. The full consideration of the resource values and public interest objectives resulting from this exchange can be found in DROD Table 2 and in the FEIS. Below I highlight the consideration of several key factors I considered in the determination of 36 CFR 254.3(b)(2)(i).

⁸ As discussed under **Findings Required by Other Laws-NEPA**, DROD Table 2 is very similar to FEIS Table 7.3.5-1.

Watersheds and Wetlands

I know that some people are concerned that the acres of wetlands on the acquired lands are not all within the St. Louis Watershed and as such do not serve as an adequate replacement for those wetlands lost due to construction of the mine. Mitigation will be required for wetland loss on the conveyed lands proposed to be mined (FEIS Section 5.2.3). The U.S. Army Corps of Engineers will make a decision on issuing a permit for dredge and fill of wetlands, and all associated wetland mitigation requirements for Section 404 of the Clean Water Act.

Still, people are concerned that the federal land to be conveyed contains a large contiguous wetland complex with an intact upland. Such a complex offers additional value beyond simply the accounting of the number of acres (FEIS Section 5.3.3.1.2). The non-federal lands to be acquired also contain high quality wetlands with ecological value and are parts of larger intact wetland complexes (FEIS Section 5.3.3.1.2). Some of these wetlands will also receive protection under the candidate Research Natural Area designation in the Forest Plan. cRNA's are managed by preserving and maintaining areas for ecological research, observation, genetic conservation, monitoring, and educational activities (Forest Plan pp. 3-34 and 3-37). Loka Lake cRNA was established recognizing a high quality lowland black spruce and tamarack swamp (FEIS Section 5.3.4.2). This exchange would contribute 172 acres to Loka Lake cRNA and would result in a 505 acre net increase of wetlands to the federal estate.

Enhancement of Recreation Opportunities and Public Access

The federal parcel is surrounded by private land, lacks public overland access and experiences little if any current recreation, hunting or gathering use. The acquired lands will overall have water and public overland access for recreation, hunting and gathering, especially Tracts 1 and 4. This contrast highlights the improvement in public access and recreation opportunities as an outcome of the land exchange (FEIS Sections 5.3.1 and 5.3.11).

My draft decision results in a net gain of 94 acres of public water lake with public water frontage available for public and tribal use. The frontage of Mud Lake is within the federal parcel being conveyed to PolyMet. Mud Lake has no overland public access. The frontage of Hay Lake and Little Rice Lake are being acquired in Tract 1. Both Hay Lake and Little Rice Lake will have public overland access for public and tribal use.

Cultural Resources

I understand there are cultural resources on the federal land that would be adversely affected by the mining project. While these effects will be addressed and mitigated in the Memorandum of Agreement through the National Historic Preservation Act Section 106 consultation process (see **Findings Required by Other Laws-National Historic Preservation Act**); I recognize that even with mitigation the mine adversely affects historic properties such as Mesabe Widjiu (Laurentian Divide), Spring Mine Lake Sugarbush, Beaver Bay – Lake Vermillion Trail

Segment, Erie Mining Company Concentrator Building, and Erie Mining Company Landscape Historic District. I also recognize while there may be cultural resources on the non-federal parcels, they are not known at this time. The non-federal parcels have not been surveyed but would be prior to any ground disturbing management activities. Any cultural resources discovered on the non-federal parcels would receive greater protection under federal ownership than under current ownership (FEIS Section 5.3.9.2.2).

Consolidation of Lands, Efficient Management and Consolidation of Split Estates

As described in the **Purpose and Need**, there is a conflict between surface and mineral estates on the federal parcel. This conflict is eliminated by the land exchange. Not all of the non-federal lands to be acquired include the mineral rights. However, the risk of conflict between mineral and surface rights on the federal lands is high due to the presence of privately owned mineral rights and economically developable minerals and USFS surface ownership. My draft decision would reduce this risk by exchanging the high-risk federal lands for predominantly low-risk non-federal lands (FEIS Section 5.3.1.2.5). There is a low potential presence of subsurface mineral resources on the non-federal tracts (FEIS Section 5.3.1.2.5).

The exchange results in a net reduction of 33.3 miles of Forest boundary to be managed. Reducing boundary lines simplifies management of NFS lands (DROD Table 2).

The exchange results in federal cost savings by eliminating two easements and their associated administration costs (see **Draft Decision**).

Finding for 36 CFR 254.3(b)(2)(i)

For the reasons discussed above and the further details provided by DROD Table 2 and in the FEIS, I find that the overall resource values and the public objectives served by the non-Federal lands or interests to be acquired exceed the resource values and the public objectives served by the Federal lands to be conveyed.

36 CFR 254.3(b)(2)(ii)

I have also given full consideration to the factors at 36 CFR 254.3(b) in making this required finding:

- (ii) The intended use of the conveyed Federal lands will not substantially conflict with established management objectives on adjacent Federal Lands, including Indian Trust lands.”

Regarding 36 CFR 254.3(b)(2)(ii), it is important to consider the context of adjacent lands. The conveyed federal lands are located adjacent to historic mining projects on the Mesabi Iron Range and are mostly surrounded by privately held land used for mining and other industrial purposes; portions of the east and southwest areas of the federal lands are bordered by Superior National Forest lands. Access to the federal lands is primarily via Dunka Road, which is privately owned,

and the former LTVSMC railroad by permission of private landowners. Privately owned properties to the north and west of the federal lands have been extensively affected over the years by surface mining, including mine pits, waste rock stockpiles, Tailings Basins, processing facilities, railroad grades, and other general mining activities (FEIS Section 3.3.2.1; FEIS Figure 3.3.2). On the broader landscape of northeastern Minnesota, extensive national forest lands surround the conveyed federal parcel (FEIS Figure 3.3-1).

I have considered the effects of the intended use of the conveyed Federal lands-the NorthMet Mining Project. Because of the scale and nature of the mining project, the area of potential effects to national forest lands is large. I realize there is the possibility of pollution or other impacts from the mine affecting adjacent national forest lands. However, the FEIS analysis indicates that with the application of the design features and mitigation measures included in the mining project and as to be implemented in the permitting process, regulatory requirements for the protection of the environment and human health will be met (FEIS Section 1.4.4 and Table 1.4-1; FEIS Table 7.2.4-1).

Water Quality

Water quality modeling performed supporting the effects analysis of the Mining Project summarized in the FEIS, indicates that water treatment systems in some form and at some scale would be needed indefinitely at the Mine Site and Plant Site. Water monitoring would persist as long as treatment is needed. Actual treatment requirements would be assessed on a reoccurring basis throughout operations and closure based on results of ongoing discharge, performance, and water resource monitoring, ensuring continuous protection of groundwater and surface water quality and compliance with applicable laws and regulations. It is acknowledged that operation, maintenance, and periodic replacement of environmental controls would be required after closure of the mine. The analysis in the FEIS indicates that the mining project will result in no significant effects to water quality, and no significant changes to groundwater and surface water flows (FEIS Executive Summary-NorthMet Project Effects on Water Resources). See FEIS Section 5.2.2 for more details.

