

No. A12-2172  
**STATE OF MINNESOTA**  
**IN COURT OF APPEALS**

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In the Matter of the Petition for an  
 Environmental Assessment Worksheet  
 for the 33<sup>rd</sup> Sale of State Metallic Leases  
 in Aitkin, Lake and Saint Louis Counties,  
 Minnesota

Matthew Tyler,

Relator,

vs.

Minnesota Department of Natural  
 Resources,

Respondent.

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**AMICUS CURIAE BRIEF BY MININGMINNESOTA**

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## INTRODUCTION<sup>1</sup>

MiningMinnesota respectfully submits this brief as *amicus curiae* pursuant to Minnesota Rule of Appellate Procedure 129 and pursuant to this Court's January 2, 2013 Order granting MiningMinnesota's request for leave to file an amicus brief. MiningMinnesota believes there is important information relating to the history and development of Minnesota's mining industry that is relevant to this Court's consideration of this appeal. Recognizing that Respondent Minnesota Department of Natural Resources ("MDNR") and Intervenors DMC (USA) LLC and Encampment Minerals, Inc. have tackled the finer legal points at issue, MiningMinnesota believes it necessary to provide historical and practical context. This context includes the history of nonferrous metallic mining in Minnesota, the history of environmental review relating to nonferrous metallic mining, other significant statutes and regulations governing exploration activities, other statutes and regulations governing eventual mining, and the significant financial implications of environmental review.

Relator here is advocating a truly unprecedented requirement by demanding formal environmental review prior to Minnesota's leasing of its nonferrous metallic mineral rights. Minnesota's nonferrous metallic mineral industry has been effectively functioning for nearly a half-century without the pre-lease review that Relator contends is now necessary.

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<sup>1</sup> Pursuant to Minn. R. App. P. 129.03, MiningMinnesota certifies that no counsel for a party authored this brief in full or in part, and no person or entity, other than the *amicus curiae*, its members, and its counsel made a monetary contribution to the preparation or submission of this brief.

Environmental review at the pre-leasing stage is neither necessary nor appropriate. In his rush to demonstrate a “parade of horrors” flowing from the State’s grant of non-ferrous mineral leases, Relator has ignored perhaps the most important provision of the leases ultimately granted by the MDNR:

**23. Lessee’s obligation under state and federal laws and regulations:**  
The provisions of this lease are *subject to all applicable state and federal statutes, orders, rules and regulations, and all operations under this lease shall be conducted in conformity with them.* All activities shall be conducted in conformity with the applicable mine land reclamation statutes and rules....

(APP172 (italics added)) Thus, leases are not approved in a vacuum. There are numerous stages further along the process where environmental review more appropriately should and does occur. As will be discussed herein, the various activities that take place throughout the mining process are already heavily regulated and there are multiple levels of environmental review.

Adding an additional layer of environmental review at the leasing stage would be unnecessary and would impose a significant waste of resources. And it would not provide any further environmental protection. Prior to leasing, there are simply too many unknowns to conduct a meaningful review and plan for and protect environmental concerns. These material unknowns include: (1) what parcels will ultimately be bid on; (2) what environmental features exist on the bid-on parcels; (3) what specific options for exploration exist; (4) whether there are significant mineral deposits requiring further consideration; and (5) what mining processes would ultimately be needed to

economically extract whatever minerals are located. It would be virtually impossible to accomplish any meaningful review at the leasing stage.

Moreover, statistical information demonstrates that the vast majority of parcels offered for lease are not even bid on and thus suffer no environmental impact whatsoever. Similarly, the vast majority of parcels leased do not undergo any drilling or other exploratory actions. In light of this, it makes eminently more sense to preserve resources and undertake an environmental review after property is actually leased and it is clear what activities are intended for that property. The MDNR understood this when it rendered its decision and its decision should be affirmed.

### **STATEMENT OF THE ISSUES AND CASE**

MiningMinnesota agrees with and adopts the statements of the issues and case provided by Respondent and Intervenors.

