

Decision Notice & Finding of No Significant Impact

Encampment Resources L.L.C. (Encampment) Prospecting Permit MNES-050817

Kawishiwi Minerals Exploration

USDA Forest Service, Superior National Forest, Kawishiwi Ranger
District, Lake County, Minnesota

T61N, R11W

Sec 1: Lots 3,4, S1/2NW, SW

Sec 2: Lots 2-4, SENE, SE

Sec 10: All

Sec 11: All

T62N, R11W

Sec 25: E1/2SW, NWSE, S1/2SE

Sec 35: NESE, SWSE

Decision

I have decided to implement Alternative 3 as described in the Environmental Assessment (EA) for the Encampment Resources L.L.C. (Encampment) Plan of Operations for the Kawishiwi Minerals Exploration Project. Under this decision the Forest Service will issue a letter to the United States Department of the Interior Bureau of Land Management (BLM) providing advice on the conditions for approving Encampments prospecting permit plan of operation and the BLM authorization of Encampment access and surface occupancy on National Forest System lands for the purpose of mineral exploration.

This decision is based on Encampment's existing permit terms and conditions, Forest Plan goals and objectives, public comments and analysis disclosed in the environmental assessment. This decision ensures that the proposed actions will only occur under terms and conditions identified by the Forest Service and BLM and will not result in significant adverse impacts to the environment based on the evaluation of current conditions and recent on the ground validation, and it ensures consistency with the Forest Service's previous permit consent decision and the Superior National Forest 2004 Land and Resource Management Plan (Forest Plan).

My decision includes condition of approval requirements based on section 2.2.2 Project Design Features – Resource Stipulations of the EA. These requirements are included in Appendix B of this document.

Based on this EA, I am also making two other decisions on plan of operations from Duluth Metals Corporation and Franconia Minerals Corporation. These Forest Service decisions are being made simultaneously. There will be three separate subsequent BLM decisions prior to any drilling. Based on the Forest Service advice, the BLM will decide on authorizing the Duluth Metals, Encampment, and Franconia plan of operations to

explore federal minerals. The other plans of operations activities are factored into the direct, indirect, and cumulative effects analyses in the EA.

This decision includes geophysical surveys, core drilling and construction of temporary roads in portions of the project area as indicated in Appendix A, Figure 2 of this document and in EA section 2.4 and EA Figure 2.2.

Alternative 3 was chosen because this alternative allows the Forest Service to advise the BLM on conditions of approval and incorporates design criteria and stipulations to the conditions of access and surface occupancy permits for Encampment's exploration of federal minerals under their prospecting permit.

Rationale for Decision

The purpose and need is for Encampment, as one of the three proponent companies considered in the EA, to conduct mineral exploration drilling and geophysical activities that will allow them to collect geologic information and drill core samples that may be used to analyze, map and discover the presence and extent of minerals. I have selected Alternative 3 not only because it meets the purpose and need described in section 1.4, but also because it is the alternative that best addresses the issues and concerns raised by the public as identified in section 1.8 of the EA. Rationale for selecting Alternative 3 is discussed below in terms of significant issues, threatened, endangered and sensitive species, and the Boundary Waters Canoe Area Wilderness (BWCAW).

Significant Issues

Section 2.5 Comparison of Alternatives shows that Alternative 3 best meets the significant issues identified in section 1.8.1. The significant issues identified in the EA that apply to Encampments plan of operations are related to helicopters providing access to Encampments drilling sites and noise from drilling operations and their season of operations.

Helicopters

People raised concerns that noise from Encampments proposed helicopter operations to access drill sites could affect people in and near the South Kawishiwi River Campground and people entering and using the BWCAW at Entry Points #32 South Kawishiwi River and #33 Little Gabbro Lake.

Since Alternative 3 does not include utilizing helicopters to provide access, there will be no effects on local property owners and recreationists from noise of helicopters moving drilling equipment to and from proposed sites.

Noise from drilling operations and season of operations

People noted that they would be much less likely to be impacted by drilling noise if it were to occur in frozen conditions since they were much less likely to be using recreational private property, the campground, or the BWCAW entry points during the winter.

People also commented that sound can be potentially heard at recreational private property, the campground, or the BWCAW entry points. Estimated changes in decibels

indicate potential changes in levels of noise that people would experience at their recreation residences, the campground, and the BWCAW entry points during drilling.

The estimated decibels of operations that could be heard and days of operations would be the same under either action alternative considered in detail. However, noise from core drilling in Alternative 3 would only affect a smaller number of people during the winter, rather than both winter and non-winter recreation, at recreational private property, South Kawishiwi River Campground, and Boundary Waters Canoe Area Wilderness (BWCAW) Entry Points #32 and #33.

Threatened, Endangered, and Sensitive Species

As shown in detail in the Biological Evaluation (EA Appendix B and Project File) and as summarized in sections 2.5, 3.4 and 3.5 of the EA, neither Alternative 2 nor Alternative 3 would lead to federal listing or the loss of viability of the species. Both action alternatives could result in degradation in the competitive advantage of lynx in a very small portion of Lynx Analysis Unit (LAU) 10 due to snow compaction and only about 9 acres of lynx habitat would be impacted of 35,557 in LAU 10. Because of the small area and short duration of impact these effects are expected to be minor (Sections 3.4, 3.5, and Appendix B).

Although Alternative 3 will result in about 3.1 more miles of temporary roads with compacted snow than under Alternative 2, neither alternative would lead to federal listing or the loss of viability of the species (BE, EA Appendix B). The impacts of these temporary roads will be decommissioned following completion of exploration activities. In addition, there will be less disturbance to breeding animals overall and less ground disturbance to plants under Alternative 3 than there would be under Alternative 2.

Boundary Waters Canoe Area Wilderness

The EA calculates and analyzes decibel levels within the BWCAW in section 3.2.

The EA provides quantitative evidence and analysis of decibel levels projected by the minerals exploration included in Encampments plan of operations at Entry Points #32 and #33 and on into the adjoining wilderness. The data and analysis provided in the EA in section 3.2 provide interested parties the information I used in making the decision to implement Alternative 3.

Alternative 3 will limit the amount of people in the BWCAW affected by the drilling noise, since drilling would occur only in frozen conditions in the winter. The number of recreational users within the Project Area varies by the season. During May through September visitor use is relatively high as indicated in Table 3.2.4, by the number of BWCAW permits issued for the entry points. Based on field observations October and November visitor use is moderate with users in the area during the various hunting seasons pursuing grouse, moose, and deer. Based on field observations from December through April the amount of winter visitor use is low. In addition, winter users can also hear noise from the Tomahawk Snowmobile Trail, a designated State of Minnesota Grant-in-Aid snowmobile trail.

