IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE WILDERNESS SOCIETY; IZAAK WALTON LEAGUE; and CENTER FOR BIOLOGICAL DIVERSITY; and FRIENDS OF THE BOUNDARY WATERS WILDERNESS; and NORTHEASTERN MINNESOTANS FOR WILDERNESS; ELY OUTFITTING COMPANY & BOUNDARY WATERS GUIDE SERVICE; HUNGRY JACK OUTFITTERS; NORTHSTAR CANOE; PIRAGIS NORTHWOODS COMPANY, INC.; RIVER POINT RESORT AND OUTFITTING COMPANY; SAWBILL CANOE OUTFITTERS, INC.; VOYAGEUR OUTWARD BOUND SCHOOL; WENONAH CANOE, INC.; and WOMEN'S WILDERNESS DISCOVERY, *Plaintiffs*, v. DAVID BERNHARDT, *et al.*, *Defendants.*	Case No. 1:20-cv-01176-BAH **FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** (5 U.S.C. §§ 701-706; 42 U.S.C. § 4321 *et seq*)

INTRODUCTION

1. Plaintiffs challenge the Bureau of Land Management's failure to comply with the National Environmental Policy Act when it issued two hardrock mining lease renewals to Twin Metals Minnesota in an area adjacent to the Boundary Waters Canoe Area Wilderness, a 1.1-million-acre pristine wilderness area in northeastern Minnesota that has been protected for nearly 100 years. Plaintiffs also challenge under the Administrative Procedure Act the U.S. Forest Service's arbitrary and capricious approval of lease stipulations that promote development of a

mine on the leases without precluding the impacts the Forest Service previously found would pose unacceptable risks to the Boundary Waters.

2. The Boundary Waters Canoe Area Wilderness ("Boundary Waters") is renowned for its healthy forests, extremely high water quality, and networks of pristine lakes, streams, wetlands, and canoe routes. Together with the Quetico Provincial Park to the north of the Boundary Waters and Voyageurs National Park to its west, the area includes multiple thousands of interconnected lakes, streams, and waterways, surrounded by pristine forests. The Boundary Waters offers abundant habitat for wildlife, including iconic Minnesota species like walleye, moose, and loon, many species of migratory birds, as well as three species listed as threatened under the Endangered Species Act: the Canada lynx, northern long-eared bat, and gray wolf. Shown in the image below is the striking beauty of a typical waterway and surrounding forest in the Boundary Waters.

3. Twin Metals Minnesota ("Twin Metals") is pursuing development of an underground copper and nickel mine on lands managed by the Forest Service in the Superior

National Forest within three miles of the Boundary Waters and in the same watershed. The photo below shows an aerial view of the area on which Twin Metals plans to build a mine.

4. The Bureau of Land Management ("Bureau") first issued two preference right hardrock mineral leases ("Leases") to the International Nickel Company, Twin Metals' predecessor, in 1966. Since then, other Twin Metals predecessors filed for two renewals of the Leases, which the Bureau renewed in 1989 and 2004. Twin Metals submitted its application to renew the Leases for a third time in 2012. Believing it had discretionary authority to grant or deny the Lease renewal, the Bureau requested that the Forest Service provide its opinion as to whether it would consent to the renewal of the leases under 16 U.S.C. § 508b, which states that the Bureau "shall not . . . permit[]" development and utilization of mineral deposits in the State of Minnesota "except with the consent of the Secretary of Agriculture."

5. The Forest Service withheld its consent. In a detailed letter, the Forest Service found that developing a copper-nickel sulfide ore mine on the Leases would pose an "unacceptable" risk that the mine might "cause serious and irreplaceable harm" to the Boundary Waters. The Forest Service found that the development of a regionally untested copper-nickel sulfide ore mine within the same watershed as the Boundary Waters posed an unacceptable risk of serious and irreversible harm to this unique, iconic, and irreplaceable wilderness area. Based on the Forest Service's refusal to consent, the Bureau accordingly rejected the Lease renewal application on December 15, 2016.

6. On December 22, 2017, more than one year later, the Department of the Interior Solicitor's Office issued a legal opinion reversing course and asserting that the Bureau lacked discretion to reject the renewal application because the terms of the prior Leases guaranteed renewal. In light of this 2017 legal opinion, the Bureau rescinded the decision to reject Twin Metals' renewal application and reinstated the Leases and renewal applications on May 2, 2018.[1]

7. In a subsequent and separate agency action, on May 15, 2019, the Bureau renewed the Leases for an additional ten-year period. Even assuming that the decision to renew the Leases was not discretionary, the Bureau did have discretion in crafting the terms of the Leases, including the ability to add lease stipulations increasing protection of the environment.

8. The National Environmental Policy Act ("NEPA") requires that agencies take a "hard look" at the environmental impacts of their actions before the actions occur, and that they prepare an Environmental Impact Statement ("EIS") for "major Federal actions significantly

[1] Plaintiffs challenged the final agency action reinstating the Leases in *Voyageur Outward Bound Sch. v. United States*, No. 1:18-CV-01463 (TNM), 2020 WL 1275795 (D.D.C. Mar. 17, 2020), and have appealed the court's judgment upholding that agency action in a consolidated appeal, *appeal docketed* No. 20-5097 (D.C. Cir. Apr. 20, 2020).

affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C); *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976). Courts have clarified that in the mineral leasing context, an agency must prepare an EIS analyzing the ultimate effect of mineral development when it issues a lease without reserving absolute authority to prevent development on the lease.

9. By renewing Twin Metals' Leases, the Bureau committed to allowing mining on the Leases and did not reserve absolute authority to prevent development. The agency did not prepare an EIS as required by NEPA, however. Instead, the Bureau prepared an Environmental Assessment ("EA")—a document limited to determining the threshold question of whether an action will have significant impacts on the environment. The EA did not evaluate the impacts of the associated proposed mine, nor did it meaningfully consider lease stipulations that would have mitigated the impacts of the mine. By failing to prepare an EIS, which would have taken a hard look at the environmental impacts of a mine on the doorstep of the pristine Boundary Waters, in the context of a decision that could prevent or reduce that impact, the Bureau violated NEPA.

10. The Administrative Procedure Act ("APA") requires that when an agency changes position, it must articulate a rational justification. An agency action is also arbitrary and capricious if political pressure causes the agency to reverse course and take action it was not otherwise planning to take. The Forest Service never withdrew its December 2016 finding that allowing development of a mine would pose unacceptable ecological risks to the Boundary Waters. Nevertheless, and after receiving pressure from members of Congress, the Forest Service agreed to new lease stipulations that do not preclude such unacceptable risks and instead are aimed at promoting quick development of a mine on the Leases, and to a stipulation that curtails the agency's ability to withhold consent to future lease renewals. The Forest Service's decision

to agree to these stipulations without rationally explaining the departure from its prior position was arbitrary, capricious, and not in accordance with law.

JURISDICTION AND VENUE

11. The Court has subject matter jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1331 and under the APA, 5 U.S.C. §§ 701-06, which waives the Defendants' sovereign immunity. The Court may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201-2202 and 5 U.S.C. §§ 705-706. There exists an actual controversy between the parties within the meaning of 28 U.S.C. § 2201.

12. Venue is appropriate under 28 U.S.C. § 1391(e) because at least one Defendant resides in the District of Columbia and because Plaintiff The Wilderness Society resides in the District of Columbia.

PLAINTIFFS

13. Plaintiff The Wilderness Society, founded in 1935, is a national, non-profit membership organization headquartered in Washington, D.C., devoted to protecting wilderness and inspiring Americans to care for wild places. It has led the effort to permanently protect 109 million acres of wilderness and ensure sound management of our shared national lands. The Wilderness Society has more than 1 million members and supporters, including over 2,600 members and 7,200 supporters in Minnesota, and has long worked to protect the Boundary Waters. A member of the Campaign to Save the Boundary Waters, The Wilderness Society has advocated for permanent protection of the Boundary Waters watershed from the threat of sulfide-ore copper mining, and has worked to inform the public about threats to the Boundary Waters, including with its 2017 report "Too Wild to Drill." Members and staff of The Wilderness Society

regularly visit the Boundary Waters and surrounding Superior National Forest lands to paddle, hunt, fish, harvest wild rice, and enjoy the splendor of the areas' pristine lakes, rivers, and forests.

14. Plaintiff Izaak Walton League of America ("the League") is a non-profit membership organization devoted to conserving outdoor America for future generations. The League has more than 40,000 members and about 200 community-based chapters nationwide, including over 1,000 members in Minnesota. League members pledge "[t]o strive for the purity of water, the clarity of air, and the wise stewardship of the land and its resources; to know the beauty and understanding of nature and the value of wildlife, woodlands, and open space; to the preservation of this heritage and to man's sharing in it." Beginning in about 2009, the League has worked to educate its members, the public, state and federal administrative agencies, and legislators about the potential impacts of copper-nickel mining in Minnesota by holding public forums, submitting comments and petitions, sponsoring and hosting informational events, litigating, meeting with agency decision makers, joining the Campaign to Save the Boundary Waters, and working with several other Minnesota organizations. In 2016, the League spoke against renewing the Leases at a Forest Service listening session and submitted petitions to the Forest Service asking that the Leases not be renewed.

