DEPARTMENT OF NATURAL RESOURCES

July 11, 2018

Kevin Lee, Senior Staff Attorney
Minnesota Center for Environmental Advocacy
1919 University Ave W, Suite 515
St Paul, Minnesota 55104

Mark Fink, Senior Attorney
Center for Biological Diversity
209 East 7th St
Duluth, Minnesota 55805

Chris Knopf, Executive Director
Friends of the Boundary Waters Wilderness
401 N Third St, Suite 290
Minneapolis, Minnesota 55401

Dear Mr. Lee, Mr. Fink, and Mr. Knopf:

The Minnesota Department of Natural Resources (DNR) received your request for a Supplemental Environmental Impact Statement (SEIS) for the proposed NorthMet project by mail on June 11, 2018. After careful consideration of your request and the information you provided to support your request, DNR has determined that an SEIS is not warranted. This letter serves as a notice of denial under Minnesota Rules part 4410.3000, subpart 4.

The joint request from Minnesota Center for Environmental Advocacy, Center for Biological Diversity, and Friends of the Boundary Waters Wilderness (MCEA et al.) is directed to the DNR, US Army Corps of Engineers, and US Forest Service. Please note that this letter conveys DNR's decision on your request for an SEIS under the Minnesota Environmental Policy Act (MEPA). This letter does not constitute a response from the US Army Corps of Engineers or the US Forest Service regarding your request under the National Environmental Policy Act.

MCEA et al.'s request seeks an SEIS that examines the environmental impacts of two mining scenarios described in a Canadian financial disclosure document (National Instrument 43-101F1 Technical Report, March 26, 2018) filed by Poly Met Mining, Inc. (PolyMet) for the NorthMet project. MCEA et al. cite the 43-101 Technical Report as the primary "evidence" that an expansion is currently proposed for the NorthMet project.

The 43-101 Technical Report is a financial disclosure document that the Canadian government requires of publicly traded companies. It must document mineral reserves and other information relevant to investors and financial institutions seeking to understand a company's potential performance. Therefore, the majority of

PolyMet's March 2018 43-101 Technical Report focuses on the NorthMet project as evaluated in the Final Environmental Impact Statement and reflected in PolyMet's various permit applications.

The two alternative mining scenarios described in the 43-101 Technical Report do not demonstrate that a project change is proposed. To the contrary, the report submitted to Canadian authorities indicates the company has identified potential expansion opportunities and, typical of any mining company, is investigating this potential additional mineral resource and possible scenarios to mine it.

Indeed, the 43-101 Technical Report makes clear that expansion is not certain. The report does describe the potential for increased throughputs at two discrete levels—59,000 and 118,000 short tons per day (STPD), versus the initially proposed level of 32,000 STPD. However, it also clearly states that the estimates of potential additional mineral resources are only "preliminary in nature" and include Inferred Mineral Resources. On p. 19, the 43-101 Technical Report explicitly states:

> The purpose of the additional investigations is to quantify the *potential* viability of identified resources at higher throughputs that are not currently permitted for development. Development of those additional resources would require additional engineering, environmental review and permitting and would require changes in infrastructure that would require significant capital investment. The economic viability of these additional resources has not been demonstrated to date.

Similar statements are contained elsewhere in the document. At this stage, specific information on potential mining scenarios and mineable resources that would be needed for meaningful environmental review is lacking, and an expansion remains speculative.

DNR has not received a proposal for either of the two alternative mining scenarios presented in the 43-101 Technical Report. Environmental review under MEPA typically begins with an initial data submittal, usually a scoping EAW, or a project description from a project proposer identifying a new or modified project. The DNR has received no such information from PolyMet about changes to the proposed NorthMet project. In fact, the DNR is currently reviewing PolyMet's application for a permit to mine for the NorthMet project, and the two scenarios identified by MCEA et al. are not included in that application. The DNR must review and act on the information that is before the agency.

MCEA et al. also allege that recommendations by one of PolyMet's consultants to complete further engineering and environmental studies provide certainty that an expansion is imminent. DNR notes that when commenting on work done to date, the consultant characterizes it as "scoping level" and "preliminary." Similarly, MCEA et al. point to statements by PolyMet executives to the media and others about the available resource and potential profits to be made. These types of statements do not constitute a reasonable basis of expectation and cannot be construed to be a proposed project.

Minnesota Rules part 4410.3000, subpart 3A directs responsible governmental units (RGUs) to consider two conditions in determining whether a proposed project should undergo preparation of a supplemental EIS after the final EIS has been determined adequate, but before the project becomes exempt under part 4410.4600,

subpart 2, items B or D. Minnesota Rules part 4410.3000, subpart 3A, items (1) and (2), direct a supplement to an EIS be prepared whenever:

1) substantial changes have been made in the proposed project that affect the potential significant adverse environmental effects of the project; or
2) there is substantial new information or new circumstances that significantly affect the potential environmental effects from the proposed project that have not been considered in the final EIS or that significantly affect the availability of prudent and feasible alternatives with lesser environmental effects.

Regarding Item 1, DNR has not received formal notification (e.g., a revised permit application or project description) of the changes identified by MCEA et al. being proposed to the NorthMet project. Nor are we aware that PolyMet has formally notified any other governing body or regulatory agency in Minnesota of such changes.

Regarding Item 2, while MCEA et al. point to new information developed since DNR's FEIS adequacy determination, DNR has determined the 43-101 Technical Report, along with the other materials submitted, do not constitute new information or circumstances that significantly affect potential environmental impacts of the proposed project. The mere contemplation of certain action is not sufficient to trigger an environmental review under Minnesota law. Indeed, MEPA and relevant case law, dating back to the 1977 Reserve Mining case, expressly do not provide for conducting environmental review on a potential expansion when the expanded project is speculative — i.e., when there is no proposal to review and the RGU has no ability to assess potential impacts. The information supporting MCEA et al.'s request for an SEIS consists of conjecture and speculation.

If an application for expansion or project modification is submitted, the DNR would evaluate those changes and compare them to what was evaluated in the EIS in order to determine if a Supplemental EIS is needed.

In conclusion, based on the information before the agency at this time, DNR is denying the request from MCEA et al. for an SEIS. If in the future DNR receives notification of proposed changes to the NorthMet project, the proposed changes will be subject to Minnesota statutes and rules regarding environmental review and permitting, and will be evaluated accordingly.

Sincerely,

Barb Naramore
Assistant Commissioner

Cc: Connie Cummins, Forest Supervisor, Superior National Forest, U.S. Forest Service
Chad Konickson, Regulatory Branch Chief, St. Paul District, U.S. Army Corps of Engineers
Dave Frederickson, Chair, Environmental Quality Board
Will Seuffert, Executive Director, Environmental Quality Board,
John Linc Stine, Commissioner, Minnesota Pollution Control Agency
Sherry Enzler, Minnesota Department of Natural Resources