

The Northern Counties Land Use Coordinating Board



EIS Scoping Process Issue Identification, Authorities and Analysis



Alternative II: Minerals Withdrawal

Title	Description	Authorities		
		Statutes	Regulations	EOs and Other
Appropriations for Discretionary Withdrawals; Early Cancellation Review	<p>The executive branch of the Federal government is reviewing the size, scope and activities of executive-branch agencies with an objective to reduce the national debt, lower cost of government to the American taxpayer, and to increase the overall effectiveness of administrative agencies. The EIS scoping process should apply responsible fiscal management by first estimating the total cost of the discretionary withdrawal proposal and the associated revision of the Resource Management Plan (RMP).</p> <p>The Secretary of Interior should be given the opportunity, as prescribed in BLMs administrative regulations at 43 CFR §2310.1-4, to determine if appropriations will even be available for USFS and BLM to <u>complete</u> the discretionary EIS and 2-year withdrawal program.</p>	43 USC §1734(b)	43 CFR §2310.1-4	EO 13781 OMB Directive M-17-22. Response of Local Government to President's Reorganization Plan.
Consistency Review; Incorporation of Bois Forte of Chippewa Tribal Land Use Issues in Scoping Process	<p>The NEPA-implementing, CEQ Regulations require, at the beginning of the scoping process, the Secretary to invite the Bois Forte Band of Chippewa Tribe and Cook, Lake and Saint Louis County governments to participate in the land use planning process. 40 CFR §1501.7 (a)(1). For its part, the EIS is required to document - in a side-by-side, comparative format - conflicts between the proposed withdrawal action and policies of the land use plans of all local governments in the withdrawal area. The EIS must document inconsistencies, how they were mutually resolved, and the potential consequences and conflicts to each local government unit resulting from the minerals withdrawal proposal. 40 CFR §1502.16 (c).</p>	43 USC §1712(c)(9)	40 CFR §1501.7 (a)(1) 40 CFR §1502.16(c) 40 CFR §1506.2(d) 43 CFR §1610.3-1	
Inventory and Loss Quantification of State Owned, School Trust Leases, Lands and Minerals: Saint Louis County; Errors on USFS Appendix A Maps	<p>The Saint Louis County Land Commissioner has identified 5,596 acres of active, state-owned, mineral leases; 12,400 acres of Minnesota School Trust mineral holdings; 12,600 acres of State Swamp Trust mineral holdings; and 68 private and public parcels in which the underlying mineral ownership remains in question. Other issues identified on the USFS Appendix A land list published in the Federal Register include missing Township and Range information and ambiguous legal descriptions. These errors and inconsistencies between county and Federal surface and subsurface mineral and land ownership must be resolved as part of the EIS scoping process in order for accurate studies to be performed.</p> <p>The Secretary is required to inventory pre-existing mineral ownership, mining claims, and other interests [43 USC §1711; 43 USC §1714(c)] and estimate compensation due state and local governments for state-owned minerals proposed for withdrawal under the USFS proposal [43 USC §1701(a)(13)]. Similarly, the EIS must identify, inventory and evaluate the potential for state trust lands to be landlocked by withdrawal proposal, and both the EIS and RMP must contain substantive mitigation recommendations to ensure in perpetuity access (43 USC §1761) is maintained across all lands proposed for withdrawal. The EIS must: 1) compare all withdrawal alternatives and calculate the impact to the quality of the state and county school system [40 CFR §1500.2(f)], and 2) Include methods to minimize adverse impacts to taxpayers (40 CFR §1502.23). Mitigation measures must be evaluated and published [40 CFR §1502.14(f); 40 CFR §1502.16(h)]. All information for Federal decision-making must be high-quality, have utility, be complete, reproducible, accurate and available to the general public. (<i>Consolidated Appropriations Act of 2001 §515 (Data Quality Act)</i>).</p>	16 USC §528 16 USC §531 43 USC §1701(a)(13) 43 USC §1711 43 USC §1714(c) 43 USC §1761	40 CFR 1500.2 40 CFR 1501.2(a) 40 CFR 1502.1 40 CFR 1502.14(f) 40 CFR 1502.16(h) 40 CFR 1502.23	EO 13352 §3 Consolidated Appropriations Act of 2001 §515 (Data Quality Act) . Correspondence. Saint Louis County Land Commissioner to Mr. Jim Carlson. August 9, 2017.

