Forest Service

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File Code: 1570 **Date:** March 1, 2013
Route To:

Subject: Appeal of the Decision Notice and Finding of No Significant Impact for the Trans Superior Resources, Inc. - Federal Hardrock Minerals Prospecting Permit Environmental Assessment Project, Bergland Ranger District, Ottawa National Forest, Appeal # 13-09-07-0014 A215

To: Appeal Deciding Officer, Acting Forest Supervisor, Ottawa NF

This letter constitutes my recommendation for the above-referenced appeal by Mr. Verito. This appeal challenges the Trans Superior Resources, Inc.-Federal Hardrock Minerals Prospecting Permit Project decision, on the Ottawa National Forest. Bergland and Ontonagon District Ranger Susanne M. Adams signed the Decision Notice on December 14, 2012, and the legal notice was published in T*he Ironwood Daily Globe* (Ironwood, Michigan) December 14, 2012.

My review was conducted pursuant to 36 C.F.R. Part 215 – "Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities." To ensure that the analysis and decision were completed in compliance with applicable laws, regulations and agency policies, I have considered the issues set forth by the Appellant in the Notice of Appeal (NOA) and have reviewed the decision documentation submitted by the Ottawa National Forest. My recommendation is based upon a review of the Project Record (PR), including but not limited to the scoping letter, public comments, Decision Notice (DN), Environmental Assessment (EA) and the Response to Comments (RTC).

Appeal Issues

Issue 1. Outdated laws

Issue 1a: The Weeks Law Lands Act of 1917 and Presidents Reorganization Plan No. 3 of 1946 are outdated and should not be used.

The Appellant states: "*To lend credence to an archaic Weeks Law Lands Act of 1917 and the Presidents Reorganization Plan No. 3 of 1946 suggests further laziness (not necessarily that of ONF management) in not having revised them sooner to reflect the changed world around us. The population has grown geometrically since 1917 and 1946. Also, land has become much more finite, and dangers to the environment much more widely known. To operate under the laws of a previous world are ludicrous*. (NOA, p.1)

Response: A change to the laws and executive direction cited is outside the scope of this project. The Weeks Law Lands Act of 1917 and the Presidents Reorganization Plan No. 3 of 1946 are in full force and effect and therefore must be complied with. The EA and DN/FONSI both correctly cite these laws as the frame work for the administration of mineral exploration on

National Forest lands. Response to comment 5d in Appendix E of the DN/FONSI clearly states the obligation of the Forest in regard to this appeal point:

> "While the Forest Service respects the commenters opinion, the authority and responsibility to allow mineral prospecting activities on federal lands, including National Forests, is already decided by law, policy, and the Ottawa National Forest Land and Resources Management Plan (Forest Plan) and is therefore outside the scope of this project. Page 3 of the EA states "The Mineral Resources section of the Weeks Act of March 4, 1917, authorizes the Secretary of Agriculture to permit mineral prospecting on lands acquired by Weeks Act authority. All lands applied for in the permit area on the Bergland Ranger District were acquired under the Weeks Act or the Clarke McNary Act (subject to all laws applicable to the lands acquired under the Weeks Law Lands Act). National Forest System lands are generally available for exploration, unless specifically precluded by an act of Congress or other formal withdrawal. Examples of this would include the Wild and Scenic River Corridors, as well as Wilderness Areas."

The Forest Service Directive System consists of the Forest Service Manual and Handbooks, which codify the agency's policy, practice, and procedure. The system serves as the primary basis for the internal management and control of all programs and the primary source of administrative direction to Forest Service employees.

Forest Service Manual (FSM), Chapter 2820 outlines direction for the management of mineral leases, permits, and licenses. It clearly states the authority under which prospecting permits may be issued for acquired lands. Regardless of the date in which the Acts were established, they are the framework under which mineral prospecting is administered:

> 2822.13 - Hard-Rock Minerals With Acquired Status. Under authority of the Act of March 4, 1917, (the function of which was transferred from the Secretary of Agriculture to the Secretary of the Interior by the President's Reorganization Plan 3 of 1946), prospecting permits and leases may be issued for hard-rock minerals acquired by the United States. Other special acts authorize exploration and development of hard-rock minerals in certain acquired lands not subject to the general mining laws. By law or regulation, hard-rock minerals are made subject to development under or in general accord with the plan; therefore, they are included here. The plan, therefore, covers all valuable minerals with acquired status except "leasables" as listed in FSM 2822.12.

These laws are indeed old but none the less the Forest is required to follow the law. Changing these laws, as the commenter suggests, is beyond the scope of this project and not a valid appeal point.

Issue 1b: The Ottawa National Forest Plan should be revised to remove direction related to outdated laws.

The Appellant states; "*ONF management is asked to put all prospecting permits on hold until these laws and the ONF Forest Plan are revised to represent the real world and vast majority of owners who clearly oppose this very type of exploration that ONF promotes*" (NOA, p.1)

"To add further insult, she alludes to the Mining and Minerals Policy Act of 1970, to 'foster and encourage private enterprise.' Again, you're operating in the Stone Age. Please have Trans Superior 'foster and encourage private enterprise' on their private property." (NOA, p.1)

"Page 4 reads, 'the Mining and Minerals Policy Act of 1970 states that the continuing policy of the Federal Government is to foster and encourage private enterprise in the development of economically sound development of domestic mineral resources.' This so-called 'mission' was conveniently added by ONF management in a FP that doesn't represent public ownership, as is obvious from the Trans Superior comments. I reiterate the utter ridiculous of validating an archaic act to justify the Trans Superior proposal." (NOA, p.2)

"On issue 5d. she writes, 'The mission of the FS is to encourage, facilitate and administer the orderly exploration, development and production of mineral and energy resources.' As the public comments make clear, this is not the mission of the public ownership. ONF management was to have revised the FP to bring the policies up to date and reflect the current ownership whose values have changed since 1917 and 1970" (NOA, p.3)

"My point 5g. mentioned the rules of 1970, and the ranger directed me to see the response to 5d., yet the response to 5d. doesn't address the outdated rules. Please address this obvious oversight during the appeals process." (NOA, p.3)

Response: The Forest Service's national minerals program policy, not "rules" as mentioned in the comment, is adopted from The Mining and Minerals Policy Act of 1970 which established the Federal Government's policy for minerals management. It states:

> "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."