BWCAW entry #32 and #33 are 1.27 miles and 2.52 miles away respectively from the nearest Encampment drilling sites (Figures 3.2.2 and 3.2.3). Based on decibel

calculations (Table 3.2.3), visitors at Entry Point #32 would perceive the drilling noise, but it would be quiet (31.5 to 41.4 dBA). Drill noise would even be quieter, if perceived at all, at Entry Point #33 (24.5 to 35.5 dBA). As shown in Tables 2.5 and 3.2.5, the change in decibels would be from about 2.2 to 3.0 decibels. Table 3.2.2 shows that a change of 3 dBA is the threshold of human perception.

Once visitors are about a mile into the BWCAW on the South Kawishiwi River, they would be at a distance from the drilling activities that the drilling noise would not be heard (Figures 3.2.1 – minimum dBA that people can hear & 3.2.2: Recreation Sites Affected by Noise). Potential impacts to the solitude for wilderness users venturing to or from entry point #32 would be limited to that area. This area is within the Semi-primitive Non-motorized Wilderness Management Area (MA) within the BWCAW, as shown in Figure 3.2.3. On page 3-45 the Forest Plan states: “Semi-primitive Non-motorized Wilderness MAs provide visitors with a semi-primitive wilderness experience in a predominantly unmodified natural environment. They are generally located along the main travel routes, where a visitor expects to encounter others more frequently, and solitude is not one of their highest priorities. A lesser degree of challenge, risk and freedom is provided here.”

In addition, the desired social condition of Semi-primitive Non-motorized Wilderness MAs is such that opportunities for experiencing isolation and solitude are moderate to low. The frequency of encountering others in the area is moderate. The challenge and risk associated with recreational opportunities is moderate to low (Forest Plan, pg 3-45).

Although drill rig noise could potentially reduce wilderness users’ sense of solitude, motor vehicle sounds from CR23 leading to Entry Points #32 and #33, and snowmobile noise might also be heard. It is also important to note that the noise from drilling operations would occur over the course of weeks or months during frozen conditions for the length of the remaining permit time rather than on-going without end into the future. Overall, these possible noise impacts to the wilderness would be within the desired conditions and expectations for a Semi-primitive Non-motorized MA, the area where drilling noise might be heard.

Other Alternatives Considered

Other alternatives considered in detail are described in sections 2.1 – 2.4 of the EA. These include Alternative 1, the No Action alternative, and Alternative 2, the Proposed Action. Two other alternatives described in section 2.6 of the EA were considered but not analyzed in detail.

Alternative 1 – No Action Alternative

Choosing the No Action Alternative, as described in EA section 2.1, is not a viable alternative since the existing prospecting permit gives Encampment the right to perform mineral exploration in accordance with the terms, conditions and stipulations of their permit. Council on Environmental Quality (CEQ) regulations require the analysis of the no action alternative even if the agency is unable to choose this alternative. The analysis of the no action alternative provides a benchmark, enabling decision makers to compare the magnitude of environmental effects of the action alternatives.

In addition, the No-Action Alternative does not meet the purpose and need for Encampment, as one of the three proponent companies considered in the EA, to conduct mineral exploration drilling and geophysical activities that will allow them to collect geologic information and drill core samples that may be used to analyze, map and discover the presence and extent of minerals.

The No-Action alternative, Alternative 1, was considered as required by the National Environmental Policy Act (NEPA).

Alternative 2 – The Proposed Action

While Alternative 2 meets the purpose and need for this project, it was not selected because it does not best address the concerns and issues raised by the public through the scoping efforts and 30-day comment period, as identified in section 1.8 of the EA, and discussed below in terms of significant issues, threatened, endangered and sensitive species, and the BWCAW.

Significant Issues

Helicopters

Since Alternative 2 would include utilizing helicopters to provide access to drill sites, there would be some effects on local property owners and recreationists from noise of helicopters moving drilling equipment to and from proposed sites.

Noise from drilling operations and season of operations

Noise from core drilling in Alternative 2 would affect winter recreation and non-winter recreation at private recreational properties, South Kawishiwi River Campground, and BWCAW Entry Points #32 and #33.

Threatened, Endangered, and Sensitive Species

Although Alternative 2 would have less compacted snow than under Alternative 3, there would be more disturbance to breeding animals overall and more ground disturbance to plants than there would be under Alternative 3.

Boundary Waters Canoe Area Wilderness

Noise from drilling in Alternative 2 would affect more people entering and using the BWCAW than in Alternative 3, since drilling would occur not only in frozen conditions in the winter but also during non-winter season, since the number of recreational users within the Project Area varies by the season. During May through September visitor use is relatively high as indicated in Table 3.2.4, by the number of BWCAW permits issued for the entry points. Based on field observations October and November visitor use is moderate with users in the area during the various hunting seasons pursuing grouse, moose, and deer. Based on field observations from December through April the amount of winter visitor use is low.

Public Involvement

The proposals were identified in the Superior National Forest Schedule of Proposed Actions in July and October 2007. The proposed action was provided to the public and

other agencies for comment in April 2007. The mailing list for this scoping effort had about 283 addresses. The public submitted input regarding the proposed action in June 2007. The Superior National Forest received 55 letters, e-mails, and phone calls regarding the proposal from individuals, South Kawishiwi River Recreation Residence owners, resort owners, environmental organizations, tribal representatives, and government agencies.

On September 21, 2007 the legal notice for the 30-day comment period was published in the *Ely Echo*, and about 80 Draft EAs were sent out to those who provided input during scoping, key contacts, government agencies, and those who had requested copies of the draft EA be sent to them. During the 30-day comment period the Superior National Forest received 84 letters, e-mails, and phone calls regarding the proposal from individuals, South Kawishiwi River Recreation Residence owners, resort owners, environmental organizations, tribal representatives, and government agencies.

The scoping package and lists of the correspondence received during scoping and the 30-day comment period are in Appendix D. Appendix F contains comments received during the 30-day comment period along with agency responses to those comments.

In addition, as part of the public involvement process, the Kawishiwi Ranger District notified the public of the proposed drilling operations under the permit for Encampment in September 2006. Using the comments from individuals and local property owners, organizations, government agencies, Boise Forte Band of the Ojibwe, the interdisciplinary team developed the issues to address.

Documentation of review of public comment is located in the project file.

Finding of No Significant Impact

I base my finding on the following:

A) Context:

In the case of site specific actions, significance would usually depend on the effects in the locale rather than in the world as a whole. Both short and long-term effects are relevant FSH 1909.15, 65.1, Part 02.