PolyMet developed a groundwater flow model of the NorthMet Mine Site and surrounding area using the U.S. Geological Survey MODFLOW model to estimate groundwater inflows to the proposed NorthMet pits. The model assumed artificially high Northshore pit lake elevations that would lead to conservatively high groundwater inflows to the proposed NorthMet pits during Northshore operations and before the NorthMet pits refill in order to ensure sizing and effectiveness of the proposed wastewater treatment facility (WWTF) system. Comments and analysis from the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) contend that a north groundwater flowpath from proposed NorthMet pits to Northshore pits could occur after the NorthMet pits refill if Northshore pit water levels representing current and future operations and closure are considered.

Superior National Forest

The Co-lead Agencies consider northward flow unlikely, however they cannot exclude the possibility of a future northward flowpath from the proposed NorthMet pits to the Northshore pits (in a watershed of the BWCAW). Permitting agencies (FEIS Table 1.4-1) will require monitoring from the start of actual NorthMet mining operations to supply more reliable information necessary to understand the flow direction. If needed, contingency mitigation can be implemented using this monitoring information to preemptively stop a northward flowpath and prevent its potential impacts. The FEIS identifies and discusses water-level monitoring and contingency mitigation measures in Sections 5.2.2.3.5, 5.2.2.3.6, and 6.2.2.3.1.

Indian Trust Land

While the adjacent lands do not include Indian Trust lands, the adjacent national forest lands are within the 1854 Ceded Territory and the Fond Du Lac Reservation is downstream of the proposed mine. The Superior National Forest facilitates the exercise of Treaty rights on national forest lands within the 1854 Ceded Territory (Forest Plan Desired Condition D-TR-3, Forest Plan p. 2-37).

I considered the effects of the mining project on the exercise of 1854 Treaty rights on adjacent national forest lands. FEIS Section 5.2.10.2.6 discloses that “there is no expected change in fish mercury concentrations, and no subsequent change in human health risks related to fish consumption.” Also, “Construction and operation of the NorthMet Project Proposed Action is not likely to significantly reduce overall availability of 1854 Treaty resources that are typically part of subsistence activities in the 1854 Ceded Territory.” FEIS Section 5.2.9.2.2. See **1854 Treaty** in this draft decision for further discussion.

The land exchange results in a net gain in acreage to the 1854 Ceded Territory and increased access to those lands. Given the fundamental conflict between the USFS and PolyMet over appropriate use and management of the conveyed lands, and the risk that a mine could be developed in the absence of an exchange, I believe the Proposed Action as modified best ensures continued access to approximately the same acreage of federal lands within the 1854 Ceded Territory on which Band members can exercise their treaty rights.

Consolidation of Split Estates

The federal tract is currently a split estate. The Federal Government owns the surface and, with the exception of 181 acres⁹, PolyMet owns the mineral rights (or subsurface estate). With the

⁹ The United States owns 181 acres (GLO) of mineral rights on lands that are not part of the NorthMet Mining Project Proposed Action mine pits but are included in the exchange. The USFS would reserve these federal mineral rights, which are located near the eastern boundary of the federal lands north of Dunka Road and near the southeast corner of the federal lands south of Dunka Road (see FEIS Section 3.3.2.1 and FEIS Figure 3.2-3).

Superior National Forest

exchange, a single owner will own both the surface and the subsurface of the conveyed lands which consolidates the estate and eliminates the conflict between the surface and mineral estates.

Regarding the non-federal lands, the United States will acquire mineral rights on the Hunting Club lands (Tract 4). The United States will have consolidated ownership of the surface and mineral rights on Tract 4 as a result of the land exchange. Mineral rights on Tracts 1, 2 and 3 will remain held by non-federal parties. The potential for conflict on these tracts is reduced as compared to the high-risk federal lands (FEIS Section 5.3.1.2.5). There is a low potential presence of subsurface mineral resources on the non-federal tracts (FEIS Section 5.3.1.2.5).

State and Local Residents and Their Economies and Financial Assurance

The mining project would result in an active mining operation that would generate federal, state, and local tax revenue, in addition to employment. The NorthMet Mining Project would generate as many as 500 direct jobs during peak construction and 360 direct jobs during operation. These direct jobs would generate additional indirect and induced employment, estimated to be 332 additional construction-phase jobs and 631 additional operations-phase jobs (FEIS Section 5.2.10-*Summary*).

I understand there is concern about whether the public might at some point in the future become financially responsible for water treatment or other costs associated with the mine. FEIS Section 3.2.2.4 provides available details regarding financial assurance. PolyMet would be responsible for financial assurance costs. As stated in Minnesota Rules 6132.1200, Subpart 5, financial assurance criteria require that funds must not be dischargeable through bankruptcy and are fully binding and enforceable under state and federal law. Minnesota Rules 6132.1200, Subpart 7 state that the Permit to Mine could be suspended or revoked if the proponent does not comply with financial assurance criteria.

PolyMet would be held accountable for maintenance and monitoring required under the permit issued by the MDNR and would not be released until all conditions have been met. PolyMet would be required to provide financial assurance to MDNR (managed independently) for closure and maintenance costs as a contingency if PolyMet or the operating company at that time were unable to fulfill the obligations under the Permit to Mine.

Protection of wilderness

The mining project and land exchange do not adversely affect Wilderness. See **Findings Required by Other Laws**-1964 Wilderness Act for more information.

Consolidation of the split estate on these 181 acres is not necessary to eliminate the conflict between the surface and mineral estates.

Accommodation of existing or planned land use authorizations

Forest Plan objectives on national forest lands and zoning/land use designations on other ownerships adjacent to the conveyed federal lands were considered for any conflicts in management objectives. No substantial conflicts were identified. (FEIS Section 5.2.1.2.1 and 5.2.1.2.2; see also **Finding Required by Other Laws-National Forest Management Act**).

Finding for 36 CFR 254.3(b)(2)(ii)

For the reasons discussed above and the further details provided by DROD Table 2 and in the FEIS, I find that intended use of the conveyed Federal lands will not substantially conflict with established management objectives on adjacent Federal Lands, including Indian Trust lands.

Public Interest Determination

In consideration of all of the factors discussed in this draft decision, I find that in total the public interest is well served with this exchange.

Environmentally Preferable Alternative

The environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in the NEPA's Section 101. Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources. 40 CFR 1505.2 (b) requires that the record of decision specify the alternative or alternatives considered to be environmentally preferable.

For this project the No Action Alternative would be the environmentally preferred alternative. Under the No Action Alternative there would be no NorthMet Mining Project Proposed Action or Land Exchange Proposed Action. Refer to FEIS Sections 3.2.3.2 and 3.3.3.1 for a discussion on the No Action alternative.

NEPA requires that the No Action Alternative be evaluated for Environmental Impact Statements. This alternative describes that the Land Exchange Proposed Action would not take place. Under the Land Exchange No Action Alternative, no lands would be exchanged and the NorthMet Mining Project Proposed Action would not proceed. Since the open pit mining in NorthMet Mining Project Proposed Action would not occur, the risks of potential environmental effects of mining would not occur.

Although the Land Exchange No Action Alternative is the environmentally preferred action, I did not select it because it does not meet the USFS purpose and need for the land exchange. It does not address the conflict resolution needed between the USFS position that the mineral rights that were reserved do not include the right to surface mine as proposed by PolyMet, and

PolyMet's position that the mineral rights it seeks to utilize provide for access to the minerals by any mining method, including open pit or surface mining.