The Forest Service's minerals program policy goes on to further state:

> **OBJECTIVES**.
> **Exploration**, development, and production of mineral and energy resources and reclamation of activities are part of the Forest Service ecosystem management responsibility. The Forest Service will administer its minerals program to provide commodities for current and future generations commensurate with the need to sustain the long term health and biological diversity of ecosystems. Accordingly, the Forest Service will strive to:
> · Ensure that **exploration**, development, and production of mineral and energy resources are conducted in an environmentally sensitive manner and that these activities are **integrated with the planning and management of other resources using the principles of ecosystem management.**
> · Facilitate the orderly **exploration**, development, and production of mineral and energy resources **within the National Forest System on lands open to these activities** or on withdrawn lands consistent with valid existing rights.

· Maintain opportunities to access mineral and energy resources which are important to sustain viable rural economies and to contribute to the national defense and economic growth.
· Ensure that lands disturbed by mineral and energy activities, both past and present, are reclaimed using the best scientific knowledge and principles and returned to other productive uses.

POLICY. The Forest Service will administer its minerals program within the overall context of the principles of ecosystem management. Accordingly, the Forest Service will:

· **Ensure that mineral-related activities are in accordance with our legal and regulatory authority**.
· **Coordinate and cooperate with other Federal and State agencies having authority and expertise in mineral-related activities**.
· Coordinate and cooperate in a collaborative manner with interested public, industry, and community representatives. Foster partnerships with industry to increase knowledge of development potential of the mineral estate.
· **Ensure the integration of mineral resource programs and activities with the planning and management of renewable resources through the land and resource management planning process, recognizing that mineral development may occur concurrently or sequentially with other resource uses**.
· Maintain an effective professional, technical, and managerial work force that is knowledgeable of (a) the geologic characteristics of mineral deposits, (b) the techniques of mineral exploration and development, (c) the principles of ecosystem management, and (d) mineral laws, regulations, policy, and guidance.
· Ensure that only certified mineral examiners perform investigations and prepare reports which require the examination of the mineral or geologic character of the land.
· Certify personnel who perform or oversee the analysis, review and administration of plans of operations for mineral and energy operations and their reclamation.
· Require reclamation plans for all proposed surface-disturbing activities to return the land to productive uses consistent with the ecological capability of the area and in accordance with land management goals.
· Process mineral applications, operating plans, leases, licenses, permits, and other use authorizations efficiently and in a timely manner. Deal with applicants and operators in accordance with the principles of customer service.
· **Plan and provide for access to and occupancy of National Forest System lands for mineral resource activities, consistent with the overall management objectives and the rights granted through statutes, leases, licenses, and permits**. Eliminate or prevent occupancy that is not reasonably incident to and required for the mineral operation.
· Ensure that mineral or energy activities conducted in congressionally-designated or other withdrawn areas are supported by valid existing rights.
· Prior to initiating the administrative withdrawal of National Forest System lands from mineral entry, ensure the full consideration of (a) the national interest in rural community development, (b) the value of the mineral resource foregone, (c) the value of the resource or improvement being protected, and (d) the risk that the renewable resources cannot be adequately protected pursuant to application of the Minerals Surface Use Regulations.
· Ensure private rights are respected in all resource management decisions.

· Ensure the uniform application of resource protection and reclamation standards for mineral-related exploration and development projects.
(Emphasis added)

Minerals management is part of the multiple use mission of the FS (Forest Service Manual (FSM) 2800-2007-3).

The Forest Plan (p. 2-10) goals pertaining to minerals and geology specifically state to "Provide mineral resources to support economic growth through environmentally sound development on National Forest System lands." Forest-wide objectives with respect to minerals and geology are to: "Generally, permit surface-disturbing exploration (including core drilling) in most areas, except within or adjacent to developed recreation sites during the recreation use season. Permit exploration especially where there is a potential to discover minerals of compelling domestic significance (as defined by U.S. Department of the Interior)." This direction is located on p. 2-35 of the Forest Plan.

The EA and DN/FONSI correctly cite the Forest Service's policy on minerals management. The EA and DN/FONSI were prepared in compliance with Ottawa National Forest's Forest Management Plan which in turn complies with this Forest Service minerals management policy.

I recognize that the Appellant disagrees with laws, policies and Forest Plan direction on minerals management. However, Forest Plan revision to update policy and management direction is beyond the scope of the Purpose and Need for the project. The Purpose and Need is limited to "respond to one hardrock minerals Prospecting Permit Application submitted by Trans Superior Resource, Inc." (EA, page 6). It is not necessary to revise the Forest Plan to meet the Purpose and Need for this project. I find no violation of law, regulation or policy related to this issue.

Issue 2: Range of Alternatives. The Appellant states "*Odd, Ms. Adams decided on Alternative 2 when, in fact, there was only one alternative. Based on the areas of public concern, including Trap Hills, a second, less-ambitious alternative needed establishment to propose prospecting on less-sensitive portions of the PA. Requests for a less-exploitive alternative were ignored in Ms. Adams' "minor wording changes." The so-called response to 5b. answers nothing, nor does it tell us anything new. There is no way an honest ranger would write, "The number of alternatives developed has been deemed reasonable by the Responsible Official based upon the range of public comments received…." I'm assuming she read the same packet of comments that I received, and based upon the site-specificity of many comments, her response makes no sense. An alternative is needed that excludes the Trap Hills SPNM area and areas of rugged topography*." (NOA, pp. 1 and 2).

Response: Section 102 (e) of the National Environmental Policy Act (NEPA) states that all Federal agencies shall, "study, develop, and describe appropriate alternatives to recommend courses of actions in any proposal which involves unresolved conflicts concerning alternative uses of available resources." (EA, page 13). Direction and guidance for the development of additional alternatives is discussed in 40 C.F.R. 1501.2(c) and Forest Service Handbook 1909.15, Chapter 10, Section 14.

The EA (page 13) displays that two alternatives were considered in detail-the No Action

Alternative (Alternative 1) and the Proposed Action (Alternative 2). The decision to analyze these alternatives in detail was made based on a review of the comments received during the scoping period. This review is summarized in Chapter 1 of the EA (pages 10-12) and is well documented in the Scoping Comment Matrix (PR document 2101).

