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**Forest Service**  
Eastern Region

Superior  
National  
Forest

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# Federal Hardrock Minerals Prospecting Permits Project

## Record of Decision



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**Attachments to the Record of Decision**

Attachments to the Record of Decision contain lists of the specific actions tied to the Record of Decision.

- Attachment 1    Prospecting Permits
- Attachment 2    Stipulations Accompanying Prospecting Permits
- Attachment 3    Monitoring Plan

## I. INTRODUCTION

### **Decision Summary**

This Record of Decision (ROD) documents my decision to implement Alternative 4 from the Final Environmental Impact Statement (FEIS) for the Federal Hardrock Minerals Prospecting Permits Project which gives Forest Service consent to the BLM issuing 29 prospecting permits, and identifies stipulations for use and protection of the national forest system lands involved. I selected Alternative 4 because it best addresses the balance between resource use and resource protection, and responds to the noise issue analyzed in the FEIS and other concerns raised in public comment.

### **Background Information**

There are a number of laws that guide the overall Forest Service mission to “sustain the health, diversity, and productivity of the Nation’s forests and grasslands to meet the needs of present and future generations.” These laws include the Organic Administration Act (Act of June 4, 1897) that set aside and reserved national forests ‘to furnish a continuous supply of timber for the use and necessities of citizens of the United States’ and provided for mineral exploration within the national forest reserves; the Multiple Use Sustained Yield Act of 1960 that states the national forests shall be administered for a variety of uses including timber, watershed and wildlife and fish purposes, and included provisions to continue use and administration of mineral resources on national forest lands; and the National Forest Management Act of 1976 that states the national forests shall be administered for a variety of uses on a sustained basis to ensure in perpetuity a continuous supply of goods and services to the American people. The Mining and Minerals Policy Act of 1970 states the following:

The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in

- (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries,
- (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs

Forest Service Manual 2802 on Minerals Management states it is an agency objective to (page 10):

Ensure that exploration, development, and production of mineral and energy resources are conducted in an environmentally sound manner and that these activities are integrated with the planning and management of other National Forest resources.

The Superior National Forest Land and Resource Management Plan (Forest Plan), approved in 2004, embodies not only the provisions of the National Forest Management Act and regulations on Forest Plan implementation, but these other laws as well. The Forest Plan guides all natural resource management activities for the SNF. The Plan describes desired resource conditions, resource management practices, levels of resource production and management, and the availability of suitable

land for resource management. The Plan provides management objectives to ensure that ecosystems are capable of providing a sustainable flow of beneficial goods and service to the public.

Desired Conditions for minerals management in the 2004 Forest Plan (p. 2-9) state:

- Exploration and development of mineral and mineral material resources is allowed on National Forest System land, except for federally owned minerals in designated wilderness (Boundary Waters Canoe Area Wilderness (BWCAW)) and the Mining Protection Area (MPA). (D-MN-1)
- Ensure that exploring, developing and producing mineral resources are conducted in an environmentally sound manner so that they may contribute to economic growth and national defense. (D-MN-2)

This is part of the legal framework that the SNF works with in managing minerals on the Forest.

Mining has been a part of the culture in northeastern Minnesota for over 120 years. Iron mines have been in operation for many decades, and this is anticipated to continue for decades into the future. The presence of hardrock minerals (e.g. copper, nickel, platinum, palladium and others) has also been known and explored since at least 1948 (Miller 2002), and recent increases in prices and improvements in technology have spurred renewed interest in exploring for hardrock minerals.

I understand that there is widespread concern and interest about the possibility of hardrock mineral development in northeastern Minnesota. To be clear, this decision facilitates prospecting (i.e. exploration) activities described in the Federal Hardrock Minerals *Prospecting* Permits Project Final EIS. It is not a minerals development project (i.e. it is not a mining project). Issuance of prospecting permits by the Bureau of Land Management (BLM) based on Forest Service consent to them confers exclusive rights to the permit holder to *prospect on and explore* the specific lands within a permit area to determine the existence of a valuable mineral deposit. I understand that it is possible that a permit holder may apply for a noncompetitive lease to develop minerals in these permit areas should exploration find a valuable deposit. However, any subsequent application for a lease to develop minerals would be subject to a separate National Environmental Policy Act (NEPA) compliance process on its own merits, and require specific decision-making in which the Forest Service would exercise its consent to leasing authority (see Attachment 2, Forest Service Stipulation #9).

The mineral estate under national forest system (NFS) lands in some cases is owned by the federal government, and by law is managed by the BLM. Specific to this project, the BLM received 29 complete prospecting permit applications for federal hardrock minerals under national forest system lands on the SNF. The Federal Hardrock Minerals Prospecting Permits Project responds to those permit applications to fulfill the direction of the applicable legal and regulatory framework (FEIS, Section 1.7 Decision Framework), the Mining and Minerals Policy Act and the Forest Plan to allow for minerals exploration in an environmentally sound manner. This project is conducted in cooperation with the BLM. The BLM has the final authority to issue prospecting permits, however must have Forest Service consent before doing so.

The Project area (the area where the 29 permit applications are located) is generally south of Ely and east of Birch Lake (see FEIS Map 1). There is very mixed land ownership in the area with many private residences, seasonal cabins, businesses and resorts. This is a high recreation use area and

includes Forest Service campgrounds, private campgrounds, motorized and non-motorized recreational trails, boat landings, Birch Lake, and BWCAW entry points. There has been and continues to be a lot of recreational and resource management activity occurring on federal land and other ownerships.

With all of the valuable resources and uses in the project area, I realize that there are strong feelings and opinions about how the land should be managed. I recognize that the BWCAW is an incomparable wilderness resource that draws visitors from Minnesota, the rest of the country, and internationally. I also recognize that a number of people live in the area, some year-round, and value the quality of life that northeastern Minnesota provides. There are also tourism and recreation businesses that employ local people in the area. Minerals are another valuable resource in the area, and minerals exploration activity provides another opportunity for employment. There are wildlife, lakes and streams, and a range of ecosystems in the area that provide biodiversity and other natural resource values.

In addition to these resources, it is also important to consider the context of this project relative to the existing activities in the area. Recreation occurs year round, and varies from cabin users and boaters on Birch Lake, to the developed campground at Birch Lake, to backpackers and dogsledders using the BWCAW. Small businesses in the area depend on recreation activity. Vegetation management and minerals exploration are also historic and ongoing activities in the area.

Minerals exploration has a multi decade history on the Forest and in the area near the 29 permit application areas (see FEIS Map 6 Active Mineral Leases and Past Drill Sites on All Ownerships). About 1,960 core holes have been drilled in the Duluth Complex on national forest land to date (Wirz 2012). My staff and I have monitored many recent minerals exploration projects and gained knowledge on mitigation and monitoring needs (SNF 2009 Monitoring Report Section 10 Minerals; see also more recent monitoring in Project File). This is reflected in the stipulations and monitoring plan shown in Attachments 2 and 3. SNF geologists and other resource specialists have gained experience monitoring and working with the mining companies to minimize adverse resource impacts. My staff and I have worked with the BLM to develop our knowledge of minerals exploration activities and permitting processes. Further, State of Minnesota Rules on conducting exploratory drilling apply to this project and serve to minimize adverse impacts (FEIS Appendix G Water Resources Technical Memo #2). Public comment on this project has been very useful in providing ideas to add and refine stipulations as well. These efforts have allowed the Forest Service and BLM to develop stipulations and tools to minimize adverse impacts that are specific to minerals exploration.

In 2009, the Kawishiwi District Ranger approved the Glacier Project that included vegetation management activities on approximately 12,672 acres of federal land, including activities within and near the 29 permit application areas considered in this project. The activities included creating young forest, thinning, and improving forest stands. It is clear that the scale of disturbance from minerals exploration (up to about 1,131 acres for these 29 permit areas) is far less than that of vegetation management. Even the projected disturbance from Forest-wide minerals exploration over the next twenty years (about 3,725 acres; FEIS Section 3.7) is less than 3% of the projected disturbance from vegetation management in ten years on the Forest (about 130,000 acres; Forest Plan p. D-2).

The Superior National Forest has considerable experience with vegetation management, and has developed mitigation and monitoring to allow for progress to be made towards achieving Forest Plan Objectives for forest composition, while at the same time minimizing adverse impacts to

environmental and social resources (SNF 2008 Monitoring Report Section 6 Timber). Some of the activities in minerals exploration are very similar to that of vegetation management (e.g. construction, use, closure and decommissioning of temporary roads), and I am confident that our knowledge from vegetation management can be successfully applied to minimize the same types of impacts from minerals exploration.

Clearly, managing the natural resources of the Superior National Forest requires complex integration of resource assessments, management action, and cooperative partnerships. I have considered the full range of potential impacts to resources and the human environment; past, present and reasonably foreseeable future activities, and existing conditions in the project area in making my decision.

The proposed action for minerals exploration in this project was included in a scoping report that was mailed to interested individuals, organizations, and federal, state, tribal and local governments on April 1, 2009. About 150 people and organizations submitted comments. Some raised concerns about the effects the project would have on recreationalists due to noise, on the Boundary Waters Canoe Area Wilderness, water quality, wildlife, the spread of non-native invasive species and other forest resources. Others supported the project for the economic impact and job opportunities. And some raised concerns about the NEPA process, permitting, and mining. We produced a Draft EIS in March 2011 that analyzed alternative methods to address the noise issue identified from scoping while meeting the Purpose and Need for the Project, and included stipulations to address other resource concerns. We received extensive comments from about 1,678 people and organizations on the Draft EIS.

