Matt Ehling  
Executive Director  
Public Record Media  
2388 University Ave. W.  
Floor 1  
St. Paul, MN 55114

February 9, 2020

Department of the Interior  
Office of the Solicitor  
Attn: FOIA Appeals Office  
1849 C Street, N.W.  
MN-6556 MIB  
Washington, DC 20240

Via Electronic Mail

RE: Freedom of Information appeal

Dear FOIA Appeals Office personnel,

On December 23, 2019, Public Record Media (PRM) submitted a Freedom of Information Act (5 U.S.C. § 552) request (the “Request”) to two components of the U.S. Department of the Interior (DOI) - the Bureau of Land Management Eastern States State Office (BLM), and the Office of the Secretary (OOS).

The Request sought copies of the following records created, received, transmitted, or maintained by your agency between December 15, 2016 and September 30, 2018 (“Item 1 Records”):

1. Any and all records - including memoranda, studies, and raw data - gathered or prepared in connection with any environmental impact statement, environmental analysis, or environmental assessment worksheet regarding the withdrawal of federally-owned minerals in the Superior National Forest.

The Request also sought copies of the following records created, received, transmitted, or maintained by your agency between January 1, 2018 and September 30, 2018 (“Item 2 Records”):

2. Any and all correspondence pertaining to the cancelation of any environmental impact statement, environmental analysis, or environmental assessment worksheet regarding the withdrawal of federally-owned minerals in the Superior National Forest.

For your convenience, a copy of the Request is attached to this correspondence. On behalf of PRM, I directed the Request to both BLM and OOS, as I anticipated that Item 1 Records were in
the possession of BLM, and Item 2 Records were in the possession of OOS. I mailed two copies of the Request under separate cover, each sent via certified mail. I have since received confirmation of the delivery of each mailing, via a certified mail return card in the case of OOS, and via the U.S. Post Office web site in the case of BLM. (Please see copies of delivery confirmation attached to this correspondence.)

The Request was submitted as part of news gathering. In it, PRM requested a waiver of fees, since the public dissemination of the requested records will "aid the public’s understanding of [DOI’s] evaluation of proposed mining activities within the Superior National Forest, which have been matters of significant public discussion within the state of Minnesota.” The Request set a limit on the amount of fees that PRM would be willing to pay without prior notice, in the event the fee waiver was denied.

Expiration of twenty-day statutory response time
5 U.S.C. § 552(6)(A)(i) requires federal agencies to make a determination about the release of information requested via the FOIA within twenty business days, and also to notify the requester of that determination.

As of the date of this writing, over twenty business days have elapsed since DOI received the Request, as evidenced by the “receipt” dates included in the mailing confirmation documentation pertinent to the Request. (Please see attachment). At the time of this writing, DOI components BLM and OOS have not notified PRM of any determinations related to the release of responsive records.

No notice of "unusual circumstances" provided
5 U.S.C. § 552(6)(B)(i) allows for an up to ten-day extension of the normal twenty-day response time due to "unusual circumstances" as described in 5 U.S.C. § 552(6)(B)(iii). The statute requires the agency to provide written notification of the extension.

At the time of this writing, DOI components BLM and OOS have not provided any written notice of "unusual circumstances" impacting their ability to respond to PRM’s Request within the twenty-day statutory time frame.

Administrative review sought
Through this letter, PRM is seeking administrative review of DOI’s failure to timely respond to the Request. PRM’s right to administrative review is established by the FOIA, and recognized by DOI’s appeals procedures as set out in the Code of Federal Regulations, found at Title 43, Subtitle A, Part 2, §2.57.

Result sought
Through the administrative appeal process, PRM is seeking to receive copies of all records responsive to the items described in the Request dated December 23, 2019.

Additional information
I can be contacted with any questions related to this appeal or the underlying Request by telephone at 651-556-1381; by e-mail at admin@publicrecordmedia.org; or by U.S. post.
Thank you for your attention to this matter.