Regarding an alternative that excludes the Trap Hills SPNM MA, I first note that this Management Area is open to minerals exploration. Minerals exploration is allowed in this SPNM MA and it is beyond the scope of this project to change that management direction in the Forest Plan. The EA states on page 12:

> "The project area encompasses portions of MAs 6.1 and 6.2. The majority of the project area is located in MA 6.1, which is classified as a "semi-primitive, non-motorized" recreational environment. The rest of the project area is located in MA 6.2, which is categorized as a "semi-primitive, motorized" recreational environment. Both of these areas are available for mineral exploration per the 2006 Forest Plan. Large-scale issues of management direction established in the Forest Plan are outside the scope of this analysis and will not be addressed in this EA."

Further, the Forest considered and disclosed impacts to social and natural resources in the SPNM MA and mitigated those impacts through crafting the Proposed Action with design features and stipulations (see **Issue 5: Scope of Action**). As stated in the EA on page 11: "*Resource Effects*: Commenters expressed concern about water quality, visual quality, soil erosion, non-native invasive species (NNIS), and fragmentation. The Inter Disciplinary Team (ID Team) has taken note of these concerns (project record). Through the incorporation of the stipulations described in Chapter 2, and Appendices A and B, these concerns are diminished or mitigated entirely." The Forest found that there would be minimal or no impacts caused by the Proposed Action. These factors support the determination that there were no unresolved conflicts per the NEPA Section 102(e) that would prompt consideration of an additional alternative excluding minerals exploration in the SPNM MA.

Likewise, as noted on EA page 11, concerns about soil erosion on steep slopes (which is presumably the issue raised by the Appellant for areas of 'rugged topography') were diminished or mitigated entirely through design features and stipulations incorporated into the Proposed Action. The Forest-wide Standards and Guidelines section for 2500 Soil, Water, and Air of the Forest Plan states "Generally, do not use heavy equipment that would cause long-term degradation of soil productivity in areas dominated by poorly drained or very poorly drained soils, or steep slopes" (Forest Plan, p. 2-27). Section 2.6 Project Stipulation 27 of the EA states "Equipment operations on slopes ranging from 18-35% will be evaluated on a case-by-case basis by Forest Service personnel before operations will commence. **Equipment operations on slopes of 35% or greater will not be permitted**" (EA, p. 21, *emphasis added*). Further discussion on stipulations to reduce impacts from operating on slopes is displayed under **Issue 12: Slopes**. Again, these factors support the determination that there were no unresolved conflicts per the NEPA Section 102(e) that would prompt consideration of an additional alternative excluding minerals exploration on areas with steep slopes.

In conclusion, I agree with the Forest that the range of alternatives was adequate. I find no violation of the NEPA or other law, regulation or policy related to this issue.

Issue 3: Response to Comments

Issue 3a: Responses to Scoping. The Appellant states "*Ms. Adams had the audacity to assert that "each concern that was expressed, received thoughtful consideration and a thorough response…" Her "thorough responses" are overwhelmingly composed of the same gibberish that ONF owners opposed on the first go-around. I'd call this a vicious cycle except that ONF management need only shirk our opinions twice, before the project is approved, under the illegal (in my opinion) guise that public comment received due consideration.*" (NOA, Page 2)

Response: While the Appellant may disagree with the responses, each comment was read and responded to by the ID Team members (DN/FONSI pages 46-56). The comments and responses were provided in the DN/FONSI. Because the Forest Service and Bureau of Land Management (BLM) are cooperating agencies on the project, a BLM representative was also part of the ID Team, and read and reviewed each comment and provided additional responses, where appropriate. The individuals who provided comments to the original proposal and a summary of their comments were presented in Table 1 to Appendix E. I also find the responses to be a substantive consideration of the points raised. For example, see response to comment 5s (comment made by the Appellant) on page 53 of the DN/FONSI explaining how and why soil impacts would be minimized. Other responses to the Appellant (and other commenters) contain an adequate and proportionate level of detail in response to comments raised.

In any case, there is no requirement that a response to comments be produced for an EA (response to comments is required for an environmental impact statement (40 C.F.R. 1503.4). There is a requirement in the 36 C.F.R. 215 appeal regulations that the comments on an EA be considered and placed in the PR (36 C.F.R. 215.6 (b)), which the Responsible Official clearly has done (DN/FONSI, Appendix E). Yet the Responsible Official directed the ID Team to produce response to all public comments on the EA. I find no violation of law, regulation or policy related to this issue.

Issue 3b: Cutting of Trees. The Appellant states *"My comment, 5t., concerns the ranger's comment, "Removal of trees five inches or greater will be kept to a minimum." She responds with the very information that I contested, then she writes, "Although Mr. Verito disagrees with the cutting of any trees…." She may be correct in this case because prospectors don't belong on public land to begin with; however, my comment pertained to the cutting of trees five inches or greater, no "any trees." This indicates that the ranger isn't properly interpreting the comment, much less responding to them."* (NOA Page 5)

Response: An appropriate response was provided in Appendix E to the DN/FONSI, page 55. The response was:

> "The cutting of any trees is authorized to allow reasonable access to the project area for exploration or surveys. There is no objective to cut any trees for any silvicultural purpose,

> and it would only be for reasons such as reopening roads, creating a pad for drilling, or to allow reasonable access for equipment.
>
> Past experience with minerals exploration projects has shown that trees which are necessary to cut would primarily be in the suppressed or intermediate layer.
>
> There is not expected to be any change in current stand structure or composition from any tree cutting. There is a possibility there would be a very slight increase in the growth of the dominant and co-dominant trees by removing some of the smaller trees; however, this would have a negligible effect on the residual stems. Although Mr. Verito disagrees with the cutting of any trees, the Multiple-Use Sustained-Yield Act of 1960, the 1976 National Forest Management Act, and the Forest Plan require that National Forest lands be managed for a variety of uses on a sustained basis, which includes mineral exploration. Any merchantable trees harvested would be designated by the Forest Service and purchased by the exploration company and either removed or left on the site. Allowing some removal of vegetation for the exploration of minerals will not affect the ability of the Forest to manage this area on a sustainable basis."

