

# Fond du Lac Band of Lake Superior Chippewa

## Reservation Business Committee

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Chairman  
**Kevin R. Dupuis, Sr.**

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Executive Director,  
Tribal Programs  
**Chuck Walt**

August 3, 2017

The Honorable Rob Bishop, Chairman  
House Committee on Natural Resources  
1324 Longworth House Office Building  
Washington, DC 20515

The Honorable Raúl Grijalva, Ranking Member  
House Committee on Natural Resources  
1324 Longworth House Office Building  
Washington, DC 20515

The Honorable Paul Gosar, Chairman  
House Committee on Natural Resources  
Subcommittee on Energy and Mineral Resources  
1333 Longworth House Office Building  
Washington, DC 20515

The Honorable Alan Lowenthal, Ranking Member  
House Committee on Natural Resources  
Subcommittee on Energy and Mineral Resources  
1333 Longworth House Office Building  
Washington, DC 20515

Re: Subcommittee's July 27, 2017 Hearing on Congressman Emmer's draft bill

Dear Chairmen Bishop and Gosar and Ranking Members Grijalva and Lowenthal:

I write on behalf of the Fond du Lac Band of Lake Superior Chippewa to express our profound concerns about, and strong objections to, the draft bill offered by Congressman Emmer that was the subject of the hearing on July 27 before the Subcommittee on Energy and Mineral Resources. This draft bill would retroactively grant to a foreign-owned mining company—one that has a history of environmental violations in its home country—a perpetual lease of federal mineral rights. It would further eliminate an ongoing administrative process that is essential to the proper evaluation of any future development of federal minerals within this exceptional part of the Superior National Forest lands. We urge you not to support this measure.

The Fond du Lac Band is a federally recognized Indian tribe. We hold a Reservation just south of Superior National Forest which was established for us by Treaty with the United States on September 30, 1854, 10 Stat. 1109. The 1854 Treaty further reserved to us the rights to hunt, fish and gather on lands outside our Reservation. These lands extend into the Arrowhead region of Minnesota, and encompass the lands within much of Superior National Forest and the Boundary Waters Canoe Area Wilderness (BWCAW), including the lands that are affected by this draft bill.

The BWCAW, the lands adjacent to it, as well as the lands beyond the BWCAW's buffer zone and within the Superior National Forest, are pristine. This region—within the Rainy Lake Watershed—is a unique water-based ecosystem with thousands of lakes and interconnected waterbodies. The quality of its waters is high and those waters provide critically important habitat for fish and wildlife, including moose and other unique natural resources like wild rice. The waters, wild rice, fish and game are especially important to the Chippewa. Such natural resources have sustained our people for centuries and are the foundation of our culture and religion. The natural resources in this region play an increasingly important role in our ability to feed our families and exercise our Treaty rights, because many of the waters southwest of this region are impaired (as designated by the Minnesota Pollution Control Agency) from mining pollutants which have, in turn, destroyed wild rice beds and led to fish consumption advisories.

Although northeastern Minnesota has a long history of mining, the mining done to date in the State has been for iron and taconite. The proposals to develop sulfide ore mining, for copper, nickel and palladium, would be the first of their kind in Minnesota. The history of such mines elsewhere highlights the very serious environmental damage that they pose from acid mine drainage—risks that Minnesota has not yet had occasion to address or regulate. Those risks are especially acute in water-based ecosystems like those in the BWCAW and the Rainy Lake watershed of Minnesota. And the proposed development of sulfide ore mines in lands immediately south of the BWCAW poses a serious and direct threat to the BWCAW for the very simple reason that the waters in that region flow north—towards the BWCAW.