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Inventory and Loss Quantification of State Owned, School Trust Leases, Lands and Minerals: Lake County	<p>The Lake County Land Commissioner has identified 12,220 acres of active, state-owned, mineral leases (of which 237 acres are <i>industrial</i> minerals, and 11,983 acres are <i>non-ferrous</i> minerals); 17,671 acres of Minnesota School Trust mineral holdings; 45,079 acres of State Swamp Trust mineral holdings and 16,169 acres in tax-forfeited mineral ownership.</p> <p>The Secretary is required to inventory pre-existing mineral ownership, mining claims, and other interests [43 USC §1711; 43 USC §1714(c)] and estimate compensation due state and local governments for state-owned minerals proposed for withdrawal under the USFS proposal [43 USC §1701(a)(13)]. Similarly, the EIS must identify, inventory and evaluate the potential for state trust lands to be landlocked by withdrawal proposal, and both the EIS and RMP must contain substantive mitigation recommendations to ensure in perpetuity access (43 USC §1761) is maintained across all lands proposed for withdrawal. The EIS must: 1) compare all withdrawal alternatives and calculate the impact to the quality of the state and county school system [40 CFR §1500.2(f)], and 2) Include methods to minimize adverse impacts to taxpayers (40 CFR §1502.23). Mitigation measures must be evaluated and published [40 CFR §1502.14(f); 40 CFR §1502.16(h)]. All information for Federal decision-making must be high-quality, have utility, be complete, reproducible, accurate and available to the general public. (<i>Consolidated Appropriations Act of 2001 §515 (Data Quality Act)</i>).</p>	16 USC §528 16 USC §531 43 USC §1701(a)(13) 43 USC §1711 43 USC §1714(c) 43 USC §1761	40 CFR 1500.2 40 CFR 1501.2(a) 40 CFR 1502.1 40 CFR 1502.14(f) 40 CFR 1502.16(h) 40 CFR 1502.23	EO 13352 §3 Consolidated Appropriations Act of 2001 §515 (Data Quality Act) . Correspondence. Lake County Land Commissioner to Mr. Jim Carlson. August 4, 2017.
Strategic and Critical Infrastructure	<p>The Lake and St Louis Land and Mineral Commissioners have identified a total 28 miles of high voltage transmission lines that interconnect a 225 megawatt, coal fired power station with the national grid. According to the <i>Patriot Act</i> and Department of the Homeland Security, the Minnesota Power, <i>Taconite Harbor Power Station</i> and the transmission lines that transect the proposed mineral withdrawal area can be defined as federally protected, critical infrastructure. As a result, the EIS and RMP must include impact analysis, forest maintenance and management protocols, and provisions to include protection and future expansion potential of the electrical transmission system and its associated corridors. The EIS must include a direct and indirect evaluation of the consequences to the human environment if the withdrawal could affect permitting, corridor expansion, or maintenance practices.</p>	115 STAT. 272 PUBLIC LAW 107-56—OCT. 26, 2001 42 USC §4331(b)(3) 43 USC §1761(a)(4) 43 USC §1763 43 USC §1701 Sec. 701 note (a) 43 USC §1701 Sec. 701 note (h)	40 CFR §1501.7(a)(5) 40 CFR §1502.14(f) 40 CFR §1502.16(e) 40 CFR §1502.16(g) 40 CFR §1508.8(b)	
	<p>In its policy directive in FLPMA Title I, the 94th US Congress stated the objective for public lands was to ensure productivity and ongoing access in a way that serves the interest of human systems and results in the increase the economic productivity of the United States. Care and preservation of the environment is to take place within the context of productivity, and this principle is adhered to throughout both FLPMA and NEPA.</p> <p>Congress defined “Multiple Use” as <i>“the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people.”</i> Similarly, the term <i>“principal or major uses”</i> includes, <u>and is limited to</u>, <i>domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.</i></p> <p>In administering the doctrine of Multiple Use and Sustained Yield, USFS and BLM are to prioritize multiple use and access to public lands over withdrawal and sequestration. This effectively places the burden upon the applicant – in this case, USFS – to demonstrate: 1) How the existing framework of environmental regulations insufficiently protects the natural environment; 2) How, from a technical perspective, the threat to the natural environment from mineral exploration/extraction sufficiently outweighs higher-order principal uses such that the withdrawal of public lands from productive use becomes necessary; and 3) Why the 1978 congressional withdrawal of the Boundary Waters Canoe and Wilderness Area requires expansion.</p> <p>In establishing the FLPMA criteria for land and mineral withdrawals of greater than 5,000 acres, the Congress codified a 12-point criteria checklist for implementation by the Secretary. 43 USC §1714(c)(2). These criteria formulate the required scope of studies, activities and analysis to be utilized in preparation of the EIS and RMP, review by the Secretary, and in notification of the Congress.</p>	16 USC §§528-531 16 USC §1604(e)(1) 43 USC §1702(c) 43 USC §1714(c)(2)	40 CFR §1500.2 40 CFR §1500.5(b) 40 CFR §1501.2(a) 40 CFR §1501.2(b) 40 CFR §1502.16(c) 40 CFR §1502.23	