15. Plaintiff Center for Biological Diversity ("the Center") is a non-profit organization with over 74,000 members. The Center is headquartered in Tucson, Arizona, and has offices across the United States, including in Duluth and Minneapolis, Minnesota, and Washington, D.C. The Center works to ensure the long-term health and viability of animal and plant species across the United States and elsewhere, and to protect the habitat these species need in order to survive. The Center believes that the health and vigor of human societies and the

integrity and wildness of the natural environment are closely linked. The Center has long advocated for northeastern Minnesota's animal and plant species in administrative processes and in court, including by commenting on mining-related proposals, petitioning for Endangered Species Act protections for the Minnesota moose population, and joining litigation over proposed mining that would destroy habitat for Canada lynx and gray wolves in the Superior National Forest.

16. Plaintiff Friends of the Boundary Waters Wilderness ("Friends") is a Minnesota non-profit corporation with a mission "[t]o protect, preserve and restore the wilderness character of the Boundary Waters Canoe Area Wilderness and the Quetico-Superior Ecosystem." Founded by Miron "Bud" Heinselman, a preeminent scientist and researcher for the Forest Service, Friends was the principal organization that promoted passage of the 1978 Boundary Waters Canoe Area Wilderness Act ("the Boundary Waters Act"), which increased the size of the Boundary Waters to approximately 1.1 million acres and removed incompatible uses from the Boundary Waters, and protected the Boundary Waters through an independent federal statute. Pub. L. 95-495, 92 Stat. 1649.

17. Friends has been involved in nearly every significant litigation involving the Boundary Waters since its founding. These include cases defending the constitutionality of the 1978 Boundary Waters Canoe Area Act, cases challenging the Forest Service's Forest Management Plans for the Superior National Forest and proposed timber sales adjacent to the Boundary Waters, and many others that would have adversely impacted the serene wilderness character of the Boundary Waters and surrounding areas. Through its "No Boundaries to the Boundary Waters" program, since 2007, Friends has sponsored 600 underserved children to visit the Boundary Waters free-of-charge. Friends' members have an interest in maintaining and

improving the ecological diversity of wilderness habitat of the Boundary Waters and greater Superior-Quetico ecosystem, including the land at issue in this case. Friends' members include residents who own land and houses near the leased land on which Twin Metals seeks to open a mine. Friends' members regularly visit and plan to visit the Boundary Waters, the leased land, and/or areas surrounding the leased land, and use those lands for various purposes, including recreation, wildlife viewing, canoeing, fishing, photography, and/or other aesthetic enjoyment.

18. Plaintiff Northeastern Minnesotans for Wilderness ("NMW") is a non-profit, tax-exempt, charitable corporation organized under the laws of Minnesota. Formed in 1996 and based in Ely, Minnesota, NMW's mission is to protect and preserve wilderness and wild places in Minnesota's Arrowhead region, to advocate for the protection of the Boundary Waters and Voyageurs National Park and the enhancement of their wilderness aspect, and to foster education about the value of wilderness and wild places. NMW was formed to continue the local tradition of working to protect wild places, particularly the Boundary Waters, against increasing commercial pressures, so that the area's natural features and processes remain intact for future generations.

19. NMW has approximately 23,500 members, all of whom have contributed financially, and more than 185,000 additional supporters across all 50 states. NMW's members rely on, appreciate, and benefit from the natural resources in the Superior National Forest, especially the waters, lands, plant communities, and wildlife in the Boundary Waters, as well as in Voyageurs National Park. They have a long-standing interest in lynx, moose, wolf, and forest conservation, both in the Boundary Waters and across the Superior National Forest. NMW members and staff regularly visit the Boundary Waters, Voyageurs National Park, the Superior National Forest, and surrounding areas for recreation, wildlife observation, and other uses. Many

NMW members plan to visit the Boundary Waters over the coming days, weeks, months, and years.

20. Plaintiff Ely Outfitting Company & Boundary Waters Guide Service ("Ely Outfitting") is a professional guide and outfitting service based in Ely, Minnesota, and founded in 2008 primarily to service the needs of customers and clients around the nation who travel to and explore the Boundary Waters. A significant percentage of Ely Outfitting's customers enter the Boundary Waters through the South Kawishiwi River, Gabbro Lake, Snake River, Isabella River, Farm Lake, Lake One, and Fall Lake entry points. These entry points, located in and around Ely and the Kawishiwi Triangle, are popular with first-time paddlers because they offer excellent wilderness and outdoor recreation characteristics with comparatively easy access.

21. Plaintiff Hungry Jack Outfitters ("Hungry Jack") is a family-owned accommodation and camping-outfitting business located on the Gunflint Trail north of Grand Marais, Minnesota. Founded in 1983, Hungry Jack is primarily a rental operation that provides canoes, camping gear, food, and overnight accommodations for people who want to experience the Wilderness. The clients and customers of Hungry Jack come from all across the globe, and from a wide range of socio-economic backgrounds, to visit the Boundary Waters and surrounding areas.

22. Plaintiff Northstar Canoes is a canoe-manufacturing business located in Princeton, Minnesota. Founded in 2014, Northstar Canoes manufactures canoes and sells them directly to outfitters and retailers. Northstar Canoes sells around 200 canoes each year to outfitters, most of which are located in or near the Boundary Waters and in the Midwest. The company employs, off and on, about 20 full-time and part-time individuals. Northstar Canoes' business depends

largely on the Boundary Waters—so much so that it focuses about 90 percent of its advertising on the Boundary Waters area.

23. Plaintiff Piragis Northwoods Company, Inc. ("Piragis Northwoods") is a canoe-trip outfitting and guide business located in Ely, Minnesota. Founded in 1979 to serve the needs of wilderness canoe paddlers visiting the Boundary Waters and the outdoor needs of the local population, Piragis Northwoods currently employs 18 full-time, year-round staff. In the peak summer months, that number increases to 55 employees. Piragis Northwoods' payroll exceeds $1 million.

24. Plaintiff River Point Resort and Outfitting Company ("River Point") is a tourism and hospitality business located in Ely, Minnesota that has been in operation since 1944. Owned and operated continually by the Koschak family since its founding, River Point offers lodging in the form of 16 housekeeping cabins, villas, and chalets, along with auxiliary recreational opportunities such as swimming, boating, kayaking and canoeing, guided fishing, hiking and other family activities. River Point accommodates approximately 2,000 housekeeping guests per season, which runs from mid-May through mid-October. As a complement to its lodging and accommodations, River Point also outfits trips in the Boundary Waters. River Point's outfitting business includes more than 100 canoes, and it outfits more than 775 people traveling in the Boundary Waters in the course of a summer. River Point offers both partial and complete outfitting services, which can include meals, routing, maps and permits, and transportation to any of the approximately 30 entry points into the Boundary Waters in the Ely area.

25. River Point's property consists of 34 acres, with one mile of shoreline, in the heart of the Superior National Forest. Prior to construction of the resort, the land had been unoccupied and undeveloped since the time of the Laurel Indians, who lived there about 500 years before the

Common Era. The land includes a significant archeological site that was discovered in 1982, the first discovery of a site occupied by the Laurel Indians in the United States. An archeological covenant with the Forest Service protects this site on the south shoreline. The Boundary Waters lies five river miles to the northeast of the River Point resort property and is accessible from the River Point property by canoe through Entry Point 32 (South Kawishiwi River). Most River Point customers and clients are attracted to River Point's location on the edge of the Boundary Waters, the area's natural beauty, the clean air, the quiet, and the wilderness setting.

26. Plaintiff Sawbill Canoe Outfitters, Inc. ("Sawbill") is a family-owned canoe outfitting business located in a remote, off the grid location on the Sawbill Trail north of Tofte, Minnesota. Sawbill provides outfitting services to clients entering the Boundary Waters. In addition to operating an outfitting shop and store, Sawbill issues Boundary Waters entry permits and operates as the concessionaire for three Forest Service campgrounds, one of which is located onsite. Sawbill's customers rely on its outfitting services and campground both before and after their trips. Many customers also choose to stay onsite at the campground and complete day trips into the Boundary Waters. Sawbill relies exclusively on visitors to the Boundary Waters to sustain its customer base. On average, Sawbill employs 15 full-time employees from May to October. Sawbill customers come from all across the United States and from a number of foreign countries.

