



WaterLegacy Comments to Minnesota Executive Council September 9, 2015

Mister Chair, members of the Executive Council, thank you for the chance to speak to you regarding the DNR's proposed auction of non-ferrous mineral leases on 103,000 acres in counties stretching across Northeastern Minnesota.

My name is Paula Maccabee. I serve as Advocacy Director and Counsel for WaterLegacy, a Minnesota non-profit formed to protect Minnesota's water resources and the communities that rely them. In 2012, I represented *pro bono* the citizens who sought environmental review of non-ferrous mineral leases.

The State of Minnesota owns mineral leases on 13.5 million acres, representing approximately 24 percent of the entire acreage of Minnesota. The State owns severed mineral rights under both public and private lands. Under Minnesota law, if State leases are sold, mining companies have the power to condemn private surface estates.

In prior meetings of this Council, Attorney General Swanson has stated that, once leases are auctioned, the Council has limited discretion to disapprove leases. However, today, before an auction has taken place, the State has complete discretion to decide if, when, where, and under what conditions to auction non-ferrous mineral leases.

We are asking today that the Executive Council ensure that no additional non-ferrous mineral leases be auctioned until environmental review is conducted and policy changes made to protect Minnesota water resources, landowners and taxpayers.

The DNR received 470 comments from citizens, and at least another 870 comments were sent to this Council by WaterLegacy supporters. Citizens have opposed non-ferrous mining leases and the creation of a sulfide mining district across Northeastern Minnesota. They've requested environmental and policy review and have expressed concerns about landowner rights, taxpayers risk and impacts to water resources.

Environmental Review

As Minnesota rules are now interpreted, a citizen may only request environmental review of prospecting on an individual case-by-case basis after a lease is already sold and exploration plan filed. This is too late.

Once leases are auctioned, it is too late screen out locations to prevent copper-nickel prospecting and sulfide mining near sensitive resources or local development. Many people don't realize this, but even if a sulfide mine is proposed and a full EIS ordered, that EIS does not require analysis to see if there are other sites where sites sulfide mining would cause less harm. The mining company alone chooses the "project" location.

Environmental review should be required prior to state auction of non-ferrous mineral leases to analyze the location, sensitivity and ownership of the acres,

screen out parcels from auction, and set appropriate conditions for any sales.

Policy Review

Under current Minnesota process, no analysis will *ever* be done to evaluate the cumulative risks of a huge sulfide mining district from the Boundary Waters to the Mississippi River. In response to comments requested that the PolyMet EIS evaluate cumulative effects of multiple copper-nickel mines proposed for Northern Minnesota, the DNR responded that potential future mining is “speculative” and “outside the scope of the analysis.”

Unless the Executive Council requires such inquiry now, there is no public process to evaluate the potential cumulative risks of a sulfide mining district across Northern Minnesota.

Policy review of the cumulative risks of creating a sulfide mining district across Northern Minnesota should take place before any additional auction of non-ferrous mineral leases.

Property Rights

Minnesota statutes currently allows a mining company lease holder to condemn the surface estate and enlist the Attorney General to prosecute that condemnation (Minn. Stat. §93.05, subs. 1 and 2). We believe this law is unconstitutional and that its threat harms property values and investments in Northern Minnesota.

Before any additional auctions of mineral leases on private property, Minnesota statutes allowing condemnation of surface estates should be amended so that private landowners and mining companies with mineral leases stand on equal footing.

Protecting Taxpayers from Sulfide Mining Costs

Minnesota rules for non-ferrous mining base financial assurance on an estimate of costs for contingency reclamation, defined as the costs if a permittee were to cease operations in the coming year. (Minn. R., Parts 6132.1200, subp. 2; 6132.1300, subp. 4). Under these rules, a company could get a permit to mine providing only enough assurance to cover reclamation after the first year of construction.

Corporations like PolyMet are set up for sulfide mining with no assets but the mine itself, so there are no resources if the mine goes bankrupt. PolyMet’s parent company, Glencore, has a track record of abandoning polluted sites.

Yet, PolyMet has not had to reveal financial assurance plans to the public. Despite requests by citizens that multi-billion dollar Glencore be included on the PolyMet permit, DNR has decided that PolyMet alone, not Glencore, would be responsible for potential liability.

Rules and policies should be changed to require financial assurance based on the

***complete* life cycle of operations and reclamation for non-ferrous mining and to include parent and joint venture companies on permits to mine and pollution permits.**

Independent Analysis of Sulfide Mining Risks

Sulfide mining poses new risks of toxic pollution to Minnesota, including the potential to contaminate the Boundary Waters and the Lake Superior Basin – among the world’s greatest freshwater resources.

There is widespread concern that PolyMet’s water modeling was designed by PolyMet and its consultants to conceal risks rather than to disclose them to the public and decision-makers.

Environmental review of any sulfide mine proposed for Minnesota should include independent and accurate water modeling and analysis of pollution and wetlands impacts.

Before additional leases are auctioned, policies and rules must be put into place to provide for environmental and policy review and to protect landowners and taxpayers. Cumulative and project risks of sulfide mining must be analyzed based on independent science and transparent public process.