Sincerely,

/s/Matt Ehling  
Executive Director  
Public Record Media
ATTACHMENT 1
Matt Ehling  
Executive Director  
Public Record Media  
2388 University Ave W.  
Floor 1  
St. Paul MN, 55114  

December 23, 2019  

Bureau of Land Management  
Keiosha Alexander  
Attn: Eastern States Sate Office  
MS-WO-640  
1849 C Street, NW  
Washington DC 20240  

RE: Freedom of Information Act request  

Dear FOIA staff,  

I am making a request for access to public records under the Freedom of Information Act (5 U.S.C. § 552).  

Through this request (the "Request"), I am seeking copies of the following records created, received, transmitted, or maintained by your agency between December 15, 2016 and September 30, 2018:  

1. Any and all records - including memoranda, studies, and raw data - gathered or prepared in connection with any environmental impact statement, environmental analysis, or environmental assessment worksheet regarding the withdrawal of federally-owned minerals in the Superior National Forest.  

Through the Request, I am also seeking copies of the following records created, received, transmitted, or maintained by your agency between January 1, 2018 and September 30, 2018:  

2. Any and all correspondence pertaining to the cancelation of any environmental impact statement, environmental analysis, or environmental assessment worksheet regarding the withdrawal of federally-owned minerals in the Superior National Forest.  

The records referenced in Item 1 of the Request are component parts of a study commissioned by your agency in 2016, and canceled in 2018. (Please see enclosure for a copy of a 2016-era press release issued by your agency regarding the inception of this study.) The records referenced in Item 2 of the Request are also related to that same study.
In the event that your agency wishes to seek further clarity regarding the records sought through this Request - including discussing the possible narrowing of the scope of the Request - please contact me at 651-556-1381, or via e-mail at admin@publicrecordmedia.org. I anticipate that records responsive to Item 1 of the Request are maintained by the Bureau of Land Management Eastern States State Office, and that records responsive to Item 2 of the Request are maintained by the Office of the Secretary.

In order to help you determine my status for the purpose of assessing fees, you should know that this request is made by Public Record Media as part of news gathering, and is not for commercial use. Responsive records will be shared with researchers, journalists, and the public, and will not be licensed for profit.

I am seeking a waiver of fees for this request, since the public dissemination of the requested materials will aide the public’s understanding of your agency’s evaluation of proposed mining activities within the Superior National Forest, which have been matters of significant public discussion within the state of Minnesota.

In the course of its record request activities, Public Record Media has been granted fee waivers by several federal agencies. For instance, the Environmental Protection Agency (EPA) granted PRM a fee waiver (see attached) for a request for correspondence between EPA personnel and a United States congressman. Similarly, the Army Corps of Engineers and the U.S. Forest Service both granted PRM a fee waiver for requests seeking correspondence and other records related to proposed mining operations in northern Minnesota (see attached).

If my fee waiver is denied, I am willing to pay fees of up to $100.00 without prior notice. If fees are estimated to exceed this amount, please notify me first.

If this request is denied in whole or in part, please notify me of the legal basis for the denial, as well as all appeals procedures available under law.

Sincerely,

/s/Matt Ehling
Executive Director, Public Record Media

cc: Department of the Interior
    Office of the Secretary
    Cindy Cafaro
    MS-7328, MIB
    1849 C Street, NW
    Washington DC 20240
Obama Administration Takes Steps to Protect Watershed of the Boundary Waters Canoe Area Wilderness

Agencies deny sulfide-ore copper lease renewal application; Commit to further study of potential impacts of mining near pristine watershed
WASHINGTON – The U.S. Department of the Interior and the Department of Agriculture today announced important steps to protect the watershed of the Boundary Waters Canoe Area Wilderness (BWCAW), a spectacular area in northeastern Minnesota comprised of more than a million acres of lakes and forests.

Citing broad concerns from thousands of public comments and input about potential impacts of mining on the wilderness area’s watershed, fish and wildlife, and the nearly $45 million recreation economy, the agencies today took actions that denied an application for renewal of two hard rock mineral leases in the area, as well as initiated steps to withdraw key portions of the watershed from new mineral permits and leases.
“The Boundary Waters is a natural treasure, special to the 150,000 who canoe, fish, and recreate there each year, and is the economic life blood to local business that depend on a pristine natural resource,” said Secretary Vilsack. “I have asked Interior to take a time out, conduct a careful environmental analysis and engage the public on whether future mining should be authorized on any federal land next door to the Boundary Waters.”

