

STATE OF MINNESOTA

DISTRICT COURT - CIVIL DIV.

COUNTY OF ST. LOUIS

SIXTH JUDICIAL DISTRICT

Case Type: Other Civil

CASE TITLE:

Court File # \_\_\_\_\_

Center for Biological Diversity,  
Minnesota Center for Environmental Advocacy,  
Save Lake Superior Association,  
Friends of the Boundary Waters Wilderness,  
and Indigenous Environmental Network,

BY: \_\_\_\_\_  
COURT REPORTER

Plaintiffs,

**COMPLAINT FOR  
DECLARATORY  
AND INJUNCTIVE RELIEF**

v.

Iron Range Resources and Rehabilitation,  
an agency of the State of Minnesota; and  
Iron Range Resources and Rehabilitation Board.

Defendants.

**INTRODUCTION**

1. This is a civil action for declaratory and injunctive relief under the Minnesota Environmental Policy Act ("MEPA"), Minn. Stat. Ch. 116D. Plaintiffs challenge Defendants Iron Range Resources and Rehabilitation, and the Iron Range Resources and Rehabilitation Board's (collectively "Iron Range Resources") December 16, 2010 approval and authorization of a four million dollar loan to PolyMet Mining Company prior to the completion of the required environmental review process for PolyMet's proposed NorthMet mine in northeastern Minnesota. The Iron Range Resources' approval and authorization of this loan, which would be used by PolyMet to purchase lands necessary for a proposed land exchange with the United States Forest Service in furtherance of its NorthMet mine proposal, violates MEPA's prohibition

on taking action to further proposed projects prior to completion of the environmental review process. Plaintiffs seek injunctive relief to enjoin Iron Range Resources from proceeding with this loan, and a declaration that the decision approving the loan is void as a matter of law.

## **PARTIES**

2. Plaintiff Center for Biological Diversity is a nonprofit corporation organized under the laws of the State of New Mexico, with over 40,000 members including hundreds of members in Minnesota. The Center has an office in Duluth, Minnesota.

3. Plaintiff Minnesota Center for Environmental Advocacy (“MCEA”) is a Minnesota-based non-profit environmental organization whose mission is to use law, science, and research to preserve and protect Minnesota’s wildlife, natural resources, and the health of its people. MCEA is incorporated under Minnesota law and is located at 26 E. Exchange Street, Suite 206, St. Paul, Minnesota 55101.

4. Plaintiff Save Lake Superior Association is a nonprofit corporation organized under the laws of the State of Minnesota. The Association began in 1969, and is the oldest citizen group working exclusively to preserve and protect Lake Superior. Save Lake Superior Association’s principal office is located in Two Harbors, Minnesota.

5. The Friends of the Boundary Waters Wilderness is a nonprofit corporation with approximately 2,400 members. The Friends mission is to protect, preserve and restore the wilderness character of the Boundary Waters Canoe Area Wilderness and the Quetico-Superior Ecosystem. The organization was founded in 1976 and is located at 401 North Third Street, Suite 290, in Minneapolis, Minnesota, 55401.

6. Plaintiff Indigenous Environmental Network is a nonprofit corporation organized under the laws of the State of Minnesota. Indigenous Environmental Network's principal office is located in Bemidji, Minnesota.

7. Defendant Iron Range Resources and Rehabilitation is a state agency located in Eveleth, Minnesota. *See* Minn. Stat. § 298.22; <http://www.ironrangeresources.org>. Defendant Iron Range Resources and Rehabilitation Board consists of 13 members, five of whom are state senators appointed by the Subcommittee on Committees of the Rules Committee of the senate, and five of whom are representatives, appointed by the speaker of the house. Minn. Stat. § 298.22, Subd. 2. The remaining members are appointed by the senate majority leader, the speaker of the house, and the Governor and must be non-legislators who reside in a taconite assistance area as defined by statute. *Id.*

8. Defendants are referred to collectively herein as "Iron Range Resources."

#### **JURISDICTION AND VENUE**

9. This Court has jurisdiction pursuant to Minnesota Statutes, Sec. 116D.04, which allows a party to bring an action for injunctive or declaratory relief concerning the requirements and provisions of the environmental review process under Minn. Stat. Ch. 116D and Minnesota Rules, Ch. 4410., Minn. Stat. § 116D.04, subd. 13. This case is properly venued in St. Louis County because the Iron Range Resources and PolyMet's proposed NorthMet mine project are located within St. Louis County. *Id.*

#### **FACTUAL BACKGROUND**

10. PolyMet Mining Corporation is incorporated in British Columbia, Canada. PolyMet proposes to construct and operate the NorthMet mine project ("NorthMet mine" or

“Project”), which includes an open pit copper mine and processing facility in St. Louis County, approximately six miles south of Babbitt, Minnesota.