In the Draft EIS we intended to accomplish two overall tasks:

- First was to evaluate the impacts of minerals exploration in the 29 current permit application areas to support a SNF decision on consent for these 29 permits.
- Second, given that interest in minerals exploration was increasing on the Forest, projected impacts from minerals exploration for federal minerals on a Forest-wide basis were evaluated.

Based on public comment to the Draft EIS, and further evaluation, I have decided to limit this decision only to the question of consent on the 29 permit applications shown in Attachment 1. See FEIS Section 1.7 Decision Framework.

## **II. THE DECISION**

My decision is based upon my knowledge of the Project Area, information gathered through on-the-ground field reviews, review of the FEIS, comments received on the Draft EIS, the Forest Service's response to those comments, the entire project record including references and literature cited, and my experience managing National Forest System land.

I am selecting Alternative 4 for the 29 current permit applications described in the FEIS. With selection of this alternative, the Forest Service is consenting to BLM issuing the 29 prospecting permits listed in Attachment 1 and shown on the 13 detailed maps in the FEIS (Maps 3.1 to 3.13). The prospecting permits include about 37,562 acres of NFS lands in the public domain, and about 1,142 acres of NFS lands acquired under the Weeks Act or with Weeks Act status. My decision includes stipulations for use and protection of natural and social resources, mitigations for special use permit roads and terms and conditions from the USDI Fish and Wildlife Service Biological Opinion which



are shown in Attachment 2, and the monitoring plan shown in Attachment 3. By selecting Alternative 4, a stipulation requiring noise mitigation would be included on each permit (see Attachment 1). For the acquired lands involved, stipulations to protect the purposes for which the lands were acquired are specified in Attachment 2. I will recommend to BLM that stipulations to protect other resources on these particular lands be included on the specific prospecting permits as applicable.

With this decision, I am also authorizing that three special use permits for temporary road construction and access in off-permit areas can be issued. The special use authorizations are listed in Attachment 1.

While the prospecting permits themselves would cover about 38,704 acres if issued by BLM, anticipated surface disturbance for actual exploration activity would be a fraction of that acreage. Table ROD-1 shows the overall acres of ground disturbing activities and reclamation that could occur with implementation of mineral exploration activities in the 29 permit areas. More detailed estimation of potential ground disturbance are in the FEIS at Section 2.2.2.1.

Table ROD-3 shows the potential surface disturbance that could occur with issuance of the three special use authorizations.

<b>Table ROD-1 Disturbance and Reclamation</b>	
<b>Activity</b>	<b>Acres</b>
Establish Drill Pads	Up to 93
Establish lines for geophysical investigations	Up to 464
Construct new temporary roads	Up to 278
Brush out existing temporary roads	Up to 290
Establish helicopter landing Pads	Up to 20 pads <sup>1</sup>
Establish landings for barges at lake shores	Up to 40 landings <sup>2</sup>
<b>Total Acres of Disturbance</b>	Up to 1,131 <sup>3</sup>
<b>Total Acres of Reclamation (all activities)</b>	Up to 1,131

<sup>1</sup> The number of helicopter use proposals is difficult to estimate. The FEIS analyzes up to 20 pads may be used Forest-wide; the number of pads used in the 29 permits in my decision is likely less.

<sup>2</sup> The number of barge landings is difficult to estimate. The FEIS analyzes up to 40 landings pads may be used Forest-wide; the number of landings used in the 29 permits in my decision is likely less.

<sup>3</sup> This figure is 1,131 acres instead of 1,125 acres due to rounding.

Table ROD-2 displays the changes to the transportation system.

Table ROD-2. Transportation System	
Transportation System	Miles
Construct New Temporary Road	Up to 116 miles
Brush out or Reconstruct Existing Road	Up to 145 miles
Closure of Temporary Road when Drill Site is Inactive	Up to 261 miles
Decommission Temporary Road (final reclamation)	Up to 261 miles

Table ROD-3 displays special use authorizations for activities located outside the permit areas.

Table ROD-3. Special Use Authorizations	
Applicant	Temporary Road Construction
DMC	2.8 miles/6.7 acres disturbance
Lehmann	5.6 miles/13.5 acres disturbance
Twin Metals	0.3 miles/.7 acres disturbance

All practicable means to avoid or minimize environmental harm have been adopted in this decision (40 CFR 1505.2). Implementing Stipulations (Attachment 2) will minimize potential adverse impacts. In addition, standard BLM stipulations also minimize impacts and help assure reclamation activities (see FEIS Section 2.4). The application of State law, including to protect water resources (see FEIS Section 3.6) and reduce noise (see FEIS Section 3.1), also serves to minimize impacts.

This decision does not include any action on future prospecting permit applications, or any action on stipulations that could be applied to future permits elsewhere on the Forest. Also, consent to the BLM on these 29 prospecting permits is a separate decision from any proposal for development of mineral resources (i.e. a mine). Any proposal for mineral development would undergo a separate NEPA compliance process, as displayed in ROD Attachment 2, Forest Service Stipulation #9.

### Stipulations

My decision includes the stipulations shown in Attachment 2. The stipulations minimize adverse impacts to social and natural resources including water quality, address the noise issue analyzed in the FEIS, respond to Forest Plan direction, and provide for public safety.

### Monitoring and Evaluation

Monitoring includes specific actions taken to determine if we did what we said we would do, and to determine how well the management actions achieve the desired outcomes or objectives. The specific monitoring actions that are included with this decision are listed in Attachment 3. Monitoring will help assure that stipulations will be implemented and have their intended effect in protecting natural and social resources.

### **III. RATIONALE FOR THE DECISION**

In making this decision, I have considered how each of the alternatives analyzed in detail would meet the purpose and need of the Federal Hardrock Mineral Prospecting Permits Project, and the environmental effects of each alternative. The purpose and need is the following (FEIS Section 1.6):

The purpose of the agencies' actions is to facilitate exploration for various mineral resources in an environmentally sound manner. The proposed action is a response to the federal government's overall policy to foster and encourage private enterprise in the development of economically sound and stable industries, to help assure satisfaction of industrial, security and environmental needs (Mining and Minerals Policy Act of 1970).

The proposed action responds to the overall guidance of the SNF Plan to ensure exploration of federal hardrock mineral resources is conducted in an environmentally sound manner (Forest Plan D-MN-2, page 2-9) and in compliance with the stipulations on the permits and operating plans.

The BLM, charged with administration of the mineral estate on these Federal lands, has the legal authority and responsibility to consider issuing permits to explore for Federally-owned minerals for potential economic recovery. The Forest Service considers consenting to the BLM issuing prospecting permits and specifies stipulations to use and protect the surface lands.

I have also considered the issues and have taken into account the competing interests and values of the diverse public. Making a decision on resource uses is a complex process and results in tradeoffs between resource effects and resource benefits. I am aware of the interactions between the various resources; the direct, indirect, and cumulative effects of the proposed action on the different resources and have taken these into consideration (FEIS Chapter 3). When compared to other alternatives, Alternative 4 will help accomplish Forest Plan direction for minerals, and provides the best balance between resource use and resource protection, and best responds to issues raised by the public, state, tribal and local government, and agencies. I have carefully considered these tradeoffs in making my decision.

I have considered the varying views expressed during the public comment periods. There is a broad range of opinion on how the Forest should be managed. In making this decision, I considered the noise issue, along with other comments raised on resources such as water quality, wildlife, transportation and economics during the planning process.

The Interdisciplinary Planning Team has spent many months developing this project, including field reviews of active and reclaimed core drilling sites. All practical means to avoid and/or minimize environmental harm that might occur from implementing the projects have been incorporated into the project design and stipulations.

The reasons I am selecting Alternative 4 are described below and are based on 1) how Alternative 4 meets the purpose and need, 2) how Alternative 4 addresses the issue driving alternatives in the EIS, 3) ensuring Alternative 4 is in compliance with the Forest Plan. My rationale is further described in **Section V Other Alternatives Considered** and **Section VII Public Involvement**.

### **1. How Alternative 4 meets the purpose and need**

The purpose of the Federal Hardrock Minerals Prospecting Permits Project is to facilitate exploration for various mineral resources in an environmentally sound manner. The Forest Service and BLM have identified the need to consider issuing 29 hardrock mineral prospecting permits on National Forest System (NFS) lands on the Superior National Forest for the purposes of exploring for valuable deposits of copper, nickel, and platinum group metals, and other associated metals.

There are two main parts to the purpose and need: 1) conducting minerals exploration, and 2) doing so in an environmentally sound manner. It is fairly straightforward that consent to the BLM to issue the prospecting permits, with reasonable and prudent stipulations, meets the purpose of facilitating minerals exploration.

After reviewing the EIS, project record and consulting the interdisciplinary team, I believe that the mineral exploration activities will be conducted in an environmentally sound manner for several reasons. First, at least 2,168 core holes have already been drilled within the Superior National Forest (Wirz 2012), yet it is evident that water quality in the region is high, and forest vegetation and diverse wildlife are present in sustainable populations (2009 SNF Monitoring Report; Water Section 2 p. 2-12, Vegetation Section 8, Wildlife Section 9). My review of the FEIS and project record does not give me reason to believe that additional minerals exploration in the 29 permit areas would change this situation. The footprint of minerals exploration is minimal and short term (up to 15 years but in most cases 2 years, see FEIS Section 2.2.2), especially when compared to vegetation management (see **Background Information**). Second, State of Minnesota Rules for core drilling are thorough and serve to minimize impacts (FEIS Appendix G Water Resources Technical Memo #2). Third, the interdisciplinary team has developed stipulations to minimize adverse impacts (Attachment 2). In some cases, these stipulations are more restrictive than requirements for minerals exploration on other ownerships. I believe that taking a conservative approach to mitigation is justified, given the values in the area (see FEIS Chapter 3, Affected Environment sections). Fourth, working with the permit holders and monitoring minerals exploration activities will help ensure that the stipulations are implemented and achieve their intended purpose (Attachment 3). For these reasons, my decision both facilitates minerals exploration and does so in an environmentally sound manner.