In turn, the No Action Alternative increases the likelihood that PolyMet will initiate litigation against the United States, asserting that the private mineral rights that PolyMet seeks to exercise include the right to open pit mine on National Forest System land. Such litigation has no certain outcome. The risk exists that litigation could result in a situation where the mining project is proposed and evaluated for approval without any non-federal land acquired in a land exchange. Further, a judicial decision adverse to the United States (e.g., finding an open pit mining right included within the mineral rights reserved in the deeds to the United States) could set a judicial precedent regarding other Weeks Act lands.

Other Alternatives Considered

The environmental consequences of Land Exchange No Action Alternative and Land Exchange Alternative B are evaluated along with the Land Exchange Proposed Action in Chapters 5 and 6 of the FEIS. The effects analysis of these alternatives is summarized in FEIS Chapter 7 which compares the effects between alternatives.

Land Exchange No Action Alternative

See discussion under **Environmentally Preferred Alternative**.

Land Exchange Alternative B

Land Exchange Alternative B was derived from the Mine Site Exchange Only Alternative that was developed to address concerns raised during scoping (refer to FEIS Section 3.3.3.3 Alternatives Considered but Eliminated from Detailed Analysis). This alternative would convey fewer acres of federal lands for fewer acres of non-federal land.

An issue that was raised through scoping for the proposed land exchange was that the USFS did not need to exchange the entire tract of federal lands included in the Land Exchange Proposed Action to accommodate the proposed Mine Site and development. Commenters noted that not all of the acres proposed for exchange would be needed for developing the NorthMet Mining Project Mine Site. Commenters stated that if there would be a land exchange, the USFS should exchange only the minimum amount of National Forest System lands needed for the Mine Site. The Land Exchange Alternative B addresses this issue by only including lands necessary for the Mine Site with less emphasis on minimizing the amount of USFS landlines and consolidating National Forest System lands ownership patterns. Compared to the Land Exchange Proposed Action as modified, 1,816 fewer acres (GLO) of National Forest System lands would be exchanged as part of Land Exchange Alternative B.

Land exchanges are based on equal value; consequently, because there would be fewer federal acres conveyed, there would be fewer acres of non-federal land that would be acquired. The federal government would convey 4,834 acres (GLO) of federal lands to PolyMet, and the USFS

would no longer manage these lands. The federal government would acquire 4,652 acres (GLO) of non-federal lands in one parcel, Tract 1.

The configuration of the smaller federal parcel is considered the smallest the boundary can be while still meeting the underlying Purpose and Need for the Land Exchange (see FEIS Figure 3.3-2).

I did not select this alternative because the remaining federal tract north of the Dunka Road and west of the proposed mine site would become an isolated piece of federal land with limited or difficult access through private property (see FEIS Figure 3.3-2). This does not meet the purpose and need as well as the Land Exchange Proposed Action as modified since keeping an isolated piece of land with difficult access does not meet the intent of Forest Plan Desired Condition D-LA-1.

Alternatives Considered but Eliminated from Detailed Analysis

The following alternatives were considered, but have been eliminated from further consideration because the proposals could not be acted upon at this time, were represented in the alternatives analyzed in detail, or did not meet the Purpose and Need. These alternatives are discussed in FEIS Section 3.3.3.3.

Direct Purchase Alternative

This alternative, as called for in USFS guidance (FSH 5409.13, Section 33.41a), would involve the USFS directly purchasing the non-federal tracts—i.e., the privately owned tracts identified for exchange to help meet USFS management objectives. The direct purchase alternative would not resolve the conflict between the United States and the proposed development of the private mineral estate at the federal parcel. For this reason, this alternative would not meet the Purpose and Need of the proposed Land Exchange, and thus it was eliminated from further consideration.

Single Contiguous Non-federal Parcel

PolyMet's proposed assemblage of land for the exchange was based on the standards and guidelines for land adjustment in the Forest Plan. The acquisition of a single contiguous non-federal parcel was not one of the priority criteria. Instead, the Forest Plan defines the desired condition for land adjustment in terms of the overall amount and spatial arrangement of National Forest System lands within the proclamation boundary along with criteria identified by Forest Plan Guideline G-LA-2. Moreover, PolyMet was not able to identify any single large tracts of land for sale. Therefore, this alternative was eliminated from further consideration.

Other Non-federal Lands

The exchange of the federal lands for multiple non-federal tracts that have wetlands and habitat more similar to the federal lands than the proposed non-federal lands was eliminated from detailed consideration for several reasons. The Land Exchange Proposed Action was designed to the extent possible with lands that were available for acquisition and that met Forest Plan standards and guidelines for land adjustment. Without identifying specific lands, this alternative

is theoretical only and would not meaningfully add to the range of alternatives considered. Therefore, this alternative was eliminated from detailed analysis.

Mine Site Exchange-Only

The Mine Site exchange-only alternative would have conveyed fewer acres of federal lands and was developed to address comments raised during the scoping period. Under this alternative, the federal government would have conveyed only the federal land that would actually be used for the NorthMet Mining Project Proposed Action.

The Mine Site proposal identifies the minimum area physically needed for mine features. However, environmental assessment of the NorthMet Mining Project Proposed Action identified the potential for air quality impacts at the Mine Site boundary that would exceed air quality regulatory requirements (Minnesota Rules 7009.0020). Compliance with air quality regulatory requirements is shown at the ambient air boundary - which is generally at the property line. Since effects to air quality dissipate with distance, modeling of air quality impacts showed that a larger land exchange area would allow PolyMet to meet air quality regulatory requirements. Consequently, this alternative was eliminated from further consideration because it would not provide an adequate area to meet air quality requirements. It was modified to Land Exchange Alternative B described in FEIS Section 3.3.3.2 and further evaluated in the SDEIS.

Full Exchange with Restrictions

Consistent with the Land Exchange Proposed Action, under this alternative, the federal government would have conveyed the entire federal tract (6,650 acres (GLO)), but would have placed use restrictions on a portion of the conveyed lands. This alternative was initially developed by the USFS during the 2009 Feasibility Analysis for the Land Exchange to compensate for a wetland imbalance when only the non-federal Tract 1 and Tract 5 were being proposed by the applicant as part of the Land Exchange Proposed Action. This imbalance has since been resolved through the addition of Tracts 2, 3, and 4 to the Land Exchange Proposed Action. Therefore, this alternative was eliminated from detailed analysis as it would have had substantially similar effects to alternatives already analyzed.

Underground Mining Alternative

The potential for an underground mine to be developed on federal lands (through permitting) instead of the proposed surface mining was raised by public comment through both the Land Exchange scoping process and the comment periods for both the DEIS and SDEIS. Commenters suggested that a land exchange would not be needed if underground mining was proposed for the NorthMet Deposit.

Underground mining was considered at the DEIS, SDEIS and again at the FEIS stage and was eliminated as an alternative to the NorthMet Mining Project Proposed Action because it was found to be economically infeasible (refer to FEIS Section 3.2.3.4 and FEIS Appendix B). Consequently, it is not a reasonable alternative to the Land Exchange Proposed Action.