27. Plaintiff Voyageur Outward Bound School ("VOBS") is a nonprofit organization that focuses on leadership and outdoor experiential education through multi-week outdoor and wilderness expeditions. Since 1964, VOBS's basecamp has been located in Ely, Minnesota within the Superior National Forest, along the South Kawishiwi River adjacent to the Boundary Waters. VOBS expeditions bring more than 600 people a year into the Boundary Waters. VOBS

employs approximately 25 people year-round, all of whom live in and around Ely, Minnesota, and it employs an additional 75 people in Ely during the summer months. VOBS expeditions cater to a wide range of people, including but not limited to military veterans, young people struggling to make positive choices, adults undergoing major life changes, families, and college students. The pristine wilderness setting provided by the Boundary Waters is a critical aspect of the VOBS expeditions.

28. Plaintiff Wenonah Canoe, Inc. ("Wenonah Canoe") is an independent, family-owned corporation that is one of the largest manufacturers of Kevlar canoes in the world. Founded in the early 1970s in Winona, Minnesota, Wenonah Canoe employed nearly 100 people in 2019 and produced more than 4,000 canoes and kayaks per year. Wenonah Canoe has many customers who frequent the Boundary Waters area, and 25 percent of its canoes are sold in Minnesota.

29. Plaintiff Women's Wilderness Discovery, LLC ("Women's Wilderness Discovery") was founded in March 2014 as the only female-owned, female-packed, female-guided professional outfitting and guide business in Ely, Minnesota. Women's Wilderness Discovery provides year-round, fully outfitted, and guided Boundary Waters canoe camping, hike camping, day canoe trips, day hikes, and winter camping treks catered principally to women. Women's Wilderness Discovery seeks to provide a safe, positive model for women and girls to enrich their lives through the wilderness experience and outdoor adventure, with clients coming from Minnesota and many other states, as well as from a few foreign nations.

30. Each of the Plaintiff organizations has individual members, customers, owners, employees, and clients (hereinafter, "Plaintiffs and Plaintiffs' members") who regularly use and enjoy the Boundary Waters and Superior National Forest for a variety of purposes, including

canoeing and outdoor recreation, wildlife viewing, cultural and spiritual purposes, and aesthetic appreciation. Plaintiffs and Plaintiffs' members value the remoteness, beauty, and largely unspoiled nature of the landscape and the ecological and hydrological resources found throughout the Boundary Waters and Superior National Forest, including the area covered by the Leases.

31. Members of Plaintiff organizations, including John Ipsen and Jon Nelson, members of The Wilderness Society and the League, and Collette Adkins, a member of the Center for Biological Diversity, regularly use and enjoy the Boundary Waters, the leased land, and/or areas surrounding the leased land for various purposes, including recreation, wildlife viewing, education, research, photography, and/or aesthetic and spiritual enjoyment. These members intend to continue to use and enjoy the Boundary Waters, for example, during planned trips in summer 2020. These and other members of Plaintiff groups also enjoy or otherwise use migratory wildlife, fish, and birds from the Boundary Waters, the leased land, and/or areas surrounding the leased land.

32. The Bureau's May 15, 2019 decision to renew Twin Metals' Leases directly and imminently injures Plaintiffs' and Plaintiffs' members' interests. Renewing the Leases entitles Twin Metals to casual use of the leased lands and to request permits for more extensive use of the leased lands. After the reinstatement of the Leases, Twin Metals installed gates at entrances to public land on the Leases. Since renewal of the Leases, Twin Metals has engaged in further activities on the leased land, including (but not limited to): the clearing of trees; widening and hardening of roads; sealing up exploratory boreholes, including backfilling holes with cement; maintaining hydro-geological wells; and limiting access to the leased land by closing and locking gates. These industrial activities interfere with Plaintiffs' and Plaintiffs' members' use and

enjoyment of the leased land and surrounding lands by blocking access and by causing noise, increased traffic, disturbance of wildlife, water quality reductions, and a landscape that is visibly degraded. The Boundary Waters, among other protected land and waters, would be in the path of pollution if a mine complex is developed. The development of a sulfide-ore copper mine in the watershed would inevitably pollute surrounding lakes, groundwater and downstream waters in the Boundary Waters, and both the quality and public image of the Boundary Waters as an authentic, pure, natural outdoor recreational paradise—"[t]he last great pure experience," as the Ely, Minnesota Chamber of Commerce calls it—would be harmed. Routes that include or cross the pollution flow path downstream from the mine site would effectively bisect the Boundary Waters. These circumstances would dissuade Plaintiffs and Plaintiffs' members from visiting the leased land and surrounding lands. Plaintiffs and Plaintiffs' members will in fact be dissuaded from visiting the Boundary Waters, and the value of their experiences will be reduced when they do.

33. Plaintiffs and Plaintiffs' members live, work, and recreate in and around the federal lands at issue in this case. They will be harmed by the development of a copper-nickel sulfide ore mine on the Leases. A copper-nickel sulfide ore mine on the Leases would cause long-term harm to Plaintiffs' and Plaintiffs' members' interests in the leased land and surrounding lands, including the Boundary Waters and areas accessible via the nearby Boundary Waters entry points, through increased noise, increased traffic, and visible degradation of the landscape on the leased lands. It would damage Plaintiffs' and Plaintiffs' members' aesthetic, recreational, and other interests in the leased lands, the surrounding lands, and the Boundary Waters by causing ecological harm and creating an ongoing risk of additional ecological harm in those areas. Ecological harm would include (but not be limited to): degradation of water quality

and its numerous indirect effects on fish, plants, and animals; loss of habitat due to occupation by mine facilities; disturbance of wildlife by noise, traffic, air pollution, and light pollution; increased risk of the spread of invasive species; and degradation of air quality. Drainage of mine pollution is likely to occur, further decreasing water quality and multiplying harmful indirect effects to plants and animals. Collectively, these impacts would degrade the wilderness character of the Boundary Waters, including by fouling its pristine and interconnected waterways, disturbing its outstanding opportunities for solitude and primitive recreation, and diminishing its untrammeled, natural appearance. Plaintiffs' members have already suffered economic damage in the form of decreased property values and a depressed market for owned residences and lands in the area, which largely depends on maintaining the area's wilderness character. A mine would also deprive Plaintiffs and Plaintiffs' members of access to the leased lands during the life of the mine, if not beyond. These harms are imminent and flow from the decision to renew Twin Metals' Leases.

34. The Defendants' unlawful actions adversely affect Plaintiffs' organizational interests in their members' use and enjoyment of the Boundary Waters, the leased land, and areas surrounding the leased land. The Bureau's May 15, 2019 decision to renew Twin Metals' Leases directly injures these interests.

35. In reliance on the June 2016 Forest Service announcement that it did not plan to renew the Leases, several Plaintiff businesses made considerable financial investments in their respective businesses with the understanding that mining would not be allowed on the leased lands.

36. Plaintiffs and Plaintiffs' members also have a substantial interest in ensuring that the Bureau complies with federal law, including the procedural requirements of NEPA and the

APA. Plaintiffs' injuries are actual and concrete and would be remedied by the relief sought in this case.

37. Sulfide-ore copper-nickel mining will leave Plaintiff and Plaintiff member property owners with devalued land, and those with homes or businesses dependent upon the Boundary Waters will be forced to sell their property at steep discounts or close their doors. If the mine is developed, several Plaintiffs will be forced to close their businesses and will lose even more property value than they have already lost due to the exploratory work that has already occurred. One 2014 University of Minnesota study showed that 23 percent of area property owners said they would move away from the area if mining were allowed in the area. The development of the mine would cause some of Plaintiffs' members to move away from their current homes.

38. To prevent these harms, various laws require the Bureau to consider wilderness, habitat, recreational, spiritual, non-extractive business, and other non-mining values on public lands when deciding whether to authorize mineral activity where the Leases are located. 16 U.S.C. § 508b; *id.* § 520; Sec. 402 of Reorganization Plan No. 3 of 1946; 43 C.F.R. § 3507.19(b); 43 U.S.C. § 1732(a). The Federal Land Policy and Management Act ("FLPMA") also requires the Secretary of the Interior, acting through the Bureau, "[i]n managing the public lands . . . [to] take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C. § 1732(b). Before authorizing mineral activity where the Leases are located, the Bureau is required by law to find that it is in the best interests of the United States and to obtain the consent of the Forest Service. 16 U.S.C. § 508b. The Forest Service has statutory duties to consider wilderness, habitat, recreational, spiritual, non-extractive business, and other non-mining values in managing National Forest System Lands, *see* 16 U.S.C. § 1600(2), (3), and

to preserve the wilderness character and values of the Boundary Waters, Pub. L. 95-495, 92 Stat. 1649 (1978), including by protecting the Boundary Waters from potentially harmful external activities, 16 U.S.C. § 1133(b). The laws described in this paragraph protect the interests of Plaintiff groups and their members in the Boundary Waters, the leased land, and the areas surrounding the leased land.

39. Plaintiffs participated extensively in the Bureau's administrative process, including commenting on the Environmental Assessment for the lease renewals. Plaintiffs have exhausted administrative remedies.