This project is a site-specific action that by itself does not have international, national, region-wide, or statewide importance. The discussion of the significance criteria that follows applies to the intended action and is within the context of local importance in the area associated with the Kawishiwi Minerals Exploration project area (see attached map). I considered the short and long term effects of mineral exploration activities as described in the EA (Chapter 3). It is my determination that the effects of implementing Alternative 3 for Encampment's plan of operations will not be significant locally, regionally or nationally.

B) Intensity:

This refers to the severity of impact and the following areas should be considered in evaluating the intensity of the actions. Discussion is organized around the ten significance criteria described in the National Environmental Policy Act (NEPA) regulations (40 CFR 1508.27).

After considering the environmental effects described in the EA in Chapter 3, I have determined that these actions will not have a significant effect on the quality of the human environment considering the context and intensity of impacts (40 CFR 1508.27). Thus, an environmental impact statement will not be prepared. I base my finding on the following:

1. Consideration of both beneficial and adverse impacts.

I considered both beneficial and adverse impacts associated with the alternatives as presented in Chapter 3 of the EA. Effects occur at localized sites where core drilling occurs. Potential impacts are localized at the road and core drill sites themselves shown in sections 1.0 – 1.3 and throughout Chapter 3 (sections 3.2.4, 3.3.4, 3.4.4, 3.5.4, 3.6.4, 3.7.4, and 3.8). Many of the short term impacts are minimized and/or avoided by using the design criteria and stipulations in sections 2.2.1 and 2.2.2.

2. Consideration of the effects on public health and safety.

This alternative will not significantly affect public health and safety. The existing road system facilitates multiple use management of Forest resources. Use of trucks and drill rigs are not expected to conflict with other forest uses. Exploration will be in compliance with the Minnesota state laws providing protection to public health and safety. Public health and safety are also provided for under sections 2.2.1 and 2.2.2.1.

3. Consideration of the unique characteristics of the geographic area (e.g. such as historic features, park lands, prime farmlands, wild and scenic rivers or wetlands).

There will be no significant effects on unique characteristics of the area. There are no Wild and Scenic Rivers, park lands, or prime farmlands within the project area. Wetlands and historic features are protected as shown in EA sections 2.2.1 and 2.2.2.

The existing untrammeled nature of the BWCAW will be unchanged by this project since there are no activities proposed within the BWCAW. There will be no ground or vegetation disturbed within the BWCAW from this project. Since this project will not create any permanent improvements or human occupation within the wilderness, the undeveloped quality of the BWCAW will not be affected. The existing natural character of the BWCAW will be unchanged by this project since the project will not change ecological ecosystems in the wilderness. There will be no activities in the BWCAW. Since there will be no operations within or adjacent to the BWCAW, there will be no effects on the BWCAW in terms of the primitive or unconfined recreation experiences available in the BWCAW.

Although noise from the proposed drilling operations can have an affect on the opportunity for solitude within the BWCAW, the EA provides quantitative evidence and analysis of decibel levels projected for the minerals exploration included in Encampment's plan of operations, projections for Entry Points #32 and #33 and on into the adjoining wilderness. Potential for noise from drilling to be perceptible in the BWCAW northeast of the South Kawishiwi River in the vicinity of Entry Point #32 is at the level of just becoming perceptible with an estimated 2 to 3 decibel change from the existing condition (EA sections 2.5 and 3.2).

Minerals exploration drilling is not a new activity in the project area and its vicinity. In the past 40 years, there have also been mineral exploration projects mainly involving drilling, mapping, rock sampling, soil sampling, and geophysical activities within the project area and in the vicinity (EA section 1.0.1). While the proposed minerals exploration activities in the plan of operations (EA Appendix A) will be continuous over the duration of the drilling at a site, they will come to a conclusion within 2 to 3 weeks at any one site (EA, section 3.2). The data and analysis provided in the EA in section 3.2, has provided interested parties the information I used in making this finding.

As shown in section 3.2.7.1, Figure 3.2.6 Exploration activity in vicinity of project area, about 10 – 12 sites have been drilled closer to the BWCAW than sites included in Encampments proposed plan of operations, and about 20 other sites have been drilled in the past in the proximity of the proposed Encampment sites. None of these previous activities have resulted in significant effects to the BWCAW.

As shown in Figure 1.6 of the EA, the Keeley Creek Research Natural Area that is roughly 2 miles south of proposed drilling sites and the Harris Lake Natural National Landmark, a Unique Biologic Area (Forest Plan, pages 3-27 – 3-29), is roughly 2½ miles south of proposed drilling sites. These areas will not be significantly affected by the plan of operations.

4. The degree to which the effects on the quality of the human environment are not likely to be highly controversial.

The effects on the quality of the human environment are not likely to be highly controversial. Comments were received in response to the proposal. The differences in comments reflect a range of opinions, and do not of and by themselves constitute controversy. The effects of the selected alternative on the various resources are not considered to be highly controversial by professionals, specialists, and scientists from associated fields of geology, hydrology, wildlife biology, and forestry, etc. I do not believe that there is significant controversy over the effects of this project. Although I anticipate this decision will not be acceptable to all, I have determined that the effects as displayed in the EA and supporting documentation in the project record file are not likely to be highly controversial.

5. Consideration of the degree to which effects on the human environment are highly uncertain or involve unique or unknown risks.

This decision is similar to past actions, and its effects are reasonably expected to be similar. The effects analysis shows the effects are not uncertain, and do not involve unique or unknown risk (see EA Chapter 3). In the past 40 years, there have been mineral exploration projects within and around the project area involving drilling, mapping, rock sampling, soil sampling, and geophysical activities. Northeastern Minnesota has a long tradition of mineral development (EA sections 1.01 and 3.2.7.1, Figure 3.2.6). The effects of these past activities are known and certain and have not led to any significant effects.

6. The degree to which this action may establish a precedent for future actions with significant effects or represents a decision in principle about future considerations.

The action does not establish a precedent for future actions. Over the past 40 years, there have also been mineral exploration projects mainly involving drilling, mapping, rock sampling, soil sampling, and geophysical activities within the project area and in the vicinity (EA sections 1.0.1 and 3.2.7.1, Figure 3.2.6). Exploratory drilling does not automatically trigger mining. Similarly, mining is not a reasonably foreseeable action. The scope of this project relates to the consideration of the proposed plans of operations for minerals exploration. The proposed activities are for exploration (rather than mine development) because there is not enough information to reliably indicate if mining would occur and if so, where and how mining would occur, what would be mined, or when it would take place. Therefore, effects to the human environment from mine development can not be meaningfully evaluated at this time. If the permit holders feel that they have found a valuable mineral deposit through their exploration activities, the next step in the process would be an application for a preference right lease. If this lease were granted, the lease holder could do additional evaluation and would have the option to apply for a permit to mine. The granting of a preference right lease and future mining proposal would be analyzed through separate environmental analyses with full opportunities for public involvement and consideration of the effects of these actions. Prospecting permits do not entitle permittee to a preference right lease (EA sections 1.6.2.3 and 1.8.4).