I would like to share an example of typical effects that can be expected and how the forest recovers from disturbance. Minerals exploration results in clearing areas for drill pads and temporary roads, yet the forest is resilient and recovers. Below are two pictures showing a drill pad and a temporary road that are in the process of growing back.



**Figure ROD-1.** site two growing seasons after exploration activity



**Figure ROD-2**

Typical access route immediately after (left figure) and two growing seasons after (right figure) exploration activity

While I recognize that no project operates flawlessly in the field, I believe that the stipulations and monitoring for the 29 permits in my decision will achieve effective results to allow for minerals exploration in accordance with the stipulations.

**2. How Alternative 4 Addressed the Issue Analyzed in Alternatives in the FEIS**

During public scoping, concerns were raised that noise from the proposed core drilling activities would affect the quality of recreational experiences. Commenters are most concerned with potential effects to local landowners, summer home visitors, Boundary Waters Canoe Area Wilderness (BWCAW) visitors and winter use enthusiasts.

The issue statement was identified as: Noise from drilling and exploration activities may degrade visitor experience and local landowner quality of life.

Three action alternatives addressing this issue were analyzed in the FEIS (Alternatives 3-5). This provided a range of alternative methods to address the noise issue and compare to the proposed action (Alternative 2) and no action (Alternative 1). Some commenters questioned the need for alternatives or any noise mitigation given that other activities in the area such as timber harvest, snowmobiling and ATV use generate motorized noise. Exploratory drilling generally operates 24 hours a day, whereas these other activities do not. Drilling noise may not be audible at a given location 24 hours a day since changing winds can render a noise inaudible, but the potential for impacts from this continuous noise source exists. I recognize that drilling noise is not a new sound since drilling has happened on the SNF for decades, and it is a temporary noise source (drilling at a given location is complete in an average of three weeks). Still, I have listened to a drill rig and I can understand that this is a concern for people's recreation experience and quality of life. Some people live in the area year round, and I understand activities in the area may impact their quality of life too. The BWCAW, where the Forest Service is required to preserve wilderness character, is near or adjacent to some of the permit areas. Thus I believe that mitigation to address noise impacts from drilling is justified.

The Draft EIS proposed under Alternative 4 noise mitigation requirements for campgrounds, campsites, resorts, private and recreational residences, several Forest Plan Management Areas, and the BWCAW. Based on review of public comment and Minnesota Rules on noise, it became evident that the requirements under Alternative 4 for campgrounds, campsites, resorts, residences and the Semi

Primitive Motorized and Non-Motorized Management Areas outside the BWCAW were very similar to State of Minnesota Rules for these receptors (both required a sound level of 50 dBA during the night, and implementation of Minnesota Rules for drilling operations would very likely result in this same sound level during the day as discussed in FEIS Section 3.1). It was not logical to have two very similar requirements for the same receptor, so I have decided to drop these requirements for Alternative 4 in the Final EIS.

Minnesota Rules on Noise requirements for campgrounds, campsites, resorts, and residences apply for all minerals exploration activities. The Minnesota Rules were developed to provide mitigation for these receptors, and application of these rules will mitigate impacts. I realize, as disclosed in FEIS Section 3.1, that some people living and recreating within the Superior National Forest outside the BWCAW may experience annoyance from drilling noise even though Minnesota Rules would reduce sound levels reaching receptors, and drilling noise is temporary. However, I also realize that minerals exploration is one of the multiple uses of the national forest. Also, Forest Plan Management Area and Recreation Opportunity Spectrum descriptions for national forest lands containing these 29 permit applications include the expectation that at least some management activities using motorized equipment will occur (see FEIS Section 3.1.2 and 3.1.3). While I recognize that my decision may not be preferable to everybody, I believe allowing for minerals exploration while also recognizing that these mitigations reduce impacts represents a balance of the multiple uses on the Forest.

However, I have maintained in Alternative 4 noise level limits for the BWCAW, which is not addressed under Minnesota Rules. The BWCAW noise level limit is considerably more stringent than what is required for any receptor under Minnesota Rules. This is because the Wilderness Act requires that the Forest Service preserve wilderness character, which includes ‘outstanding opportunities for solitude or a primitive and unconfined type of recreation’. See FEIS Section 3.1 for details on Minnesota Rules and noise mitigations identified in Alternative 4.

Other commenters requested that I prohibit any noise from minerals exploration from being audible in the BWCAW to preserve wilderness character. I do not believe that it is realistic or required to reduce impacts on the BWCAW to zero from resource management activities located outside the BWCAW. Forest Service Manual 2320.3.5 states “do not maintain buffer strips of undeveloped wildland to provide an informal extension of wilderness.” The Wilderness Act also expressly provides that it shall not “be deemed to be in interference with” other federal laws such as the “Multiple-Use Sustained Yield Act of June 12, 1960.” 16 U.S.C. § 1133(a)(1). Project activities will all occur outside the wilderness, on multiple use national forest system lands.

Further, I realize that noise from motorized sources, including exploratory drilling, is present in the area and will continue to be present even if I select the no action alternative due to timber harvest, snowmobile and ATV use, and drilling on state and private land, and for privately held minerals on federal land (FEIS Section 3.1.2 Affected Environment). I believe that recognition of the existing sounds in the area, and proper application of our management framework leads to the approach of allowing for minerals exploration in the 29 permit areas while taking reasonable action to minimize impacts.

My decision includes that sound levels at the boundary of the BWCAW may only exceed 30 dBA 50% of the time (L50 level of 30 dBA) and 35 dBA 10% of the time (L10 level of 35 dBA) at the boundary of the BWCAW. A sound level of 30 dBA from drilling sound, while not the same type of

sound as natural sounds in a forest, is considered to be the level of a quiet woods setting (FEIS Section 3.1). This provides for substantial mitigation, especially when it is considered that sound levels from drilling would be even lower further into the BWCAW beyond the boundary, where nearly all wilderness campsites are located. I recognize that drilling sound from rigs near the BWCAW could be audible in the BWCAW near the boundary, particularly under occasional calm wind conditions (e.g. L90 Audibility figures in FEIS Section 3.1 show the area of audible drill sound that could occur 10% of the time). Drilling sound would be inaudible further in the wilderness, or near the boundary under higher wind speed conditions (FEIS Section 3.1 Noise). Finally, I realize that the drilling noise would be temporary. The FEIS discloses that under Alternative 4, impacts to the BWCAW would be minor with the application of this mitigation (FEIS Section 3.1 Noise).

I am comfortable that the FEIS presents an adequate analysis of noise impacts. We have received expert advice from the National Park Service Natural Sounds and Night Skies Division, and implemented these recommendations as appropriate to improve the analysis (see National Park Service recommendations in project file). We have also carefully considered public comments on the Draft EIS about noise, including a detailed technical report from a local noise expert attached to comments from permit applicants (see Braslau Letter and Responses, project file).

Please see **Section V Other Alternatives Considered** for my rationale on not selecting the other alternatives as it relates to noise.

### **3. Consistency with Forest Plan Direction**

My decision is based on a review of the record that shows consideration of relevant scientific information, including responsible opposing views, and as appropriate, the acknowledgement of incomplete or unavailable information, scientific uncertainty, and risk. My decision implements the Superior National Forest Plan. As required by NFMA Section 1604(i), I find this project to be consistent with the Forest wide goals, the physical, biological and social desired conditions and objectives and the standards and guidelines included in the Plan. Relevant direction in the Forest Plan has been included as stipulations shown in Attachment 2. We have used the best available science in conducting the effects analyses.

My decision helps meet the overall guidance of the SNF Plan to ensure exploration of federal hardrock mineral resources is conducted in an environmentally sound manner (Forest Plan D-MN-2, page 2-9). It also responds to the Forest Plan Desired Condition that exploration of minerals is allowed on national forest system land, except for federally owned minerals in designated wilderness (BWCAW) and the Mining Protection Area (Forest Plan D-MN-1, page 2-9).

I have considered the effects of the project on all of the other relevant resources and have taken into account all of the analysis in Chapter 3 of the EIS. The effects of the project on all resources will be within Forest Plan standards and guidelines. The overall effects are expected to be minimal and acceptable when I consider the tradeoff between taking action to facilitate minerals exploration and not taking any action. Temporary road construction and use may be the most prominent feature of this project, given how small drill pads are (up to about 100 by 100 feet at most). Stipulations on construction, use, closure and decommissioning of temporary roads also meet Forest Plan direction on temporary road management and limit adverse impacts.

When I reviewed the stipulations in FEIS Section 2.4, it is evident that Forest Plan direction, including Forest-wide Standards and Guidelines, has been incorporated into this project as shown in Attachment 2. The Monitoring Plan in Attachment 3 provides a method to help ensure the stipulations are implemented to achieve intended results. If monitoring indicates that any stipulations are not complied with, the Forest Service and BLM will work with the permittee to ensure that compliance is achieved and any resource damage remediated.