### **STATEMENT OF THE FACTS<sup>2</sup>**

#### **I. Description of Mining Minnesota**

MiningMinnesota is an initiative driven by a diverse coalition of organizations, companies and individuals committed to sustainable and environmentally responsible nonferrous mining development in Minnesota. MiningMinnesota works with local citizens, businesses and other organizations to bring growth and job creation to the State through responsible development of natural resources. The organizations affiliated with

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<sup>2</sup> As amicus curiae, MiningMinnesota believes there is important information available in the public domain which should be considered by the Court as part of this appeal. Accordingly, MiningMinnesota has prepared a supplemental appendix including select portions of publicly available sources. *See, e.g., Camacho v. Todd and Leiser Homes*, 706 N.W.2d 49, 52 n.3 (Minn. 2005) (approving consideration of articles submitted by amicus that was in public domain and that provided information pertinent to the appeal).

MiningMinnesota are committed to using innovative mining practices to improve the economies of northeastern Minnesota communities.

Moreover, through the support and encouragement of innovative mining processes, MiningMinnesota works to ensure that extraction and processing are performed in environmentally responsible ways. Minnesota has long been a national leader in developing strict, yet sensible, regulatory processes for the development of the natural resources located within its borders. The members of MiningMinnesota fully support these existing regulations, and their proposed projects meet or exceed all standards, using best mining and reclamation practices coupled with the world's cleanest processing technologies.

MiningMinnesota's members include entities that have bid on state mineral leases in the past, and members that will bid on them again in the future. MiningMinnesota's members also include companies that provide supplies and services to the companies performing the mining. Consistent with its mission, MiningMinnesota and its members have a significant interest in ensuring that the mining process—from auction to extraction—is conducted in an efficient, but also environmentally responsible way.

## **II. Brief History of Nonferrous Mining in Minnesota**

Relator's brief might lead the Court to conclude that mineral leasing and exploration in Minnesota are nascent concepts which have not been sufficiently vetted from an environmental perspective and, therefore, it is necessary and justified to require formal environmental review at every conceivable juncture. However, a review of the history and a review of the expansive social, environmental, and economic impacts

analyses that has been conducted over the years demonstrates that Relator's concerns are without support. Indeed, over the past 60 years—from when copper and nickel were first discovered in Minnesota to the lease sale at issue in this appeal—the State and the interested parties (including environmental groups) have comprehensively analyzed the impacts of mining, the regulatory processes for mining, and the appropriate stages of environmental review. And at no point during these comprehensive analyses have the State or the parties contemplated or demanded preparation of Environmental Assessment Worksheets, or other formal environmental review, at the leasing stage.

The most prevalent of nonferrous metallic minerals present in Minnesota—copper and nickel—were first discovered in Minnesota in 1948 southeast of Ely. (AA277) Following this discovery, International Nickel Company began exploration on federal lands and Bear Creek Mining Company began exploration on private lands between 1950-1960. (*Id.*) Given the apparent interest in copper and nickel deposits, the State began working on lease rules and held public hearings relating to its mineral resources, but did not come to a final agreement on rules until 1966. (*Id.*) By 1966, Minnesota had completed copper, nickel, and associated mineral leasing rules and the rules were modified and adopted through a public hearing process with approval of the State Executive Council. (*Id.*)

Between 1966-1973, Minnesota held six public lease sales. (AA277) Approximately 3.8 million acres were offered for leasing and approximately 425,000 acres were eventually leased. (*Id.*) Despite this, prior to allowing development of the leased mineral resources, the State placed a moratorium on acceptance of copper-nickel

mining development proposals pending study of the significant potential social, environmental, and economic impacts associated with copper-nickel mining. (*Id.*) This study, known as the Regional Copper-Nickel Study, took place between 1974-1979 and resulted in preparation of a five volume, thirty-six chapter report. (*Id.*, see AA1-250)

**A. The Regional Copper-Nickel Study**

The Regional Copper Nickel Study was commissioned by the Minnesota Environmental Quality Board in 1974. (AA3, AA277) The purpose of this report was to investigate and develop further information regarding the economic, societal, and environmental impacts of nonferrous metallic mineral mining to shape public policy moving forward. (AA3) By its terms, the purpose of the Regional Copper-Nickel Study, was to provide a “comprehensive technical examination of the environmental, social, and economic impacts associated with the potential development of copper-nickel sulfide mineral resources of the Duluth Complex in northeastern Minnesota.” (*Id.*) As a “regional study,” it was commissioned because it was believed that “conventional site-specific environmental impact statements and the corresponding regulatory process were inadequate to deal with the broader issues involving this unexploited resource.” (*Id.*) Thus, a comprehensive study was undertaken to determine whether development of copper-nickel resources was in the best interests of Minnesota.