DEFENDANTS

40. Defendant David Bernhardt is sued in his official capacity as Secretary of the Interior. Secretary Bernhardt heads the U.S. Department of the Interior, the Cabinet-level agency responsible for the Lease renewals.

41. Defendant Bureau of Land Management is an agency of the U.S. Department of the Interior authorized to allow mining on the land covered by the Leases on behalf of the Secretary of the Interior if it is in the best interests of the United States, and with the consent of the Secretary of Agriculture.

42. Defendant Mitchell Leverette is sued in his official capacity as Eastern States Director for the Bureau of Land Management. The Eastern States Director for the Bureau of Land Management signed the Decision Record approving the Lease renewals.

43. Defendant Dean Gettinger is sued in his official capacity as District Manager for the Northeastern States District for the Bureau of Land Management. Mr. Gettinger signed the Finding of No Significant Impact for the Lease renewals.

44. Defendant Casey Hammond is sued in his official capacity as Acting Assistant Secretary for Land and Minerals Management for the United States Department of the Interior. The Assistant Secretary for Land and Minerals Management for the U.S. Department of the Interior signed the Lease renewals Decision Record after the Eastern States Director for the Bureau of Land Management, concurring in that decision and making it final agency action.

45. Defendant U.S. Department of the Interior is a Cabinet-level agency that manages the country's natural and cultural resources.

46. Defendant U.S. Forest Service is an agency of the U.S. Department of Agriculture and is responsible for the management and protection of the Superior National Forest and Boundary Waters Canoe Area Wilderness. In that capacity, the Forest Service has jurisdiction and responsibility to protect and maintain the character and quality of the Boundary Waters Canoe Area Wilderness and to withhold consent to any mineral leasing that it finds would adversely affect the Boundary Waters.

47. Defendant U.S. Department of Agriculture is a Cabinet-level agency that is responsible for the management and protection of the Superior National Forest and Boundary Waters Canoe Area Wilderness.

48. Defendant Victoria Christiansen is sued in her official capacity as Chief of the Forest Service.

LEGAL BACKGROUND

I. STATUTORY AND REGULATORY REQUIREMENTS FOR ENSURING ENVIRONMENTAL PROTECTION PRIOR TO ISSUING MINERAL LEASES ON PUBLIC LAND

49. Mineral leasing on more than ninety percent of the land that is the subject of the Leases at issue in this case is governed by 16 U.S.C. § 508b. This statute allows the Secretary of

the Interior to permit mineral prospecting, development, and utilization on certain lands in the national forests in Minnesota otherwise withdrawn from the mining laws of the United States, but requires that the Secretary of the Interior act in the best interests of the United States. *Id.* The Secretary of the Interior "shall not" permit mineral development or utilization on § 508b lands without the consent of the Secretary of Agriculture. *Id.*

50. In determining whether to consent to mineral development or utilization on § 508b lands, the Forest Service, acting for the Secretary of Agriculture, is bound by the Wilderness Act, the Boundary Waters Act, and the National Forest Management Act ("NFMA"). The Wilderness Act charges the Forest Service with preserving the wilderness character of the Boundary Waters, including by protecting the Boundary Waters from potentially harmful external activities. *See* 16 U.S.C. § 1133(b). The Boundary Waters Act directs the Forest Service to "minimize to the maximum extent possible, the environmental impacts associated with mineral development affecting" the Boundary Waters and Mining Protection Area. Pub. L. 95-495, §§ 1-2, 92 Stat. 1649 (1978). NFMA requires the Forest Service to consider wilderness, habitat, recreational, spiritual, non-extractive business, and other non-mining values on National Forest System Lands when managing those lands. *See* 16 U.S.C. § 1600(2)-(3). Consistent with these directives, the 2004 Superior National Forest Plan requires that the Forest Service manage the Boundary Waters in a manner that "perpetuates and protects its unique natural ecosystems, provides an enduring wilderness resource for future generations, and provides opportunities for a primitive and unconfined recreation experience." 2004 Superior National Forest Plan at 2-50.

51. Mineral leasing on the remainder of the land that is the subject of the Leases is governed by the Weeks Act, 16 U.S.C. § 520. This provision allows the Secretary of Agriculture to permit mineral prospecting, development, and utilization on forest lands acquired under the

Weeks Act. *Id.* In doing so, the Secretary of Agriculture must act in the best interests of the United States. *Id.* Section 402 of the Reorganization Plan No. 3 of 1946 transfers the functions of the Secretary of Agriculture under § 520 to the Secretary of the Interior, but provides that the Secretary of the Interior may only authorize mineral activity when the Secretary of Agriculture determines that it will not interfere with the primary purposes for which the land was acquired. The Bureau, acting for the Secretary of the Interior, must consider environmental impacts before granting a lease under Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099. 43 C.F.R. § 3507.19(b).

52. The FLPMA requires the Bureau to "manage the public lands under principles of multiple use and sustained yield," and to "take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C. § 1732. These principles require balancing the potential economic benefits of additional mining against the possible risks to environmental and cultural resources.

53. 16 U.S.C. § 508b, 16 U.S.C. § 520, Section 402 of Reorganization Plan No. 3 of 1946, and FLPMA require the Bureau to consider environmental values on public lands on and around the Leases, including the Boundary Waters, in exercising its discretion with respect to the Leases.

II. THE NATIONAL ENVIRONMENTAL POLICY ACT

54. NEPA is "our basic national charter for protection of the environment." 40 C.F.R. § 1500.1(a).

55. NEPA's goals are to (1) "prevent or eliminate damage to the environment and biosphere," (2) "stimulate the health and welfare of" all people, and (3) "encourage productive and enjoyable harmony" between human kind and the environment. 42 U.S.C. § 4321. NEPA

recognizes that "each person should enjoy a healthful environment" and ensures that the federal government uses all practicable means to "fulfill the responsibilities of each generation as trustee of the environment for succeeding generations" and "assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings." *Id.* § 4331(b)-(c).

56. To fulfill these purposes, NEPA requires that: (1) agencies take a "hard look" at the environmental impacts of their actions before the actions occur, thereby ensuring "that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts," and (2) "the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

57. NEPA requires federal agencies to prepare an EIS for "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). To determine whether the nature and extent of a proposed action's environmental effects requires preparing an EIS, federal agencies prepare an EA. 40 C.F.R. § 1501.4(b)-(c). If, on the basis of the EA, the agency finds that the proposed action will produce "no significant impact" on the environment, then an EIS need not be prepared. *Id.* § 1501.4(e). An agency's finding of "no significant impact" and consequent decision not to prepare an EIS can be overturned if the decision was arbitrary, capricious, or an abuse of discretion. *See, e.g.*, *Am. Rivers v. Fed. Energy Regulatory Comm'n*, 895 F.3d 32, 49-52 (D.C. Cir. 2018).

58. A finding of "no significant impact" will be overturned when an agency commits to an action that will significantly affect the environment without evaluating the impacts of the decision. NEPA requires an agency to evaluate the environmental effects of its action at the point

of commitment. This "critical agency decision" is made when the decision results in "irreversible and irretrievable commitments of resources" to an action that will affect the environment. *Sierra Club v. Peterson*, 717 F.2d 1409, 1414 (D.C. Cir. 1983). In the mineral leasing context, an agency makes "irreversible and irretrievable commitments of resources" when it issues a lease without reserving absolute authority to prevent development on the lease. *Id*. at 1414-15. If it has issued a lease without reserving absolute authority to prevent development, the agency must prepare an EIS that examines the consequences of the ultimate development on the lease. *Id.* at 1415.

59. Among other things, the agency's NEPA analysis must assess the cumulative impacts of the action "result[ing] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions." 40 C.F.R. §§ 1508.7, 1508.27(b)(7). This analysis must include more than "conclusory remarks, statements that do not equip a decisionmaker to make an informed decision about alternative courses of action." *Nat. Res. Def. Council, Inc. v. Hodel*, 865 F.2d 288, 298 (D.C. Cir. 1988). An agency must prepare an EIS if it is reasonable to anticipate a cumulatively significant impact on the environment. *Grand Canyon Tr. v. Fed. Aviation Admin.*, 290 F.3d 339, 346 (D.C. Cir. 2002).

60. As part of its NEPA review, an agency is also required to prepare a detailed statement regarding the alternatives to a proposed action. *See* 42 U.S.C. § 4332(2)(C)(iii), (E). This alternatives analysis is the "heart" of NEPA review. 40 C.F.R. § 1502.14; *see also id.* § 1508.9(b). Consideration of reasonable alternatives is necessary to ensure that the agency has taken into account all possible approaches to, and potential environmental impacts of, a particular project. *Calvert Cliffs' Coordinating Comm., Inc. v. U. S. Atomic Energy Comm'n*, 449 F.2d 1109, 1114 (D.C. Cir. 1971). An agency must "[r]igorously explore and objectively

evaluate all reasonable alternatives." 40 C.F.R. § 1502.14(a). These alternatives must include a "no-action" alternative. *Transmission Access Policy Study Grp. v. Fed. Energy Regulatory Comm'n*, 225 F.3d 667, 736 (D.C. Cir. 2000). The "no-action" alternative for when an agency is approving a proposed activity "would mean the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward." Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026, 18,027 (Mar. 23, 1981). This is true even if the agency is "under a court order or legislative command to act." *Id.* When a member of the public proposes an alternative for the agency to consider, the agency must also give a reasoned explanation for why it has rejected a proffered alternative. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 50 (1983) (requiring a rational connection between "the facts found and the choice made").

