

APPLICATION FOR WITHDRAWAL

Superior National Forest Cook, Lake, and Saint Louis Counties, Minnesota

Items required by 43 C.F.R. 2310.1-2(c):

1. APPLICANT

Regional Forester
USDA Forest Service
626 East Wisconsin Ave
Milwaukee, WI 53202

2. STATEMENT OF DELEGATION

The general delegations of authority from the Secretary of Agriculture to the Chief of the Forest Service is set forth at 7 C.F.R. § 2.60. More specifically 7 C.F.R. § 2.60(a)(2) delegates authority to the Chief of the Forest Service to protect, manage, and administer the National Forest System. The Chief of the Forest Service has delegated the authority to request withdrawals to the Regional Foresters (FSM 2761.04).

3. OTHER AGENCY CONSENT

The subject lands are National Forest System lands under the administration of the U.S. Department of Agriculture, Forest Service, which hereby consents to the requested withdrawal and segregation of those lands.

4. TYPE OF WITHDRAWAL ACTION

This is a request for a new withdrawal. The Forest Service requests these lands be withdrawn from disposition under laws relating to mineral and geothermal leasing laws, subject to valid existing rights - including the Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq. as amended), the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351 et seq. as amended), Section 402 of the President's Reorganization Plan No. 3 of 1946, 16 U.S.C. 520, and 16 U.S.C. 508b. All of the lands would remain subject to the laws providing for the disposal of mineral materials as defined by 36 C.F.R. Part 228, Subpart C.

The Forest Service recognizes that any segregation or future withdrawal of these lands and interests in the lands will be subject to valid existing rights on Federal land. The segregation and withdrawal would also be inapplicable to private lands owned in fee, private mineral estates, and private fractional minerals interests.

5. LANDS INVOLVED IN WITHDRAWAL

The Federal lands whose withdrawal is requested fall within a portion of the Rainy River watershed, outside the Boundary Waters Canoe Area Wilderness (BWCAW) and the Boundary Waters Canoe Area Wilderness Mining Protection Area (MPA), as indicated on the attached map (Appendix B). More specifically, the Forest Service requests the withdrawal of all lands identified in Appendix A that include fully federally owned minerals that are situated within the exterior boundaries of the area depicted on the attached map (Appendix B). The Forest Service also requests that the withdrawal be made applicable to all fee title lands subsequently acquired by the Federal Government that are situated within the exterior boundaries of the area depicted on the attached map (Appendix B).

The Federal lands that are requested for withdrawal are within the Rainy River watershed and drain into the BWCAW. The application of the mineral leasing laws to the remaining Federal lands within portions of the Rainy River watershed, i.e., the BWCAW and the MPA, are already curtailed by virtue of Sec. 11(a) of Pub. L. 95-495, 92 Stat. 1649, 1655 (1978).

The National Forest System lands for which withdrawal is requested in aggregate total approximately 234,328 acres within the Superior National Forest. There are two categories of these National Forest System lands which include fully Federally-owned mineral interests - lands reserved from the public domain owned by the United States in fee simple, and acquired lands owned by the United States in fee simple.

6. OTHER WITHDRAWALS

The area containing the Federal lands whose withdrawal is requested by means of this application does not overlap any other withdrawal.

However, pursuant to Sec. 11(a) of Pub. L. 95-495, 92 Stat. 1649, 1655 (1978) “no permit, lease, or other authorization may be issued by any agency or authority of the United States for [the] exploration for, or mining of, minerals owned by the United States within the Boundary Waters Canoe Area Wilderness and Boundary Waters Canoe Area Mining Protection Area.” These areas are adjacent to the lands that this application requests be withdrawn from the disposition under laws relating to mineral and geothermal leasing.