11. PolyMet’s proposed NorthMet mine would be the first nonferrous sulfide mine permitted in the state, and the proposal has generated substantial attention from the public and state and federal agencies. The proposed mine site is located near the headwaters of the Partridge and Embarrass river watersheds, tributaries of the St. Louis River that flows into Lake Superior.

12. PolyMet’s proposed NorthMet mine site is located within the Superior National Forest, on land with surface rights currently held by the United States. In order to implement its project as proposed, PolyMet must acquire the title to the proposed mine site. Thus, as part of its project, PolyMet is pursuing a “land exchange” with the United States Forest Service. PolyMet proposes to purchase private parcels within or adjacent to the Superior National Forest and exchange those lands for the parcels it seeks to mine that are currently held by the United States.

13. Polymet’s NorthMet mine is a large and complex undertaking that involves assistance and authorizations from a number of local, state and federal governmental agencies. Because the project will have significant environmental impacts, state and federal law require that a thorough environmental review in the form of an Environmental Impact Statement (“EIS”) be completed and available to government decisionmakers and the public prior to any decision to provide financial assistance or authorize the project.

#### **STATUTORY AND REGULATORY BACKGROUND**

14. The Minnesota Environmental Policy Act, Minn. Stat. § 116D.01 *et seq.*, is the state’s “environmental review” law. It is patterned after the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321, *et seq.*, and Minnesota courts are guided by federal interpretations

of the federal counterpart. *No Power Line, Inc. v. Minnesota Environmental Quality Council*, 262 N.W.2d 312, 323 (Minn. 1977).

15. The Environmental Quality Board (“EQB”) is the state agency charged with implementing MEPA and has adopted rules under the act. Minn. R. 4410.0001, *et seq.*

16. MEPA requires an environmental impact statement (“EIS”) for any project that has the potential for significant environmental effects. Minn. Stat. § 116D.04, subd. 2a. The EIS is to be “an analytical rather than an encyclopedic document which describes the proposed action in detail, analyzes its significant environmental impacts, discusses appropriate alternatives to the proposed action and their impacts, and explores methods by which adverse environmental impacts of an action could be mitigated.” *Id.*

17. The EIS must be “prepared by the responsible governmental unit.” *Id.* As defined by the EQB rules, the “responsible governmental unit” or RGU for large nonferrous sulfide mining projects, including the PolyMet NorthMet mine, is the Minnesota Department of Natural Resources (“DNR”). Minn. R. 4410.4400, subp. 8. Although one governmental unit, the RGU, conducts the environmental review, the environmental study is used by all local, regional, and state governmental agencies to inform their decisions relative to the proposed project.

18. MEPA and EQB rules allow for cooperation between state and federal agencies when environmental review is also required under the federal law, NEPA. Minn. Stat. § 116D.04, subd. 2a(g); Minn. R. 4410.3900. In such instances, state RGUs must comply with federal requirements so that one environmental review document satisfies both state and federal laws. Minn. R. 4410.3900, subp. 2.

19. For any project that requires environmental review, MEPA prohibits “a final governmental decision . . . to grant a permit, [or] approve a project” until the environmental review is complete. Minn. Stat. § 116D.04, subd. 2b; Minn. R. 4410.3100, subp. 1. A “permit” includes “the commitment to issue or the issuance of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, by a governmental unit.” Minn. R. 4410.0200, subp. 58.

20. As explained by the EQB in its *Guide to Environmental Review in Minnesota*, the prohibition on government decisions that assist or authorize a project prior to the completion of environmental review is at the heart of MEPA’s purpose:

One of the key purposes of environmental review is to provide information about potential environmental effects and how to avoid or minimize those effects to each of the governmental units which will approve or conduct the project. For this information to have utility, the governmental units must have the information in mind when they take their actions about the project. To issue permits or approvals before the information is available undermines the very purpose of the review. That is the reason why all decisions approving the project (or parts of the project) are prohibited until the review has been completed.