### **Management Area Direction**

The 29 permit areas include acreage in General Forest, General Forest – Longer Rotation, Recreation Use in a Scenic Landscape, and Semi-primitive Motorized, Semi-primitive Non-Motorized, Unique Biological Area, Research Natural Area, and Eligible Wild, Scenic and Recreational River Management Areas (MAs). Table 6 in the FEIS displays the MAs that each permit area is located in. I have considered the effects of the actions in relation to the MA direction in the 2004 Forest Plan. My decision follows the social and ecological direction for these MAs since prospecting permits may be granted in these MAs, and stipulations in my decision minimize adverse impacts. Stipulations shown in Attachment 2 incorporate relevant MA specific direction from the Forest Plan (e.g. LOC-2 and LOC-3).

Forest Plan direction for Research Natural Areas (RNA) and Unique Biological Areas (UBA) prohibits surface occupancy for minerals exploration. Permit Application 055203 contains about 488 acres within a UBA, and Permit Application 55206 contains about 160 acres in a UBA and about 639 acres in a RNA. The portions of these Permit Applications within the RNA and UBA MAs are required to be No Surface Occupancy as a part of the stipulations in my decision. See FEIS Map 2 for areas of No Surface Occupancy for minerals exploration.

Map 2 also shows the BWCAW and MPA, where no permit, lease, or other authorization will be issued for exploration or development of minerals owned by the United States. All of the 29 permit application areas in my decision are outside the BWCAW and MPA, as required by applicable law and Forest Plan direction (S-MN-3, S-MN-6, Forest Plan p. 2-9).

About 34 acres of Permit Application 054045 are within the Eligible Wild, Scenic and Recreational River MA. In this case, the 34 acres are near the St. Louis River, which is classified as recreational. The Forest Plan prohibits surface disturbance or occupancy for *development* (i.e. mining) of federal minerals in a Recreational River MA, but exploration is allowed (S-WSR-12, Forest Plan p. 3-20). My decision allows minerals exploration on these 34 acres near the St. Louis River.

The Forest Plan identifies what areas are open to minerals exploration. I realize public commenters have asked me to prohibit minerals exploration in this project. It is beyond the scope of the Federal Hardrock Minerals Prospecting Permits Project to withdraw national forest system lands from availability for minerals exploration, and this would not meet the Purpose and Need shown in FEIS Section 1.6. This Project identifies stipulations for use and protection of natural and social resources to allow for minerals exploration to occur in an environmentally sound manner.

## **IV. ENVIRONMENTALLY PREFERABLE ALTERNATIVE**

Regulations implementing the National Environmental Policy Act require the specification of “...the alternative or alternatives which were considered to be environmentally preferable” [40 Code of



Federal Regulations (CFR) 1505.2(b)]. In this project, the minerals exploration activities are conducted to identify the presence or absence of a valuable mineral deposit in the geologic formation present. These activities are not specifically designed to achieve forest structure or composition objectives in the Forest Plan, or otherwise provide benefits to environmental resources. The application of protective stipulations shown in Attachment 2 would minimize adverse impacts from the action alternatives. However, the environmentally preferable alternative would be Alternative 1 (No Action) since no adverse impacts to natural resources would occur from the project.

## **V. OTHER ALTERNATIVES CONSIDERED**

The three other alternatives I considered in detail are discussed below. A more detailed comparison of these alternatives can be found in the EIS. All of the action alternatives included the same project proposals for minerals exploration activities; therefore, the reasons why an alternative was not selected relates to exploration activities that resulted in different effects between alternatives, in this case, primarily impacts from drilling noise.

### **Alternative 1, No Action**

Under the No Action alternative, current management plans would continue to guide management of the Project Area; however none of the 29 prospecting permits would be consented to by the Forest Service, and mineral exploration activities for federal minerals in these permit areas would not occur. I realize that many commenters recommended the No Action Alternative, as this would avoid any adverse environmental impacts from implementing the project. However, the No Action Alternative does not help achieve the Desired Conditions D-MN-1 and D-MN-2 in the 2004 Forest Plan (p. 2-9): “Exploration and development of mineral and mineral material resources is allowed on National Forest System land, except for federally owned minerals in designated wilderness (BWCAW) and the Mining Protection Area (MPA).” “Ensure that exploring, developing and producing mineral resources are conducted in an environmentally sound manner so that they may contribute to economic growth and national defense.” By the same token, No Action does not achieve the purpose and need displayed in FEIS Section 1.6. After reviewing the effects analysis in the FEIS, public comment and the project record, I believe the minerals exploration may be conducted in an environmentally sound manner with the application of stipulations shown in FEIS Section 2.4 along with State of Minnesota rules for exploratory drilling. Based on our working relationships, I have confidence that permittees will work cooperatively with the Forest Service and BLM to effectively implement the stipulations to minimize adverse impacts. Further, monitoring shown in Attachment 3 will help ensure that stipulations are implemented to achieve their purpose to minimize adverse impacts.

In addition, the No Action Alternative would not result in any economic activity or jobs that would occur under the action alternatives (economic activity from minerals exploration).

### **Alternative 2**

Alternative 2 was the modified proposed action. I did not select Alternative 2 because this Alternative does not provide any stipulations to reduce noise impacts, and thus does not address the issue raised during scoping which prompted the Forest Service to develop alternatives in the EIS. I am aware that the State of Minnesota regulates noise impacts for several important receptors within the Forest, including private residences, recreation residences, resorts, and designated campgrounds and

campsites. However, these State rules are silent on noise impacts to the federally designated Boundary Waters Canoe Area Wilderness. Alternative 4 includes protective stipulations for the BWCAW.

### **Alternative 3**

Alternative 3 included a requirement for mitigation to reduce sound levels produced at all drill rigs. This alternative has the advantage of requiring consistent application of noise mitigation regardless of location, which would reduce impacts for both known receptor locations such as campgrounds and residences, and in more remote areas which might have recreationalists present. However, in some cases Alternative 3 may result in applying mitigation where no recreationists are present, which would not address the noise issue. In addition, a requirement for reduction of sound levels at the drill rig does not allow the Forest Service to conclude that sound levels at receptors would be at a target level (for example, if the drill rig is very close to a receptor under Alternative 3, sound levels at the receptor may still be relatively high). Alternative 4 includes limits on sound levels reaching the receptor. This approach more directly addresses the experience of the receptor. Minnesota Rules address sound levels reaching receptors outside the wilderness, and Alternative 4 addresses the wilderness as a receptor.

### **Alternative 5**

Alternative 5 included a requirement for mitigation to reduce sound levels produced at all drill rigs in the same manner as Alternative 3. It also required that drill rigs operate only during the period of lower recreation use on the Forest (November 1 through April 30). I recognize that Alternative 5 would avoid noise impacts to recreation users and residents during the summer months. Noise impacts to winter recreation users would increase by concentrating drilling during the winter. Ambient sound levels in winter may be somewhat lower than summer, which would render noise impacts from drilling more noticeable.

Adverse impacts to some natural resources would be decreased because minerals exploration operations would be concentrated in the winter months when frozen ground conditions and seasonality of wildlife activity limits impacts. However, based on past minerals exploration practices on the Forest and due to soils stipulations that require operations on frozen ground in some cases, any of the action alternatives would have the majority of activities conducted during the winter. Thus, there would be minimal difference based on season of operation between Alternative 5 and Alternatives 2-4.

While I recognize that Alternative 5 has benefits to social and natural resources, and was recommended by several commenters for this reason, it also reduces flexibility for operations by the permittees. Alternative 5 limits the window of opportunity to complete project activities in a timely manner. The analysis in the EIS indicates that the stipulations to protect wildlife, soils and other resources under all action alternatives will minimize impacts.

See also the discussion for why Alternative 3 was not selected.

## **VI. ALTERNATIVES CONSIDERED BUT ELIMINATED FROM FURTHER ANALYSIS**

I did reconsider the alternatives that were addressed in Section 2.4 of the EIS to determine if any of these should be analyzed in detail. I still believe these alternatives do not need to be considered in detail and agree with the rationale included in the Final EIS.

In addition, Forest Service NEPA procedures at 36 CFR 220.5(e)(1) state that alternatives that are modified through the course of the NEPA process are additional alternatives considered. Between the Draft and Final EIS, the list of stipulations shown in FEIS 2.4 were modified based on comments from the public, other agencies, and staff input. Changes to this list include modifications to Noise, Wildlife, Water Resources, and other stipulations (see FEIS Appendix F). These changes are another alternative considered.

## **VII. PUBLIC INVOLVEMENT**

The Notice of Intent (NOI) for this project was published in the *Federal Register* on December 19, 2008. The proposed action for minerals exploration in this project was included in a scoping report that was mailed out to interested individuals, organizations, and federal, state, tribal and local governments on April 1, 2009. About 150 people and organizations submitted scoping comments. Some raised concerns about the effects the project would have on recreationalists due to noise, on the Boundary Waters Canoe Area Wilderness, water quality, wildlife, the spread of non-native invasive species and other forest resources. Others supported the project for the economic impact and job opportunities. And some raised concerns about the NEPA process, permitting, and mining. We produced a Draft EIS in March 2011 that analyzed alternative methods to address the noise issue while meeting the Purpose and Need for the Project, and included stipulations to address other resource concerns. The legal notice for the 45 day comment period on the Draft EIS was published in the Duluth News Tribune on April 1, 2011. In response to public request, the comment period was extended by the Forest Supervisor for another 45 days for a total of 90 days. Open houses giving the public the opportunity to ask questions about the Draft EIS to better inform comments were held in Duluth, MN on April 12, Virginia, MN on April 13, and Roseville, MN on April 14, 2011. We received extensive comments from about 1,678 people and organizations on the Draft EIS.