Because of the very substantial risks posed by sulfide-ore mining, Minnesota Governor Dayton made a decision in March 2016 not to permit the use of state lands for mining in this area, and subsequently the Secretaries of Interior and Agriculture made like decisions with regard to federal lands. In particular, these federal agencies declined to renew two leases of federal minerals which had been made a half-century ago to the predecessor of Twin Metals Mine, and its foreign owner, Antofagasta Minerals. One of these leases covers land that is directly adjacent to the BWCAW. The other is within three miles of the BWCAW. The federal decision was based on a determination that the leases posed an unacceptable risk to the waters and natural resources in the BWCAW. In connection with that decision, the Departments of Interior and Agriculture initiated a process to evaluate

whether 234,328 acres of federal lands within this ecologically unique region should be withdrawn from mining.<sup>1</sup>

The federal review process is now underway and should be allowed to continue.<sup>2</sup> Decisions on whether to allow sulfide-ore mining, especially in this unique water-based ecosystem, need to take into account all of the impacts of the proposed project and should be based on objective science, economics and the social and related impacts of such development on the lives and livelihood of Minnesotans, including federally-protected tribal Treaty rights.

Such analysis should also be done before any decision is made to reinstate expired, or expiring, leases of federal minerals in this area. The need for such an analysis is illustrated by the expired leases for the Twin Metals Mine. The original leases, which had a 20-year term, were made in 1966, well before enactment of laws that are essential to protecting the environment, such as the Clean Water Act. The original leases were also made before the federal courts confirmed the continued rights of the Chippewa to hunt, fish and gather in this region, and accordingly do not take into account the impact of the mineral leases on these treaty-protected rights. All such matters should be carefully considered, and the on-going administrative review process is intended to do this and should be allowed to continue.

The draft bill does not do this. Instead of allowing a process that would permit informed decision-making, the bill would eliminate the on-going review process. The bill would further retroactively reinstate the Twin Metals' expired leases, while rewriting the terms of those leases to convert them into "indeterminate" leases, while further limiting the federal government's ability to impose conditions on these leases—giving to the company what appears to be essentially a perpetual right to the federal minerals on these lands. Further, the bill would do the same for all other unidentified leases that may now exist on National Forest Service lands within Minnesota, as well as any future such leases.

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<sup>1</sup> During the July 27 hearing, testimony was presented to suggest that the federal withdrawal affected 420,000 acres of land. That is not correct. The federal action applied only to 234,328 acres of federal lands, and further made clear that even as to federal lands, it did not and would not affect any valid existing rights on those federal lands.

See USFS Withdrawal Application, at [http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/105871\\_FSPLT3\\_3924868.pdf](http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/105871_FSPLT3_3924868.pdf). The decision to withdraw state lands, including the state's school trust lands, was made by the Governor based on his view about the need for further study.

<sup>2</sup> The review began with a Notice of Intent published in the Federal Register on January 13, 2017, 82 Fed. Reg. 4,282. On April 13, 2017, this Administration continued the process and extended the deadline for submitting comments. 82 Fed. Reg. 17,794.

The kind of mining that Twin Metals and Antofagasta propose to develop is dangerous and poses a direct and substantial threat to what has long been recognized as an exceptional and extraordinary wilderness. Those threats should be carefully assessed through the on-going administrative review process. Congress should not enact laws that preclude informed decision-making or which blindly re-write leases, but should allow the federal agencies which have been delegated responsibility for addressing the terms and conditions on which federal lands may be leased, to continue to exercise that authority under existing law. Finally, to the extent that Twin Metals Mine contends that the federal government's decision not to renew its leases is wrong, it has already chosen to raise those claims in federal court, where they are pending.

We urge Congress not to proceed with this draft bill.

Sincerely,



Kevin R. Dupuis, Sr., Chairman

cc: The Honorable Rick Nolan  
The Honorable Betty McCullum  
The Honorable Keith Ellison  
The Honorable Tom Emmer  
The Honorable Tim Walz  
The Honorable Jason Lewis  
The Honorable Erik Paulsen  
The Honorable Collin Peterson  
Chris Esparza, Majority Committee Staff  
Steve Feldgus, Minority Committee Staff