7. PURPOSE OF WITHDRAWAL

As previously noted, the 234,328 acres of Federal land for which the Forest Service requests withdrawal are located within the Vermillion and Rainy Headwaters sub-watersheds of the Rainy River watershed in the Superior National Forest and are adjacent to the BWCAW and MPA. There is known interest in the development of hardrock minerals that have been found—and others that are thought to exist—in sulfide-bearing rock within this portion of the Rainy River watershed. Any development of these mineral

resources could ultimately result in the creation of permanently stored waste materials and other conditions upstream of the BWCAW and the MPA with the potential to generate and release water with elevated levels of acidity, metals, and other potential contaminants. Additionally, any failure of mitigation measures, containment facilities, or remediation efforts at mine sites and their related facilities located upstream of the BWCAW and the MPA could lead to irreversible impacts upon natural resources and therefore, render the Forest Service unable to meet the purposes for the designation of the BWCAW and the MPA specified by Sec. 2 of Pub. L. 95-495, 92 Stat. 1649 (1978). These concerns are exacerbated by the fact that perpetual maintenance of waste storage facilities along with the perpetual treatment of water discharge emanating from the waste storage facilities and the mines themselves would likely be required to ameliorate these adverse effects, yet it is not at all certain that such maintenance and treatment can be assured over possibly infinite timeframes.

Thus, the purpose of this withdrawal request is to protect National Forest System lands (and waters) located in the Rainy River Watershed, the BWCAW, and the MPA from the adverse environmental impacts arising from exploration and development of fully Federally-owned minerals conducted pursuant to the mineral leasing laws. This will result in more efficient and effective Forest Service administration of such NFS lands (and waters) in accord with applicable Federal law.

8. EXTENT OF WITHDRAWAL AND SEGREGATION

The Forest Service requests that the Federal lands within the area identified on the attached map (Appendix B) be withdrawn from disposition under laws relating to mineral and geothermal leasing – including the Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq. as amended), the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351 et seq. as amended), Section 402 of the President’s Reorganization Plan No. 3 of 1946, 16 U.S.C. 520, and 16 U.S.C. 508b - for the maximum period of 20 years authorized by 43 U.S.C. § 1714(c)(1), subject to valid existing rights.

The Forest Service also requests that the notice of this withdrawal application published in the Federal Register pursuant to 43 C.F.R. § 2310.3-1(b)(1) provide that the National Forest System lands within the area identified on the attached map (Appendix B) are segregated from the operation of the mineral leasing laws for the maximum period of two years authorized by 43 U.S.C. § 1714(b)(1), subject to valid existing rights.

The Forest Service intends that the National Forest System lands within the area identified on the attached map (Appendix B) remain subject to the laws providing for the disposal of mineral materials set forth by 36 C.F.R. Part 228, Subpart C throughout the duration of the segregation and any subsequent withdrawal.

9. ALLOWABLE TEMPORARY USES

Statutorily authorized multiple uses of National Forest System lands, i.e., outdoor recreation, range, timber, watershed, and wildlife and fish purposes, along with the

disposal of mineral materials, maybe authorized by Forest Service officers during the requested 2-year segregation period. However, those uses would only be authorized if they would comply with applicable Forest Service regulations, the applicable land use plan, and they would not cause adverse environmental impacts to National Forest System lands (and waters) located in the Rainy River Watershed, the BWCAW, and the MPA comparable to those that could arise from exploration and development of Federally-owned minerals conducted pursuant to the mineral leasing laws.

10. ANALYSIS OF ALTERNATIVES

Per 43 C.F.R. § 2310.1-2(b)(10), a withdrawal application should contain “[a]n analysis and explanation of why neither a right-of-way under section 507 of the Act (43 U.S.C. 1767), nor a cooperative agreement under sections 302(b) (43 U.S.C. 1732(b)) and 307(b) (43 U.S.C. 1737(b)) of the act would adequately provide for the proposed use.”

However, none of these statutory provisions are relevant to a withdrawal application submitted by the Forest Service for the withdrawal of National Forest System lands.

Insofar as 43 U.S.C. §§ 1732(b) and 1737(b), portions of the Federal Land Policy and Management Act of 1976 [FLPMA], are concerned, those provisions are not applicable because they grant the Secretary of the Interior (43 U.S.C. § 1702(g)) authority to manage the public lands. And for purposes of FLPMA, “[t]he term ‘public lands’ means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management....” In contrast, all national forest lands, including the Superior National Forest, are administered by the United States Department of Agriculture, Forest Service as part of the National Forest System (16 U.S.C. § 1609(a)). Indeed, 43 U.S.C. § 1702(k), a portion of the definitional section of FLPMA, explicitly distinguishes “public lands” from “lands within National Forests.”