III. THE ADMINISTRATIVE PROCEDURE ACT

61. The APA provides a right to judicial review for any "person suffering legal wrong because of agency action." 5 U.S.C. § 702. Final agency actions "for which there is no other adequate remedy in a court" are reviewable under the APA. *Id.* § 704.

62. Under the APA, a reviewing court shall "hold unlawful and set aside agency action . . . found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Id.* § 706(2)(A). Agency actions may also be set aside if the action is "without observance of procedure required by law." *Id.* § 706(2)(D). Courts will also set aside agency action that contradicts an agency's prior position, "when, for example, its new policy rests upon factual findings that contradict those which underlay its prior policy" and the agency

has given no reasoned justification for the change. *Fed. Commc'ns Comm'n v. Fox Television Stations, Inc*., 556 U.S. 502, 515 (2009). "[W]hen an agency rescinds a prior policy its reasoned analysis must consider the alternatives that are within the ambit of the existing policy." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1913 (2020) (internal quotations and alterations omitted).

63. Courts will also set aside agency action as arbitrary and capricious when it is the product of undue political interference. *Aera Energy LLC v. Salazar*, 642 F.3d 212, 220 (D.C. Cir. 2011) (explaining that political pressure will invalidate agency action "when it shapes, in whole or in part, the judgment of the ultimate agency decisionmaker"); *D.C. Fed'n of Civic Ass'ns v. Volpe*, 459 F.2d 1231, 1246 (D.C. Cir. 1971) (an agency decision to approve a project would be arbitrary and capricious where it was "based in whole or in part on the pressures emanating" from a member of Congress). When a decisionmaker "suddenly" reverses course or reaches "a weakly-supported determination" after being pressured by Congress, courts may infer that undue political pressure "may have caused the agency to take action it was not otherwise planning to take." *Connecticut v. U.S. Dep't of the Interior*, 363 F. Supp. 3d 45, 64-65 (D.D.C. 2019) (quoting *ATX, Inc. v. U.S. Dep't of Transp.*, 41 F.3d 1522, 1529 (D.C. Cir. 1994)).

FACTUAL BACKGROUND

I. THE BOUNDARY WATERS CANOE AREA WILDERNESS, A 1.1-MILLION ACRE PROTECTED EXPANSE IN NORTHEASTERN MINNESOTA, OFFERS EXCEPTIONAL AND UNIQUE WILDERNESS EXPERIENCES

64. The Leases at issue are adjacent to the Boundary Waters, a 1.1-million-acre wilderness in the Superior National Forest in northeastern Minnesota. With 250,000 visitors annually, it is the most visited wilderness in the United States. The Boundary Waters contains

more than 1,000 lakes, over 1,200 miles of canoe routes, and 2,000 remote water-access-only campsites. Visitors canoe the wilderness, as well as fish, hike, camp, cross-country ski, dog sled, harvest wild rice and other edible wild plants, and hunt. The outfitters, guides, and other Minnesota businesses that cater to summer-only visitors who enter the Boundary Waters generate tens of millions of dollars annually in direct economic benefits to the region. The Boundary Waters provides important habitat for loons, pike, trout, walleye, grouse, eagles, great gray owls, moose, deer, beavers, bears, wolves, bobcats, lynx, bats, waterfowl, over a hundred species of migratory breeding birds, and many other kinds of wildlife, including three species listed as threatened under the Endangered Species Act, 16 U.S.C. §§ 1531-1544. The U.S. Fish and Wildlife Service has designated most of the Boundary Waters and Superior National Forest as critical habitat for the threatened Canada lynx and gray wolf.

65. For nearly a century, Congress and the Executive Branch have recognized that the Boundary Waters is a resource of national importance worthy of special consideration and protection. In 1909, President Theodore Roosevelt created the Superior National Forest from previously withdrawn public domain lands, including parts of what was later designated the Boundary Waters Canoe Area Wilderness. In 1926, Secretary of Agriculture W. M. Jardine set aside 640,000 acres of the Superior National Forest as roadless wilderness, writing, "[t]he purpose of this program is to conserve the value of the Superior National Forest as a game and fish country. . . . Not less than one thousand square miles containing the best of the lakes and waterways will be kept as wilderness recreation areas." In 1938, the Forest Service established the Superior Roadless Primitive Area along boundaries similar to the modern Boundary Waters. In 1964, Congress passed the Wilderness Act "to secure for the American people of present and future generations the benefits of an enduring resource of wilderness," making the Boundary

Waters Canoe Area part of the new National Wilderness Preservation System. 16 U.S.C. § 1131(a). Most recently, in 1978, Congress passed the Boundary Waters Act, which expanded and enhanced protections for the Boundary Waters and added a Mining Protection Area. Pub. L. No. 95-495, 92 Stat. 1649 (1978). Congress recognized "the special qualities of the area as a natural forest-lakeland wilderness ecosystem of major esthetic, cultural, scientific, recreational and educational value to the Nation," and sought among other things to "minimize to the maximum extent possible, the environmental impacts associated with mineral development affecting" the Boundary Waters and Mining Protection Area. *Id.*, §§ 1-2.

66. The Superior National Forest, including the Boundary Waters, is an outstanding freshwater resource. The Superior National Forest holds 20 percent of the fresh water in the entire National Forest System. These water-rich Minnesota forests purify water, sustain surface and ground water flow, maintain fish habitat, control erosion, and stabilize streambanks.

67. The Boundary Waters is among the most expansive, wild, untrammeled places in the United States. The largest wilderness area east of the Rocky Mountains and north of the Everglades, the Boundary Waters was recognized by the National Geographic Society as one of "50 Places of a Lifetime" in the entire planet—under the category "Paradise Found"—and the only one in the Midwest. *See* National Geographic Traveler, 50 Places of a Lifetime (1999). To preserve the wilderness character of the Boundary Waters, the Forest Service allows camping only on designated campsites, limits the number of persons who can enter the Boundary Waters each day, and restricts entry to specific, numbered and designated entry points.

II. MINING ON THE LEASES POSES SERIOUS RISKS TO THE BOUNDARY WATERS CANOE AREA WILDERNESS

68. The Leases are adjacent to the Boundary Waters and are in the Rainy River watershed, upstream and downstream of the Boundary Waters, and upstream of Quetico Provincial Park and Voyageurs National Park. The Leases include approximately 4,864 acres of land in the Superior National Forest on either side of Minnesota Highway 1, southwest of Ely, Minnesota. Specifically, Lease MNES 01353 lies immediately adjacent to the Boundary Waters and southwest of Boundary Waters entry points 32 and 33, which are at the South Kawishiwi River and Little Gabbro Lake, respectively. Lease MNES 01352 is three miles to the southwest of those entry points, straddling the eastern end of Birch Lake, and extending along the south side of the South Kawishiwi River. Surface water in the leased area drains directly into the Boundary Waters and from there into Voyageurs National Park and the Quetico Provincial Park in Ontario, Canada.

69. Twin Metals intends to develop a copper-nickel sulfide ore mine on the Leases. Mining in sulfide-bearing mineral deposits causes significant pollution of air and the surrounding landscape by the deposition of air pollution and water pollution. When sulfide in rock is exposed to air and water by mining, it produces a chemical reaction that creates sulfuric acid. Sulfuric acid then leaches heavy metals from the rock, rock dust, and tailings. A process called acid mine drainage occurs when water collects the acid and metals and then drains or leaks from the mine complex. All major elements of a mining operation can produce acid mine drainage, and mine drainage may not become acidic until years or decades after mining has commenced. Even when mine drainage is not acidic, it consistently includes toxic heavy metals and sulfate, which in low-sulfate waters plays a significant role in the formation of methyl-mercury, the form of mercury

that bio-accumulates in nature and poses serious hazards to human and animal health. Hardrock mining in sulfide-bearing mineralizations is known worldwide for producing acid mine drainage that requires continuous management and perpetual treatment. With this continuous management and perpetual treatment come a perpetual risk of contamination due to treatment or containment failure, insolvency, political events, geological events, and weather events. Acidic or not, mine drainage adversely affects fish populations and aquatic ecosystems with both direct effects on aquatic life and indirect effects on food supplies and habitat.