Forest Service Authorization of Private Open Pit Mining on National Forest System Land

Hypothetically, an owner of the land could authorize the surface mining by a mineral rights holder, even when that mineral rights holder has no property right to such mining methods due to limitations of the severance deed. However, with respect to the United States' ownership interest in National Forest System lands, any such action taken by the USFS would have to be authorized by federal law. Stated more specifically, any USFS authorization of private open pit mining on the Superior National Forest would have to be made pursuant to and in accordance with federal statutory authority. Additionally, any such action would need to be consistent with the management objectives of the Superior National Forest. The USFS does not believe that such authority or consistency exists with respect to the lands conveyed to the Federal Government in 1935 and PolyMet's proposal for an open pit mine.

Tribal Consultation

Government to Government Consultation

I have consulted with the Fond du Lac, Bois Forte and Grand Portage Bands of Chippewa along with the 1854 Treaty Authority and the Great Lakes Indian Fish and Wildlife Commission through the development of this project proposal. I realize the Bands have deep concerns about this project. We have worked to listen to and understand these concerns through ongoing consultation.

We consulted with the tribal governments on the project since spring of 2006. Government to government consultation specifically on the land exchange with PolyMet started in 2009 after approval of the Land Exchange Feasibility Analysis. This consultation continued through proposed land exchange public scoping in 2010 and through development of the SDEIS and FEIS.

Objectives for consultation included meeting Forest Plan Objective O-TR-2: "Maintain a consistent and mutually acceptable approach to government-to-government consultation that provides for effective Tribal participation and facilitates the integration of tribal interests and concerns into the decision making process (Forest Plan p. 2-38)." Government to government consultations took place through annual and periodic meetings between Tribal Chairpersons and the Forest Supervisor throughout the environmental review process. The Superior National Forest continues to fulfill government to government tribal consultation commitments in developing this draft decision.

The tribal governments were also designated as Cooperating Agencies per 40 CFR 1501.6 in the preparation of the EIS beginning in February 2005 with Bois Forte and Fond du Lac Bands, and including Grand Portage beginning in May 2008. Work with the Bands as Cooperating Agencies continued through preparation of the FEIS. For example, there were twice monthly Cooperating Agency conference calls with staff to identify and understand concerns and issues since 2013. I

appreciate the expertise that the tribal governments brought to the EIS process. Their involvement has led to changes in the project design and in the display and understanding of effects. The concerns and technical comments shared by the tribal governments are many, and FEIS Chapter 8, Major Differences of Opinion, displays a summary of some of these concerns as understood by the Co-lead Agencies. Highlighted among these include technical comments about the effects analysis in the EIS, and concerns about resources of importance to the Bands. These include water quality, plants and animals important in hunting and gathering, and others. Although these differences of opinion persist between the Bands and the Co-leads, I do understand the concerns and the nature of the differences.

NHPA Section 106 Consultation

In addition to ongoing government to government tribal consultation, the federal Co-lead Agencies have actively consulted with the federally recognized Bands that have expressed an interest in consulting on the NorthMet Mining Project and Land Exchange. This consultation is on historic properties pursuant to requirements of Section 106 of the National Historic Preservation Act. Historic properties affected by the NorthMet Mining Project Proposed Action have been identified and the impacts to those properties have been assessed. This also includes an assessment of actual use of those historic properties, as well as other resources in the area of potential effect, by tribal members. The consultation process under Section 106 is described in FEIS Section 4.2.9. A Memorandum of Agreement (MOA) is being developed by the consulting parties. Consulting parties include USFS and USACE (federal Co-lead agencies); Minnesota State Historic Preservation Office; PolyMet (project proponent); and the Fond du Lac, Bois Forte, and Grand Portage Bands of Chippewa.

Historic properties that are adversely affected include Mesabe Widjiu (Laurentian Divide), Spring Mine Lake Sugarbush, Beaver Bay – Lake Vermillion Trail Segment, Erie Mining Company Concentrator Building, and Erie Mining Company Landscape Historic District.

There are adverse effects to these properties due to loss of sites and proximity to proposed activities. These effects will be mitigated through actions identified in the currently draft MOA developed by the consulting parties for this project.

Effects on cultural resources and culturally significant natural resources are addressed in the Cultural Resources sections in FEIS Chapters 4, 5, and 6.

1854 Treaty

The federal and non-federal tracts involved in the land exchange are located within the 1854 Ceded Territory. The Superior National Forest facilitates the exercise of Treaty rights on national forest lands within the 1854 Ceded Territory (Forest Plan Desired Condition D-TR-3, Forest Plan p. 2-37).

I understand that the opportunity to exercise treaty rights would be lost on the conveyed federal parcel. While little information is available on tribal uses within the federal parcel, I understand that some opportunities could be reduced such as gathering plants associated with coniferous bogs (FEIS Section 5.3.9.2.1).

However, under my land exchange draft decision, there will be a net gain of federal lands (40 acres GLO) and a net gain of wetlands under federal ownership (505 acres) available for tribal use within the 1854 Ceded Territory. All of the non-federal lands are within the 1854 Ceded Territory and would thus be subject to Treaty rights reserved by the Bands (FEIS Section 5.3.9.2.2). Overall, public overland access to the acquired lands is available for tribal use, especially on Tracts 1 and 4, whereas public overland access is not available on the conveyed land (FEIS Section 5.3.1.2.1).

There is also a net gain in public lake with public water frontage available for tribal use under my land exchange draft decision. The frontage of Mud Lake, within the federal parcel, is being conveyed to PolyMet. Mud Lake has no public overland access. The frontage of Hay Lake and Little Rice Lake are being acquired in Tract 1. Under my draft decision, Hay Lake and Little Rice Lake have public overland access available for tribal use. There would be a net gain of 94 acres of public water lake with public water frontage available for tribal use as an outcome of the exchange (DROD Table 2).

While there would be no change in public wild rice harvest opportunities available for tribal use as a result of my draft decision, there would be an increase of about 126 acres of wild rice beds within federal estate boundaries (FEIS Section 5.3.2.2.2; DROD Table 2).

In regards to effects of the mine itself, FEIS Section 5.2.10.2.6 discloses that “there is no expected change in fish mercury concentrations, and no subsequent change in human health risks related to fish consumption.” Also, “Construction and operation of the NorthMet Project Proposed Action is not likely to significantly reduce overall availability of 1854 Treaty resources that are typically part of subsistence activities in the 1854 Ceded Territory.” FEIS Section 5.2.9.2.2.

Finally, if I had selected the No Action alternative, the risk exists that litigation could result in a situation where the mining project is proposed and evaluated for approval without any non-federal land acquired in a land exchange (see **Purpose and Need**).

Among the things I think about most is that while many of us hold these lands dear, for most of us there is, essentially, a homeland somewhere else. For native peoples, there is no other homeland. I recognize that what they risk is different and that is reflected in their grave concern over proposed mining. I believe that my draft decision on the land exchange best ensures that Band members will continue to have access to and will be able to exercise treaty rights on approximately the same total acreage within the 1854 Ceded Territory.

In consideration of all of these factors and the analysis in the FEIS, I believe my draft decision is the best practicable way to both eliminate the conflict between the USFS surface management and PolyMet's proposal to surface mine on the federal parcel and achieve a net increase in accessible federal land within the 1854 Ceded Territory. My draft decision meets Forest Plan direction for Tribal Rights and Interests (Forest Plan pp. 2-37 and 2-38).