It was in recognition of its irreplaceable resources that Congress set aside the Boundary Waters more than 50 years ago. Today, more than 150,000 annual visitors help drive the local economy through tourism and outdoor recreation.

“There’s a reason that the Boundary Waters is one of the most visited wilderness areas in America: it’s an incredible place,” said U.S. Secretary of the Interior Sally Jewell. “Today’s best available science is helping us understand the value of the land and water and potential impacts of development in places like the Boundary Waters. This is the right action to take to avoid irrevocably damaging this watershed and its recreation-based economy, while also taking the time and space to review whether to further protect the area from all new mining.”

As the surface management agency, the Agriculture Department’s U.S. Forest Service has issued a decision withholding consent to the renewal of two mineral leases located on lands near the wilderness area within the Superior National Forest in northern Minnesota. As a result of that decision, the Interior Department’s Bureau of Land Management (BLM), the agency managing the mineral deposits, is subsequently rejecting the renewal application, which was submitted by Twin Metals Minnesota in 2012.

The two leases, initially issued in 1966 and most recently renewed in 2004, would have allowed for the mining of copper, nickel and associated minerals from the leased lands. However, no mineral production has occurred on either lease since the original date of issuance.

In not consenting to the lease renewals, the Forest Service cited the potential risk of environmental contamination of the surrounding watershed as a key concern. The two leases are located directly adjacent to and within three miles of the BWCAW, respectively. It is well established that acid mine drainage is a significant environmental risk at sulfide ore
mine sites like the one proposed for these leased lands and in a water-based ecosystem like the Boundary Waters because contaminated water could have dramatic impacts to aquatic life, sport fisheries, and recreation-based uses and communities.

The BWCAW is the only large lake-land wilderness in the National Wilderness Preservation System. In establishing the wilderness area, Congress directed the Forest Service to maintain its water quality, protect its fish and wildlife, and minimize the environmental impacts associated with mineral development.

This past summer, the Forest Service held two listening sessions and a 30-day public input period related to the potential lease renewals and received more than 30,000 comments. The decision to withhold consent and study the impacts of this type of mining near the Boundary Waters echoes the concerns of many in the area, including former Vice President Walter Mondale and Minnesota Governor Mark Dayton, who has similarly said that the state will not authorize or enter into any new state access or lease agreements for mining operations near the Boundary Waters Canoe Area.

The Forest Service also submitted an application to the Secretary of the Interior to withdraw key portions of the watershed that flows into the BWCAW from new mineral permits and leases.

The BLM will review the withdrawal application and issue a notice in the Federal Register to segregate the lands – essentially, place them in a ‘time out’ – for up to two years, subject to valid existing rights. To preserve the status quo during that ‘time out,’ no new mineral exploration or development applications would be accepted while a thorough, scientific environmental analysis is conducted. Upon publication of the Federal Register notice, there will be an initial 90-day public review period for the proposed withdrawal and additional analysis during the segregation period that will include further public involvement, including public meetings.

During the segregation period, BLM and the Forest Service will conduct an environmental analysis to determine if the lands should be withdrawn for a period of 20 years. This process will invite participation by the public, tribes, environmental groups, industry, state and local government, as well as other stakeholders. By law, the Department of the Interior
can only withdraw these lands for a maximum of 20 years. Only Congress can legislate a permanent withdrawal.

The segregation or any future withdrawal would not prohibit ongoing or future mining activities on any valid existing rights or prohibit any other authorized uses on private lands.

Other National Forest management activities that are not related to mineral exploration or development, including permits, licenses, and cooperative agreements compatible with the intended use on the lands, would still be permissible at the discretion of the authorized officer.