This study was massive and included significant analysis regarding environmental concerns. Included within the study was a volume devoted exclusively to the physical environment, a volume devoted exclusively to the biological environment, and a volume devoted exclusively to the human environment. (AA129-130) The state invested

\$4.3 million in the study (which works out to nearly \$14 million in today's dollars). (AA3) In addition to the final regional report, the study also resulted in the creation of over 180 technical reports, extensive environmental monitoring data files, special sample collections, and other compiled resources. (See AA3, AA131-142) Over 75 professionals were involved in monitoring and research programs. (AA143-146) Moreover, numerous state and federal agencies participated in the study including the MDNR, the Minnesota Pollution Control Agency, the U.S. Bureau of Mines, the U.S. Forest Service, and the U.S. Environmental Protection Agency. (AA9) The Study became the basis for multiple reviews and modifications to regulations in the coming years, none of which suggested or required that formal environmental review be required at the leasing stage.

#### **B. The Mining Simulation Project**

Following the conclusion of Regional Copper-Nickel Study and the end to the copper nickel moratorium, leasing and exploration continued without issue. Despite this, no mine had been developed on state leased lands, so the regulatory process remained largely untested as to actual mine development. Thus, in continuation of the cooperative manner in which the industry, state, and environmental groups had worked in the past, a cooperative study was undertaken by the environmental community, the mining industry, the MDNR and the Minnesota Pollution Control Agency to further examine the regulatory process. (See AA147-250)

In September 1987, the Blandin Foundation, a Grand Rapids based philanthropic organization, convened the Minnesota Minerals Forum. (AA153) A significant item of

concern for the Forum participants was the regulatory environment and its relation to mineral development. (*Id.*) Accordingly, a project was developed to examine the as-yet-untested regulatory framework through a series of hypothetical “case studies” which would go through the environmental review and permitting processes for several geologically and economically realistic, though nonexistent, mine developments. (*Id.*) The working group for this project included the MDNR, the Minnesota Pollution Control Agency, the environmental community as represented by Project Environment Foundation,<sup>3</sup> and mineral industry interests coordinated and represented by Ernest K. Lehmann & Associates, Inc., a Minneapolis-based geological consulting firm. (AA154) The simulation resulted in a three-volume report which included, among other things, review of issues such as exploratory drilling, environmental review and permitting processes and procedures, land-use conflicts, water quality and quantity, air quality, design/operation/closure/post-closure care, and financial assurance. (AA157-159)

As part of the report, the MDNR outlined the process for determining which parcels it would lease. (AA198-200) The MDNR had, and continues to have, a comprehensive screening process which is intended to: (1) identify lands that the state does not want to lease for exploration and possible mineral development because the lands have greater value to society if undisturbed by mining; (2) identify lands that may be offered for lease with the exception of certain features (such as the beds of

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<sup>3</sup> The Project Environment Foundation was the predecessor to the Minnesota Center for Environmental Advocacy.

unmeandered lakes); and (3) identify lands that can be leased subject to some conditions or restrictions on exploration and mining procedures. (AA198)

The report also considered the environmental reviews in place for exploratory drilling and concluded that they were largely sufficient. The MDNR observed that “the rules are being closely followed by exploratory drillers” and “the Department believes the regulations are effective and offer adequate protection of the state’s ground water resources from impacts of exploratory drilling.” (AA179) The MDNR further outlined the extensive regulatory requirements accompanying the exploratory drilling process. (AA179-182) Finally, the MDNR noted the appropriate time for preparation of an Environmental Assessment Worksheet was not prior to exploratory borings, but prior to “mineral deposit evaluation,” which means “examining an area to determine the quality and quantity of minerals, excluding exploratory boring but including obtaining a bulk sample, by excavating, trenching, constructing shafts, ramps, tunnels, pits, and producing refuse and other associated activities.” (*See, e.g.* AA182)