First, as pointed out in the response, limited removal of vegetation incident to minerals exploration in this project complies with the Forest Plan and other requirements. Second, I find that the response adequately considers the comment. The portion of the response quoted refers to 'merchantable trees' which would include trees over 5 inches in diameter. The response includes consideration of both 'any trees' and 'merchantable trees' (larger trees over 5 inches in diameter). Third and in any case, as described under **Issue 3a**, there is no requirement that a response to comments be produced for an EA. I find no violation of law, regulation or policy in relation to this issue.

Issue 3c: Contour Interval of Maps. The Appellant states *"In response to 5u, on the NCT and contour intervals, she writes, "….the map is visually descriptive with the intent of illustrating the steepness of the landscape in the PA." Here, the ranger shows no conception of why a contour interval is needed. When observing contour lines on a map, knowing the intervals makes a world of difference. If the ranger doesn't understand this, she has no business administering projects across our priceless forest."* (NOA, Page 5)

Response: An answer was provided to the contour interval issue in Appendix E to the DN/FONSI, page 55. The response was *"The contour interval is 20 feet."* In any case, the Appellant raised the issue of steep slope in the comment 5u, which is indicative that the map served its intended purpose to allow for public comment as stated in the response *"the map is visually descriptive with the intent of illustrating the steepness of the landscape."*

The Appellant also apparently claims that the Responsible Official does not have adequate information to make a decision on the project. It is clear from the response (DN/FONSI, pages 55-56) that the Ranger and the ID team have adequate expertise on the issues raised (slope, soils and cartography). The contour interval was identified in the response, and the possibility of slope impacting the North Country National Scenic Trail was considered and mitigated with stipulations. Further, the National Park Service concurred that the stipulations to protect soils

would be adequate for management of the North Country National Scenic Trail. See also Response to **Issue 12**. I find no violation of law, regulation or policy in relation to this issue.

Issue 4. Vague and unspecific stipulations. The Appellant states: *"Before criticizing the ranger's responses, I direct you to a comment by the Bad River Band of Lake Superior Chippewa (35a26). 'The existing stipulations….are too vague and unspecific. Language in the stipulations such as 'may include, use reasonable measures, kept to a minimum,' and 'whenever possible' do not provide the specificity…' I have never met anyone from this tribe, yet this comment is near facsimile of mine, which ought to send a loud and clear message.*" (NOA, p.2)

"On 5g. the ranger responds with the very data that I refute in the original comment. She's pretending to fulfill a public formality without fulfilling it. She also uses previously contested language, 'whenever possible' and 'minimizing impacts,' which means the limit is whatever it takes to get the job done, not necessarily to protect the health of the forest." (NOA, p.3)

Response: The concern that stipulations measures developed for the project are vague and unspecific are addressed in the DN/FONSI, Appendix E – Response to comments. The GLIFWC acronym in the comments below refers to the Great Lakes Indian Fish & Wildlife Commission.

> "This project was analyzed by a well experienced ID Team that also included the BLM, representing multiple resource areas. During the course of public scoping, the ID Team evaluated the comments received and used them to help shape, refine, and develop the stipulations. In addition to the public comments, **the ID Team relied upon their past experience with similar projects on the Forest to develop the stipulations. As such, the stipulations represent a comprehensive and thorough means of protection for the Ottawa's resource base.** These stipulations are detailed in the EA on pages 16-23. In addition to the stipulations identified in the EA, there are numerous other Federal and State laws and regulations that will also ensure the project is conducted in an environmentally sensitive manner." (Appendix E, Response to comment 35a1, *emphasis added*)
>
> Based upon GLIFWCs comments during scoping, many of the draft stipulations that were provided with the scoping letter were revised, clarified, or removed altogether. The comment matrix (PR – 2101) and the Analysis Framework (PR – 3101) both document the ID Team's review and actions taken for GLIFWC's recommendations during scoping. (RTC, 35a9)

Also, the ID Team considered stipulations developed on other national forests for applicability to this project as discussed in RTCs:

> The ID Team reviewed the Superior National Forest's and the Chequamegon-Nicolet National Forest's stipulations that were supplied by GLIFWC as Attachment A (PR – 2429) and Attachment B (PR – 2430) as a part of this letter. Additionally, the ID Team documented the needed actions to this recommendation on page 6 of the scoping comment matrix (PR – 2101). **Those recommendations included reviewing the stipulations and incorporating specific stipulations as necessary and as related to the Ottawa**, bearing

> in mind that both the Superior and Chequamegon-Nicolet National Forests are in different geographical and geological settings compared to the Ottawa as well as having different sets of state regulations addressing prospecting. (RTC, 35a10, *emphasis added*)
>
> **Stipulations were designed in consideration of the scope of this project, including the extent of the proposed activities and site specific location. Broader scaled stipulations still do apply as outlined in Appendices A and B of the EA**.
>
> Stipulations from other Forests were reviewed by project specialists to determine if any **specific stipulations could be adopted for this project.** Some of the differences in the stipulations on other Forests occur because there are different regulations in different states. (RTC, 35a11, *emphasis added*)

The ID Team modified stipulations based on public comments:

> **The list of stipulations was modified to incorporate changes recommended by the public during the scoping comment period.**
>
> The stipulations were developed so that they did not reiterate Forest Plan direction, State regulations or other federal laws and regulations (EA, Section 2.6). In addition, the Analysis Framework used in the development of Alternative 2 was created in a manner that was consistent with these laws, regulations and policies.
>
> Finally, some of the stipulations associated with this project have been used before on similar projects and have proved successful in allowing the flexibility for the activities, while ensuring resource protection. (RTC, 35a11, *emphasis added*)

June 20, 2012, ID Team Meeting notes (PR – 4208) address concern over specific stipulations:

> Groundwater and surface water – covered in state regs and our stipulations. Will be shown in the analysis.
>
> Roads – They would be using existing roads and will need to create temporary roads. Stipulations will require that temporary roads be removed. Paul C. will look at stipulation that has been used before and edit to make sure it covers this. **Che-Nic Stips – ID Team will review other forests stips later in this meeting. We have incorporated Che-Nic stips but ours are adapted for the Ottawa.**
>
> 23z – **Stipulations are written for adaptability. Designed to be adaptable to site specific needs. Will review stipulations today and review and edit stipulations for site specific needs for this project.** (Addressing Comment No. 23d – 23h (GLIFWC), *emphasis added*)

I find that the Forest carefully and thoroughly considered stipulations to protect forest resources, and revised those stipulation based on public comment, including comments by the Bad River

Band. Further, the stipulations were evaluated in the EA to adequately protect surface resources (EA, p. 28).