**PRESS RELEASE**

In Case You Missed It: Interior Sec. Bernhardt: USMCA will boost economy and conservation efforts — here's how

**PRESS RELEASE**
Mike Kaszuba
Editor
Public Record Media
2375 University Avenue West
St. Paul, Minnesota 55114

Re: Federal Freedom of Information Act request EPA-RS-2016-005345

Dear Mr. Kaszuba:

Thank you for your March 29, 2016 request under the Federal Freedom of Information Act (FOIA). In that request, you asked for any and all correspondence (in written and electronic form) between EPA and staff or representatives of Congressman Rick Nolan’s office regarding the proposed NorthMet Mine (PolyMet Corporation) and Twin Metals Mine during the period January 1, 2013 and December 31, 2014.

This FOIA reply covers all responsive materials from the Region 5 Office of Enforcement and Compliance Assurance (OECA). You may receive separate replies from other EPA programs.

Documents provided:
1) 8/4/14 email from Jim Swiderski, Congressman Nolan’s legislative director, to Kenneth Westlake, EPA;
2) 8/5/14 email from Jim Swiderski to Kenneth Westlake, EPA;
3) 8/8/14 email from Jim Swiderski to Kenneth Westlake, EPA;
4) 8/11/14 email from Jim Swiderski to Kenneth Westlake, EPA;
5) 8/11/14 email from Jim Swiderski to Eileen Deamer, EPA;
6) 8/14/14 email from Congressman Nolan to Kenneth Westlake, EPA;
7) 8/14/14 email from Jim Swiderski to Kenneth Westlake, EPA;
8) 8/15/14 email from Richard Periman, US Forest Service, to Jim Swiderski;
9) 8/15/14 email from Jim Swiderski to Richard Periman;
10) 8/15/14 email from Douglas Bruner, US Army Corps of Engineers, to Jim Swiderski;
11) 8/15/14 email from Jim Swiderski to Douglas Bruner;
12) 8/15/14 email from Douglas Bruner to Jim Swiderski;
13) 8/15/14 email from Alan Walts, EPA, to Jim Swiderski;
14) 8/15/14 email from Jim Swiderski to Alan Walts, EPA;
15) 8/15/14 email from Alan Walts, EPA, to Jim Swiderski;
16) 8/19/14 email from Barb Naramore, Minnesota Department of Natural Resources Assistant Commissioner, to Jim Swiderski;
17) 11/24/14 email from Jim Swiderski to Kenneth Westlake, EPA;
18) 12/3/14 email from Eileen Deamer, EPA, to Jim Swiderski.
You may appeal this response to:
National Freedom of Information Officer
U.S. EPA, FOIA and Privacy Branch
1200 Pennsylvania Avenue, N.W. (2822T)
Washington, DC 20460 (U.S. Postal Service Only)
FAX: (202) 566-2147
E-mail:hq.foia@epa.gov.

Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30-calendar-day limit. The appeal letter should include the FOIA number listed above. For quickest possible handling, the appeal letter and its envelope should be marked “Freedom of Information Act Appeal.”

There are no billable costs associated with preparing this FOIA response, as EPA granted your request for a waiver of costs.

If you have any questions or concerns about the OCEA materials, please feel free to contact me at 312-886-2910 or westlake.kenneth@epa.gov.

Sincerely,

Kenneth A. Westlake
Chief, NEPA Implementation Section
Office of Enforcement and Compliance Assurance

Enclosures
Office of Counsel

Matt Ehling
Public Records Media
2375 University Ave W.
Suite 200
St. Paul MN 55114

Subject: Freedom of Information Request FA-14-0014

Dear Mr. Ehling:

This letter is in response to your November 21, 2013, Freedom of Information Act (FOIA) request for: “1. Any and all correspondence (in written or electronic form) between your agency and representatives or employees of Polymet Mining Corp, Glencore International AG, Twin Metals Mining Minnesota, Duluth Metals Limited, or Antofagasta PLC, regarding plans or proposals (in any stage, including pre-feasibility studies) to construct, site, or otherwise locate mining operations inside of, or within 100 miles of, the Boundary Waters Canoe Area Wilderness administered by the US Forest Service (BWCAW); 2. Any and all internal agency correspondence (in written or electronic form) regarding plans or proposals (in any stage, including pre-feasibility studies) to construct, site, or otherwise locate mining operations inside of, or within 100 miles of, the BWCAW; 3. Any and all internal agency correspondence (in written or electronic form) regarding any proposed "land exchange" related to plans or proposals to construct, site, or otherwise locate mining operations inside of, or within 100 miles of, the BWCAW”.