7. Consideration of the action in relation to other actions within individually insignificant, but cumulative significant effects.

Cumulative effects analysis for the analysis area, by resource, was conducted and documented in the EA sections 3.2.7, 3.3.7, 3.4.7, 3.5.7, 3.6.7, 3.7.7, 3.8, and Appendix C. Cumulative effects of this decision, when considered in conjunction with other past, ongoing and reasonably foreseeable activities, are not expected to be significant.

8. The degree to which the action may affect listed or eligible historic places.

This project meets federal, state and local laws for protection of historic/cultural properties. A project specific inventory of the area has been conducted. The action will also not cause loss or destruction of significant scientific, cultural, or historical resources (EA section 3.8.2). Protection of heritage resources are also provided for in EA sections 2.2.1 and 2.2.2.7.

9. The degree to which the action may affect an endangered species or their habitat.

A Biological Assessment was completed for threatened and endangered species for the Kawishiwi Minerals Exploration Project. The Biological Assessment disclosed potential effects to threatened and endangered species and determined that the Project “may affect but is not likely to adversely affect” Canada Lynx. The Forest Service consulted with the U.S. Fish and Wildlife Service in accordance with requirements, who concurred with this determination.

The effects to all of the Regional Forester Sensitive Species are briefly summarized in the EA. The BE contains the complete effects analysis and considered the existing condition information, including populations and trends and information on Project Area surveys, habitat needs and limiting factors; habitat trends, direct and indirect effects, cumulative effects, the determination, and mitigations. This project may impact individuals of the Northern goshawk, boreal owl, and great gray owl but is not likely to cause a trend toward federal listing or a loss of viability. The projects will have no impact on all other RFSS. Please see the BE for the analysis that led to these conclusions.

Based on the EA, the BA, and the BE, I have concluded there will be no significant direct, indirect, or cumulative effects to any Federally Threatened, Endangered, or Sensitive species or their habitats. Although the bald eagle and gray wolf are no longer listed as threatened or endangered species, potential effects were considered on these species in the BE (Appendix B of the EA) and in EA sections 3.4 and 3.5.

10. Whether the proposed action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

The action is consistent with the 2004 Forest Plan (as discussed below). Actions to be implemented under this decision do not threaten a violation of federal, state, or local environmental protection laws. Project design features and stipulations help assure compliance with these laws. The Final EA also meets National Environmental Policy Act disclosure requirements.

Findings Required by Other Laws and Regulations

National Forest Management Act - Consistency with Forest Plan (16 USC 1604(i)):

The EA was developed under the management direction of the 2004 Forest Plan. This decision is consistent with the intent of the forest plan's goals regarding minerals exploration described on page 2-9, D-MN-1 and D-MN-2.

On December 22, 2004 the Under Secretary of Agriculture approved regulations for National Forest System land management planning (36 CFR 219, published in the Federal Register on January 5, 2005). These regulations became known as the 2005 Planning Rule. On March 30, 2007 the court in *Citizens for Better Forestry v. USDA Civ. No. 05-1144* and *Defenders of Wildlife v. Johanns Civ. No. 04-4512*, in the Northern District of California, enjoined the Forest Service from implementation and utilization of the 2005 Planning Rule. On July 3, 2007 the same court refused to amend its prior judgment and affirmed that the March 30, 2007 order applied nationwide. The result of these two rulings is that the entire Forest Service is currently operating under the prior planning rule, adopted in November 2000 at 36CFR 219 and subsequently interpreted in an Interpretative Rule at 69 Fed. Reg. 58055 (September 29, 2004). This project is planned under the regulation at 36CFR 219.35 (2000) and the Interpretative Rule of September 29, 2004. As required by 36 CFR 219.35, I have considered the best available science in making this decision. The project record demonstrates a thorough review of relevant scientific information, consideration of responsible opposing views, and, where appropriate, the acknowledgment of incomplete or unavailable information, scientific uncertainty, and risk.

The Clean Water Act and State Water Quality Standards –

The integrity of the decision area's water and riparian features will be maintained. The project's design features and stipulations (EA sections 2.2.1 and 2.2.2) provide additional site-specific measures to assure riparian areas retain their ecological function. The analysis also indicates that implementation of this decision will not produce appreciable impacts on aquatic resources (EA section 3.6). The Clean Water Act and State Water Quality Standards will be met.

The Endangered Species Act (ESA) (16USC 1531 et.seq) –

This project *may effect but is not likely to adversely affect* the federally listed Canada Lynx, the project would not lead to federal listing or the loss of viability of the species. US Fish and Wildlife Service has reviewed the BA and has issued their concurrence with the determinations within the BA. A biological evaluation (BE) has been completed and located in EA Appendix B. Conclusions from the BE are summarized in the EA sections 3.4 and 3.5.

The Wilderness Act –

On September 28, 2007, U.S. District Judge John Tunheim issued a ruling for the *Izaak Walton League, et al v. Kimball et al* case involving establishing a snowmobile trail near the BWCAW. Judge Tunheim's ruling addressed Section 4(b) of the Wilderness Act of 1964. In his decision, Judge Tunheim stated:

“Thus, the key question in determining whether agency action violates § 4(b) is whether that action degrades the wilderness character of a designated wilderness area. To answer this question, the Court must look to various factors including the nature of the agency activity, the existing character of the wilderness area, and the extent to which the essential, natural characteristics of the wilderness area are changed by the agency activity in question. For example, if the wilderness area is affected by sounds caused by recreationalists on private property adjacent to the wilderness, agency activity that affects that same wilderness area with sound that is similar in volume, duration, frequency, and quality, is unlikely to result in a violation of the § 4(b). In other words, where the agency activity does not increase or exacerbate the existing sound impact on the wilderness area, such activity would not degrade the wilderness character of the area. On the other hand, agency activity that results in noise that is louder, more constant, more frequent, or of a different quality, is more likely to degrade the wilderness character from its present condition and thus violate § 4(b).”

The factors identified in Judge Tunheim’s ruling are considered in detail in the EA.