### **Public Comments**

This project resulted in a wide range of public input. I recognize that there are strong feelings and opinions for and against this project. I also recognize that many public comments included detailed technical comments and recommendations. I have carefully considered these. The interdisciplinary team identified a number of changes between the Draft and Final EIS to respond to public comment. These are summarized in FEIS Appendix F. Response to public comments are shown in FEIS Appendix J. Due to the voluminous nature of public comment, we developed Public Concern statements based on the public comment and responded to these as allowed by 40 CFR 1503.4(b). The full text of public comment is in the project file. I would like to speak to several themes that showed up in the comments.

First, I want to acknowledge that the area containing the 29 permit applications shown in FEIS Map 1 is very important for multiple reasons as discussed under **Background**. I have heard from visitors to the BWCAW, dogsledders, and people interested in jobs associated with minerals management. I have heard from people who live in this area year-round, and live with both the adverse and beneficial impacts of decisions made by the Forest Service and other land managers in the area. On the one hand this may include job opportunities from minerals exploration. On the other hand, this may include noise and other impacts to recreation use, visual resources and natural resources. In either case, the effects are ultimately temporary and limited. A given drill pad may take a few weeks to complete. I

realize that effects may be present for longer when cumulative drilling activity is considered, yet it is still a temporary and shifting presence on the landscape.

Second, as I have already mentioned, my decision is to consent to the BLM issuing the 29 prospecting permits, with stipulations and monitoring. My decision does not authorize a mine or any mineral development. A separate NEPA process would be undertaken to address any proposals for mineral development at such time it is proposed. I realize that it is possible that an application for a lease to develop federal minerals could occur, based in part on possible findings from exploration in the 29 permit areas. Some commenters wanted us to analyze cumulative impacts from future mining projects in the area, and pointed out that some mining companies have information about mining projects on their websites. However, it is not reasonable or feasible to conduct a cumulative impacts analysis on actions that are being contemplated and do not contain specific information about their physical characteristics which allow us to meaningfully evaluate impacts. I am comfortable that the cumulative actions shown in FEIS Appendix C contain past, present, and ‘reasonably foreseeable’ actions relevant to cumulative effects.

Third, I know that there is concern about potential impacts to water resources from minerals exploration. It is important to recognize that the scale of minerals exploration limits effects. And we have seriously considered public comment on water resources, and have revised several stipulations to address these. For example, I have adjusted the stipulation to limit water withdrawals from surface waters to minimize impacts from potential cumulative withdrawals from the same water body. In addition, after considering public comment I have also added several stipulations to protect wild rice and rice lakes (see Attachment 2).

I have also carefully considered public comment raising the concern that exploratory drilling could cause pockets of brackish (i.e. salty) groundwater to reach freshwater supplying drinking water wells. In response to this public comment, my staff completed some limited monitoring of existing drill holes and found some holes to contain brackish water (data is in project file). This is not surprising since it is known that brackish water is present in deeper underground rocks throughout the region. However, the probability that a drill hole could cause brackish water to move into a rock fracture containing fresh water used in a drinking water well is very low (See FEIS Section 3.6 and FEIS Appendix G, Technical Memos 4 and 4a). In addition, consultation with the Minnesota Department of Health indicated that this scenario is considered unlikely. Minnesota Department of Health Rules on drilling contain multiple provisions to prevent and minimize any pollution problems from exploratory drilling (see FEIS Appendix G, Water Resources Technical Memo #2).

Although the probability that exploratory drilling would result in brackish water impacting drinking water supplies in wells located within the Duluth Complex is low, I also considered that the risk is not zero. Further, there is very little data available to characterize the extent of the risk. Therefore, I am adopting a precautionary approach to include a stipulation to address this concern. This stipulation requires that when a drill site is within 500 feet of a drinking water well, the permittee must either permanently abandon the hole once drilling is complete, or monitor the drill hole for chloride levels above 250 mg/L (the State of Minnesota secondary drinking water standard). If chloride levels above 250 mg/L are found, the permittee must permanently abandon the hole per Minnesota Department of Health (MDH) regulations. Alternatively, the permittee may keep the hole open if it is cased. See Attachment 2 for this stipulation (WAT-9). I realize that this stipulation goes beyond the requirements of MDH rules for drilling. However, after implementation of this stipulation in these 29 permit areas,

we will be in a better position to consider the need for it in the future with the collection of additional monitoring data.

Fourth, I received comments and questions about the NEPA process and what steps would be taken to comply with NEPA during the minerals exploration permitting process. Several commenters requested that NEPA environmental documents be produced before approval of all operating plans.

The process for permitting and approving exploration for federal hardrock minerals is somewhat complicated, so I wish to explain a few key points about it here in relation to the NEPA process.

- Minerals exploration is a process that 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 identified 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 proposal stage.
- On-the-ground minerals exploration activities for federal minerals are authorized through a two step process.
  - First, 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 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 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 minerals 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 NEPA and the right of permittees to conduct minerals exploration in a reasonable and timely manner. Thus, the Final EIS discloses the impacts of minerals exploration activities in the 29 permit areas, even though the exact locations of all disturbances that could occur within the 29 permit areas is unknowable at this

time. We have provided information on 21 operating plans that have already been submitted in the EIS. This has helped us characterize the type and extent of impacts that could occur from all exploration activities in the 29 permit areas. 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.

I realize that some commenters will likely disagree with this approach. However, I believe it strikes a reasonable balance between the requirements for impact disclosure under NEPA, the right of permit holders to conduct exploration activities in a timely manner, and the reality of uncertainty in implementing minerals exploration. It is also consistent with the applicable regulatory framework (see FEIS Section 1.7). It is not reasonable to complete multiple NEPA documents for operating plans over the course of a decade or more, unreasonably delaying implementation and infringing on the rights of permit holders. Especially when the impacts of implementing exploration in permit areas has already been disclosed in the Final EIS, the scale of impacts are limited, and protective stipulations will further limit impacts to what is disclosed in the Final EIS. If an operating plan contains activities that are not within the scope of impacts disclosed in the Final EIS, the Forest Service and BLM would consider the need for additional NEPA environmental documentation. One example of this situation would be a proposal in an operating plan for mineral bulk sampling, which was dropped from consideration as part of the Proposed Action for this project.

I also saw comments requesting that a Supplemental Draft EIS be produced. Council of Environmental Quality regulations for implementing NEPA provides direction for producing supplements to an EIS at 40 CFR 1502.9(c) which states that agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

Regarding point (i), the Final EIS covers the same 29 permits with the same activities that are covered in the Draft EIS (the Draft EIS included 32 permits, and of these 32 permits, the Final EIS includes 29). The scope of the decision framework in the Final EIS is more limited than that of the Draft EIS since I am not making a decision on requiring stipulations Forest-wide. I believe that an adjustment providing for a more limited decision framework reduces the scope of potential impacts from a decision on the EIS and does not constitute a substantial change in the proposed action. And while the proposed action has been adjusted by adding and editing stipulations between the Draft and Final EIS, these changes were made in response to public comment, which is allowed for at 40 CFR 1503.4.

Regarding point (ii), I realize that we have collected data on the brackish water issue raised by the public in comments on the Draft EIS discussed above. I included a protective stipulation in response to include in the Final EIS and my decision. Again, I believe this is appropriate to the direction at 40 CFR 1503.4.

Additional direction at 40 CFR 1502.9 (a) states:

(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in part 1503 of this chapter. The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

I understand several commenters considered the Draft EIS inadequate for a variety of reasons. We have responded to these comments in FEIS Appendix J Response to Comments. I believe the Draft EIS was adequate for the public to review and comment on. We have revised and improved the analysis in the Final EIS as allowed for in 40 CFR 1503.4.

Finally, I considered the public comments on noise and the FEIS analyzes alternative ways to address this issue. Please see **Rationale for the Decision: How Alternative 4 Addresses the Issue Analyzed in Alternatives** for discussion on these comments.

### **VIII. TRIBAL CONSULTATION**

The project area falls within the 1854 Ceded Territory for the Grand Portage, Bois Forte and Fond du Lac Bands of the Tribes of Lake Superior Chippewa (Collectively, the Bands). The Bands are sovereign nations and, as a result of the treaty with the United States, retain the usufructuary right to hunt, fish and gather in the ceded lands.

For the Federal Hardrock Minerals Prospecting Permits Project, consultation and coordination with Tribal Governments began through informal notice at regularly scheduled Forest-wide meetings held with the Bands by the Forest Supervisor and Tribal Liaison Officer. The Bands were provided an overview of the proposed project starting in 2007, and were kept informed of the status of the project during 11 meetings with the Forest Supervisor. Formal consultation began with a letter dated April 1, 2009. This letter notified the Bands of the proposed action and requested scoping comments. Letters were mailed to the 1854 Treaty Authority, an intertribal natural resource agency representing the Grand Portage and Bois Forte Bands, and to the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) representing the Fond du Lac Band. One letter was received from Darren Vogt the Environmental Coordinator for the 1854 Treaty Authority. Concerns raised in Mr. Vogt's letter are summarized below. On February 11, 2011, the three Bands, 1854 Treaty Authority, GLIFWC and the Forest Supervisor and staff met to discuss the draft Federal Hardrock Mineral Prospecting Permits Environmental Impact Statement prior to public dissemination.