Public Involvement

We heard a wide range of interests and concerns from the public. I understand many people in local communities, throughout Minnesota, and in this country have strong feelings and viewpoints about this project. I have done my best to listen to and understand the interests and concerns. I have discussed some of the key issues raised in public comment in the **Rationale for the Decision**.

Land Exchange Scoping

As discussed in FEIS Section 2.3.1, the USACE and USFS published a Notice of Intent (NOI) to prepare an SDEIS; this NOI discussed both the intent to prepare an SDEIS, which would supplement the 2009 DEIS, and the inclusion of the Land Exchange Proposed Action as a connected action. The NOI identified that the comment period would be held for 45 days and provided notification that scoping comments were limited to the Land Exchange Proposed Action.

Open house scoping sessions were held in Aurora, Minnesota on October 26, 2010 and in New Brighton, Minnesota, on October 27, 2010. At each open house, representatives from the USFS, USACE, MDNR, PolyMet, and the Co-lead Agencies' third-party consultant provided information on the NEPA process, the NorthMet Mining Project Proposed Action and Land Exchange Proposed Action, and how to provide scoping comments.

SDEIS Publication

The SDEIS was made available to the public through notification in the December 9, 2013 EQB Monitor (Volume 37, Number 25) and December 13, 2013 (Volume 78, Number 240) Federal Register (FR). The notification informed the public that paper copies of the SDEIS were available for review at MDNR offices and public libraries in Grand Rapids, Hibbing, Hoyt Lakes, Babbitt, Duluth, Minneapolis, and St. Paul. Executive Summaries of the document and compact disks containing the full version of the SDEIS were provided upon request, and the entire document was also made available via the MDNR's website. Executive Summaries or full copies on paper or disk were distributed to parties on the Minnesota Environmental Quality Board (MEQB) distribution list as well as additional interested parties.

Comment Period and Public Meetings

The MEQB notification also identified that the 90-day comment period would end on March 13, 2014. Instructions and contact information were provided for submittal of public comments.

Following the release of the SDEIS, public meetings were held in Duluth, Minnesota, on January 16, 2014, Aurora, Minnesota, on January 22, 2014, and St. Paul, Minnesota, on January 28, 2014, to gather public comments on the SDEIS.

Receipt and Review of Public and Agency Comments

Public and agency comments on the SDEIS were collected during the 90-day comment period. Submissions came from federal, state, and local government agencies, tribal entities, local businesses, non-governmental organizations, private individuals, and PolyMet. Approximately 58,000 comment submissions were received by the Co-lead Agencies during the 90-day comment period.

Each submission was reviewed and individual unique comments were identified. The comments were then grouped into relevant topic areas and further categorized into comment themes. This process is described in more detail in FEIS Appendix A.

Consideration of Public Comments Received on the SDEIS

The SDEIS comments were considered and addressed through FEIS text edits and clarifications, project design modifications, and updated analysis where deemed appropriate. The comment themes were addressed with responses, as were each individual Cooperating Agency comment. A description of the process taken to consider, manage, and respond to the submissions, comments, and themes, as well as copies of the comments, themes, and responses are provided in FEIS Appendix A.

Findings Required by Other Laws

My draft decision meets the requirements of all applicable laws, regulations and executive orders. Exchanges are authorized by the Weeks Act of March 1, 1911 (36 Stat. 961 as amended; U.S.C. 516), the Federal Land Exchange Facilitation Act of August 20, 1988 and the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2755 as amended; 43 U.S.C. 1701, 1715, 1716, 1717).

National Environmental Policy Act (NEPA)

As discussed under **Rationale for the Decision**, I realize there is concern and disagreement regarding the predicted effects disclosed in the EIS (especially of the effects of the mining project) from some members of the public, interested organizations, tribal government, and others. I have heard from other interested people and organizations who expressed concerns that the analysis has taken too long.

The Co-Leads have worked to address concerns with the project design and effects analysis through progressive modifications over the 10 year public involvement and environmental review process (see Figure DROD-1). Even with this work, there remains vehement disagreement and differences of opinion regarding technical aspects of the effects analysis, the

design of the project, whether the predicted effects are considered acceptable, and the alternative to select.

While I realize there are deep differences of opinion and strongly voiced concerns, the effects analysis in the FEIS and the entirety of the public involvement process meets NEPA requirements and provides adequate information for me to make a draft decision on the land exchange.

I also considered how dropping Tract 5, McFarland Lake lands from the non-federal tracts would potentially alter the effects disclosure of the Proposed Action in the FEIS. Dropping Tract 5 would have no change on the mining project or the effects of the mining project disclosed in the FEIS. Regarding the land exchange, a comparison of DROD Table 2 and FEIS Table 7.3.5-1 indicates minimal changes for almost all of the factors evaluated in the public interest determination, which reflect a wide range of analysis in the FEIS. In addition, dropping Tract 5 is within the range of the alternatives evaluated in the FEIS since Alternative B and No Action disclose effects where Tract 5 is not acquired. The effects of the Land Exchange Proposed Action as modified are within the range of effects disclosed in the FEIS.

National Forest Management Act

The Forest Service is currently operating under the 2012 Planning Rule. As required by section 219.15(d) of the 2012 Planning Rule, this project is consistent with the direction found in the 2004 Forest Plan.

I considered the best available science in making my draft decision. The project record demonstrates a thorough review of relevant scientific information, consideration of responsible opposing views, and, where appropriate, acknowledgment of incomplete or unavailable information, scientific uncertainty, and risk.

As discussed under **Rationale for the Decision**, the land exchange meets the intent of Forest Plan direction, including D-LA-1, G-LA-2, G-LA-3 and D-MN-2.

I also considered additional relevant Forest Plan direction in making my draft decision:

Management Areas:

The federal parcel to be conveyed to PolyMet in my draft decision is in the General Forest and General Forest-Longer Rotation Management Areas (FEIS Table 4.3.1-1). Lands in these Management Areas are available for conveyance by exchange (O-GF-4, Forest Plan p. 3-7; O-LR-4, Forest Plan p. 3-11).

G-GF-4 (Forest Plan p. 3-8) and G-LR-4 (Forest Plan p. 3-12) are Forest Plan Guidelines for the General Forest and General Forest Longer Rotation Management Areas. These Guidelines state: “Generally, on lakes with 80 percent or greater public ownership, NFS water frontage land will be retained or will only be conveyed to a public land management entity.” The federal parcel is

located within these Management Areas, and contains Mud Lake which has greater than 80% public ownership. I am deviating¹⁰ from G-GF-4 and G-LR-4 by conveying the water frontage land of Mud Lake within the federal parcel to PolyMet. The analysis in the FEIS discloses the effects of conveying the federal tract containing Mud Lake to PolyMet and the effects of acquiring Tract 1, which contains Hay Lake and Little Rice Lake (see FEIS Section 5.3.2). There would be a net gain of 1.7 miles of shoreline under federal ownership and 94 acres of public water lake with public water frontage as an outcome of the exchange (DROD Table 2). Even though I am deviating from these two Forest Plan Guidelines, this outcome is a net gain in NFS water frontage. Accordingly, the purpose of these Guidelines to conserve lake shores in federal ownership is better met as an outcome of the land exchange.