As described in EA section 1.8.4, this project will not degrade the wilderness character of the Boundary Waters Canoe Area Wilderness. The existing untrammled nature of the BWCAW would be unchanged by this project since there are no activities proposed within the BWCAW. There would be no ground or vegetation disturbed within the BWCAW from this project. Since this project would not create any permanent improvements or human occupation within the wilderness, the undeveloped quality of the BWCAW would not be affected. The existing natural character of the BWCAW would be unchanged by this project since the project would not change ecological ecosystems in the wilderness. There would be no activities in the BWCAW. Since there would be no operations within or adjacent to the BWCAW, there would be no effects on the BWCAW in terms of the primitive or unconfined recreation experiences available in the BWCAW.

Although noise from the proposed drilling operations could have an affect on the opportunity for solitude within the BWCAW, the natural characteristics of the BWCAW will not be changed by the activities within the plan of operations. The activities in the plan of operations are not uncommon in the project area and its vicinity. In addition, potential for noise from drilling to be perceptible in the BWCAW northeast of the South Kawishiwi River in the vicinity of Entry Point #32 is at the level of just becoming perceptible with an estimated 2 to 3 decibel change from the exiting condition (EA sections 2.5 and 3.2). Minerals exploration drilling is not a new activity in the project area and its vicinity. In the past 40 years, there have also been mineral exploration projects mainly involving drilling, mapping, rock sampling, soil sampling, and geophysical activities within the project area and in the vicinity (EA section 1.0.1).

While the proposed minerals exploration activities in the plan of operations (EA Appendix A) will be continuous over the duration of the drilling at a site, they will come to a conclusion within 2 to 3 weeks at any one site (EA, section 3.2). The plan of

operations do not provide for exploration drilling without end into the future but over a finite period of time.

Noise from vehicle traffic, boat motors, and snowmobiles from existing recreation uses and resource management activities can be heard within the BWCAW in the vicinity of Entry Points #32 and #33. The existing character of the wilderness where there is potential for the sound of the drilling to be perceived (see EA Figure 3.2.3) is described as Semi-primitive Non-motorized Wilderness Management Area (MA) in the Forest Plan on page 3-45 and in EA section 3.2. The Forest Plan states:

“Semi-primitive Non-motorized Wilderness MAs provide visitors with a semi-primitive wilderness experience in a predominantly unmodified natural environment. They are generally located along the main travel routes, where a visitor expects to encounter others more frequently, and solitude is not one of their highest priorities. A lesser degree of challenge, risk and freedom is provided here.”

In terms of desired social conditions the Forest Plan further states:

“Opportunities for experiencing isolation and solitude are moderate to low. The frequency of encountering others in the area is moderate. The challenge and risk associated with recreational opportunities is moderate to low.”

By addressing these factors and other BWCAW concerns discussed in EA sections 1.8, 2.5, 3.2, 3.3 and 3.6, the Wilderness Act will be met by this project.

National Historic Preservation Act –

All sites will be avoided and protected following the standards set forth under the guidelines of the Memorandum of Agreement between the USDA Forest Service and the Minnesota State Historic Preservation Officer. A project-specific inventory of all activity areas has been conducted and has been placed in the archaeological files. If any unknown sites are found within an area of potential effect during project implementation, the project will be redesigned to avoid the site, or measures will be designed to mitigate the effects of the project on the site and submitted to the Minnesota State Historical Preservation Office as required by law for their review and consultation. Based upon analysis in the EA section 3.8.2(page 14) I have determined that there are no direct, indirect, or cumulative effects to heritage resources from implementation of this decision.

Wild and Scenic Rivers –

There are no eligible Wild and Scenic Rivers segments in the project area.

Environmental Justice Act of 1994 –

Public involvement occurred for this project, and the results did not identify any adversely impacted local minority or low-income populations. I have considered the effects of this project on low income and minority populations and concluded that this project is consistent with the intent of this Order (EO 12898). The local community was notified of this project through the public participation process (EA section 1.7).

Shipstead-Newton-Nolan (Public Law No. 359, 71st Congress, S 2498, July 1930) –

The South Kawishiwi River is covered by Shipstead-Newton-Nolan Act (Public Law No. 359, 71st Congress, S 2498, July 1930). The purpose of the Shipstead-Newton-Nolan Act (SNN) is to conserve the aesthetics of the shoreline for canoeists and boaters and is applicable to logging practices 400 ft from the shore and a more restricted 200 ft zone from the shore. Although Kawishiwi Minerals Exploration is not a logging project, there would be openings created by the proposed drilling and temporary road access. The permit stipulations listed in EA section 2.2.1 address meeting requirements under Shipstead-Newton-Nolan.

All of the proposed sites are more than 400 feet from the shore of the South Kawishiwi River. The EA further addresses the Shipstead-Newton-Nolan Act in section 3.8.6.

Summary of Findings

My review of the analysis prepared by the ID Team indicates that this decision is consistent with 2004 Forest Plan management direction, compliant with other applicable laws, and responds to public concerns. After thorough consideration, I have determined that actions selected do not constitute a major federal action, individually or cumulatively, and these actions will not significantly affect the quality of the human environment. The site-specific actions of Alternative 3, in both the short and long-term, are not significant. Therefore, the preparation of an environmental impact statement is not needed.

Administrative Review or Appeal Opportunities

This decision is subject to administrative review (appeal) pursuant to 36 CFR Part 215. A written notice of appeal must be submitted within 45 calendar days after the Legal Notice is published in the *Ely Echo*. However, when the 45-day filing period would end on a Saturday, Sunday, or Federal holiday, then filing time is extended to the end of the next Federal working day. The date of the publication of the Legal Notice is the only means for calculating the date by which appeals must be submitted; do not rely upon any other source for this information.

The Notice of Appeal must be sent to: Appeal Deciding Officer, Jim Sanders; c/o USDA, Forest Service, Gaslight Building, Suite 700, 626 East Wisconsin Avenue, Milwaukee, WI 53202-4616. The Notice of Appeal may alternatively be faxed to: (414) 944-3963, Attn: Appeals Deciding Officer, USDA, Forest Service, Eastern Regional Office. Those wishing to submit appeals by email may do so to appeals-eastern-regional-office@fs.fed.us. Acceptable formats for electronic comments are text or html email, Adobe portable document format, and formats viewable in Microsoft Office applications. Hand-delivered appeals may be submitted at the above address between 7:30 and 4:00 pm CT Monday through Friday, except on Federal holidays. Appeals must meet the content requirements of 36 CFR 215.14 and will only be accepted from those who have expressed interest during the formal, 30-day comment period.