70. A copper-nickel sulfide ore mine on the Leases would threaten the integrity of water resources in the Superior National Forest, including the Boundary Waters. The hydrogeology and high degree of interconnectedness of water bodies in northeastern Minnesota makes the area especially susceptible to degradation of water quality. Surface waters of northeastern Minnesota are especially sensitive to changes in pH, acid deposition, and acid runoff. Unlike in some other regions, the bedrock, surficial deposits, and soils of northeastern Minnesota have little capacity to neutralize acids, and the waters are naturally very low in sulfate.

71. Should the Boundary Waters be contaminated by acid mine drainage from a copper-nickel sulfide ore mine on the Leases, it is unlikely that the damage could be successfully remediated. Moreover, all or almost all of the methods available to remediate acid mine drainage would cause additional damage the Boundary Waters' ecosystem, watershed, and wilderness values.

72. In addition to the threat from mine drainage, a copper-nickel sulfide ore mine would degrade the wilderness character of the Boundary Waters and its associated recreational opportunities, ecosystem services, and wildlife habitat. Mining would introduce significant noise

and air pollution likely to continue 24 hours per day and 365 days per year, as well as long-term water pollution, contamination of fish and wildlife, and scenic disruption from construction and operation of an industrial mining district.

73. Sulfide-ore copper-nickel mining would also have long-lasting negative effects on fish and wildlife. The Superior National Forest and Boundary Waters forest landscape would be altered such that it could no longer provide a habitat for the diverse species and complex chains of life within the forest. Mine construction would counter proper management of critical Canada lynx and gray wolf habitat within the Boundary Waters and Superior National Forest, habitat which would be difficult, if not impossible, to return to its original state if destroyed. A mining complex would also cause habitat fragmentation and devastating loss of forest habitat on the edge of the Boundary Waters, harming moose, northern long-eared bat, gray wolf, and other species' habitat as a result.

III. HISTORY OF THE BUREAU'S UNLAWFUL RENEWAL OF THE LEASES DESPITE THE RISK TO THE BOUNDARY WATERS

74. The Bureau originally issued Leases MNES 01352 and MNES 01353 to the International Nickel Company, Inc. on June 14, 1966, for a primary term of 20 years. The purpose of the Leases was to grant an exclusive right to mine for nickel, copper, and associated minerals on the leased land. After the Bureau granted the Leases to the International Nickel Company, the Leases were assigned to new entities three times. Twin Metals is now the successor in interest of the International Nickel Company with respect to the Leases. No lessee has developed a mine or begun any mineral production on the Leases. There is no record showing that the Forest Service consented to the Leases prior to their issuance in 1966.

75. On May 14, 1986, the lessee applied to renew the Leases. On June 8, 1986, the Bureau requested that the Forest Service advise the Bureau whether the Forest Service had any objections to renewal of the Leases. On June 19, 1987, the Forest Service consented to renewal of the Leases for a ten-year period. The Bureau renewed the Leases for a ten-year period effective July 1, 1989.

76. On March 25, 1999, the Bureau requested the Forest Service's consent regarding a second request by the lessee to renew the Leases. On July 18, 2003, the Forest Service replied that it had no objection. The Bureau renewed the Leases for a second ten-year period on January 1, 2004.

77. On October 16, 2012, Twin Metals applied for a third renewal of the Leases.

78. In processing the application for the third renewal, the Bureau asked the then-Solicitor of the Department of the Interior, Hilary C. Tompkins, for guidance on whether it had discretion to grant or deny the application for renewal of the Leases. On March 8, 2016, Solicitor Tompkins issued a Memorandum Opinion, M-37036, concluding that Twin Metals Minnesota did not have a non-discretionary right to renewal, but rather the Bureau had discretion to grant or deny the pending renewal application.

79. On June 3, 2016, the Bureau requested a decision from the Forest Service on whether it consented to a third renewal. The Forest Service announced that it was considering withholding consent, solicited public input on the issue, and held two listening sessions in Minnesota. On December 14, 2016, after months of deliberation, the Forest Service responded to the Bureau by withholding consent to the third renewal of the Leases.

80. In the December 14, 2016 letter withholding its consent to renewal of the Leases, the Forest Service found that developing a copper-nickel sulfide-ore mine on the Leases would

pose an "unacceptable . . . inherent potential risk that development of a regionally-untested copper-nickel sulfide ore mine within the same watershed as the [Boundary Waters] might cause serious and irreplaceable harm to this unique, iconic, and irreplaceable wilderness area." The Forest Service found that "[t]here is a direct flow of water from the lands subject to the [Leases] to the [Boundary Waters]." It also found that "[a]ll of the waste rock and tailings derived from the sulfide ore bodies on the Leases would have a high likelihood of oxidizing and becoming sources of [acid mine drainage]" and that once water was contaminated with acid mine drainage, "very few of the available containment and remediation strategies would be compatible with maintaining the [Boundary Water's] quality and character." The Forest Service therefore determined it was "incumbent upon" it to withhold its consent to lease renewal, and that failing to prevent damage to the Boundary Waters that could be caused by mining on the Leases would be inconsistent with its obligations under the Boundary Waters Act to "protect the special qualities of the [Boundary Waters] as a natural forest-lakeland wilderness ecosystem of major esthetic, cultural, scientific, recreational and education value to the Nation."

81. In its letter withholding consent, the Forest Service also noted the lengthy history of federal legislative protection for the Boundary Waters and surrounding areas, including outright bans on mining in the Boundary Waters and the Mining Protection Area, and the special requirement to obtain Forest Service consent for mining of federally-owned minerals in the Superior National Forest.

82. On December 15, 2016, the Bureau rejected Twin Metals' October 2012 application to renew the Leases, citing the Forest Service's denial of consent, and the Leases expired.

83. On December 22, 2017, more than a year after the Leases expired and more than five years after the last renewal application, then-Principal Deputy Solicitor of the Department of the Interior Daniel Jorjani issued an opinion about the expired Leases, Memorandum Opinion M-37049, concluding that the Bureau had no discretion to deny Twin Metals' 2012 renewal request.

84. On May 2, 2018, the Bureau rescinded its December 15, 2016, decision denying Twin Metals' 2012 application to renew the Leases. At the same time, the Bureau reinstated the Leases as written in 2004, as well as Twin Metals' 2012 application to renew the Leases.

85. Plaintiffs filed three suits against the Bureau in the U.S. District Court for the District of Columbia challenging the Bureau's reinstatement decision as violating the APA. *Voyageur Outward Bound Sch. v. United States*, No. 1:18-CV-01463 (TNM) (consolidated cases). Twin Metals joined as a defendant-intervenor. On March 17, 2020, the Court issued a final, appealable order granting summary judgment for the defendants. On April 17, 2020, Plaintiffs in the consolidated case filed notices of appeal to the U.S. Court of Appeals for the District of Columbia Circuit. *Voyageur Outward Bound Sch. v. United States,* No. 20-5097 (D.C. Cir. April 20, 2020) (consolidated cases).

86. In December, 2018, the Bureau issued a draft environmental assessment analyzing the lease renewal. The draft EA included a lease stipulation recognizing the Forest Service's ongoing consent authority under 16 U.S.C. § 508b and providing that future renewals of the leases could only be issued with consent of the Forest Service. The stipulation read: "[n]otwithstanding any other provision, any renewal of this lease is subject to, and may only be issued after, the prior consent of the Forest Service. As a condition of such consent, if any, the Forest Service may prescribe terms and stipulations, for the protection of [National Forest

System] resources and uses, and such terms and stipulations shall become requirements of any renewed lease."

87. On January 31, 2019, a legislative assistant for Congressman Tom Emmer emailed the Congressional liaison representing the Forest Service. In his email, he wrote "Hey Rob, I told you on Monday I'd be lobbying you soon. I just didn't expect it to be this soon. Not lobbying you per se, but hoping to hop on a call regarding the Twin Metals Minnesota lease renewal at some point over the next few days. Happy to work with your schedule or to coordinate if you're on the hill anytime soon. Also cc'ing my counterpart in [Congressman Pete] Stauber's office, who may want join." The email reflects both a call and a subsequent in-person meeting between Forest Service and the Congressional staff.

88. On March 1, 2019, a legislative assistant for Congressman Pete Stauber emailed the same Congressional liaison representing the Forest Service. In his email, he wrote "I just wanted to touch base on the Twin Metals situation. The company is getting increasingly concerned about the stipulations put forward by the Forest Service on the up or down vote they require for mineral lease renewals every ten years. Both Reps. Emmer and Stauber are increasingly concerned that these stipulations could deter Twin Metals from making further investment in the area and slow down economic development in turn. Do you mind setting up a quick call next week where we can recenter and get on the same page?" The email chain concludes by setting up the requested meeting.

89. Subsequently, Members of Congress pressured the Forest Service to change provisions requiring future Forest Service consent to lease renewal.

90. On May 15, 2019, the Bureau renewed the Leases for an additional ten-year period. The Bureau included new discretionary stipulations. Unlike the 1966 and 2004 Leases,

the renewed Leases established by stipulation: (1) a right to perpetual renewal of the Leases if Twin Metals complies with the Leases' terms and stipulations; and (2) a stipulation that if Twin Metals fails to meet certain milestones for developing and constructing a mine during the 10-year renewal period, the Leases will terminate, but with provisions that can toll the Leases' term.