The non-federal tracts to be acquired by the United States in my draft decision are in the General Forest, General Forest-Longer Rotation, Riparian Emphasis and candidate Research Natural Area Management Areas. Acquisitions are allowed in these Management Areas (O-GF-4, O-LR-4, G-RE-3, and G-RNA-5; Forest Plan Chapter 3). In particular, acquisition of lands to be added to the candidate Research Natural Areas is identified as 'Priority 1' in Forest Plan Guidelines G-LA-2 and G-RNA-5 and will allow the Forest Service to manage these lands to conserve their ecological and other values in the long-term.

Other Forest Plan direction:

With my draft decision, the federal parcel will become the property of PolyMet, and Forest Plan direction will no longer apply to the property. Nonetheless, we evaluated the effect of the mining project and land exchange on Forest Plan direction related to larger areas on the landscape.

- S-WS-1 (Forest Plan, p. 2-13): When the disturbance of the NorthMet mining project is considered, the amount of upland open and young forest in the 6th level watersheds overlapping the mining area would be below the 60% threshold identified in this Standard (NorthMet S-WS-1 review, project record).
- G-WL-3 (Forest Plan, p. 2-30): The Biological Assessment (FEIS Appendix D) evaluates the amount of unsuitable lynx habitat in Lynx Analysis Unit SNF12 which includes the NorthMet mining area. The total amount of unsuitable lynx habitat in this Lynx Analysis Unit under the NorthMet Mining Project and Land Exchange Proposed Actions is 6.4%, well below the 30% threshold for all ownerships identified in this Guideline (Biological Assessment, p. 6-60).
- Forest Plan direction related to Management Indicators Habitats: This direction generally applies Forest-wide. When the NorthMet mining project and land exchange is considered in combination with other land exchanges and acquisitions Forest-wide, there would be

¹⁰ My draft decision may deviate from a Forest Plan Guideline as described at Forest Plan p. 1-8.

Superior National Forest

an increase to the federal estate of approximately 46,000 acres of MIHs 1 to 14 (FEIS Table 6.3.5-1). This is consistent with Forest Plan direction.

My draft decision complies with the National Forest Management Act and the 2004 Superior National Forest Plan.

1854 Treaty

See **Tribal Consultation** for discussion on the 1854 Treaty.

Weeks Act of 1911

The Weeks Act of 1911 authorizes land exchanges when the public interest would be benefitted thereby. The Secretary of Agriculture is authorized, in his or her discretion, to accept on behalf of the United States title to any lands within the exterior boundaries of national forests, which, in his or her opinion, are chiefly valuable for the purposes of the Weeks Act. In exchange, the Secretary is authorized to convey an equal value of national forest land in the same State. Lands that are accepted by the Secretary under the Weeks Act become part of the national forest within whose exterior boundaries they are located and are subject to all provisions of the Weeks Act. My draft decision complies with the Weeks Act of 1911.

Mining and Minerals Policy Act of 1970

This legislation laid out the federal government's overall policy to foster and encourage private enterprise in the development of economically sound and stable industries, and in the orderly and economic development of domestic resources to help assure satisfaction of industrial, security and environmental needs. As discussed in regards to Forest Plan Desired Condition D-MN-2 under **Forest Plan Direction and Purpose and Need**, my draft decision is consistent with this Act.

National Historic Preservation Act

We have worked with the Bands and the State Historic Preservation Office to identify potential effects to historic properties during the environmental review for the proposed mining project. The Executive Summary of the FEIS, 'NorthMet Project Effects on Cultural and Socioeconomic Resources' states:

The federal co-leads have determined that there would be no adverse effect on the Erie Mining Company Railroad Mine and Plant Track, Main Line Segment, and Dunka Railroad Segment; Erie Mining Company Railroad Corridor Historic District; Duluth, Missabe, and Iron Range Railroad Segment; or Erie Mining Company Administration Building. However, the federal co-leads have determined that the Partridge River Section of the *Mesabe Widjiu*, the Spring Mine Lake Sugarbush, the Partridge River Segment of the Beaver Bay to Lake Vermilion Trail, the Erie Mining Company Concentrator Building, and the Erie Mining Company Landscape Historic District would be adversely affected by the NorthMet Project Proposed Action. The federal co-leads have considered

measures to avoid and minimize adverse effects, and are currently consulting with the Bands, MN SHPO, and PolyMet on the development of a draft Memorandum of Agreement (MOA) to resolve adverse effects.

Regarding the non-federal tracts, the FEIS (Section 5.3.9.2.2) states:

There are no known cultural resources on the non-federal lands, except known 1854 Treaty resources consisting of wild rice beds within the Hay Lake lands. Any potential cultural resources located on private lands being transferred to federal ownership would not be considered adversely affected by the proposed action, but would be considered to have greater preservation protection under federal law.

In summary, for the mining project, execution and implementation of the mitigation measures stipulated in the Memorandum of Agreement will evidence the federal Co-lead Agencies compliance with Section 106 of the National Historic Preservation Act. On the non-federal tracts, any cultural resources will have greater protection under federal ownership. My draft decision on the land exchange complies with the National Historic Preservation Act.

Executive Order 12898

(Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 1994)

I understand that there is concern about the effects of the mining project on minority and low-income populations, and in particular there is concern about hunting and gathering rights afforded to Native Americans under the 1854 Treaty.

The analysis in the FEIS evaluated the degree to which the mining project could disproportionately affect minority and low-income populations, including residents of the study area, as well as Band members who use the study area for subsistence, regardless of where they live. There would be a benefit in the form of increase in jobs and income; on the other hand, increased demand for housing and public service could result in a minor disproportionate effect due to rising prices. Overall, the analysis disclosed the mining project would not disproportionately affect these populations (FEIS Section 5.2.10.2.6).

When the land exchange is implemented, the conveyed federal parcel would not be available for tribal and public access and subsistence activities; the acquired non-federal tracts would be. There are unknown changes in the type and extent of subsistence resources on the federal and non-federal lands. The land exchange results in a net increase of federal lands available for tribal and public access, a benefit for hunting and gathering activities (FEIS Section 5.3.10). See also **1854 Treaty** for further discussion.

While my draft decision is for the land exchange only, when I consider the future uses and resource values on the conveyed lands and the acquired lands, my draft decision meets the intent of EO 12898.

Executive Order 13045

(Protection of Children from Environmental Health Risks and Safety Risks, 1997)

I realize that many people are concerned about the potential effects of the mining project on human health, including the health of children. The FEIS evaluates potential effects to human health. FEIS Section 5.2.10.2.6 discloses that “there is no expected change in fish mercury concentrations, and no subsequent change in human health risks related to fish consumption”. The FEIS at Section 5.2.2 evaluates effects to drinking water and water quality, and the predicted effects meet regulatory requirements for the management of drinking water. Likewise, the FEIS at Section 5.2.7.2.3 evaluates effects to air quality, and the predicted effects meet regulatory requirements for the management of air quality as it pertains to human health.

Applicable regulatory requirements will be required to be followed as part of the permitting process carried out by the Minnesota Department of Natural Resources, Minnesota Pollution Control Agency and Minnesota Department of Health (FEIS Table 1.4-1).

While my draft decision is for the land exchange only, when I consider the effects disclosed in the FEIS of the future uses of the conveyed lands along with the regulatory requirements, my draft decision meets the intent of EO 13045.