Those who are legal instrument holders such as permittees, can also appeal under 36 CFR 251 Subpart C and must meet the requirements of 36CFR 251.90. Legal instrument

holders must stipulate which appeal regulation they are appealing under. They cannot appeal under both.

Implementation Date

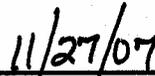
If no appeals are filed within the 45-day time period, implementation of the decision may occur on, but not before, 5 business days from the close of the appeal filing period. When appeals are filed, implementation may occur on, but not before, the 15th business day following the date of the last appeal disposition.

Contact

For additional information concerning this decision contact Michael Jiménez, 8901 Grand Avenue Place, Duluth, MN, 55809 or (218) 626-4383.



MARK E. VAN EVERY
Kawishiwi District Ranger


Date

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Appendix A – Figures and Maps

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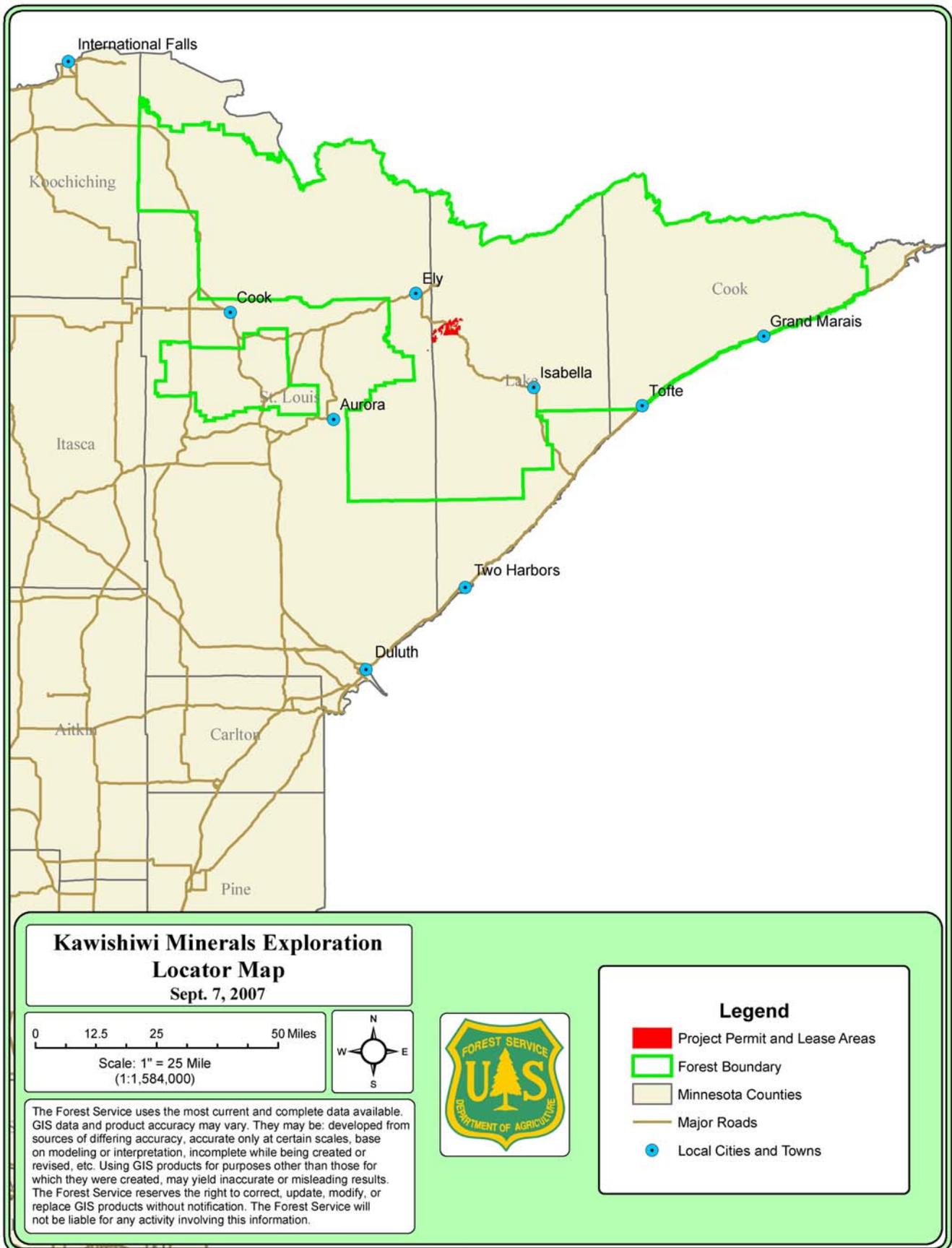