91. The Forest Service did not withdraw its December 14, 2016 findings that developing a mine would pose "unacceptable . . . inherent potential risk." Nonetheless, the Forest Service included no stipulations to the Leases to prevent those risks and even agreed to add stipulations that would limit the Forest Service's ability to withhold consent to future renewals. The Forest Service consented to removal of the stipulation included in the draft EA that "renewal of this lease is subject to, and may only be issued after, the prior consent of the Forest Service." In its place, the Forest Service agreed to the inclusion of a stipulation that "if the lessee is in full compliance with the terms and conditions of this lease, the Forest Service will provide consent to a renewal, subject to any reasonable adjustments as described in Section 14." (Emphasis added.) It also agreed to stipulations aimed at promoting mining on the Leases, including a "diligent development and continued operation" requirement. The Forest Service provided no explanation for its change in position.

92. In conjunction with its decision to renew the Leases, the Bureau prepared an EA pursuant to NEPA. However, the EA did not take a hard look at the environmental impacts of mining on the Leases even though (i) the Leases conveyed the right to mine without reserving absolute authority to the Bureau to prevent development on the Leases and (ii) the Bureau considered mining to be a cumulative impact to leasing. The EA also did not consider a true "no action" alternative comparing the proposed mine to no mine. Finally, the EA did not consider other reasonable alternatives to leasing presented by the public, including alternative stipulations

that would have reserved the Bureau's authority to prevent development and alternative stipulations that would have been more protective of the environment.

CAUSES OF ACTION

COUNT I—ARBITRARY AND CAPRICIOUS ACTION (AGAINST THE FOREST SERVICE)

93. All preceding paragraphs are hereby incorporated as if fully set forth herein.

94. In 2016, the Forest Service made factual findings that developing a mine in accordance with the Leases would have the potential to result in acid mine drainage and cause extreme environmental harm to the Boundary Waters.

95. The Forest Service therefore determined that renewing Twin Metals' Leases would pose an "unacceptable . . . inherent potential risk that development of a regionally-untested copper-nickel sulfide ore mine within the same watershed as the [Boundary Waters] might cause serious and irreplaceable harm to this unique, iconic, and irreplaceable wilderness area," and refused to consent to lease renewal.

96. The Forest Service has not withdrawn these factual findings or its determination that it must withhold consent to lease renewal in order to protect the Boundary Waters.

97. The Forest Service has the right to withhold consent to lease renewals under 16 U.S.C. § 508b. The Forest Service also has the right and obligation under the terms of the Leases, and under, among other authorities, 16 U.S.C. § 508b, Section 402 of Reorganization Plan No. 3 of 1946, the Boundary Waters Act, the Wilderness Act, and NFMA, to include lease stipulations it deems necessary to protect the surface resources. Concomitantly, the Forest Service has the right and obligation to object to and to deny consent to stipulations that would

interfere with its ability to protect and maintain the character and quality of the Boundary Waters.

98. The Forest Service consented to or failed to object to lease stipulations on the renewed Leases that encourage development of a mine without preventing the impacts cited in its 2016 analysis and that would limit its ability to withhold consent to future renewals. This directly contradicts its previous position that it was obligated to take action to "protect the special qualities of the [Boundary Waters] as a natural forest-lakeland wilderness ecosystem of major esthetic, cultural, scientific, recreational and education value to the Nation." The Forest Service has offered no justification for its policy reversal, which rests upon factual findings that contradict those which underlay its prior policy. Nor did it consider other lease stipulation options that would have protected the character and quality of the Boundary Waters, within the ambit of its previous position that it was obligated to protect the area.

99. The Forest Service's consent to a lease stipulation limiting its ability to withhold consent to future lease renewals was a result of undue political interference from Members of Congress and is therefore arbitrary and capricious. The Forest Service has a statutory right under 16 U.S.C. § 508b to withhold consent to future lease renewals, and the renewed Leases initially included a stipulation confirming as much. After Members of Congress pressured the Forest Service to abandon this statutory right out of concern that it could "deter" Twin Metals from making further investment in the area, the Forest Service reversed course, consented to removing the stipulation, and in its place agreed to a stipulation that it "will" provide consent to renewal so long as Twin Metals remains in compliance with the terms and conditions of the Leases. The Forest Service provided no explanation for why it curtailed its own authority and consented to this new stipulation.

100. The Forest Service's consenting, or failing to object, to stipulations on the renewed Leases promoting development of the Leases without preventing the impacts it described in its 2016 conclusion and curtailing its own authority, including under 16 U.S.C. § 508b and Section 402 of Reorganization Plan No. 3 of 1946, was arbitrary and capricious and not in accordance with law under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

COUNT II—VIOLATION OF NEPA, FAILURE TO PREPARE AN EIS (AGAINST THE BUREAU)

101. All preceding paragraphs are hereby incorporated as if fully set forth herein.

102. Under NEPA, an agency must prepare an EIS before it makes an "irreversible and irretrievable commitment of resources" to an action that will significantly affect the environment. 42 U.S.C. § 4332(C); *Sierra Club v. Peterson*, 717 F.2d 1409 (D.C. Cir. 1983).

103. The Bureau's renewal of Twin Metals' Leases was an "irreversible and irretrievable commitment of resources" by the Bureau to allow mine development causing significant impacts to the environment, because the Bureau did not withhold absolute authority to prevent development on the Leases.

104. The Bureau did not produce an EIS prior to its renewal of the mine Leases.

105. The Bureau's failure to prepare an EIS evaluating the environmental impacts of mine development violated NEPA. 42 U.S.C. § 4332(2)(C). The Bureau's approval of the Leases was therefore arbitrary, capricious, not in accordance with law, and not in accordance with the procedures required by law. 5 U.S.C. § 706(2)(A), (D).

COUNT III—VIOLATION OF NEPA, FAILURE TO ADEQUATELY CONSIDER CUMULATIVE IMPACTS (AGAINST THE BUREAU)

106. All preceding paragraphs are hereby incorporated as if fully set forth herein.

107. An agency's NEPA analysis must assess the cumulative impacts of the action "result[ing] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions." 40 C.F.R. §§ 1508.7, 1508.27(b)(7). This analysis must include quantified and detailed information. General statements about possible effects and some risk do not constitute a hard look. An agency must prepare an EIS if it is reasonable to anticipate a cumulatively significant impact on the environment.

108. The Bureau has determined that mining is a cumulative action to the Lease renewal.

109. Nevertheless, the EA considers the impacts of mining in only generalized, conclusory statements that fail to take a hard look at the impacts of mining.

110. The Bureau's failure to adequately analyze cumulative impacts of the Lease renewal violated NEPA. 40 C.F.R. §§ 1508.7, 1508.27(b)(7). The Bureau's approval of the Leases was therefore arbitrary, capricious, not in accordance with law, and not in accordance with the procedures required by law. 5 U.S.C. § 706(2)(A), (D).

COUNT IV—VIOLATION OF NEPA, FAILURE TO CONSIDER ALTERNATIVES (AGAINST THE BUREAU)

111. All preceding paragraphs are hereby incorporated as if fully set forth herein.

112. Under NEPA, an agency is required to prepare a detailed statement regarding the alternatives to a proposed action. *See* 42 U.S.C. § 4332(2)(C)(iii), (E); 40 C.F.R. § 1508.9(b). These alternatives must include a no-action alternative. And when the public proposes an alternative for the agency to consider, the agency must also give a reasoned explanation for why it has rejected a proffered alternative.

113. The Bureau failed to consider a true no-action alternative of no mining on the Leases. It also failed to consider other reasonable alternatives suggested by the public without a reasoned explanation for rejecting them.

114. The Bureau's failure to adequately consider these alternatives violated NEPA. 42 U.S.C. § 4332(2)(C)(iii), (E); 40 C.F.R. § 1502.14. The Bureau's approval of the Leases was therefore arbitrary, capricious, not in accordance with law, and not in accordance with the procedures required by law. 5 U.S.C. § 706(2)(A), (D).

PRAYER FOR RELIEF

Therefore, Plaintiffs respectfully request that the Court:

A. Issue a declaratory judgment that the Forest Service's decision to agree to stipulations on the renewed Leases promoting development of the Leases without precluding impacts it previously identified and curtailing its own authority was arbitrary and capricious and not in accordance with law under the APA, 5 U.S.C. § 706(2)(A);

B. Issue a declaratory judgment that the Bureau violated NEPA in renewing the Leases;

C. Issue an order setting aside as unlawful the decision record approving the lease renewal, the underlying EA and Finding of No Significant Impact, and the renewed Leases;

D. Enter any other appropriate injunctive relief to ensure that the Defendants comply with NEPA and the APA, and to prevent irreparable harm to the Plaintiffs and to the environment until such compliance occurs;

E. Award Plaintiffs the costs of this action, including reasonable attorneys' fees, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412;

F. Retain continuing jurisdiction over this matter until Defendants remedy the violations of law identified herein; and

G. Grant such other relief as the Court deems just and proper.

Dated this 27th day of August, 2020.