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Inventory of Highway and Road Access Corridors; In perpetuity Easements to Private Inholdings: Saint Louis County	<p>The Saint Louis County Land Commissioner has identified 21,667 acres of state-owned surface land, 16,963 acres of county-managed surface land, 46,288 acres of privately-owned surface land, and 172 acres of Bois Forte Band of Chippewa Native-American tribal land in the proposed withdrawal boundary.</p> <p>The Federal Land Policy Management Act (FLPMA) requires that the Secretary “ascertain the boundaries of public lands...” and “provide State and local governments with data from the inventory for the purpose of planning and regulating the uses of non-federal lands in proximity of such public lands.” 43 USC §1711(b). Similarly, FLPMA authorizes both the Secretaries of Interior and Agriculture to grant rights-of-way for transportation purposes. 43 USC §1761(6). To ensure protection of valid existing rights and permanent access to landlocked inholdings, a boundary inventory of <i>all</i> stranded inholdings must be performed as part of the EIS, and a long-term, property-access mitigation plan included in the RMP which grants in perpetuity easements.</p>	43 USC §1711(b) 43 USC §1761(6)	40 CFR §1508.20	
Inventory of Highway and Road Access Corridors; In perpetuity Easements to Private Inholdings: Lake County	<p>The Lake County Land Commissioner has identified 55,979 acres of state-owned surface land, 3,075 acres of county-managed surface land, and 63,182 acres of privately-owned surface land in the proposed withdrawal boundary.</p> <p>The Federal Land Policy Management Act (FLPMA) requires that the Secretary “ascertain the boundaries of public lands...” and “provide State and local governments with data from the inventory for the purpose of planning and regulating the uses of non-federal lands in proximity of such public lands.” 43 USC §1711(b). Similarly, FLPMA authorizes both the Secretaries of Interior and Agriculture to grant rights-of-way for transportation purposes. 43 USC §1761(6). To ensure protection of valid existing rights and permanent access to landlocked inholdings, a boundary inventory of <i>all</i> stranded inholdings must be performed as part of the EIS, and a long-term, property-access mitigation plan included in the RMP which grants in perpetuity easements.</p>	43 USC §1711(b) 43 USC §1761(6)	40 CFR §1508.20	
Statutory Evolution of the Superior National Forest; Boundary Inventory Required to Distinguish Management Jurisdictions; USFS Responsibility for Water Flow Limited; Consultation with US Army Corps of Engineers During EIS and RMP Required.	<p>The complex history of land ownership and overlapping regulatory responsibilities within the boundaries of the Superior National Forest and proposed withdrawal area require careful and informed consideration during the EIS and RMP.</p> <p>The <i>Timber and Stone Act</i> (T&SA) of 1878 was a Congressional response to the belief that forest lands were best managed as private property, and it provided for the sale of public lands to private individuals. T&SA was extended to Minnesota in 1892 at about the same time the Federal government began withdrawing forested lands as national forest reserves under the provisions of the Forest Reserve Act of 1891. Lands sold to the public under the provisions of the T&SA conveyed to the purchaser three separate rights: 1) Timber rights, 2) Surface land rights, and 3) Subsurface rights.</p> <p>The lands that were reserved under the <i>Forest Reserve Act</i> of 1891 were the start of what became the Superior National Forest. The <i>Forest Service Organic Administration Act</i> of 1897 provided the initial statutory basis for the management of the forest reserves under the Department of Interior, until that responsibility was transferred to the Department of Agriculture by the <i>Transfer Act</i> of 1905. The terms “forest reservations” and “reservation” were changed to “national forests” and “national forest,” respectively, under the authority of the Transfer Act of March 4, 1907, 34 Stat. 1269.</p> <p>Throughout the statutory history of the Superior National Forest and up to the present, the State of Minnesota has never ceded its jurisdiction over surface and subsurface inholdings incorporated within the national forest.</p> <p>Forest practices of the time were not as well managed as they are today. The consequent damage to the lands that had been deforested and sometimes abandoned led the public to believe it would be better for the government to reacquire lands that had been sold under the <i>Timber and Stone Act</i>. Thus, the <i>Weeks Act</i> of 1911 was the response from Congress. The <i>Weeks Act</i> established the <i>National Forest Reservation Commission</i>, whose mission was to re-purchase private lands for inclusion in the National Forest system. A Superior National Forest purchase unit was formed in 1926, and that commission began purchasing land to add to the Superior National Forest. Maps showing <i>Weeks Act</i> units in 1933 and 1936 show how extensive those purchases were.</p>	16 USC §475 16 USC §480 16 USC §500 16 USC §515 16 USC §516 16 USC §518 16 USC §563 43 USC §1711(b) 43 USC §1712(c)(4) 43 USC §1714(c)(2)(2)	33 CFR Part 209 36 CFR Part 254 40 CFR §1502.25(b)	The Impact of the Timber and Stone Act on Public Land Ownership in Northern Minnesota United States v. New Mexico, 438 US 696 (1978).