After a discussion on December 16, 2013, between you and our District Counsel, Mr. Joseph Willging, it was agreed that it would be acceptable to limit the search to incoming and outgoing correspondence between the District and the mining companies meeting the geographic parameters established in your request. That agreement was confirmed by electronic mail on December 17, 2013.

We have searched our records pertaining to the above listed mining companies and others that may be within a 100 mile radius of the BWCAW, and are providing you with the documents responsive to your request. Please note that one document (Data_from_Bar_20121115.zip) uses file extensions that require special software to open. The records contained in that file consist of database files and GIS shapefiles generated by Barr Engineering that were used to develop figures and tables that show access roads and wetland and drill locations that are included in the “Analysis of Potential Environmental Impacts of Exploratory Drilling Activities on Non-Federal
Minerals”. That document has been provided and is found in the file under “Day” titled “2012-05222-LED.pdf.” If your software does not support these file extensions and you desire access to these files, please let us know and we will see what assistance can be made available to allow you to view them.

You have requested a waiver of all fees associated with processing your request based on your status as a representative of the news media and that the information requested will be disseminated to the public. That request has been granted. If you have any question regarding this portion of your request you can contact me at [email protected] or [phone number]

Sincerely,

[Signature]

Rachael M. Brower
Legal Assistant
Matt Ehling
President
Public Record Media
2375 University Ave. W
Suite 200
St. Paul, MN 55114

Dear Mr. Ehling:

Enclosed on CD are records which we determined to be responsive to your request under the Freedom of Information Act (5 U.S.C. 552). These are in addition to records sent under earlier correspondence dated April 15, 2014.

In your letter, you requested copies of:

"...records created, received, transmitted, or maintained by your agency between January 1, 2012 and November 20, 2013" which include:

1. Any and all correspondence (in written or electronic form) between your agency and representatives or employees of Polymet Mining Corp, Glencore International AG, Twin Metals Mining Minnesota, Duluth Metals Limited, or Antofagasta PLC, regarding plans or proposals (in any stage, including pre-feasibility studies) to construct, site, or otherwise locate mining operations inside of, or within 100 miles of, the Boundary Waters Canoe Area Wilderness administered by the US Forest Service (BWCAW);

2. Any and all internal agency correspondence (in written or electronic form) regarding plans or proposals (in any stage, including pre-feasibility studies) to construct, site, or otherwise locate mining operations inside of, or within 100 miles of, the BWCAW;

3. Any and all internal agency correspondence (in written or electronic form) regarding any proposed "land exchange" related to plans or proposals to construct, site, or otherwise locate mining operations inside of, or within 100 miles of, the BWCAW."

The enclosed CD contains 272 megabytes consisting of 580 files including emails, correspondence, and attachments which we have determined to be "non-exempt" and appropriate for release under FOIA criteria. These records are responsive to points 1 and 2 of your request.

Additional records were located; however, these records will require review by the Regional Office prior to release. We have referred these additional records to the Regional Office for a final response directly to you; you will receive appeal rights in the Region’s final response letter.

You stated that: "Responsive files will be shared with journalists, and the public, and will not be licensed for profit.” As a member of the news media who distributes information to the general public, your organization qualifies for a fee waiver. All responsive records will be provided electronically and will not entail reproduction expenses.

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If you have any questions about this matter, please contact Kris Reichenbach at [redacted] or kreichenbach@[redacted]

Sincerely,

/s/ Brenda Halter  
BRENDA HALTER  
Forest Supervisor  

Enclosure (CD)

cc: Richard Periman  
Mary Shedd  
Judi Perez  
Kristina A Reichenbach  
Eric R Wirz
ATTACHMENT 2
COMPLETE THIS SECTION ON DELIVERY

A. Signature

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from Item 1? ☐ Yes ☐ No

If YES, enter delivery address below:

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☐ Priority Mail Express®
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PS Form 3811, July 2015 PSN 7530-02-000-0053

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Washington, DC 20040

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See Reverse for Instructions
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