Notably, the groups jointly concluded that no instances of ground water contamination had been detected in Minnesota as a result of drilling for metallic minerals in Minnesota. (AA245) Thus, the only joint recommendation with respect to exploratory drilling was that “the Commissioner of Health with the advice of the Advisory Council on Wells and Borings review additives commonly used in drilling fluids to determine which if any additives being used by exploratory drillers present potential hazards and should be restricted.” (*Id.*)

**C. June 1991 Report to the State Executive Council by the MDNR**

On January 30, 1991, approximately one year after the completion of the Mining Simulation Project, the State Executive Council met to discuss mineral management issues. (AA253) This meeting resulted in questions by the State Executive Council to the MDNR which the MDNR addressed in a lengthy formal report. (See AA251-360) This report advised the State Executive Council on sustainable mineral development; the state's mineral potential; the state metallic minerals leasing program; environmental studies, research and review; the regulatory permitting process; and economic impacts. (AA253) Also included within the report was an overview of the State's metallic minerals leasing program. The report addressed topics such as ownership of mineral rights, the basic procedures for issuing state leases, the environmental screening of lands that occur prior to offering, and inspection and monitoring of activities conducted under a state lease. (AA273-285)

Notably, and as explained to the State Executive Council, formal environmental review in the form of an Environmental Assessment Worksheet or an Environmental Impact Statement was never and has never been a part of the leasing process. (See AA280-284) Instead, the MDNR conducts a pre-lease screening based on input from various parties concerning the existing use of tracts within the general area being considered for leasing. (*Id.*) Parties that provide information during this initial screening process have included state agencies such as the Minnesota Pollution Control Agency and the Minnesota Historical Society, other governmental units such as Voyageurs National Park, and environmental organizations such as the Sierra Club and Project Environment

Foundation. (AA281-282) This screening process results in the exclusion of numerous tracts of land, and limitations on other tracts such as designated trout streams, state canoe and boating routes, state trails, wildlife management areas, natural heritage sites, watersheds of all eighteen ecologically significant peatlands, historic and archaeological sites, recreation sites, and other areas of particular concern. (AA282-283)

### **III. The Typical Mining Development Sequence**

Any mineral venture is developed in stages which generally flow in the following order: (1) exploration; (2) pre-production; (3) production; and (4) post-production.<sup>4</sup> (AA44-48) There are various statutes and regulations governing each of these stages, and there are varying levels of environmental review undertaken at each stage.

Exploration generally begins with the belief (typically based on available and preexisting geologic data) that minerals might be located in a general area and that there is a need for such minerals in the marketplace. (AA44) From there, various stages of testing and evaluation are performed to identify a specific area within a general area of interest where sufficient mineral resources amenable to recovery might be found. (*Id.*) These target areas are then tested by drilling which, if successful, is used to delineate the deposit. At the same time, there is investigation of socio-economic considerations, legal requirements, and environmental concerns. (*Id.*) If the exploration phase reveals that mining is likely to be successful and economically viable, the development proceeds to

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<sup>4</sup> This sequence was discussed in somewhat greater detail in the Regional Copper Nickel Study. Although this Study discussed the developmental sequence as of the 1970's, the sequence is essentially the same today as it was then. A discussion of these sequencing is also available on the Minnesota DNR's website. (*See* AA361-363.)

the next step. If not, the development ends or is abandoned until market conditions change. (AA44-45) The exploration phase can require more than ten years to gather sufficient information to support a decision on whether to proceed with a mining development. (AA44)

Following exploration is the pre-production phase. (AA45) This is generally a 3-5 year period that begins when a mining company decides to develop a project and applies for permits,<sup>5</sup> and ends when production begins. (*Id.*) It is during this period that the facilities are constructed and the employees are hired. (*Id.*) Most major decisions affecting the future operation of the project and its impact on the State, the region, local communities, and the environment are made during this phase. (*Id.*)

Pre-production is followed by the production and post-production phases, neither of which is particularly relevant to this case except to note that the production phase involves the ongoing operation of the mining facility, and the post-production phase involves reclamation or restoration of the property impacted by the mining operation. (AA47-48)

The subject of this appeal—leasing of the mineral rights—generally occurs either prior to or very early in the exploration phase. Leases occur at a time when very little is known about the specifics of any potential mineral deposits, the processes that would ultimately be needed to develop those minerals, the environmental impacts associated with development, or the economic value of development.