Figure 1: Location and Vicinity

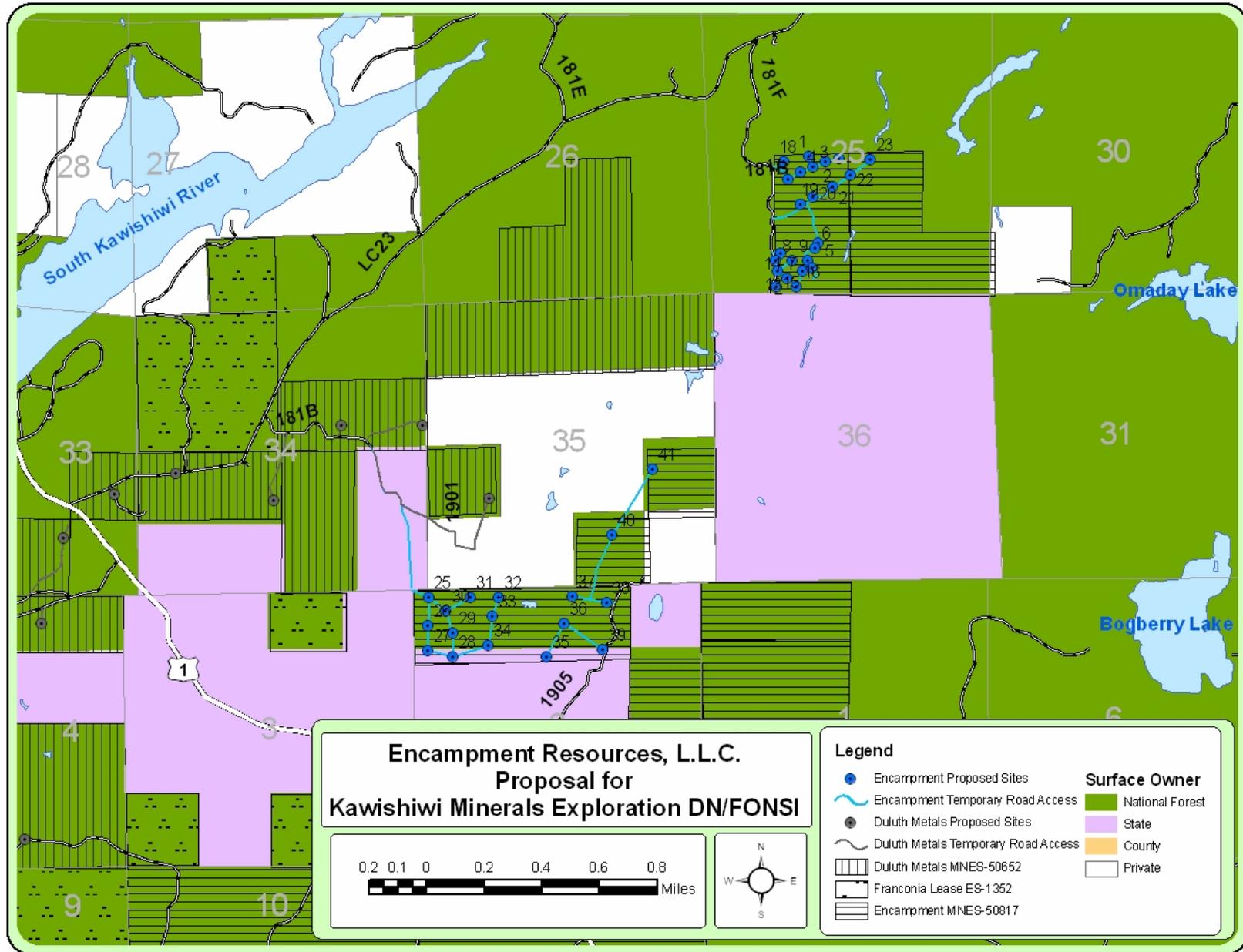


Figure 2: Project Area Encampment Exploration Activities (MNES-050817)

Appendix B – Stipulations and Design Features

(Based EA Section 2.2.2)

1. Steps to provide public safety

Areas constructed as drill sites shall be open to state and federal officials, hired contractors and their employees and employees or consultants. In the interest of safety and to the extent practical, unauthorized personnel shall be restricted from entering operations areas.

Vehicles and drills shall be equipped with fire-fighting equipment.

2. Location and extent of areas to be occupied

Drilling will involve some surface disturbances because of the need to prepare drill sites (including sumps for water re-circulation and settling out of drill cuttings) and the need to construct temporary access trails, but this shall be minimized to the extent possible.

The location of proposed sites may be modified slightly in cooperation with the surface managers (Forest Service). The access trails shown attempt to avoid apparent wetlands areas in so far as possible. Where wet ground conditions cannot be avoided, mats shall be used to minimize impact or drilling would be deferred until winter.

Within a drill site, all or part of the area may be cleared of vegetation to accommodate the drill rig and sump pit. Trees and shrubs cut during construction of the sites and access roads shall be lopped and scattered to lie within three feet of the ground.

Existing access roads used to access the temporary access trails shall be maintained as necessary by the company or its contractors, in compliance with specifications and instructions.

In the construction of temporary access roads and drill pad sites, all effort shall be made to avoid cutting of timber.

1. Slash, brush, tree limbs, seedlings and saplings cut to clear temporary roadways, shall be pulled approximately 30 feet back from cleared temporary roadways.
2. Any piled trees cut or pushed over along with slash shall be no higher than 3 feet high.
3. This material shall be utilized in rehabilitating the temporary roads and drill pad sites once drilling operations are complete. For this reason, chipping of timber and slash shall not be utilized.

3. Steps taken to prevent and control soil erosion

Ecological Land Type associated with the proposed exploration activities are mapped and identified in the Project File. Table G-WS-8b in the Forest Plan provides a brief

description of ELTS on Superior National Forest identified in the measures below (Forest Plan, pg 2-18).

1. On ELT 2 and 6: Boring activity/access is limited to frozen soil (frozen to a depth that will support equipment that is being used and no rutting and compaction occurs.) page 2-17, G-WS-8, Table G-WS-8.
2. On ELT 14 and 2: Boring activity/access is limited to frozen soil (frozen to a depth that will support equipment that is being used and no rutting and compaction occurs) or during normal dry periods so no rutting and compaction occurs. page 2-17 Table G-WS-8a.
3. Use of wetlands under frozen condition for temporary roads and skid trails will generally be permitted as long as no fill is placed in the wetland. These roads or trails will be blocked to discourage vehicle use under unfrozen conditions. page 2-15, G-WS-12.
4. Avoid felling trees into non-forested wetlands, except where done for purposes of habitat restoration. Page 2-15, G-WS-14.
5. On access routes, appropriate water diversion structures (such as water bars) to reduce erosion should be installed and so that surface water diverted from roads into filter strips or vegetative area, rather than directly into streams, lakes, open water wetlands, etc. As recommended in Part 2 of *Sustaining Minnesota Forest Resources: Voluntary site-level Management Guidelines*, Forest Soil Productivity section. (Forest Plan, pgs 2-7 – 2-8)

4. Steps taken to prevent water pollution

1. The only additives, such as bentonite described in EA section 1.2.3.2, to the drilling water shall be those permitted by the State of Minnesota Department of Health. Each site shall be restored through surface grading, natural re-vegetation, and seeding as needed. Local surface water source may be used for drilling operations. If no surface water is available, water shall be supplied by a tanker truck. There is minimum danger of pollution because all drilling fluids are collected in the sump-pit and re-circulated. Where shallow bed rock prevents constructing a sump-pit, drilling fluids and cuttings shall be collected in tanks, the water re-circulated and the drill cuttings disposed of at another site in accordance with State regulations.
2. There shall be no fuel storage within a wetland. Fuel storage containers shall be kept on an upland site. Absorbent mats or other absorbent material shall remain under the drilling rig and extra mats will remain on site at all times to clean up any small spills from refueling. Any spills or releases of oils, fuels, or other toxic or hazardous material must be reported and remediated per applicable State and Federal Laws.
3. If a drill hole boring is to be temporarily sealed, State of Minnesota regulations shall be followed. They include the requirement that the casing and cap must extend at least five feet above the potential high water within the regional flood level. High water levels shall be identified and established on a case by case basis and determined by on the ground evidence of past high water.

