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**From:** Spencer Shaver <spencer@sportsmenbwca.org>  
**Sent:** Monday, November 02, 2020 4:52 PM  
**To:** nationwidepermits2020  
**Subject:** [Non-DoD Source] Public Comment on Proposed 2020 Nationwide Permits and Regional Conditions in Minnesota and Wisconsin [ COE-2020-0002]  
**Attachments:** SFBW NWPCComment - 2020-11-2.docx

Please find the attached Public Comment on Proposed 2020 Nationwide Permits and Regional Conditions in Minnesota and Wisconsin on behalf of Sportsmen for the Boundary Waters.

Sincerely,  
Spencer Shaver

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Spencer Shaver  
Conservation Director  
Sportsmen for the Boundary Waters <Blocked<https://sportsmenbwca.org/>>  
612-219-8769  
[spencer@sportsmenbwca.org](mailto:spencer@sportsmenbwca.org) <<mailto:spencer@sportsmenbwca.org>>

Meghan Brown  
St. Paul District, Regulatory Division,  
180 East 5th Street, Suite 700  
St. Paul, Minnesota 55101  
[CEMVP-NWP-Comments@usace.army.mil](mailto:CEMVP-NWP-Comments@usace.army.mil)

Headquarters, U.S. Army Corps of Engineers  
Directorate of Civil Works,  
ATTN: CECW-CO-R  
441 G Street, N.W.  
Washington, D.C. 20314-1000  
[nationwidepermits2020@usace.army.mil](mailto:nationwidepermits2020@usace.army.mil)

**Re: Public Comment on Proposed 2020 Nationwide Permits and Regional Conditions in Minnesota and Wisconsin**

Dear Ms. Meghan Brown:

These comments on the U.S. Army Corps of Engineers (“Corps”) proposed changes to reissued 2020 nationwide permits are submitted on behalf of Sportsmen for the Boundary Waters (“SFBW”). SFBW is a non-profit organization whose mission is to protect the integrity of the Boundary Waters Canoe Area Wilderness (“Boundary Waters”) and its watersheds for huntable and fishable populations of fish and wildlife, now and forever through advocacy and education. This area includes the Superior National Forest and the Rainy-River Headwaters (“Boundary Waters watershed”). SFBW's members and supporters regularly canoe, camp, and engage in other activities on the Superior National Forest in and outside of the Boundary Waters, such as hunting and fishing. For our members, these activities are of deeply personal significance and represent an important economic contribution to the community. The conduct of these activities, and enjoyment of them, is dependent upon maintaining the existing high quality of the wetlands, streams, lakes, fresh water, and other natural resources for which northeastern Minnesota and particularly the Superior National Forest, is known and prized.

SFBW objects to the proposed removal of a provision that limits stream bed losses under the NWP's to 300 linear feet from a number of Nationwide Permits (“NWP's”)<sup>1</sup> including NWP 44. Contrary to assertions in [Docket Number COE-2020-0002](#),<sup>2</sup> this proposed change, if made, would allow for significant magnification of environmental damage from the direct destruction and degradation of high-quality streams, the consequential degradation of existing high water quality in receiving waters, and the destruction of more fish, wildlife, and aquatic vegetation, such as the regionally-important aquatic vegetation such as wild rice (*Zizania palustris*), than is currently allowable under the existing nationwide permits. Due to the water-rich character of

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<sup>1</sup> The 300 linear foot limit is also currently found in, and proposed to be removed from, at least NWP's 21, 39, 50, 51, and 52.

<sup>2</sup> See, e.g., 85 Fed. Reg. 57298, pp. 57301-57302, the conclusory statement that reliance on the ½-acre limit and pre-construction notice would “ensure that activities authorized by these NWP's will result in no more than minimal adverse environmental effects,”

northern Minnesota, such a change to the NWP, especially NWP 44, would have disproportionately large and significant environmental effects.

Northeastern Minnesota is characterized by an abundance of interconnected freshwater streams, rivers, lakes, and wetlands. Even within the region, the Rainy River-Headwaters, also known as the Boundary Waters watershed, stands out as a fresh water-rich landscape of massively interconnected high-quality waters set amid a large area of the southern boreal forest. The Superior National Forest holds 20 percent of the entire National Forest System's fresh water supply. The healthy forested, natural landscape with extremely high water quality provide valuable watershed benefits, such as purifying water, sustaining surface water and ground water flow, maintaining superb fish habitats, controlling erosion, and stabilizing river and streambanks. It is because the watershed upstream of the Boundary Waters is so healthy that the waters downstream in the Boundary Waters are so clean. The Boundary Waters is one of the few places in the country where one can safely drink water directly from the middle of a lake.