The Fond Du Lac Band and a number of individual Native American individuals provided comments on the Draft EIS during the comment period on the Draft EIS. On April 27, 2012, the three Bands, 1854 Treaty Authority, GLIFWC and the Forest Supervisor and staff met to discuss the Final Environmental Impact Statement prior to public dissemination.

Concerns raised by the tribes include potential effects to forest access, game species, wild rice, water quality and fisheries, and heritage and cultural resources. Impacts of the project on these resources are

summarized in FEIS Section 1.8.1 Tribal Issues and Concerns. I believe that with the application of stipulations, and the limited scope of minerals exploration discussed in **Background**, impacts to these resources will be minimized. In particular, I have added several additional stipulations to protect wild rice to the FEIS in response to concerns about this valued resource (FEIS Section 2.4 Stipulations; ROD Attachment 2).

I am committed to continuing our government-to-government consultation relationship with the Bands for this and any future projects touching on minerals management and other issues of interest.

## **IX. FINDINGS REQUIRED BY OTHER LAWS AND REGULATIONS**

### *National Forest Management Act (NFMA)*

The 2012 Planning Rule provides direction to the Forest Service on implementing the NFMA. As required by section 219.15(d) of the 2012 Planning Rule, this project is consistent with the direction found in the 2004 Forest Plan. The project is feasible and reasonable and results in the application of management practices that meet the Plan's overall direction of protecting the environment while producing goods and services. See **Section III Rationale for the Decision** in this ROD for further discussion on consistency with the Forest Plan.

I have thoroughly reviewed the Final EIS. I believe the interdisciplinary team adequately analyzed and disclosed the relevant effects on the resources to the level commensurate with the risks concerning minerals exploration. Five alternatives were analyzed in detail, two more were considered but dropped from further review, and revisions between the Draft and Final EIS resulted in an additional alternative considered. This range of alternatives was broad enough to provide a range of effects of different levels of minerals exploration activities. This analysis provided me with sufficient information to make a sound and reasoned decision, based on providing goods and services to meet the needs of the public and maintaining the long-term productivity of the land.

### *Mineral Resources on Weeks Law Lands (16 USC 520).*

This law set out that the USDA Secretary could authorize mineral prospecting on lands acquired under the Weeks Act of 1917. The functions of the Agriculture Secretary under this Act were transferred to the Secretary of Interior in the Reorganization Plan No. 3 of 1946, and set forth that the Interior Secretary could only authorize mineral development when advised by the USDA that such activity will not interfere with the primary purposes for which the lands were acquired. The Weeks Act for Certain Lands of September 1958 (16 USC 521a) provided that lands acquired under differing land acquisition authorities would be subject to provisions of the Weeks Act.

About 1,142 acres of lands within the prospecting permits were acquired under the Weeks Act, or under different acquisition authorities, but have Weeks Act status. With the specification of stipulations for use and protection of surface resources (see FEIS Section 2.4 and ROD Attachment 2), along with requirements for reclamation, I find that the exploration activities will not interfere with the primary purposes for which these lands were acquired. This finding is supported by the analysis in FEIS Chapter 3, which discloses that the impacts from prospecting activities would be limited through the effective application of stipulations, and the limited scope of proposed activities. In particular, FEIS Chapter 3 Vegetation discloses that prospecting would result in very limited removal of vegetation. Stipulation GA-1 would minimize removal of trees, and disturbed areas would return to a



forested condition after reclamation. FEIS Chapter 3 Water Resources discloses that impacts on navigable streams and waters would be limited through stipulations such as limiting cumulative withdrawal from surface waters (Stipulation WAT-5).

### *Mining and Minerals Policy Act of 1970.*

This legislation laid out the federal government's overall policy to 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. As discussed under **Rationale for My Decision**, my decision is consistent with this Act.

### *National Environmental Policy Act (NEPA)*

The FEIS for this project tiers to the 2004 Forest Plan FEIS. The entirety of the public involvement process and the development of the EIS as shown in the project record supports compliance with NEPA. We took the step of extending the comment period on the Draft EIS to 90 days to allow people more time to submit comments, and held public meetings to provide the opportunity to answer questions about the project.

As I have mentioned, the uncertainties accompanying minerals exploration make this a different kind of project than vegetation management, where it is feasible to identify more precise site specific information on where timber harvest would occur before implementation. However, I believe the EIS adequately discloses impacts (see FEIS Chapters 2 and 3), and the administrative process accompanying operating plan approval will ensure that stipulations are applied and implemented, and on the ground activities will be within the scope of what is disclosed in the EIS. My decision complies with NEPA.

### *1964 Wilderness Act*

Wilderness qualities (which are used to monitor wilderness character) are defined as:

**Untrammeled-** wilderness is essentially unhindered and free from modern human control or manipulation.

**Natural-** wilderness ecological ecosystems are substantially free from the effects of modern civilization.

**Undeveloped-** wilderness is essentially without permanent improvements or modern human occupation.

**Outstanding Opportunities for Solitude or a Primitive and Unconfined Type of Recreation-** wilderness provides outstanding opportunities for people to experience solitude or primitive and unconfined recreation, including the values of inspiration and physical and mental challenge.

These four qualities are identified in the General Technical Report "Monitoring Selected Conditions Related to Wilderness Character: A National Framework: (USDA 2005 and 2009 reports) and Section 2(c) of the 1964 Wilderness Act (P.L. 88-577). The 1978 BWCAW Act (P.L. 95-495) includes additional purposes for this wilderness, but provides no further direction on defining the composition of wilderness character.

Section 4(b) of the Wilderness Act requires federal agencies managing wilderness to preserve wilderness character. Section 4(b) of the 1964 Wilderness Act states:

(b) Except as otherwise provided in this Act, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise provided in this Act, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

Below I explain my rationale for my finding for compliance with Section 4(b) through considering impacts to the four qualities described above.

It is important to consider the minerals exploration in these 29 permit areas in context with past and ongoing management activities and their effect on the BWCAW. The Glacier Project, approved in 2009, conducts over 5,300 acres of timber harvest to create young forest, some of it within ½ mile of the BWCAW. This level of disturbance is representative of timber harvest projects on the Forest. Yet with the application of mitigation, this level of activity has only limited effects (e.g. 2008 SNF Monitoring Report Timber Section).

Minerals exploration has also taken place historically on the Forest, with at least 2,168 core holes drilled within the Forest boundary (Wirz 2012). Some of these core holes were near the BWCAW, indicating that drilling near the wilderness is a historic and ongoing activity. Based on the effects disclosed in the FEIS and project record, only very limited adverse impacts to the BWCAW could occur from minerals exploration in my decision. In fact, the protective stipulations in my decision are likely more restrictive than that required from past drilling, including on other ownerships.

The 29 permit areas, which comprise about 38,704 acres of national forest system lands, could experience a total of up to about 1,131 acres of disturbance. When compared to other activities which had limited impact to the BWCAW, I do not expect the impacts from minerals exploration in the 29 permit areas in my decision (9 of which are within ½ mile of the BWCAW), to be of a different scale or type than what has occurred historically. But because some of the 29 permit areas are close to the BWCAW, I have considered the impacts from activities located outside the wilderness on the wilderness itself. FEIS Section 3.2 summarizes these impacts and I have considered these for my finding on the Wilderness Act:

**Untrammeled-**None of the activities authorized by my decision occur inside the wilderness, so there would be no impacts to the untrammeled quality. There is no action authorized by my decision manipulating the wilderness, such as setting prescribed fire inside the wilderness (FEIS Section 3.2 Wilderness).

**Undeveloped-**None of the activities authorized by my decision occur inside the wilderness, so there would be no impacts to the untrammeled quality. There are no structures or human facilities developed inside the wilderness as a part of my decision (FEIS Section 3.2 Wilderness).

**Natural-**

- **Water Quality:** FEIS Section 3.2.3.2 and Section 3.6 discuss that impacts to water quality would be minor, including for the BWCAW, given the limited scope of the activities in the 29 permit areas, and the application of protective stipulations. While some of the 29 permit application areas are in the same watershed as portions of the BWCAW, the small scale of

disturbance indicates that the 60% threshold for disturbance in a watershed described in Forest Plan Standard S-WS-1 would not be exceeded. I realize that there are concerns about the possibility of environmental contamination from drill cuttings impacting surface resources or entering the BWCAW. This potential impact is avoided and minimized since the amount of disturbance is small, and stipulations require that cuttings be buried in sumps which prevent them from moving off site (FEIS Section 3.6.3, Surface Water Quality).

- **Air Quality:** FEIS Section 3.2.3.2 and Section 3.13 discuss that impacts to air quality would be minimal, including to the Class I Airshed in the BWCAW.
- **Wildlife:** Please see the findings for the Endangered Species Act and Regional Forester Sensitive Species. Population of wildlife that use habitat in both the BWCAW and the 29 permit application areas would remain viable (FEIS Section 3.8, FEIS Appendices H and I).
- **Non-native invasive species spread:** FEIS Section 3.2.3.2 explains that the risk that invasive species could spread into the BWCAW is very low. Stipulations to limit the spread of invasive species for this project would also minimize the risk of spread. Ongoing treatments to eradicate weeds within and outside the BWCAW would also minimize impacts.
- **Illegal OHV intrusion:** FEIS Section 3.2.5 discloses potential impacts from illegal OHV intrusion into the BWCAW. Stipulations to close temporary roads when not in use, and decommission them during reclamation would minimize opportunities for illegal OHV intrusion.