I also note that the stipulations are applied at a site-specific level through administrative review and approval of operating plans when those operating plans are submitted to the BLM during implementation. See **Issue 8: Site-specific information not included (in the form of an operating plan)** for further explanation on this point**.**

The PR shows that the Forest developed stipulations that adequately protect forest resources in consideration of public comment. Further, the Forest provides evidence that the stipulations would be effective in minimizing impacts. I find no violation of law, regulation or policy related to this issue.

Issue 5: Context of Action. The Appellant states "*On Page 7, Ms. Adams asserts that, "This project is a site-specific action that by itself does not have international, national, region-wide or statewide importance." This is yet another mistruth. The Trap Hills area, that many opponents are concerned about, is of statewide, if not regional importance*." (NOA, p. 2)

Response: RTCs regarding the Trap Hills area states "the Trap Hills Escarpment Special Interest Area (SIA) – MA 8.3 lies farther to the west and is not a part of this project area, although this type of relief and topography is also seen to the north and east of the project area." (DN/FONSI, RTCs, p. 59).

The DN/FONSI states "Several of the comments received indicated concern for permitting mineral exploration with the Trap Hills region, which many of the commenters felt were unique to them because of resources such as the rocky outcrops, the steep bluffs, Cascade Falls, botanical resources, and the North Country National Scenic Trail. I appreciate that several commenters find this area special. Analysis disclosed that any impacts will be minimal and short term to botanical and wildlife resources, and no effect to aquatic, soils, geological, recreational, or timber resources (Analysis Framework – PR 3101, BE – PR 52101 and the EA on pages 27-34)." (DN/FONSI, p. 8).

Thus, the Trap Hills SIA is not inside the project area. Further, even though exploration is permitted in the 'Trap Hills region' by this project, the nature of minerals exploration and the required stipulations would result in minimal or no impact to the social and natural resources within the Trap Hills region as disclosed in the EA. This analysis in the EA supports the conclusion in the FONSI that the project does not have international, national, region-wide or state wide importance that may result in a significant impact even with consideration of exploration in the Trap Hills region. The Responsible Official took appropriate action in issuing a FONSI. I find no violation of the NEPA or other law, regulation or policy related to this issue.

Issue 6: Visual Quality. The Appellant states "*On issue 5c., the ranger writes, "…the amount of acreage that could be disturbed by core drilling for this project is less than one percent of the acreage of the PA." In truth, the visual quality is disturbed across areas many times the size of the drilling pad. Road construction exacerbates this effect. This concern has been raised on*

previous exploration proposals, yet the ranger neglects to recognize this concern on subsequent proposals." (NOA, p. 3)

Response: Comments submitted by the Appellant from the scoping document state "*Another bogus statement is the suggestion that only roughly two acres would be affected. The truth that you, Ms. Adams, don't choose to advertise that the visual impact would affect many times that acreage, in addition to additional terrain that will likely be trampled while searching out the drill sites*" (PR, Document 2409 page 1). The Appellant also commented on this issue during the EA comment period (DN/FONSI, page 50). The comments/potential issues examination by the ID team determined this was not an issue that would be addressed through additional management alternatives. However, the concern could be addressed through clarification presented in the EA and/or considered and disclosed through team effects analyses as documented in the Scoping Comment Matrix document (PR, Document 2101 page 2).

Although visual impacts were not identified as an issue to be analyzed in detail in the EA, the Forest considered, disclosed and minimized visual impacts from the project. First, I note that the design features of the project activities will minimize visual impacts from drill pads and roads by locating these in previously disturbed areas whenever possible. The Mineral Analysis Framework (PR, document 3101) listed the Trans Superior Resources, Inc. intentions for Geophysical Surveys as "Geophysical surveys will be confined to existing forest openings; timber sale areas; trails and roads; and hand brushed lines up to 3 feet wide" (Mineral Analysis Framework, p 2). For Drilling Sites, this document stated the Trans Superior Resources, Inc. intentions as "Drill sites will be located in existing forest openings; timber sale areas; skid trails; roads; or purpose built temporary access trails" (Mineral Analysis Framework, p. 2). These same intentions are provided in the EA (EA, p. 27 and 28).

Second, stipulations will minimize visual impacts. EA, Section 2.6, stipulation 36 states "On the upper loop of the Cascade Falls Trail, there shall be a 200 foot setback for all mineral exploration activities from the trail to preserve the visual integrity" (EA, p. 22). EA, Section 2.6, stipulation 38 states "On Forest Road 468, there shall be a drilling equipment setback of 200 feet from the road clearing" (EA, p. 22). Additionally, the EA discussed "multiple stipulations have been developed to ensure that Forest Roads are maintained, and restored to original conditions after the project is completed (EA, section 2.6, stipulations 19 through 24" (EA, p. 31). Stipulations also minimize visual impacts from temporary road construction by requiring closure after use as stated in the EA on page 15 "Any road construction that may occur is set to the lowest standard possible for access in order to protect resources. Temporarily opened or constructed roads are closed after use."

Third, Forest Plan objectives for minimizing visual impacts identified in Visual Quality Objectives (VQO) will be met. The VQO map (PR, Document 11101)) and the Forest Plan Appendix G addressed the visual quality objectives. Appendix G – Scenery Management of the Forest Plan states that "Ottawa management activities such as timber harvest, recreation projects, or road work are required to meet specific standards associated with each VQO" (Forest Plan, p. G-1). As stated in the Response to Comments, the drill pad disturbance would meet the VQO (RTC, 5j, DN/FONSI, page 50).

The EA considers visual impacts, which are mitigated by the design features, stipulations and meeting Forest Plan objectives. Chapter 3 - Section 3.5 Environmental Impacts Related to Concerns in Recreational Resources of EA states the following: "The visual quality of the area would be preserved. There is a low probability that from certain vantage points along the NCNST and the upper loop of the Cascade Falls Trail, an exploratory drill rig could be observed within the northern portion of Parcel A. However, this would be very temporary in nature – typically less than one week. Additional measures would be put into place to preserve visual integrity in the vicinity of Cascade Falls (EA section 2.6, stipulation 36, and 38)" (EA, p. 29).