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	<p>It is essential that the inventory and boundary mapping required of the Secretary under the <i>Federal Land Policy and Management Act</i> (FLPMA) distinguish between Forest Service lands acquired through the provisions of the <i>Forest Reserve Act</i> of 1891, land exchanges with the state or private property owners, purchases or donations from private property owners that are not related to the Weeks Act, and <i>Weeks Act</i> purchases, because of a key inconsistency between the <i>Weeks Act</i> and other acquisition statutes. The results of the inventory must be reported in the EIS, and the differing management requirements distinguished in the RMP.</p> <p>16 USC §475 codifies the Organic Act of 1897 that, among other provisions, mandates that the Forest Service manage its holdings “. . . for the purpose of securing favorable conditions of water flows . . .;” for its part, 16 USC §515 codified the <i>Weeks Act</i>, requiring the Secretary of Agriculture to prioritize the purchase of lands in the watersheds that may be necessary to the regulation of the flows for navigation management. In <i>US v. New Mexico</i>, the Supreme Court of the United States affirmed that it was the <u>intent of Congress that USFS manage watersheds in the Superior National Forest for water quantity, and this to ensure stable baseline, downstream flows.</u></p> <p>Because the statutory record and relevant caselaw is silent with respect to the responsibility of USFS over water quality or groundwater management, <u>a reasonable conclusion is that agency has no jurisdictional responsibility over management, permitting or regulation of water quality, which is the basis of their application for withdrawal.</u></p> <p>The <i>Weeks Act</i> mandate to purchase lands for regulation of water flow, and the U.S. Army Corps of Engineers, (USACE) responsibility for navigability establishes a nexus between USFS and USACE as USACE has jurisdiction over flow emanating from responsible forest management. As part of the EIS and RMP, coordination with USACE is required to calculate flow and obtain permits for the various watershed points within the boundaries of the Superior National Forest - including the proposed withdrawal area.</p> <p>Managing for water flows must include active management, which includes periodic stand thinnings and the harvest of mature stands of timber. Passive management leads to the overgrowth of timber stands, which reduces water flows to streams. Active management means the building of roads, which are needed to access the mineral estate as part of forest road building and maintenance operations. This inconsistency with the purposes of the proposed withdrawal needs to be resolved as part of the EIS process.</p>			