4. Water cannot be withdrawn from streams that have less than 1 cubic feet per second flow rate. Withdrawal rates from streams shall be no more than 10% of the flow at the time of withdrawal. Withdrawal from wetlands, ponds, or lakes, shall not exceed 1% of the estimated volume of the basin at the time of withdrawal. Water intakes shall have appropriately sized screens to minimize impact to aquatic organisms.
5. Drilling, road use, and road construction shall occur within a wetland only after the surfaces have been frozen enough to provide access and use without breaking through the frozen layer.
6. Sumps to treat the water used in the drilling process may be constructed (see EA Figure 2.3). These sumps (as described in EA Section 1.1.6) shall contain and treat the pump water. No sump pits will be allowed for drilling in wetlands and re-circulation tanks are required.
7. Road construction in wetlands will only be allowed during frozen conditions. Log mats placed for the crossing of wetlands shall be removed once they are no longer needed. A setback of at least 50 ft shall be maintained for drill pad disturbance from all lakes, open water wetlands, and perennial streams and rivers.
8. Culvert crossings shall be designed and installed in accordance with geomorphic principles and accommodate aquatic organism passage. All temporary culverts and floodplain fill shall be completely removed and the temporary access roadway completely decommissioned when drilling is completed and the holes have been abandoned. Temporary access obliteration shall include brushing in, lop and scattering as well as barriers and signs.
9. All sites located in low or wet areas shall only have overland access during winter months once the ground has sufficiently froze.
10. Drilling shall be accomplished by licensed well drillers in accordance with State regulations.

5. Noise Abatement Measures

Noise abatement measures shall be used to reduce impact to private residences and recreation use within the project area. These measures shall help disperse drilling noise upward rather than dispersing the noise generated laterally and reduce sound waves. The companies shall submit a noise abatement design proposal to the Forest Service. The proposal will be reviewed and, when adequate, will be approved by the Forest Service.

The measures shall include:

1. Baffles: A noise abatement baffle system shall be utilized such as systems incorporating absorbant synthetics manufactured by Sound Seal, or other affective methods.
2. Exhaust extension: The exhaust of the drilling engines shall be extended and directed up into the air to help direct engine sound upward, rather than laterally.

6. Non-Native Invasive Species

Exploration requires construction of roads, pads, berms, water diversions and pits. These activities all require heavy equipment, which can transport noxious weed seeds or vegetative matter. Construction activities create disturbed sites upon which noxious weeds can become established. The companies shall implement the following measures to limit the introduction of weeds on the Forest:

1. If revegetation is required, only native or desired non-native species that are certified noxious weed free seed shall be planted.
2. To avoid non-native invasive species (NNIS) occurrences, skid trails, temporary roads, and landings if used in the growing season shall be located away from NNIS sites.
3. Minimize removal of roadside vegetation when constructing, reconstructing or maintaining exploration and mining roads.
4. Clean all heavy-equipment and other vehicles before transporting them onto National Forest System lands. Concentrate inspection and cleaning on the undercarriage, with special emphasis on axles, frame, cross-members, motor mounts, underneath steps, running boards, and front bumper/brush guard assemblies. Sweep vehicle cabs and deposit refuse in waste receptacles. The companies shall contact the Forest Service and allow them to complete an inspection of heavy equipment before they are transported onto National Forest System lands.
5. The Forest Service will monitor all current and recently closed exploration and mine sites for noxious weeds. If weeds are found, the company is responsible for treating the weed infestation in accordance with Forest Service requirements or may choose to fund the Forest Service to treat the weeds.

7. Other Resource Protection Measures

1. During drilling, trash shall be stored in suitable containers and removed from the site for disposal.
2. No explosives or firearms will be permitted on the project. Fires are permitted only in specific heating devices (salamanders, cook stoves, etc.) and all state and federal fire laws and regulations shall be observed to prevent and suppress fires in the areas of operation.
3. No structures or facilities will be built.
4. Cultural surveys have been conducted on proposed Plan of Operations, if during the course of exploration, any artifacts, cultural features or other archaeological items are discovered, operations shall immediately cease and the Bureau of Land Management and the Forest Service shall be notified so that the potential significance of the material can be assessed and a possible plan for mitigation can be prepared.
5. The District Ranger shall be given advance notification of any activity that could involve hazards to public safety and suitable action will be taken to protect the public.

6. The District Ranger shall be notified at least 2 weeks in advance of the start up of all activities under the operating plan. This includes all activities in future years such as permanently sealing drill borings, geophysics, and final reclamation.
7. The District Ranger shall be notified yearly on the company's intent to permanently seal drill borings and when final reclamation will take place.
8. The Minnesota DNR, BLM and Forest Service will monitor drilling activities. The Forest service monitoring effort will include site visits during operations and until final reclamation is successful. Monitoring of water resources may include water quality sampling and testing (if necessary) of surface and/or groundwater. If this is necessary, the companies shall be responsible for the costs associated with these activities.

8. Reclamation

The companies shall secure a reclamation bond with the BLM before the plans of operations are approved. This bond will include Forest Service reclamation requirements. The companies shall complete interim and final reclamation. These include:

Interim reclamation:

- Remove all equipment, trash, and other materials;
- Temporarily seal the exploratory borings in accordance with state regulations;
- Collect all drill cuttings and place them in the sump pits before they are backfilled;
- Backfill sump pits (no recirculation tank was used), with stockpiled soil;
- Re-contour the disturbed sites to blend in with the natural topography and to stabilize the soils;
- Pull back brush and slash and spread it over all disturbed sites;
- Seed disturbed areas, if deemed necessary by the Authorizing Officer, with a native plant seed mix made up of grasses, shrubs, and forbs;
- Maintain access routes and other disturbed sites to assure the soils are stabilized and erosion will not occur during interim closure;
- Reclaim site access temporary road entrance closures per Forest Plan direction on temporary roads and road decommissioning (Forest Plan, page 2-50) and as illustrated in Appendix G.

Final reclamation:

- Remove all equipment, trash, and other materials;
- Permanently seal borings as per Minnesota Department of Health Rules. Bore hole casings shall be removed or cut below grade if they cannot be removed. The boring shall be grouted to permanently seal the hole and to protect groundwater.
- Collect all drill cuttings and place them in the sump pits before they are backfilled;
- Backfill sump pits (if no recirculation tank was used) with stockpiled soil;
- Re-contour the disturbed sites to blend in with the natural topography and to stabilize the soils;
- Pull back brush and slash and spreading it over all disturbed sites;

- Seed disturbed areas, if deemed necessary by the Authorizing Officer, with a native plant seed mix made up of grasses, shrubs, and forbs;
- Reclaim site access temporary road entrance closures per Forest Plan direction on temporary roads and road decommissioning (Forest Plan, page 2-50) and as illustrated in Appendix G.

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