In summary, I find that the Forest adequately considered visual impacts in the EA and mitigated those impacts with design features and stipulations. I find no violation of the NEPA or other law, regulation or policy related to this issue.

Issue 7: Future Mining. The Appellant states: *"ONF management has stressed in the past that exploration is just exploration. It doesn't mean a mine is going in. What if, God-forbid, the company finds a wealth of minerals that they seek? ONF management is jeopardizing a SPNM area of great public concern by letting anyone prospect there to begin with."(NOA, p.4)*

Response: The only action before the federal agencies at this time is the application for a prospecting permit (See EA, Chapter 1). According to BLM regulations at 43 C.F.R. 3501.10, prospecting permits are described as allowing exploration for leasable mineral deposits on lands where the BLM has determined that prospecting is needed to determine the existence of a valuable deposits of minerals. It is not known at present whether valuable deposits of minerals exist on the lands involved or not, thus, it follows that assuming mining will result is speculative.

A recent decision by the Interior Board of Land Appeals (IBLA) rejected the rationale that hypothetical future mining that may or may not occur subsequent to prospecting was a reasonable basis for making a decision on a minerals prospecting project (See IBLA decision on appeal IBLA 2011-128 in PR at p. 182-12): *"BLM's rejection was also based upon its concern that resource degradation would result from future mining on the acquired lands. Because WIM's permit application seeks only to explore for minerals, we do not presently consider BLM's hypothetical concern that mining the lands is not consistent with the purposes for they were acquired."*

The EA also discloses a required special stipulation to be included in the recommendation for consent to BLM for the prospecting permit:

> **Special Stipulation:** (FSM 288.1, R9 RO Supplement, Exhibit 1): "Pursuant to the provisions of the Act of March 4, 1917 (16 USC 520), Section 402 of the Re-Organization Plan No. 3 of July 16 1946 (60 Stat. 1097, 1099), the Act of August 7, 1947 (30 USC 352), and the National Environmental Policy Act of 1969 (42 USC 4321 et seq.) as said authorities have been or may hereafter be amended, **no mineral development** (i.e. mining) **of any type is authorized hereby**, and consent to the issuance of this prospecting permit as required by law and regulations (43 CFR 3507.11 (d)) and (34 CFR 3507.19 (c)) is given **subject to the express stipulation that no mineral lease may be issued for the land under permit without the prior consent of the Forest Service**

> **USDA and the proper rendition of an environmental analysis in accordance with the National Environmental Policy Act of 1969**, the findings of which shall determine whether and under what conditions for the protection of the land involved the lease may issue." (EA, p.4, *emphasis added*)

This stipulation explicitly states that a prospecting permit does not give the permittee the right to develop, or mine, the mineral estate. It also states that before BLM issues a lease required before mining were to occur, the Forest Service has a decision on whether or not to consent to the issuance of the lease which must be analyzed under appropriate NEPA documentation.

The Ottawa adequately complied with the NEPA in that it analyzed past, present and reasonably foreseeable projects. It is not known at present whether valuable deposits of minerals exist on the lands involved or not, thus, it follows, that assuming mining will result, is speculative.

Regarding minerals exploration in the semi primitive non-motorized Management Area, this area is open to minerals exploration under Forest Plan direction (EA, page 12). Further, it is clear the Forest Plan allows for minerals exploration. The Forest Plan (p. 2-10) goals pertaining to minerals and geology specifically state to "Provide mineral resources to support economic growth through environmentally sound development on National Forest System lands." Forest wide objectives with respect to minerals and geology are to: "Generally, permit surface-disturbing exploration (including core drilling) in most areas, except within or adjacent to developed recreation sites during the recreation use season. Permit exploration especially where there is a potential to discover minerals of compelling domestic significance (as defined by U.S. Department of the Interior)." This direction is located on p. 2-35 of the Forest Plan. For the reasons discussed above, I find no violation of law, regulation or policy related to this issue.

Issue 8: Site specific information not included (in the form of an operating plan). The appellant states: *"The Ranger raises a huge point of concern in her so-called response to 5l. 'The ONF has not received the drilling operating plan, which would have the exact location where road construction and drill pads are proposed as well as which existing roads would be used.' There is no excuse to withhold this crucial impact information from the public until after opportunity, including the appeals process, has ended."*

"This all needs completion prior to the public process, so we may be duly aware of exactly what is proposed and where. You're putting the cart before the horse. It's frustrating to have asked to provide this information on previous explorations and to have that concern totally ignored on this Trans Superior proposal."

"Ms. Adams writes, 'Thus, there are expected to be few locations where temporary road construction is needed.' Firstly, they're not needed at all be the public ownership, and secondly, her response is open-ended. She doesn't tell us to what extent, because it's not known. This bolsters my point that we need to know what they have in mind before the public process begins. Her response suggests that a private company will have free run over our public forest." (NOA, p.4)

Response: The proposed actions for this project were described in the public scoping letter dated May 10, 2012. This proposed action is further outlined in EA Section 1.5 and Section 2.4 respectively: "The action proposed for this project is a recommendation of consent and what stipulations would be a part of the prospecting permit in the project area," and "The action proposed for this project is a determination of 'consent or non-consent' and the stipulations that would be a part of the Prospecting Permit in the project area." The exploration activities that are permitted by BLM under a prospecting permit are further described in EA Sec. 2.4. These exploration activities were used in the development and analysis of project stipulations. The specific location of exploration activities is known in that it would be located inside the prospecting permit areas. These areas are specifically displayed in the EA, Figures C-1 and C-2. This allowed for commenters to raise any concerns related to these specific locations and activities. Further, the anticipated effects of the project were adequately analyzed and disclosed considering the project activities described in EA Section 2.4 and that the stipulations would minimize effects (see also Issue 4).