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Before the United States acquires non-federal lands, a Pre-Acquisition Phase 1 Environmental Site Assessment (ESA) is conducted in accordance with 40 CFR Part 312 to identify environmental liabilities associated with the tracts. If it is discovered that the property, or any portion thereof, is contaminated or is in a condition which would constitute a violation of federal, state, or local laws or regulations related to the protection of health, safety, or the environment, the United States may decline to acquire the lands or adjust the acreage and description of the nonfederal lands such that those portions of the property that are affected by the newly discovered contamination or condition are excluded from exchange. My draft decision complies with CERCLA.

1964 Wilderness Act

I have considered federally designated Wilderness, including the Boundary Waters Canoe Area Wilderness (BWCAW) in making my draft decision.

Wilderness qualities (which are used to monitor wilderness character) are defined as:

Untrammeled- wilderness is essentially unhindered and free from modern human control or manipulation.

Natural- wilderness ecological ecosystems are substantially free from the effects of modern civilization.

Undeveloped- wilderness is essentially without permanent improvements or modern human occupation.

Outstanding Opportunities for Solitude or a Primitive and Unconfined Type of Recreation- wilderness provides outstanding opportunities for people to experience solitude or primitive and unconfined recreation, including the values of inspiration and physical and mental challenge.

These four qualities are identified in the General Technical Report “Monitoring Selected Conditions Related to Wilderness Character: A National Framework: (USDA 2005 and 2009 reports) and Section 2(c) of the 1964 Wilderness Act (P.L. 88-577). The 1978 BWCAW Act (P.L. 95-495) includes additional purposes for this wilderness, but provides no further direction on defining the composition of wilderness character.

Section 4(b) of the Wilderness Act requires federal agencies managing wilderness to preserve wilderness character. Section 4(b) of the 1964 Wilderness Act states:

(b) Except as otherwise provided in this Act, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise provided in this Act, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

Below I explain my rationale for my finding for compliance with Section 4(b) through considering impacts to the four qualities described above.

Untrammeled-None of the activities authorized by my draft decision occur inside wilderness, so there would be no impacts to the untrammeled quality. There is no action authorized by my draft decision manipulating wilderness (FEIS Section 5.2.12.2.2).

Undeveloped-None of the activities authorized by my draft decision occur inside wilderness, so there would be no impacts to the undeveloped quality. There are no structures or human facilities developed inside wilderness as a part of my draft decision (FEIS Section 5.2.12.2.2).

Natural-the FEIS discloses that none of the activities would adversely affect the water, air, wildlife or vegetation in the wilderness:

- **Water Resources:** The BWCAW is located approximately 20 miles north of and in a different watershed than the NorthMet Mining Project area. Surface water flow and surficial groundwater flow from the NorthMet Mining Project Proposed Action would

not directly, indirectly, or cumulatively affect the water in these areas. Potential groundwater flow from the Mine Site north to the Northshore Mine (which is in a watershed of the BWCAW), if determined possible through monitoring, would be prevented (FEIS Executive Summary - NorthMet Project Effects on Water Resources). Monitoring and steps to prevent northward flow are discussed in the FEIS (Section 5.2.2.3.5-Contingency Mitigation and Section 5.2.2.3.6-Monitoring).

- **Air Quality:** The NorthMet Mining Project Proposed Action would not adversely affect visibility in the BWCAW and other evaluated federally designated Wilderness areas (FEIS Section 5.2.7 and FEIS Section 6.2.12.4).
- **Wildlife and Vegetation:** As stated at FEIS Section 5.2.12, water quality and air quality in the BWCAW would be virtually unchanged from existing conditions. Sounds from the mining project would not reach the BWCAW (FEIS Section 5.2.8.2.3). The absence of these direct effects means that there would be no indirect effects on wildlife, vegetation, or aquatic species (FEIS Section 5.2.12). Cumulative effects would not overlap spatially with the BWCAW for these resources (FEIS Section 6.2.12.2.1 and 6.3.12).

Outstanding Opportunities for Solitude or a Primitive and Unconfined Type of Recreation-

The FEIS discloses that there would be no impacts to this quality of wilderness character from the sounds and sights of the mining project. The mining project is located approximately 20 miles from the BWCAW (FEIS Section 5.2.8.1.1).

- **Sounds:** Section 5.2.8 of the FEIS discloses impacts of sound generated by mining. Sounds from the mining project would not reach the BWCAW (see FEIS Section 5.2.8.2.3 and FEIS Figures 5.2.8-4 and 5.2.8-6).
- **Sights:** As discussed under Air Quality, visibility in the BWCAW and other federally designated Wilderness areas would not be adversely affected. Distance and the Giants Range precludes views of the mining project from within the BWCAW (FEIS Section 5.2.11.2.2).

In summary, as stated at FEIS Section 5.2.12.2.2:

By virtue of distance, topography, watershed, or vegetation, none of the four characteristics of Wilderness defined above (Untrammled, Undeveloped, Natural, and Solitude or a Primitive and Unconfined Type of Recreation) would be affected by the NorthMet Project Proposed Action.

For the reasons cited here and the supporting analysis in the FEIS, my draft decision complies with section 4(b) and other provisions of the 1964 Wilderness Act.

Clean Water Act and State Water Quality Regulations

While the Forest Service assumes no responsibility for enforcing laws, regulations or policies under the jurisdiction of other governmental agencies, I understand that the wetlands, lakes and waterways of northeastern Minnesota are a defining feature of the landscape and effects to these resources are a key concern for many interested people. I have considered the effects, both beneficial and adverse, in making this draft decision on the land exchange. See **Rationale for the Decision** for discussion on this point.

Compliance with state water quality regulations related to the development of a mine will be met through the mine permitting process by the Minnesota Department of Natural Resources, Minnesota Pollution Control Agency, and Minnesota Department of Health (see FEIS Table 1.4-1). The analysis in the FEIS predicts no significant adverse effects to water quality (FEIS Executive Summary - NorthMet Project Effects on Water Resources; FEIS Sections 5.2.2, 5.3.2, 6.2.2, 6.3.2). The U.S. Army Corps of Engineers will make a decision on issuing a permit for dredge and fill of wetlands, and all associated wetland mitigation requirements (see FEIS Section 5.2.3 for more information on wetland mitigation). Through the mine permitting process administered by the U.S. Army Corps of Engineers, legal requirements for Section 404 of the Clean Water Act will be met. The Minnesota Pollution Control Agency will make a determination on the Section 401 certification and administer the National Pollutant Discharge Elimination System (NPDES/SDS) mine permits required for the project.

My draft decision on the land exchange complies with the Clean Water Act and applicable federal and state regulations to protect water resources.

Executive Order 11990-Wetlands

The Land Exchange Proposed Action as modified would result in a 505 acre net increase of wetlands to the federal estate. My draft decision conforms to EO 11990 (FEIS Section 5.3.3.1.1).

Executive Order 11988-Floodplains

There would be no decrease in the amount of mapped floodplain or increase in the flood damage potential associated with the Land Exchange Proposed Action as modified. The effects on the ecological function of the floodplain wetlands would be mitigated through the Section 404 Permit and the proposed mitigation described in FEIS Section 4.2.3. The Land Exchange Proposed Action as modified would also increase the wetlands within the federal estate. My draft decision conforms to EO 11988 (FEIS Section 5.3.3.1.3).