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<sup>5</sup> To apply for a mining permit, a company must first complete and submit a comprehensive Environmental Impact Study.

#### **IV. Typical Exploration Activities**

Relator contends the granting of the leases creates a likelihood of significant environmental impacts because, per the terms of the leases, the lessee has the right to conduct exploration activities which include “obtaining bulk sample by drilling excavating, trenching, constructing shafts, ramps, tunnels, pits, and producing refuse and other associated activities.” (APP172) Of course, the lease also obligates the lessee to operate in such a manner “only as is usual and customary in skillful and proper mining and milling operations in accordance with the requirements, methods, and practices of good mining, metallurgical, and environmental engineering.” (*Id.*) Usual and customary practices for exploration typically involve a series of minimally invasive processes.

##### **A. Geophysical and Geochemical Surveying**

The first exploration process is typically geophysical surveying.<sup>6</sup> (IA12-13) Geophysical surveys are exploration techniques that take advantage of the physical properties of rock formations, such as magnetism, electrical conductivity, and density, to narrow down the area in which to search for mineral deposits. (*Id.*) These properties can be measured at specific locations on the Earth’s surface or continuously recorded from an aircraft flying over an area. (*Id.*) Many minerals have distinctive geophysical characteristics which allow the explorer to assess what type of minerals might be present without ever disturbing the surface. (*Id.*) The environmental impacts of airborne geophysical surveys are obviously negligible. (*Id.*) Ground based surveys have similarly

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<sup>6</sup> Geophysical surveying might also be preceded or accompanied by geologic studies or mapping which involve the review of preexisting materials.

minimal environmental impacts; they essentially involve an explorer walking on the ground while carrying backpack-sized instruments. (*Id.*) To the extent there is any environmental impact, it is typically limited to the cutting of brush along the explorer's walking lines. (*Id.*) The environmental impacts are thus minimal and temporary.

The second exploration process is geochemical sampling. As with geophysical surveying, geochemical sampling is minimally invasive—it literally involves collecting shovels full of soil or samples of rock outcrops and testing the soil and rock for telltale signs of a mineral deposit. (IA13)

### **B. Exploratory Drilling**

The third exploration process is exploratory drilling which, due to cost and other factors, is only pursued after the geophysical surveying and geochemical sampling have provided positive results. While exploratory drilling is more involved than geophysical and geochemical sampling, it is a heavily regulated activity that still results in a minimal and temporary environmental disturbance.

The purpose of exploratory drilling is to obtain a continuous sample of the bedrock. The drill core sample is logged to define rock types, and portions are often sampled and chemically analyzed to help further characterize the rock types and to look for the presence of useful minerals. Holes are generally drilled 100 to 5,000 feet deep. (IA14) The MDNR notes that the average hole depth is 1100 feet. (*Id.*) The holes themselves are typically 2 to 5 inches in diameter. (*Id.*) Drill rigs are typically truck mounted or track mounted and only need a narrow road to access a drill site. Drill plans use existing roads and trails wherever possible. To the extent special “drill roads” are

necessary, such “roads” are sited so that clearing of trees and vegetation is minimized and the “drill roads” are restored after drilling is complete. Drilling in wetland areas is typically only conducted in the winter when the ground is sufficiently frozen. (*Id.*)

Mining companies are not in a hurry to just go out onto leased tracts of land and start drilling holes. Exploratory borings can cost about \$100 per linear foot. (IA14) That means that the average hole of 1,100 feet will cost about \$110,000 and the drilling could cost up to a half-million dollars for a 5000 foot boring. These costs do not include the preparation or site reclamation costs. Because of the expenses associated with exploratory drilling, the explorers typically exhaust all other available options to ascertain whether drilling is necessary or worthwhile, including examining drill cores that have already been extracted.