As RTC 5l states, the ONF did not have the operating plan in hand. Below is an explanation of the administrative process for mineral exploration on National Forest System lands for Federal Hardrock minerals as it relates to the NEPA taken from a Record of Decision on the Superior National Forest:

> Minerals exploration is inherently uncertain. Permittees do not know many or even some of the locations of drill pads or access roads when they apply for a permit. That is only defined iteratively as initial results inform the decision on if and where to drill next. This is different than other projects on national forest lands such as vegetation management where the location and acreage of proposed timber harvest units may generally be identified during the project planning stage.
>
> On-the-ground minerals exploration activities for federal minerals are authorized through a two-step process:
> - First, the permit applicants submit an application for a federal hardrock minerals prospecting permit. They must submit an exploration plan with the application which describes the type and scope of proposed activities in the permit area. It is not possible for the exploration plan to display site-specific activities due to the inherent uncertainties.
> - Second, before the permit holders can conduct any ground disturbing minerals exploration in the permit area, they must submit an operating plan to BLM. The operating plan shows site-specific proposed locations of disturbance such as temporary roads and drill pads. BLM has the authority to approve operating plans, and in consultation with the Forest Service, identifies relevant stipulations from the permit that apply to that operating plan, and any additional conditions of approval to protect resources and provide for public safety. A field review by the Forest Service and BLM usually occurs before operating plan approval to ensure that relevant stipulations are applied to achieve their intended purpose.
>
> Many operating plans may be submitted for approval in a given permit area. Often, operating plans and adjustments (amendments) to those operating plans may be submitted on a yearly or more frequent basis. Once a prospecting permit is granted by BLM, permittees have the right to conduct minerals exploration. This right cannot be unreasonably impeded by delay.

> However, permittees are also required to conduct all mineral exploration in accordance with the terms of the permit, including any stipulations to protect resources accompanying the permit.
>
> Given this process, there is a need to balance requirements for impact disclosure under the NEPA and the right of permittees to conduct mineral exploration in a reasonable and timely manner. Thus the EA discloses the impacts of mineral exploration activities within the permit area, even though the exact location of all disturbances that could occur within the permit area is unknown at this time. It is the position of BLM that operating plan approval is an administrative action by BLM which implements the NEPA decision to grant the prospecting permit. (Record of Decision - SNF Federal Hardrock Minerals Prospecting Permits Project, p. ROD 17 and Working Guidance for FS Eastern Region, FS Minerals and Geology Management Centralized National Operations June 2012).

Given this administrative process for minerals exploration, I find that the Forest completed a reasonable analysis and disclosure of impacts and provided sufficient information for the public to comment on the EA. I find no violation of the NEPA or other law, regulation or policy related to this issue.

Issue 9: Non-Native Invasive Plants (NNIP) The Appellant states: "*Concerning NNIP, the surest way to avoid additional spread is to keep the area free of prospecting equipment. Little was known about the spread of NNIP in 1917 and 1970. The ranger's response to (5o) actually adds to my reasoning when she mentions dragging logs, stumps and other woody material to impede OHV use. Accessing this debris spreads NNIP… Also not fully addressed is the NNIP that is encouraged by vehicles moving within the PA.*" (NOA p. 4)

Response: The Appellant raised concerns regarding the spread of NNIP on the ONF resulting from mineral exploration activities during the public comment period (EA, Appendix E – RTCs, PC# 5o, 5q, and 5w [PR Document 3601; pages 46-56]) and my review indicates that mitigating the spread of NNIP is well addressed in the EA, DN/FONSI and PR. NNIP can spread as a result of disturbance from a variety of activities on the Forest (NNIP Specialist Report [PR Document 53102; page 3]) and stipulations included in the Decision specify mitigation to reduce the spread of NNIP resulting from mineral exploration activities. These stipulations are designed to prevent the spread of NNIP through the use of weed-seed free mulch and gravel (EA, Stipulation 25; page 20), maintenance of canopy and native vegetation to suppress NNIP establishment (EA, Stipulation 26; page 20), equipment cleaning (EA, Stipulations 43-48; page 22-23), and soil protection by minimizing disturbance and seeding disturbed soils with native species (EA, Stipulations 49-50; page 23). The PR adequately addresses the potential spread of NNIP resulting from mineral exploration vehicles moving within the PA because equipment and vehicle cleaning, as outlined in the EA, will lessen the likelihood of NNIP spread (EA, Stipulations 43-48; page 22-23; see also NNIP Specialist Report [PR, Document 53102]).

Forest Service RTCs (EA, Appendix E – RTCs, PC# 5o; page 52) identifies known occurrence of NNIP present in the PA and indicates that the NNIP species present in the PA have a low likelihood of spreading when woody debris are placed on the road during the road decommissioning process. Use of on-site debris would inhibit transfer of NNIP propagules to

new sites (EA, Appendix E – Response to Comments, PC# 5o; page 52). In addition, the Forest Service response points out that utilizing existing roads and openings will reduce the number of locations where temporary road construction is needed (EA, Appendix E – Response to Comments, PC# 5o; page 52). I find no violation of law, regulation, or policy on this issue.

Issue 10: Off-Highway Vehicle (OHV) Use

The Appellant states: "*It is feared that OHV users, if blocked off, will choose a new point of entry over fresher terrain than what existed on the decommissioned road surfaces.*"

Response: This comment is, presumably, in response to stipulations guiding the decommissioning of temporary roads under Stipulation 19 in the EA (page 19) which states "Road closure may include pulling logs and debris onto the road surface within the first 100 feet of a berm to discourage illegal Off-Highway Vehicle [OHV] use, as directed by a Forest Service Official." This issue was not raised by the Appellant during the public comment period.

The PR cites monitoring reports from neighboring forests which indicate that techniques employed by the U.S. Forest Service to decommission temporary roads are effective (Knight et al. 2012 [PR, Document 51106; page 1], Rye 2012 [PR, Document 51105; page G-7]). Monitoring outlined in Section 2.5 of the EA (page 16) will track road use and conditions and post-prospecting monitoring will ensure that sites are returned to their "natural landscape." The ONF will use these information and methods to implement successful road decommissioning on the Forest.

Furthermore, the project proposes no changes to authorized public motor use. All roads and trails currently closed to the public will remain closed (DN, page 4). Forest roads 400 and 630, which serve as major access routes through the project area are closed to OHV operation (EA; page 26). This management direction should further aid in the reduction of OHV use on decommissioned temporary roads within the project area. The ONF has adequate stipulations and methods to minimize impacts from OHV use in the PA. I find no violation of law, regulation, or policy on this issue.