Clean Air Act and State Air Quality Regulations

Relevant state and federal regulatory thresholds for air quality were evaluated, including visibility in nearby Class I areas (the BWCAW, Voyageurs National Park, Rainbow Lakes Wilderness, and Isle Royale National Park (FEIS Section 5.2.7). The mining project has been shown to not cause or contribute to significant air quality effects (FEIS Section 5.2.7-Summary). During the permitting process to be completed by the State of Minnesota (see FEIS Table 1.4-1),

I have the role of Federal Land Manager under the Clean Air Act's Prevention of Significant Deterioration permit program. In that role I will have the opportunity to review the draft air permit under 40 CFR Section 52.21(p). My draft decision complies with the Clean Air Act.

Executive Order 13112 Invasive Species

Measures to minimize the spread of invasive species have been incorporated into the design of the mining project as well as wetland mitigation sites to the extent practicable. For example, "Disturbed areas would be reclaimed during operations and at closure...Seed mixes and methodologies would be designed to minimize the introduction of invasive species (FEIS Section 5.2.4-Summary)." The spread of invasive species on the non-federal tracts to be acquired by the federal government is varied but federal management would minimize spread to the extent practicable (for example, using measures described in the Superior National Forest NNIS Decision Notice of 2006). My draft decision complies with EO 13112.

Endangered Species Act

The Biological Assessment (BA) at Appendix D to the FEIS determined that the NorthMet Mining Project and Land Exchange Proposed Action is likely to adversely affect Canada lynx, Canada lynx critical habitat, the northern long eared bat, the gray wolf, and gray wolf critical habitat (BA, Executive Summary). The BA describes conservation measures at BA Section 7.0 to mitigate adverse effects to these species and critical habitats.

I also note that the BA states about Canada lynx and gray wolf: "It is unlikely that habitat loss and fragmentation resulting from the Project would represent a significant impact to lynx and wolf habitat from a regional perspective." On northern long-eared bats, the BA states "Impacts on northern long-eared bats from the Project would not preclude both the survival and recovery of the population as a whole." BA Section 8.0.

The BA has been submitted to the US Fish and Wildlife Service for formal consultation. Through the Endangered Species Act consultation process, the US Fish and Wildlife Service will issue a Biological Opinion (BO). The BO may contain conservation measures which will be required for compliance with the Endangered Species Act.

Regional Forester Sensitive Species

The Biological Evaluation (FEIS Appendix D) determined that the NorthMet Mining Project and Land Exchange Proposed Action would have no effect on some Regional Forester Sensitive Species (RFSS). For other RFSS, the NorthMet Mining Project and Land Exchange Proposed Action may impact individuals but are not likely to cause a trend to federal listing or loss of viability. The Executive Summary of the Biological Evaluation displays the effect determinations for each RFSS. Given these findings, my draft decision meets the direction in Forest Service Manual 2672.42.

Bald Eagle Protection Act and Migratory Bird Treaty Act

The Biological Evaluation (FEIS Appendix D) and the wildlife analysis (FEIS Sections 5.2.5, 5.3.5, 6.2.5, and 6.3.5), evaluates effects to wildlife, including the bald eagle and other birds identified as Regional Forester Sensitive Species. The evaluation found that the NorthMet Mining Project and Land Exchange Proposed Action may impact individuals but are not likely to cause a trend to federal listing or loss of viability. My draft decision complies with the Bald Eagle Protection Act and Migratory Bird Treaty Act.

Administrative Review and Objections Process

The NorthMet Land Exchange decision is subject to the objection process, pursuant to 36 CFR part 218, subparts A and B. These recently published regulations are available at: <http://www.gpo.gov/fdsys/pkg/FR-2013-03-27/pdf/2013-06857.pdf>

Objections will only be accepted from individuals or entities who previously submitted timely and specific written comments (as defined by 36 CFR 218.2) about this proposed project or activity during scoping or any other designated public comment period in accordance with 36 CFR 218.5(a). Issues raised in objections must be based on previously submitted timely, specific written comments regarding the proposed project unless based on new information arising after designated opportunities.

Objections for this project, including any attachments or supporting documentation, will be accepted for 45 days beginning on the first day after the date of publication of the legal notice in the Duluth News Tribune Newspaper of Duluth, MN. When the 45 day time period expires on a Saturday, Sunday, or Federal holiday, the time is extended to the end of the next Federal working day. The regulations (36 CFR 218.6(d)) do not allow for any other extension of the objection period.

The objection must be sent to:

Kathleen Atkinson, Reviewing Officer

Attn: Objections & Litigation

USDA Forest Service, Eastern Region

626 E. Wisconsin Avenue

Milwaukee, WI 53202

Hand-delivered objections must be submitted to the above address Monday-Friday, 8 am to 4:30 pm, except federal holidays. Faxed objections must be sent to 414-944-3963, Attn: Kathleen Atkinson-Reviewing Officer, USDA Forest Service, Eastern Regional Office. Electronic objections must be directed to: objections-eastern-region@fs.fed.us subject: NorthMet Land

Exchange: Objection. Acceptable formats for electronic objections are: text (.txt), MSWord 6.0 or higher (.doc), portable document format (.pdf), or rich text format (.rtf). All email submissions should contain “Notice of Objection: NorthMet Land Exchange/ Superior National Forest” as the first words on the subject line.

Pursuant to 36 CFR 218.8 (d), the objection must include a description of those aspects of the proposed project addressed by the objection, including specific issues related to the proposed project; if applicable, how the objector believes the environmental analysis or draft decision specifically violates law, regulation or policy; suggested remedies that would resolve the objection; supporting reasons for the reviewing officer to consider; and a statement that demonstrates the connection between prior specific written comments on the particular proposed project or activity and the content of the objection, unless the objection concerns an issue that arose after the designated opportunities for comment.

In addition, an objection must include the following: objector’s name address and telephone number (if available); signature or other verification of authorship of the individual, entity, or lead objector; the name of the project; the name and title of the Responsible Official; the name of the National Forest and the name of the Forest where the project will be implemented. Furthermore, incorporation of documents by reference is not allowed, except for the following: all or any part of a federal law or regulation; Forest Service directives and land management plans, documents referenced by the Forest Service in the proposed project EIS, comments previously provided to the Forest Service by the objector during public involvement opportunities for the proposed project where written comments are requested by the Responsible Official (36 CFR 218.8 (b)). All other supporting documents must be provided with the objection.

Final Decision

If no objections are filed within the 45-day time period for this Draft Decision, then a final decision may occur on, but not before, the 5th business day following the end of the objection filing period. If an objection is filed: a Final Decision will not be signed until all instructions (identified by the Reviewing Officer) have been addressed (36 CFR 218.12 [b]).

This decision is subject to certain Secretarial approval and 30-day congressional oversight requirements.

Those who are legal instrument holders, such as permittees, can appeal under 36 CFR 214 regulations upon the issuance of the final decision.

The land exchange would be implemented immediately after the Final Decision in 2016.

Contact Person

For more information about the specific activities in this Draft Decision, please contact Michael Jimenez, Project Manager at mjimenez@fs.fed.us or 218-626-4383.

DECIDING OFFICER:

BRENDA HALTER
Forest Supervisor
Superior National Forest

Date

Note: This is a Draft Decision and is not signed. The Final Decision will be signed by the Deciding Officer.

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