The U.S. Forest Service has recognized the Rainy River-Headwaters contains unique public lands resource of extraordinary ecological, recreational, and economic importance, and is highly susceptible to degradation.

“In addition to the existing high quality of the waters, the dramatic hydrogeology and interconnectedness of [the Boundary Waters's] forests, lakes, streams, and wetlands make the region unique and susceptible to degradation. The Boundary Waters includes nearly 2,000 pristine lakes ranging in size from 10 acres to 10,000 acres, and more than 1,200 miles of canoe routes.

...

The [Boundary Waters] is one of the most visited areas in the entire National Wilderness Preservation System, and the System's only large lake-land wilderness. It provides an experience unique within the continental United States. The [Boundary Waters'] thousands of lakes and hundreds of miles of streams comprise about 190,000 acres (20 percent) of the [Boundary Waters'] surface area and provide for long distance travel by watercraft. The opportunity to pursue and experience expansive solitude, challenge and personal immersion in nature are integral to the [Boundary Waters] experience. Winter [Boundary Waters] enjoy opportunities for skiing, dog-sledding, camping and ice fishing. Fishing is one of the most popular [Boundary Waters] activities throughout the year due to the range of species found in its waters, including smallmouth bass, northern pike, walleye, and lake trout.

...

Bedrock geochemistry in northeastern Minnesota plays a large role in the low buffering capacity of the lakes and streams in the region. Both the Minnesota Pollution Control Agency and the Environmental Protection Agency (EPA) have identified the surface waters of northeastern Minnesota as sensitive to changes in pH, acid deposition, and acid runoff. Unlike surface waters bounded by carbonate bedrock, or relatively thick carbonate rich glacial till where neutralization of acid runoff occurs through dissolution of limestone and exsolution of carbon dioxide from water, the waters of northeastern

Minnesota are largely underlain by igneous and metamorphic bedrock with thin overlying soils and surficial deposits with little acid neutralization capacity.<sup>3</sup>

The Corps must consider how the proposed changes to the NWP, particularly NWP 44, could reasonably be expected to play out in Minnesota and Wisconsin. In particular, the Corps must consider the numerous proposals for sulfide-ore copper mining in Minnesota and Wisconsin, and that the area in which those proposed mining projects are proposed in Minnesota is a unique lake-land system that is highly susceptible to mining-caused pollution and degradation as well as being of extremely high ecological, social, and economic importance, as noted in the December 14, 2016 U.S. Forest Service decision accompanying this comment letter. The change being proposed to NWP 44 would allow many hundreds -- and potentially thousands -- of additional linear feet of stream bed to be lost per invocation of NWP 44.<sup>4</sup> Considering those points, it is highly likely, if not certain, that removing the 300 linear foot limit on stream bed loss would have the potential for significant environmental effects. Consequently, if the Corps wishes to proceed with the proposed change, then it must first prepare an environmental impact statement ("EIS").

There are a number of sulfide-ore copper mining projects at various stages of planning in northeastern Minnesota. These include Antofagasta's Twin Metals Minnesota ("TMM") project and Teck's Mesaba project. These projects would be located in the Rainy River-Headwaters, upstream from the Boundary Waters. A mine plan of operations (MPO)<sup>5</sup> for the TMM project was submitted December 18, 2019 to federal and state agencies, and in July, 2020 the BLM posted notice in the Superior National Forest's Schedule of Proposed Actions ("SOPA") that it expected the environmental review process for the TMM project to be completed by September, 2022. In addition, the scope of mining as proposed would be very large. The TMM project, for example, stretches across all or part of 24 square miles. Yet the mines, if approved, would likely grow to even greater scope than the current proposals would suggest. The TMM project currently proposes to mine 182.5 million short tons, which is less than seven percent (< 7%) of the 2.509 billion metric tonnes of mineral resources which Antofagasta PLC, TMM's owner, claims TMM to represent.<sup>6</sup> Once it has put a billion or more dollars into building a mine and processing facility, Antofagasta is not likely to walk away from that sunk capital, or from the remaining 2.3 billion tonnes of claimed mineral resources. This suggests very large expansion stages of mining in the foreseeable future, such that the eventual footprint of the TMM mine project could be an order of magnitude greater than is currently presented. That's without factoring-in the more than 40 pending federal hardrock mineral permit and lease applications within the Superior National Forest.<sup>7</sup>

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<sup>3</sup> U.S. Forest Service Chief Tidwell letter dated Dec. 14, 2016, to Bureau of Land Management Director Kornze.