Given the limited scope of minerals exploration activities, and the application of protective stipulations, there will be minor impacts to the natural quality of wilderness character from my decision.

#### **Outstanding Opportunities for Solitude or a Primitive and Unconfined Type of Recreation-**

The FEIS discloses impacts to this quality of wilderness character from the sounds and sights of minerals exploration activities.

- **Sounds:** Section 3.1 of the FEIS discloses impacts of sound generated by project activities on the BWCAW. I believe we have taken a hard look at this issue. This includes consideration and response to comments on noise (FEIS Appendix J), consideration and response to a technical report by Dr. David Braslau attached to public comments (see project file), and consideration and use of advice from experts at the National Park Service Natural Sounds and Night Skies Division (see project file).

Compliance with the 1964 Wilderness Act as it relates to sound can be considered in light of a recent court ruling. On September 28, 2007, a Court Opinion for the *Izaak Walton League, et al v. Kimball et al* case involving establishing a snowmobile trail near the BWCAW included discussion on noise impacts to the BWCAW.

This Opinion included the following statement: “As discussed above, agency activity that results in sound that is louder, more constant, more frequent, or of a different quality, than the sound that presently exists within the wilderness, is more likely to degrade the wilderness character from its present condition and thus result in a violation of 4(b).”

Therefore, it is important to consider the existing sounds that can be heard within the wilderness to determine if my decision will impact the wilderness character. Section 3.1.2 of the FEIS describes that minerals exploration has been occurring in the project area and is likely to continue to occur, even if I had selected No Action. The area also has human developments and activities including private homes, resorts, businesses, recreation sites, and roads and trails. In addition, timber harvest has been occurring for many years on federal, state, county, and private lands. Many of these activities have occurred and are occurring near the wilderness boundary and in some cases, directly adjacent to the wilderness boundary. We know that some of these activities occurring outside the wilderness are heard in the wilderness. Common noises heard near wilderness entry points or other areas near the wilderness boundary include noise from minerals exploration drilling, vehicles on roads and at entry points, motorboat traffic on motorized lakes in and outside the wilderness, noise generated from landowners with property near the boundary, timber harvest activities, aircraft used for fire detection, aerial law enforcement, wildlife surveys, and in support of US Border patrol. In particular for minerals exploration, activity is increasing under all ownerships, including for private minerals on federal land. The activities in my decision represent additional exploration, but this is within the scope of what is generally occurring in the region.

I also note that a recent Minnesota District Court Opinion (Case 0:10-cv-02178) on the Superior National Forest Travel Management Project states the following regarding the Wilderness Act:

*...it is far from clear how, if at all, the Act purports to limit activities occurring outside of a designated wilderness area, but possibly having environmental effects that extend into a wilderness area. (page 38)*

*The Wilderness Act also expressly provides that it shall not “be deemed to be in interference with” other federal laws such as the “Multiple-Use Sustained Yield Act of June 12, 1960.” 16 U.S.C. § 1133(a)(1) (page 39)*

*But in Izaak Walton League, the court was “not persuaded that § 4(b) supports a per se ban on agency activity that has any impact on the adjoining wilderness.” 516 F.Supp. 2d at 989. A “per se ban on all agency activity having some impact on the adjoining wilderness area would substantially impede its administration of wilderness areas, and could serve to expand the wilderness boundaries beyond the areas established by Congress.” (page 42)*

I have considered the effects disclosure in FEIS Section 3.1, the management context and my own reading of the Wilderness Act. I realize that the noise impacts disclosed in FEIS Section 3.1 to the BWCAW are greater than zero. I do not believe that it is reasonable or necessary to limit impacts to the BWCAW to zero, as this ‘could maintain buffer strips of undeveloped wildland to provide an informal extension of wilderness’ (Forest Service Manual 2320.5). My decision does limit noise impacts to the BWCAW through Stipulation RV-3 shown in Attachment 2. Sound levels reaching the BWCAW from drilling approved in my decision will likely be lower than that of existing and future drilling on other ownerships due to the stipulation in Alternative 4, which is not required on other ownerships. Further, impacts are limited since drilling is a temporary event.

- **Sights:** There are nine permit application areas within ½ mile of the BWCAW. Some drill sites in these permit areas may be visible from within the wilderness. However, this is unlikely in most instances given the dense vegetation in much of the Forest and BWCAW. In addition, Stipulation RV-6 would be used to adjust drill site locations to reduce visibility if they are near any particular sites where people may gather, such as a BWCAW entry point. Also, Stipulation RV-8 would minimize any artificial light visible from within the wilderness. I would again observe that drilling activities are temporary, so the minimal visual impacts, if any, for visitors inside the wilderness would end when exploration is complete. See FEIS Section 3.12.

In conclusion, I again observe that Forest Service Manual 2320.3.5 states “do not maintain buffer strips of undeveloped wildland to provide an informal extension of wilderness.” Further, the Wilderness Act also expressly provides that it shall not “be deemed to be in interference with” other federal laws such as the “Multiple-Use Sustained Yield Act of June 12, 1960.” 16 U.S.C. § 1133(a)(1) At the same time, the 1964 Wilderness Act requires that wilderness character be preserved. This is not an either/or proposition. Instead, it is a matter of conducting management that both achieves Forest Plan objectives and desired conditions and preserves wilderness character. For the reasons cited in the ROD and the supporting analysis in the EIS and the project record, my decision complies with section 4(b) and other provisions of the 1964 Wilderness Act.

### *Endangered Species Act*

The project Biologist found in the Biological Assessment (FEIS Appendix H) that the project may affect, likely to adversely affect Canada lynx. This finding was based on the potential for vehicle traffic and human use of roads associated with the project to cause mortality. The Biologist also found that the population viability would be maintained. Consultation with the USDI Fish and Wildlife Service resulted in a finding in the Biological Opinion (BO) that one lynx might be killed over the course of 20 years of implementing minerals exploration Forest-wide. Stipulations to close temporary roads when minerals exploration is not taking place (Stipulation RDS-1), and to decommission temporary roads at final reclamation (Stipulation RDS-2 and RECL-3) will minimize impacts to lynx. Additional mitigation identified by the Fish and Wildlife Service to require that employees and contractors implementing the project to carrying information to identify lynx, and for the Forest Service to sign roads with higher traffic levels will reduce this already minimal impact (see BO in project file). Part of my decision includes the terms and conditions in the BO. While lynx is a threatened species and I am committed to conserving the species, I believe this is an acceptable impact. Managing species to sustainably conserve populations while allowing for multiple uses on the Forest is a reasonable practice which natural resource managers balance on a regular basis. My decision complies with the Endangered Species Act.

The Gray Wolf was delisted in January 2012. However, I note that the analysis in the Biological Assessment indicates that this species would be conserved and viable populations maintained.

### *Bald Eagle Protection Act*

An Interagency Agreement between the Forest Service and the USFWS to facilitate compliance with the Bald Eagle Protection Act restricts management activities within 330 feet of an eagle nest site.

Alternative 4 includes stipulations to protect bald eagle which meet the intent of the Bald Eagle Protection Act (Stipulations RFSS-6, 7 and 8). Alternative 4 is not anticipated to have a significant direct, indirect, or cumulative effect on any bald eagle habitat (FEIS Appendix I).

### *Migratory Bird Treaty Act*

The Biological Evaluation (BE, FEIS Appendix I) evaluates effects to sensitive birds, including migratory birds and found that Alternative 4 might impact individuals but is not likely to cause a trend toward federal listing or loss of viability. My decision complies with the Migratory Bird Treaty Act.

### *Regional Forester Sensitive Species (FS Manual 2670)*

The BE found that Alternative 4 might impact individuals but is not likely to cause a trend toward federal listing or loss of viability for Regional Forester Sensitive Species. My decision complies with direction found in Forest Service Manual 2670.

### *Clean Water Act*

Minerals exploration activities are expected to comply with applicable state water quality standards and the Clean Water Act with the use of stipulations shown in Attachment 2 and the application of State of Minnesota Rules on drilling activity. Permit holders must obtain a Section 404 permit if any dredging or filling of wetlands is proposed in an operating plan; however stipulations would minimize situations where this could be necessary. I have reviewed FEIS Section 3.6 and my decision complies with the Clean Water Act.

### *Wild and Scenic Rivers*

My decision includes a permit area which contains about 34 acres near the St. Louis River designated as a recreational river in the Forest Plan. Stipulations would minimize impacts and meet Forest Plan Management Area direction for this recreational river. Based on FEIS Section 3.15.4.5, the outstandingly remarkable values, free flowing character, and classification will be maintained.

### *Clean Air Act*

The analysis in the FEIS Section 3.13 and discussion in the FEIS Appendix J Response to Comments (see Public Concern #1) shows that impacts to air quality would be minimal, including to the Class I Airshed in the BWCAW. I determine that Alternative 4 will be in compliance with the Clean Air Act.

### *National Historic Preservation Act*

Effects to heritage resources are disclosed in FEIS Section 3.11. Alternative 4 is in compliance with the provisions of 36 CFR part 800. Appropriate heritage resource surveys will be conducted in the Project Area before ground disturbing activities in the permit areas. The provisions of the Memorandum of Understanding with the State Historic Preservation Officer have been followed. I have determined, consistent with Forest Service direction on heritage resources, that there will be no significant effect on heritage resources.

