

## Questions & Answers

### *What decision did the BLM and the Forest Service make?*

On June 3, 2016, the Bureau of Land Management (BLM) requested that the Forest Service provide a decision on whether it consents to the renewal of two leases currently held by Twin Metals Minnesota (TMM) located on the Superior National Forest adjacent to the Boundary Waters Canoe Area Wilderness. Requesting the consent of the Forest Service is standard practice. The Department of the Interior's regulations provide that the Bureau of Land Management's issuance of leases for the hard rock minerals in question on National Forest System lands is "[s]ubject to the consent of the surface managing agency." This grants the agency discretion to determine if permits or leases are within the best interest of the public and whether surface resources can be adequately protected.

On December 14, 2016, the Chief of the Forest Service sent the BLM a letter denying consent for the renewal of two mineral leases adjacent to the Boundary Waters. Subsequently, the Bureau of Land Management notified the lease applicant, Twin Metals Minnesota, that their leases would not be renewed.

### *Where are the leases in question?*

The leases are located directly adjacent to or within three miles of the Boundary Waters Canoe Area Wilderness on the Superior National Forest. The BWCAW is one of the most visited in the National Wilderness Preservation System, with nearly 150,000 visitors in 2015. Recreation tourism is a pillar of the region; economic benefits from recreation in the BWCAW are approximately \$100 million annually.

### *Why did the Forest Service withhold consent?*

After careful consideration, including two public listening sessions and a 30-day public input period, the Forest Service determined that the inherent risks of mining sulfide ore adjacent to the irreplaceable BWCAW is unacceptable.

The BWCAW is an exceptional resource, and the risks of affecting water quality by sulfide ore mining in the watershed outweigh the potential benefits of mining in this particular location. The BWCAW is known for excellent water quality, which supports internationally renowned fishing, wildlife viewing, and recreational opportunities. Indeed, it was in recognition of its irreplaceable resources, that Congress set aside the BWCAW more than 50 years ago and directed the Forest Service to maintain its water quality, protect its fish and wildlife and minimize the environmental impacts associated with mineral development.

The type of mining proposed here is untested in Minnesota and poses risk to the Boundary Water's unique natural resources. Acid mine drainage is a significant environmental risk at sulfide ore mine sites and as the Boundary Waters is a water-based ecosystem, contaminated water could have dramatic impacts to aquatic life, sport fisheries, and recreation-based communities.

*Did the public have the opportunity to participate in this decision?*

FS and BLM officials held two public listening sessions and a 30-day public input period. Input was collected through the mail, email, and the two public listening sessions held in Duluth and Ely.

*Why didn't the BLM/Forest Service conduct an environmental analysis under NEPA before making a decision?*

NEPA tasks agencies to assess changes in the physical environment caused by the action the agency proposes to authorize. NEPA does not require a federal agency to consider effects arising from an action it has declined to undertake and that do not represent changes in the physical environment caused by the federal action itself. Actions which do nothing to alter the natural physical environment and maintain the environmental status quo are not subject to NEPA. Therefore, declining to consent to the lease renewals does not require an environmental analysis under NEPA.

Nevertheless, the Forest Service and BLM did choose to hold two listening sessions and to hold a 30-day comment period in order to ensure that all relevant information was before the agencies.

*Has there been mining in this region previously?*

Yes, the northern region of Minnesota has a history of iron taconite mining. However, recent mining interest in the area has shifted from the historic taconite and iron mining operations of the past century, to copper and nickel mining in sulfide mineral deposits. Numerous examples of environmental harm resulting from mining in sulfide mineral deposits have occurred. Additionally, a number of scientific studies highlight the potential environmental risks associated with long-term storage of contaminated materials created by this type of mining.

*Can't we mitigate any potential harm from mining?*

Although contamination containment strategies do exist, it is doubtful any of the available strategies are compatible with maintaining the quality and the character of the wilderness required by the Boundary Waters Canoe Area Wilderness Act. If contamination did occur, either through gradual seepage of contaminants through ground or surface waters, or through catastrophic failure of a mine, it is likely impossible to clean up without severely degrading wilderness character.

*Who makes the decision on consent?*

The Secretary of Agriculture has the authority to grant or withhold consent. The Secretary can delegate that authority to other decision makers in the agency (Chief, Regional Forester, Forest Supervisor). In this case, the decision was delegated to the Chief of the Forest Service.

*What if I disagree with the consent determination? Can I appeal?*

There is no administrative process for challenging the Forest Service decision regarding consent for lease renewal.

*Can the BLM renew these leases without the Forest Service's consent?*

No. BLM regulations at 43 C.F.R part 3500 require Forest Service consent prior to the BLM issuing permits or leases.

*Was this decision analyzed under the NEPA?*

No. The decision to consent or not to consent, in itself, is not subject to analysis under the NEPA. Analysis under the NEPA is triggered by federal actions that may affect the physical environment.

Because the decision is to withhold consent, there are no physical environmental effects and further analysis under NEPA is unwarranted.