#### **IRON RANGE RESOURCES’ PREMATURE FINANCIAL ASSISTANCE TO POLYMET**

21. Because the proposed NorthMet mine project has the potential to significantly impact and permanently alter Minnesota’s natural resources and environment, and because both state and federal agencies are involved in assisting and authorizing various aspects of the proposal, it triggers environmental review under both MEPA, Minn. Stat. § 116D, and NEPA, 42 U.S.C. § 4321, *et seq.* The Minnesota DNR has entered into an agreement to conduct a joint EIS with the federal government. The U.S. Army Corps of Engineers and the U.S. Forest Service are the lead federal agencies for the joint EIS.

22. Environmental review for the NorthMet mine project has been on-going since at least June 6, 2005, when the Minnesota DNR and the U. S. Army Corps of Engineers issued a Scoping Environmental Assessment Worksheet and Draft Scoping Decision Document for the project.

23. In October, 2009, the agencies published an initial Draft EIS for the proposed NorthMet project. A number of comments were submitted on the Draft EIS that were highly critical of the proposal. For instance, the United States Environmental Protection Agency rated the Draft EIS as “Environmentally Unsatisfactory-Inadequate,” and “identified adverse environmental impacts that are of sufficient magnitude that EPA believes the proposed action must not proceed as proposed.” The Tribal cooperating agencies determined that the proposed mining project would need to treat wastewater for “hundreds or thousands of years” to avoid contamination of nearby surface waters. Plaintiffs also submitted detailed comments that were critical of PolyMet’s proposal.

24. On June 24, 2010, the Minnesota DNR, the U.S. Army Corps of Engineers, and the U.S. Forest Service, announced that they will prepare a Supplemental Draft EIS for PolyMet’s proposed NorthMet mine. The Supplemental Draft EIS will include an analysis of the proposed land exchange between PolyMet and the U.S. Forest Service, and will also evaluate new information and alternatives.

25. The Minnesota DNR, the U.S. Army Corps of Engineers, and the U.S. Forest Service continue to work on the Supplemental Draft EIS for PolyMet’s proposed NorthMet project. The agencies are not anticipated to issue the Supplemental Draft EIS until at least the summer of 2011, and the Final Supplemental EIS will not be published until at least nine months after the Draft is released.

26. Iron Range Resources is a state agency. Minn. Stat. § 298.22. It is a “governmental unit” for purposes of MEPA. Minn. Stat. § 116D.04, subd. 1a(e). Iron Range Resources’ conduct and decisions must comply with MEPA.

27. On December 15, 2010, the *Duluth News Tribune* and *Minneapolis Star Tribune* reported that Iron Range Resources would be considering a four million dollar loan to PolyMet at its December 16, 2010 Board meeting, which would be used by PolyMet to purchase lands necessary for its proposed land exchange with the U.S. Forest Service.

28. On December 16, 2010, prior to the scheduled Iron Range Resources Board meeting, Plaintiff Center for Biological Diversity sent a letter to the Iron Range Resources Commissioner and Board members, explaining that the Board’s approval of this loan would be in violation of MEPA, because the MEPA environmental review process is currently ongoing.

29. At the December 16, 2010 Iron Range Resources Board meeting in Eveleth, the Iron Range Resources Board unanimously approved the expenditure of four million dollars from the “Taconite Area Environmental Protection Fund” for a requested loan to PolyMet in order to enable the mining company to acquire lands for its proposed NorthMet mining project.

30. The Iron Range Resources Board determined that the approved four million dollar loan would assist PolyMet to undertake the proposed NorthMet mine project.

31. As part of the loan agreement, Iron Range Resources received warrants allowing it to purchase 400,000 shares of PolyMet common stock traded on the Toronto Stock Exchange at an exercise price of \$2.50 per share.

32. The Iron Range Resources’ resolution approves the loan “on terms in the informational materials presented to the Board.” Those materials included a description of the loan and a draft “term sheet.” The term sheet requires that the loan close “in one or more

tranches on or before June 30, 2011.” June 30, 2011, is well before the environmental review for the project will be finalized.