### *Executive Orders*

**Executive Order 11990** - requires federal agencies to avoid, to the extent possible, the long- and short-term adverse impacts associated with the destruction or modification of wetlands. Stipulations require that temporary road construction avoid or minimize impacts to wetlands. Sumps must be placed in upland areas. And any drill pads and temporary roads in wetland areas must be constructed during frozen conditions or otherwise mitigated to avoid impacts. For any operating plan which

includes a proposal for wetland disturbance involving dredging or filling, permit holders must obtain a Section 404 Permit from the U.S. Army Corps of Engineers. However, this situation would be rare because required stipulations would usually avoid this situation.

**Executive Order 11988** - directs federal agencies to avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains. The Executive Order was largely intended to reduce the risk of property loss, minimize the impact of floods on human safety, health, and welfare. It is also meant to restore and preserve the beneficial values provided by floodplains. Alternative 4 does not result in any human occupancy in floodplains. The nature of the proposed activities and the application of stipulations combine to minimize adverse effects on floodplains.

**Executive Order 12898** - directs federal agencies to identify and address the issue of environmental justice, i.e., adverse human health and environmental effects of agency programs that disproportionately impact minority or low-income populations. Forest Service activities must be conducted in a discrimination free atmosphere. Contract work that may be generated from this document will include specific clauses providing for civil rights protection. The Forest Service will make a concerted effort to enforce these policies.

The nearest minority populations to the 29 permit areas are the Bois Forte, Fond Du Lac, and Grand Portage Bands of the Lake Superior Chippewa. Members of the Bands are known to hunt both large and small game, harvest wild rice, and fish within the project area. However, it is not anticipated that Alternative 4 would have a negative impact on their possible use since the activities proposed would not change forest access, and both the limited scale of disturbance and protective stipulations would minimize impacts to these resources (FEIS Section 1.8). I find that implementation of Alternative 4 will not cause adverse health or environmental affects that disproportionately impact minority and low-income groups.

**Executive Order 12962** - requires federal agencies to evaluate the effects of proposed activities on aquatic systems and recreational fisheries. I find that Alternative 4 minimizes the effects upon aquatic systems through project design and application of stipulations in Attachment 2. Recreational fishing opportunities will remain the same because impacts to aquatic habitats are minimized to the extent possible.

**Executive Order 11644**- The purpose of this order to establish policies and provide for procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands. Public motorized use of temporary roads approved in this decision is prohibited. Stipulation RDS-1 requires that if permit holders are not using a temporary road for more than two weeks, it must be closed while unused. At the completion of all exploratory activities, drill sites must be reclaimed and temporary roads accessing the drill sites decommissioned. These stipulations will minimize adverse impacts from unauthorized off-road vehicle use that might occur as a result of conducting minerals exploration in the 29 permit areas in my decision. And our monitoring of closure and decommissioning indicates that these measures may be completed to achieve effective results (2008 SNF Monitoring Report Section 14 Transportation; Road Closure Report in project file). My decision includes these measures to minimize conflicts and resource damage, and complies with EO 11644.

**Executive Order 13112-** EO 13112 requires federal agencies to prevent the introduction of invasive species, control populations of such species in a cost-effective and environmentally sound manner, monitor invasive species populations, and to take all prudent measures to minimize risk of harm if actions may cause introduction of invasive species. My decision includes measures to reduce the risk of invasive plant spread, such as cleaning heavy off road equipment that might introduce invasive species (Stipulation NNIS-3). During reclamation, any invasive species present in areas disturbed by minerals exploration must be eradicated and any seeding done must be with native plants (Stipulations NNIS-4, RECL-1, and RECL-2). The analysis in FEIS Section 3.9 Non-Native Invasive Plants indicates that the project would result in only limited invasive species spread. My decision complies with EO 13112.

## **X. IMPLEMENTATION**

Implementation of this Forest Service decision would occur through BLM deciding to issue specific permits based on Forest Service consent via issuance of their own Record of Decision, which would be followed by subsequent issuance of the prospecting permits, and the applicant's acceptance of them.

Implementation of this decision may occur no sooner than 50 days following publication of the legal notice of the Decision in the *Duluth News Tribune* newspaper, published in Duluth, Minnesota. If no appeal is received, implementation of this decision may occur on, but not before, five business days from the close of the appeal filing period. If an appeal is filed, implementation may not occur for 15 days following the date of a decision on the appeal. Depending on the BLM decision, I expect to begin implementation of this project in the summer of 2012.

Once a prospecting permit is issued, permit holders could submit operating plans to the BLM to implement ground disturbing exploration activities in the 29 permit areas. The BLM would consult the Forest Service on the surface use and reclamation aspects of the operating plan. By regulation, operating plans must be designed to be consistent with the terms, conditions and stipulations of the prospecting permit. Operating plans would identify specific locations of temporary roads, drill pads and other ground disturbance. All ground disturbing activities would only occur after an operating plan is approved by the BLM in consultation with the Forest Service. Field review of activities shown in operating plans by the Forest Service and BLM would occur as needed before operating plan approval to ensure that relevant stipulations from the prospecting permit are applied to the operating plan to minimize adverse impacts. Relevant stipulations from ROD Attachment 2 and any additional conditions of approval (mitigations) would accompany the operating plan that BLM may approve. Any required surveys would take place before ground disturbing activities occur. Operating plan approval is an administrative action by BLM and occurs during implementation of the NEPA decision on the prospecting permit (see ROD Sections X and XI for further information on operating plans and implementation). During implementation, monitoring would occur as displayed in Attachment 3.

## **XI. PROCESS FOR CHANGE DURING IMPLEMENTATION**

During implementation, if on-the-ground conditions are different than what is described in the Final EIS, I will engage BLM, and determine if additional analysis is required prior to implementing a change in exploration activities. Any changes to the authorized project will be subject to the



requirements of the National Environmental Policy Act (NEPA), National Forest Management Act (NFMA), and other laws concerning such changes.

In determining whether and what kind of NEPA action is required, I will consider the criteria for whether to supplement the existing Final EIS in 40 CFR 1502.9(c), and FSH 1909.15, sec. 18, and in particular, whether the proposed change is a substantial change to the Selected Alternative as planned and already approved, and whether the change is relevant to environmental concerns. Connected or interrelated proposed changes regarding particular areas of specific activities will be considered together in making this determination. The cumulative impacts of these changes will also be considered.

## **XII. APPEAL RIGHTS FOR THE PROJECT**

This Decision is subject to appeal pursuant to Title 36 CFR 215. An appeal may be filed by those who have submitted comments for the Project during the 90-day comment period on the Draft Environmental Impact Statement (the comment period on the Draft EIS was extended 45 days to a total of 90 days by the Forest Supervisor). The appeal must be filed within 45 days of the date that the notification of this Decision is published in the *Duluth News Tribune*, the official newspaper of record, published in Duluth, Minnesota. If the appeal period ends on a Saturday, Sunday or federal holiday, appeals will be accepted until the end of the next federal working day. The publication date of the legal notice is the exclusive means for calculating the time to file an appeal. The Notice of Appeal must be sent to:

USDA Forest Service, Eastern Region  
ATTN: Appeal Deciding Officer,  
Regional Forester Charles Myers  
626 E. Wisconsin Avenue, Suite 700  
Milwaukee, WI 53202

Fax number: 414-944-3963  
Office Hours: 7:30 a.m. to 4:00 p.m. Central Standard Time,  
Monday-Friday

Electronic address for email appeals: [appeals-eastern-regional-office@fs.fed.us](mailto:appeals-eastern-regional-office@fs.fed.us)

Electronic File Formats: txt, html, pdf, or any file format viewable with MS Office applications

It is the responsibility of those who appeal a Decision to provide the Deciding Officer with sufficient narrative evidence and argument to show why this Decision should be changed or reversed. At a minimum, the written Notice of Appeal must:

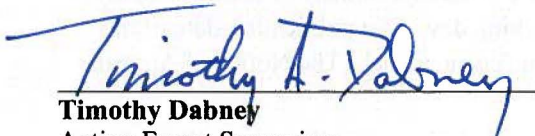
- State that the document is a Notice of Appeal filed pursuant to 36 CFR part 215;
- List the name, address, and, if possible, a telephone number of appellant;
- Identify the decision document by title and subject, date of the decision, and name and title of the Responsible Official;
- Identify the specific changes(s) in the decision that the appellant seeks or portion of the decision to which the appellant objects;
- State how the Responsible Official's decision fails to consider comments previously provided,

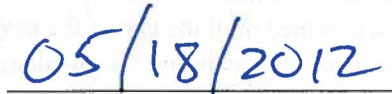
either before or during the comment period specified in 36 CFR 215.6 and, if applicable, how the appellant believes the decision violates law, regulation, or policy.

Those who are legal instrument holders such as permittees, can appeal under 36 CFR 251 Subpart C and must meet the requirements of 36 CFR 251.90. Legal instrument holders must stipulate which appeal regulation they are appealing under. They cannot appeal under both.

**CONTACT PERSON**

For more information about the specific activities authorized with this Decision, please contact Peter Taylor at [prtaylor@fs.fed.us](mailto:prtaylor@fs.fed.us) or 218-626-4368 or the Superior National Forest Headquarters at 8901 Grand Avenue Place, Duluth MN 55808.

  
**Timothy Dabney**  
Acting Forest Supervisor  
Superior National Forest

  
**Date**

**XIII. REFERENCES CITED**

See References section in the Final EIS.

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