### **C. Exploratory Drilling Regulation**

While Intervenors have touched on the exploratory boring regulations, further detail is provided here. Boring activities are regulated under Minn. Stat. Ch. 103I and Minn. R. Ch. 4727. Minn. Stat. 103I.601 provides laws specifically regulating exploratory borings. Minn. R. Ch. 4727 provides rules for the exploratory borings. These statutes and rules require, *inter alia*, advance notice to the Commissioner of Health and the property owner where the boring is to take place, and a map showing the location of the proposed boring. Minn. Stat. § 103I.601, subd. 3, Minn. R. 4727.0910. The rules also impose casing and sealing procedures which prevent contamination of underground water supplies as a result of the boring. *See, e.g.*, Minn. R. 4727.0920, 4727.0947, 4727.0950, 4727.0980, 4727.0985, 4727.1000, 4727.1100, 4727.1250. Exploratory

boring can only be conducted by licensed explorers. Minn. Stat. § 103I.061, subd. 2. All exploratory boring must be supervised by a statutorily required “responsible individual” who is certified or licensed with respect to requirements for constructing, locating, and sealing exploratory borings. *Id.* The Commissioners of Health, MDNR, and the Pollution Control Agency, and their respective officers and employees have access to all exploratory boring sites for inspecting drill holes, drilling, and sealing of the borings, and to take samples and measurements during the drilling. Minn. Stat. § 103I.061, subd. 5.

Similarly, and in addition to the requirements of the Rules, the mineral leases at issue in this case (and the form mineral lease provided by Minn. R. 6125.0700) require advance notice of any exploration activities (not just drilling), and provide that the MDNR has the authority to “require the lessee to adjust its exploration plans or plans for constructions of roads or trails due to special features or uses with the lease premises or due to other natural resource management concerns.” (APP172) Thus, exploration activities, including drilling, are sufficiently regulated such that no potential for significant environmental effects could arise from merely engaging in exploration. But to the extent any adverse environmental effects could theoretically occur, the State has procedures in place to account for these effects when reviewing exploration plans.

**V. Statistical Information Regarding Historical Nonferrous Metallic Mineral Exploration Activities from 1966 through 2011.**

As explained qualitatively above, non-ferrous mineral exploration results in negligible (if any) environmental impact. This qualitative information is further supported by historical quantitative information. Dennis Martin from the MDNR’s

Division of Land and Minerals has conducted a detailed examination of non-ferrous mineral exploration in Minnesota from the period spanning 1966 through 2011. (IA24-51) The results of Mr. Martin's historical research are exceedingly relevant to the issues presently before the Court.

From January 1, 1966 to June 2011, there have been 120,659 parcels of land offered for mineral exploration. (IA34) Of those parcels, only 23,752 (20% of offered parcels) have been leased; only 4478 (3.7%) have had geochemistry samples taken; only 555 (0.4%) have had one or more drill holes; and only 175 (0.15%) have had more than one drill hole. (IA35, IA37, IA41, IA44) The vast majority of leases terminate after 10 years with no significant mineral discovery. (IA33)

Thus, from a quantitative perspective, as well as from a qualitative perspective, no significant environmental impacts would reasonably arise from granting leases, or from exploration drilling following the granting of leases. The absence of adverse environmental consequences is supported by an extensive drill history. There have literally been thousands of exploratory drill holes in Minnesota, and there have been no documented instances of groundwater contamination or other negative adverse consequences.<sup>7</sup>

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<sup>7</sup> The MDNR estimates that there have been 1477 exploratory drill holes within state mineral lease parcels. (IA41.) In the early 2000's, it was estimated that there were 2,200 holes recording in the Duluth Complex. Richard L. Patelke, *Digital Drill Logs for the Duluth Complex*.