Issue 11: Temporary Roads

The Appellant states: "*The response to issue 5p concerning temporary roads over streams, is not assuring in that the 'kept to a minimum' language is repeated, and that a State DEQ permit is required. We've learned for a fact lately that the DEQ isn't concerned about sedimentation, in fact they seem to encourage it.*" (NOA p. 4)

Response: The Appellant raised concern regarding impacts of temporary roads on streams during the public comment period for this action (EA, Appendix E – RTCs, PC# 5p [PR Document 3601; page 53]). Forest Service RTCs (EA, Appendix E – RTCs, PC# 5i; page 49) provides reference to specific stipulations developed to guide the planning, construction, and management of temporary roads associated that directly address potential sedimentation during prospecting operations (6, 6A, 6B, 19, 19A, 19B, 19C, 21, 22, 23, 24, 28, and 40 [EA; pages 18-22]).

My review of the PR indicates that the construction of temporary roads to mitigate impacts to aquatic systems is adequately addressed by project stipulations which provide direction that "Locations [of temporary roads] shall be approved by the Forest Service prior to construction" (EA, Stipulation 19 C; page 20). Furthermore, operating plan stipulations outlined in Section 2.6 "Roads and Drilling Pad Construction" of the EA (Stipulation 21; page 20) provide Forest Service guidance on road standards as applied to aquatic systems and sedimentation. These stipulations include:

- Roads, culverts and bridges will be designed to allow aquatic organism passage in perennial streams, unless otherwise prescribed (EA; page 20); and
- Sediment-capturing structures will be constructed along roads and streams where needed to prevent road sediment from entering the water. Such structures must be weed-seed free (no hay bales) (EA, page 20).

The Appellant also raised concern regarding the effectiveness of sediment traps during the public comment period (EA, Appendix E – RTCs, PC# 5r [PR Document 3601; page 53]). In response, the Forest Service provided a citation (USDA Forest Service 2005 [PR Document 51111; pages 54-57]) referencing the standard methods for sediment capture (EA, Appendix E – RTCs, PC# 5r [PF Document 3601; page 53]). My review indicates that sediment control is well addressed in the PR.

Related stipulations provide the mechanism for closing roads if damage is detected (EA, Stipulation 23; page 20) and specify the closure of temporary roads during extended periods of inactivity (EA, Stipulation 24; page 20). Stipulation 9 (EA; page 18) restricts specific activities within 100 feet of rivers, perennial or intermittent streams, ponds, seeps or spring unless approved by a Forest hydrologist to prevent contamination of adjacent water resources and sedimentation.

Additional stipulations pertinent to the Appellant's comment restrict operations in wetlands "only after the wetland surfaces have been protected, either through the use of mats or similar devices, or when frozen enough to provide access and use without breaking through the frozen layer" (EA, Stipulation 6; page 17). Stipulations 19B and 19C (EA; page 19-20) require that newly constructed roads be decommissioned and rehabilitated back to "the natural lay of the land". Monitoring data from similar project sites on neighboring forests indicates that stipulations are an effective means of resource protection (Knight et al. 2012 [PR Document 51106; page 1], Rye 2010 [PR Document 51105; page G-9], Rye 2012 [PR Document 51105; page G-7]).

Furthermore, the aforementioned stipulations that provide site-specific measures to protect and retain the ecological function of aquatic systems will ensure that Clean Water Act and State Water Quality Standards will be met (DN; page 12-13). I find no violation of law, regulation, or policy on this issue.

Issue 12: Slope The Appellant states: "*On issue (5s) regarding slope, the chart provided is not reassuring whatsoever. I did not ask for a chart. My concern revolved around the potential from runoff on slopes of less than 18 percent, which comprises 81% of the PA. To properly address*

my comment, the ranger would need to break down the 0-18% range further. Water will run on a 17% slope." (NOA p. 5)

Response: The Appellant raised concern regarding slopes between 18 and 35 percent during the public comment period for this action and the erosion risk for these slopes was adequately characterized (EA, Appendix E – RTCs, PC# 5s; page 53-55). Concerns regarding slopes between 0 and 18 percent were not raised at that time.

However, my review of the PR indicates that potential impacts from mineral exploration activities on soil and water quality are adequately mitigated, including guidelines for operations on slight to moderate slopes (EA, Stipulation 27; page 21). First, the Natural Resources Conservation Service of the United States Department of Agriculture, with expertise in soil conservation, specified that slopes of 0 to 18 percent pose a slight erosion risk and 18 to 35 percent slopes pose a moderate erosion risk. These data are detailed in the Forest Service RTCs (EA, Appendix E – RTCs, PC# 5s; page 53-55). Thus, there is only a slight risk of erosion in areas of concern to the Appellant. The erosion risk in the 0 to 18 percent range is adequately characterized. Even in the areas of 0 to 18 percent slope with a slight risk of erosion, design features and stipulations of the project further minimize and avoid impacts.

Furthermore, Stipulation 27 (EA; page 21) provides specific guidelines to reduce erosion risk by requiring Forest Service evaluation, on a case-by-case basis, for slopes from 18 to 35 percent and prohibiting equipment operation on slopes greater than 35 percent. Monitoring on the Forest confirms the effectiveness of project design criteria in protecting soil quality and productivity (2011 Monitoring and Evaluation Report; page 23). Therefore, Forest Service site-evaluation and stipulations included as part of BLM authorization of a Plan of Operations, under the framework established to protect soil integrity, are well documented in the Project Record.

The aforementioned stipulations that provide site-specific measures to protect and retain the ecological function of aquatic systems will ensure that Clean Water Act and State Water Quality Standards will be met (DN/FONSI; page 12-13). I find no violation of law, regulation, or policy on this issue.

Recommendation

After reviewing the Project Record materials for the Trans Superior Resources, Inc.-Federal Hardrock Minerals Prospecting Permit Project, on the Ottawa National Forest and after reviewing and considering the concerns raised by the Appellant, I find no merit in this appeal. I recommend that the decision for these project be affirmed.

/s/ Brian M. Pentecost
BRIAN M. PENTECOST
Appeal Reviewing Officer
District Ranger

cc: Patricia R Rowell