With regard to 43 U.S.C. § 1767(a), another portion of FLPMA, it permits “the Secretary concerned” to utilize the authority granted by other provisions in the subchapter to provide another department or one of that department’s agencies a right-of-way across land administered by the Secretary concerned. The shorthand formulation “the Secretary concerned” in 43 U.S.C. § 1767(a) clearly refers to both the Secretary of the Interior and the Secretary of Agriculture as evidenced by a prior provision in the same subchapter: 43 U.S.C. § 1761(a). Per 43 U.S.C. § 1761(a), rights-of-way may be issued by “[t]he Secretary [i.e., the Secretary of the Interior (43 U.S.C. § 1702(g))], with respect to the public lands ... as defined in section 1702(e) of this title ... and, [by] the Secretary of Agriculture, with respect to lands within the National Forest System....” Accordingly, 43 U.S.C. § 1767(a) merely authorizes the Secretary of Agriculture to issue rights-of-way across National Forest System lands to other departments and their agencies. That authority has no bearing with respect to the Forest Service’s reason for requesting this withdrawal—to protect National Forest System lands (and waters) located in the Rainy River Watershed, the BWCAW, and the MPA from the adverse environmental impacts that would arise from exploration and development of Federally-managed hardrock minerals conducted pursuant to the mineral leasing laws.

FLPMA section 507, 43 U.S.C. § 1767(b), cannot achieve the Forest Service's purpose to protect the specified National Forest System lands because it merely prohibits the Secretary of the Interior from terminating or limiting a right-of-way for the benefit of any department or agency of the United States without that entity's consent.

11. WITHDRAWAL DURATION

The Forest Service requests withdrawal of the Federal lands within the area indicated on the attached map(Appendix B) for the maximum period of 20 years authorized by 43 U.S.C. § 1714(c)(1).

A withdrawal for the maximum duration of 20 years is warranted because the potential adverse effects from the exploration and development of the fully Federally-managed hardrock minerals in the Rainy River watershed. These potential impacts are a direct result of the location of the minerals with the sulfide-bearing rock present in that area. Thus, the need to protect the National Forest System lands (and waters) located in the Rainy River Watershed, the BWCAW, and the MPA from the adverse environmental impacts arising from exploration and development of Federally-managed hardrock minerals—the purpose of this withdrawal request—remains constant.

12. ALTERNATIVE SITES

No additional valuable deposits of Federal hardrock minerals outside the Rainy River watershed have been found or presently are known. Therefore there are no other sites where equivalent hardrock mineral exploration or development could be authorized by the Department of the Interior.

13. WATER REQUIREMENTS

No water rights will be needed to fulfill the purpose of this withdrawal request.

The unique and irreplaceable resource this withdrawal seeks to protect is the 1.1 million acre Boundary Water Canoe Area Wilderness (BWCAW) located in the northern third of the Superior National Forest in Minnesota, extending nearly 200 miles along the international boundary with Canada. The BWCAW includes nearly 2,000 pristine lakes ranging in size from 10 acres to 10,000 acres, and nearly 1,200 miles of canoe routes. It is the only large-scale protected sub-boreal forest in the lower 48 United States. These healthy forests with extremely high water quality also provide a host of watershed benefits, such as purifying water, sustaining surface water and ground water flow, maintain fish habitats, and stabilizing streambanks.

14. LOCATION OF RECORDS

Records related to this application for an extension of the withdrawal may be examined at:

Superior National Forest
Supervisor's Office
8901 Grand Ave Pl
Duluth, MN 55808

SUPPLEMENTAL INFORMATION

Appendix A: Legal Description of Superior National Forest Mineral Fee Simple Lands
for Withdrawal Application

Appendix B: Map of Superior National Forest Withdrawal Application Area