## VI. Mining Permitting Requirements

Relator's brief reads as though the granting of a mineral lease gives the lessee the unfettered right to place a mining facility on the premises and start digging. This is simply not the case. The lease itself clearly states that the lessee shall be subject to all applicable state and federal statutes, orders, rules and regulations. This would, of course, include the statutes and rules relating to the permitting and construction of eventual mining operations.

Minnesota law provides that, "except as provided in this subdivision, after June 30, 1975, no person shall engage in or carry out a mining operation for metallic minerals within the state unless the person has first obtained a permit to mine from the commissioner." Minn. Stat. § 93.481, subd. 1. In preparing the application for the permit, the applicant must: (1) provide a proposed plan for the reclamation or restoration, or both, of any mining area affected by mining operations; (2) provide proof of necessary insurance; (3) pay an application fee (\$50,000 for non-ferrous metallic mineral mines), (4) post a bond; and (5) demonstrate that it has provided public notice of the proposed mining operation as required by statute. *Id.*

Following submission, there is an application review process that can include further requests for information by the Commissioner, and public hearings. Minn. Stat. § 93.481 subd. 2, Minn. R. Ch. 6132. The public has 30 days to object to proposed mining applications and in the event objections are received, a public hearing **must** be held. *Id.* Following the review process, the Commissioner has the authority to grant the application, grant the application with modifications, or deny the application altogether.

*Id.* Thorough environmental review is a required component of the mining permit process. *See id.*

In addition to the mining permit, there are also Water Quality and Air Emissions permits that must be obtained through the MPCA. *See* Minn. R. Ch. 7002, 7007. These permitting requirements impose yet further levels of environmental review. *See* Minn. R. Ch. 7001. Thus, there are significant environmental reviews before any mining can occur.

### **ARGUMENT**

#### **ENVIRONMENTAL REVIEW SHOULD NOT BE REQUIRED PRIOR TO THE LEASING OF MINERAL RIGHTS BECAUSE THERE IS NOT SUFFICIENT INFORMATION TO PROVIDE A MEANINGFUL REVIEW AND BECAUSE THERE ARE SUBSEQUENT AND BETTER OPPORTUNITIES FOR REVIEW**

Based on the extensive historical information set forth above, requiring environmental review at the mineral leasing stage would be a wasteful and futile exercise. Prior to leasing, there are significant and material unknowns such as: (1) what parcels will ultimately be bid on; (2) what environmental features exist on the bid-on parcels; (3) what specific options for exploration exist; (4) whether there are significant mineral deposits requiring further consideration; and (5) what mining processes would ultimately be needed to economically extract whatever minerals are located. With all these unknowns, it would be impossible to accomplish any meaningful review at the leasing stage, and it is far more prudent for all interested parties to conserve their resources for evaluation and, if necessary, mitigation when the variables are better defined.

The vast majority of parcels offered for lease are never bid on, and the vast majority of parcels that are bid on have no drilling take place. Moreover, the drilling

process is not particularly invasive, and to require significant environmental review at the leasing stage—when *less than 1%* of the parcels identified for lease are likely to be drilled—would be incredibly wasteful. The financial burden alone would likely cripple exploration activities and would directly impede Minnesota’s stated policy of supporting mineral exploration. *See* Minn. Stat. § 93.01. To the extent environmental review is ever appropriate for the minimally evasive exploration activities described above, such review certainly should wait until: (1) it is actually known what parcels have been leased and are actually intended for exploration; and (2) what the intended exploration activities would entail.

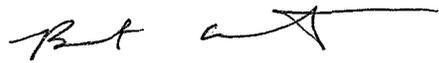
Extensive environmental review is far more appropriate at later stages in the process, when the interested parties have some idea as to the potential scope of the project, the value of the mineral resource being considered, and the technologies and processes available to exploit the resource. Until these things are known, there is simply not enough information to meaningfully evaluate the pros and cons associated with developing or not developing a mine.

### **CONCLUSION**

Minnesota’s current statutory and regulatory processes from nonferrous metallic mineral mining were not haphazardly generated. Instead, they were the result of comprehensive, deliberate, and collaborative analysis that took place over decades. Relator’s efforts to unilaterally revise these processes through litigation should be rejected.

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