33. The Governor must approve or disapprove expenditures from the Iron Range Resources’ Taconite Environmental Protection Fund. Minn. Stat. § 298.223, subd. 2(c). Iron Range Resources may submit projects to the Governor for approval at any time. *Id.* Plaintiffs made requests to both Governors Pawlenty and Dayton to disapprove the four million dollar loan expenditure because it violates MEPA. Neither Governor responded to Plaintiffs’ requests.

### **CLAIM FOR RELIEF**

#### **DECLARATORY JUDGMENT AND INJUNCTION**

34. Plaintiffs incorporate by reference all preceding paragraphs.

35. MEPA provides for enforcement of its provisions by injunction, action to compel performance, or other appropriate action in this Court. Minn. Stat. § 116D.04, subd. 13; *see also* Minn. Stat. Ch. 555 (declaratory judgment act).

36. Iron Range Resources’ December 16, 2010 resolution is a “commitment to issue . . . [a] loan, or other form of financial assistance” to PolyMet for its NorthMet mine project. Minn. R. 4410.0200, subp. 58. Because Iron Range Resources’ final governmental decision was taken before completion of the environmental review for the proposed NorthMet project, it violated MEPA. Minn. Stat. § 116D.04, subd. 2b; Minn. R. 4410.3100, subp. 1.

37. Plaintiffs are entitled to a declaration that Iron Range Resources acted in violation of MEPA, Minn. Stat. § 116D.04, subd. 2b; Minn. R. 4410.3100, when it approved on December 16, 2010, a four million dollar loan to assist PolyMet with its NorthMet mine proposal prior to completion of an environmental review for the project, and that Iron Range Resources’ December 16, 2010 resolution approving the four million dollar loan to PolyMet is null and void.

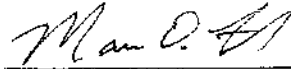
38. Plaintiffs are further entitled to an injunction against any future governmental decision committing to or authorizing the loan to PolyMet unless and until the pending joint EIS for the project is completed and determined adequate under MEPA.

### **REQUEST FOR RELIEF**

Plaintiffs respectfully request the following relief:

- A. An Order
  - a. declaring Iron Range Resources' December 16, 2010 resolution approving the four million loan to PolyMet violates MEPA;
  - b. declaring Iron Range Resources' loan to PolyMet Mining Corporation void by operation of Minnesota law;
  - c. enjoining any further governmental decision committing to or authorizing the four million loan to PolyMet Mining Company unless and until there is an adequacy determination regarding the EIS that is currently being prepared for PolyMet's NorthMet mine proposal.
- B. For such other relief as allowed by MEPA to avoid premature governmental action, loans, permits, or approvals regarding the NorthMet mine proposal prior to the completion of the environmental review process.
- C. For Plaintiffs' costs and disbursements.
- D. For Plaintiffs' reasonable attorneys' fees, pursuant to Minn. Stat. § 15.472
- E. For such other and further relief the Court deems appropriate in the circumstances of this action.

Dated this 14th day of January, 2011.



Marc Fink (#343407)  
209 East 7<sup>th</sup> Street  
Duluth, Minnesota 55805  
Telephone: (218) 525-3884  
Fax: 817-582-3884  
mfink@biologicaldiversity.org

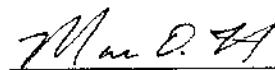
Kevin Reuther (#266255)  
26 East Exchange Street, Suite 206  
St. Paul, MN 55101  
Phone: (651) 223-5969  
Fax: (651) 223-5967  
kreuther@mncenter.org

Attorneys for Plaintiffs Center for  
Biological Diversity, Minnesota Center for  
Environmental Advocacy, Save Lake  
Superior Association, Friends of the  
Boundary Waters Wilderness, and  
Indigenous Environmental Network

Acknowledgement

Plaintiffs, by their attorneys, acknowledge that sanctions may be awarded under Minn. Stat. § 549.211 to the opposing party if the parties or their attorneys act in bad faith, assert a frivolous claim, assert an unfounded position to delay or harass, or commit a fraud upon the Court.

Dated this 14th day of January, 2011.



Marc Fink