*What is the process for determining consent?*

The Forest Service's decision whether or not to consent to the lease renewals is based in current law and policy. BLM regulations at 43 C.F.R part 3500 require Forest Service consent to the BLM prior to issuing permits or leases. Additionally, the Forest Service has regulatory authority to grant or deny consent to lease renewals within national forest boundaries in Minnesota (16 U.S.C. § 508b, 60 Stat. 1099). Taken together, this grants the Forest Service discretion to determine if permits or leases are in the best interest of the public and whether surface resources can be adequately protected.

*Why are the agencies pursuing a different process to renew Twin Metals' leases than followed in 1989 and 2004?*

Following a request from the Bureau of Land Management asking that the "USDA Forest Service provide, in writing, a decision on whether it consents or does not consent to renewal of the leases," the Forest Service followed the review process outlined in the Forest Service Manual (FSM 2800) to make the consent determination.

The BLM request for a consent determination is in accordance with the USDI Solicitor's Memorandum M-37036, stating the renewal of BLM leases MNES-1352 and MNES-1353 are discretionary by the BLM. Based on this position and within the authorities granted in 16 USC 508b and 60 Stat. 1099, the BLM Eastern States office requested in a June 3<sup>rd</sup>, 2016 letter that the "USDA Forest Service provide, in writing, a decision on whether it consents or does not consent to renewal of the leases."

*If NEPA is not done, how can you have environmental concerns?*

The risks to the environment posed by mining in sulfide mineral deposits, like those found within the proposed lease renewals, are well-documented. There is a great deal of scientific literature on mining in sulfide mineral deposits, including studies on their environmental impact, which support reasonable concern for potential impacts within the watershed.

*What about social or economic effects – don't you have to analyze them?*

The Forest Service understands that the decision not to consent to lease renewal could have social and economic effects. Although social and economic effects do not individually trigger a NEPA analysis without associated physical environmental effects (40 CFR 1508.14 and 36 CFR 220.4(a) (3)), they were an important consideration in the consent determination.

*Was the public input period the same as initial scoping under NEPA?*

No, the public input period was a voluntary action, unrelated to NEPA, taken by the Forest Service to ensure officials fully appreciate public sentiment toward the proposed lease renewals. The public input period does not initiate environmental review under NEPA.

*How did the Forest Service use public input? How will it be shared?*

Public input was gathered and summarized, based on issues raised, to identify new information and to give Forest Service decision makers a broad understanding of the range of public concerns prior to making their final consent decision.

*How much and what kind of public input did the Forest Service receive?*

Approximately 30,000 individual emails were received including form letters, master forms with multiple signatures, and unique messages. A total of approximately 120 paper letters and petitions containing nearly 60,000 signatures were received. The public input ranged from full support for lease renewal to complete opposition.

*How long did the listening sessions last? How many people spoke?*

The listening sessions each lasted 2.5 hours. At the public listening sessions, a total of 89 people provided verbal input.

*Why was the first listening session held in Duluth?*

Based on past public input on similar issues, listening session attendees were expected to come from the Twin Cities, the Iron Range and other nearby communities. The Forest Service wanted a centrally-located facility related to stakeholders who had expressed interest. More than 2,000 people were expected to attend the listening session so a large venue was needed to hold everyone. The Duluth Entertainment and Convention Center is the only location in northern Minnesota that can accommodate a crowd that large, that has an adequate sound system, provides set up and take down support, and can effectively support internet live streaming.

*Why did the Forest Service add a second public listening session?*

The Forest Service held a second listening session in Ely to address the strong expression of concern by elected officials and citizens living on the Iron Range that Duluth is not a reasonable location for them to travel to participate.

*Why didn't the Forest Service plan a listening session on or near the Iron Range in the first place?*

The DECC in Duluth was selected as the site that met all three criteria for a listening session: 1. Could accommodate at least 2,000 people, 2. Centrally-located relative to interests from the Twin Cities and the Iron Range, and 3. Acoustics along with technical and logistical support desired. The intent was to effectively provide a large-scale event to gather the full range of public input.

*Why did the Forest Service state a concern, rather than just asking people what their concerns are?*

The Forest Service believes this was the most honest and transparent approach.

*How will this affect the PolyMet Land Exchange? When will the final PolyMet decision be published?*

The Twin Metals leases are unrelated to, and have no impact on, the PolyMet Land Exchange decision.

*Why is the process for the PolyMet Land Exchange (Northmet project) different from the one for the Twin Metals Lease Renewals?*

The Twin Metals Leases involve federal minerals, which the Bureau of Land Management is authorized to manage on behalf of the federal government. These federal minerals are located

under surface resources owned by the federal government and managed by the Forest Service. The Northmet project involves private minerals over which the federal agencies (BLM and Forest Service) have no authority. The Forest Service is authorized to manage the federal lands overlaying the private mineral estate involved in the Northmet project. PolyMet submitted a proposal to develop a mine to the State of MN and proposed the land exchange to the Forest Service. These proposed actions expressly involve physical effects to the environment and require analysis to meet requirements of the NEPA.

*How does the lawsuit filed by Twin Metals Minnesota against the BLM affect the Forest Service's determination not to consent to lease renewal?*

The Forest Service is not a party involved in the lawsuit. It would not be appropriate to comment on ongoing litigation.