<sup>4</sup> The proposed change would allow up to 2,178 linear feet of streambed to be destroyed, if the streambed were not more than 10 feet wide, since 0.5 acres equals 21,780 square feet.

<sup>5</sup> Mine Plan of Operations: Twin Metals Minnesota Project Environmental Review Support Document, 12/18/19, [https://www.twin-metals.com/wp-content/uploads/2020/05/TMM-Mine-Plan-of-Operations\\_2019-1218-R.pdf](https://www.twin-metals.com/wp-content/uploads/2020/05/TMM-Mine-Plan-of-Operations_2019-1218-R.pdf)

<sup>6</sup> Antofagasta PLC, 2019 Annual Report, p. 218

<sup>7</sup> PENDING FEDERAL HARDROCK MINERAL APPLICATIONS Within the Superior National Forest, Minnesota As of May 13, 2019,

The geographic scope of the areas of mining interest, in addition to being upstream from the Boundary Waters, coincides with high-quality streams, as well as high-quality wetlands and lakes. Among these streams are a number of designated trout streams and designated trout stream tributaries. Valuable stream resources are different from, and provide different services and values than, other types of wetlands. For these reasons, the Corps cannot rely on the ½-acre limit alone in the proposed form of NWP 44 to protect the same services and values that are now better protected under the existing (2017) version of NWP 44, with its 300 linear foot cap on streambed loss.

The type of mining activities proposed represent the construction of industrial-scale copper mining operations, the processing of sulfide-bearing rock and the construction of tailings storage facilities. Converting the existing natural vegetation on the landscape to a mining industrial area would expose scores of high-quality streams to far greater amounts of stream loss under the proposed changes to existing NWPs. Construction associated with proposed mining represents further stream loss and conversion of existing natural forested landscape to roads, buildings and impervious services. Disrupting existing streams contributes to destabilization of riverbanks, erosion and increased loading of streams. Buffers, land use and land cover also determine the amount of bank erosion that occurs in a given stream. Increased erosion causes increased loading and turbidity of impacted streams. Precipitation events often provide for increased turbidity levels in streams due to increased runoff and stream flows which can cause surface and channel erosion. More intense precipitation events cause higher turbidity and increased loading of suspended solids in a stream. Increased erosion would lead to the loss of important in-stream structural habitat diversity, including the sedimentation and in-filling of existing pools. In addition, mining-related work being proposed now would isolate some streams from large areas from their existing watersheds, leading to significant reductions in low-flow conditions, and damaging or destroying other existing components of streams such as riffles, thermal refugia, and more. Fundamental changes in hydrology would result in affected streams, upstream and downstream of mining-related activity under the proposed changes to NWPs, permanently damaging down-gradient areas of the stream, and potentially up-gradient areas, as well. Each of these effects, for example, would likely befall more than 300 linear feet of Keeley, North Nokomis, and South Nokomis Creeks in Lake County, Minnesota, if the TMM project were to go ahead under the new proposed terms for NWP 44.

Keeley Creek, and the body of water it flows into, Birch Lake, are high quality waters adjacent to the Boundary Waters. Birch Lake is zoned for recreational use and is home to lodges, outfitters, camps and residential homes. Some of the bays on Birch Lake host high-quality wild rice beds, as is the case with the bays into which North and South Nokomis Creeks drain. The loss of several hundred to more than a thousand feet of a single stream like Keeley Creek, or North or South Nokomis Creeks, would have significant negative environmental impacts on the creeks themselves, on the bays of Birch Lake and Birch Lake as a whole, and on the Boundary Waters downstream.

For the foregoing reasons, Sportsmen for the Boundary Waters objects to the proposed changes in NWP 44 and the other NWPs, which would allow multiples of currently-allowed stream losses. In addition, we object to any changes related to the ½-acre mining limit in non-tidal navigable waters of the United States. Proposed changes to NWPs do not account for a number of undesirable consequences related to mining activities and should not be weakened, particularly when significant mining activities are proposed in sensitive areas in Minnesota. Removing a limit meant to protect streams removes protections for fish and wildlife within that stream and may reduce the quality of outdoor recreational activities nearby, and that cannot be compensated for by reference to the retained ½-acre limit.

Thank you for the opportunity to submit comments on Proposed 2020 Nationwide Permits and Regional Conditions in Minnesota and Wisconsin.

Sincerely,

Spencer Shaver  
Conservation Director  
Sportsmen for the Boundary Waters