Respectfully submitted,

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EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE WILDERNESS SOCIETY, 1615 M Street, NW, Washington, DC 20036; IZAAK WALTON LEAGUE OF AMERICA, 707 Conservation Lane, Gaithersburg, MD 20878; and CENTER FOR BIOLOGICAL DIVERSITY, P.O. Box 710, Tucson, AZ 85702-0710; and

FRIENDS OF THE BOUNDARY WATERS WILDERNESS, 401 North Third Street, Suite 290 Minneapolis, MN 55401-1475; and

NORTHEASTERN MINNESOTANS FOR WILDERNESS, PO Box 625, Ely, MN 55731; ELY OUTFITTING COMPANY & BOUNDARY WATERS GUIDE SERVICE, 529 East Sheridan Street, Ely, MN 5573; HUNGRY JACK OUTFITTERS, 318 S Hungry Jack Road, Grand Marais, MN 55604; NORTHSTAR CANOE, 1506 14th Street S, Princeton, MN 55371-2317; PIRAGIS NORTHWOODS COMPANY, INC., 105 N Central Avenue, Ely, MN 55731-1210;.; RIVER POINT RESORT AND OUTFITTING COMPANY, PO Box 397, Ely, MN 55731-0397; SAWBILL CANOE OUTFITTERS, INC. 4620, Sawbill Trail, Tofte, MN 55615;.; VOYAGEUR OUTWARD BOUND SCHOOL, 1007 Spruce Road, Ely, MN 55731; WENONAH CANOE, INC., 1252 Bundy Blvd, Winona, MN 55987-4872;.; and WOMEN'S WILDERNESS DISCOVERY, 429 East Sheridan Street, Ely, MN 55731.

Plaintiffs,

v.

DAVID BERNHARDT, in his official capacity as Secretary of the Interior, 1849 C Street NW, Washington, DC 20240; BUREAU OF LAND MANAGEMENT, 1849 C Street NW, Rm. 5665, Washington, DC 20240; GARY TORRES, in his official capacity as Acting Eastern States Director for the Bureau of Land Management, 20 M Street SE Suite 950, Washington, DC 20003; CASEY HAMMOND, in his official capacity as Acting Assistant Secretary for

Case No. ———— 1:20-cv-01176-BAH

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
(5 U.S.C. §§ 701-706; 42 U.S.C. § 4321 *et seq*)

~~Land and Minerals Management for the U.S. Department of the Interior, 1849 C Street NW, Washington, DC 20240; DEAN GETTINGER, in his official capacity as District Manager for the Northeastern States District for the Bureau of Land Management, 10406 Gunston Road, Lorton, VA 22079; U.S. DEPARTMENT OF THE INTERIOR, 1849 C Street NW, Washington, DC 20240; U.S. FOREST SERVICE, 201 14th Street, SW, Washington, DC 20024; U.S. DEPARTMENT OF AGRICULTURE, 1400 Independence Ave., S.W., Washington, DC 20250; and VICTORIA CHRISTIANSEN, in her official capacity as Chief of the U.S. Forest Service, 201 14th Street, SW, Washington, DC 20024.~~
DAVID BERNHARDT, *et al.*,

Defendants.

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INTRODUCTION

1. Plaintiffs challenge the Bureau of Land Management's failure to comply with the National Environmental Policy Act when it issued two hardrock mining lease renewals to Twin Metals Minnesota in an area adjacent to the Boundary Waters Canoe Area Wilderness, a 1.1-million-acre pristine wilderness area in northeastern Minnesota that has been protected for nearly 100 years. Plaintiffs also challenge under the Administrative Procedure Act the U.S. Forest Service's arbitrary and capricious approval of lease stipulations that promote development of a mine on the leases without precluding the impacts the Forest Service previously found would pose unacceptable risks to the Boundary Waters.

2. The Boundary Waters Canoe Area Wilderness ("Boundary Waters") is renowned for its healthy forests, extremely high water quality, and networks of pristine lakes, streams, wetlands, and canoe routes. Together with the Quetico Provincial Park to the north of the Boundary Waters and Voyageurs National Park to its west, the area includes multiple thousands

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of interconnected lakes, streams, and waterways, surrounded by pristine forests. The Boundary Waters offers abundant habitat for wildlife, including iconic Minnesota species like walleye, moose, and loon, many species of migratory birds, as well as three species listed as threatened under the Endangered Species Act: the Canada lynx, northern long-eared bat, and gray wolf. Shown in the image below is the striking beauty of a typical waterway and surrounding forest in the Boundary Waters.

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3. Twin Metals Minnesota ("Twin Metals") is pursuing development of an underground copper and nickel mine on lands managed by the Forest Service in the Superior National Forest within three miles of the Boundary Waters and in the same watershed. The photo below shows an aerial view of the area on which Twin Metals plans to build a mine.

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4. The Bureau of Land Management ("Bureau") first issued two preference right hardrock mineral leases ("Leases") to the International Nickel Company, Twin Metals' predecessor, in 1966. Since then, other Twin Metals predecessors filed for two renewals of the Leases, which the Bureau renewed in 1989 and 2004. Twin Metals submitted its application to renew the Leases for a third time in 2012. Believing it had discretionary authority to grant or deny the Lease renewal, the Bureau requested that the Forest Service provide its opinion as to whether it would consent to the renewal of the leases under 16 U.S.C. § 508b, which states that the Bureau "shall not . . . permit[]" development and utilization of mineral deposits in the State of Minnesota "except with the consent of the Secretary of Agriculture."

5. The Forest Service withheld its consent. In a detailed letter, the Forest Service found that developing a copper-nickel sulfide ore mine on the Leases would pose an "unacceptable" risk that the mine might "cause serious and irreplaceable harm" to the Boundary Waters. The Forest Service found that the development of a regionally untested copper-nickel sulfide ore mine within the same watershed as the Boundary Waters posed an unacceptable risk of serious and irreversible harm to this unique, iconic, and irreplaceable wilderness area. Based on the Forest Service's refusal to consent, the Bureau accordingly rejected the Lease renewal application on December 15, 2016.

6. On December 22, 2017, more than one year later, the Department of the Interior Solicitor's Office issued a legal opinion reversing course and asserting that the Bureau lacked discretion to reject the renewal application because the terms of the prior Leases guaranteed

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renewal. In light of this 2017 legal opinion, the Bureau rescinded the decision to reject Twin Metals' renewal application and reinstated the Leases and renewal applications on May 2, 2018.[1]

7. In a subsequent and separate agency action, on May 15, 2019, the Bureau renewed the Leases for an additional ten-year period. Even assuming that the decision to renew the Leases was not discretionary, the Bureau did have discretion in crafting the terms of the Leases, including the ability to add lease stipulations increasing protection of the environment.

8. The National Environmental Policy Act ("NEPA") requires that agencies take a "hard look" at the environmental impacts of their actions before the actions occur, and that they prepare an Environmental Impact Statement ("EIS") for "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C); *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976). Courts have clarified that in the mineral leasing context, an agency must prepare an EIS analyzing the ultimate effect of mineral development when it issues a lease without reserving absolute authority to prevent development on the lease.

9. By renewing Twin Metals' Leases, the Bureau committed to allowing mining on the Leases and did not reserve absolute authority to prevent development. The agency did not prepare an EIS as required by NEPA, however. Instead, the Bureau prepared an Environmental Assessment ("EA")—a document limited to determining the threshold question of whether an action will have significant impacts on the environment. The EA did not evaluate the impacts of the associated proposed mine, nor did it meaningfully consider lease stipulations that would have mitigated the impacts of the mine. By failing to prepare an EIS, which would have taken a hard

[1] Plaintiffs challenged the final agency action reinstating the Leases in *Voyageur Outward Bound Sch. v. United States*, No. 1:18-CV-01463 (TNM), 2020 WL 1275795 (D.D.C. Mar. 17, 2020), and have appealed the court's judgment upholding that agency action in a consolidated appeal, *appeal docketed* No. 20-5097 (D.C. Cir. Apr. 20, 2020).

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look at the environmental impacts of a mine on the doorstep of the pristine Boundary Waters, in the context of a decision that could prevent or reduce that impact, the Bureau violated NEPA.

10. The Administrative Procedure Act ("APA") requires that when an agency changes position, it must articulate a rational justification. An agency action is also arbitrary and capricious if political pressure causes the agency to reverse course and take action it was not otherwise planning to take. The Forest Service never withdrew its December 2016 finding that allowing development of a mine would pose unacceptable ecological risks to the Boundary Waters. Nevertheless, and after receiving pressure from members of Congress, the Forest Service agreed to new lease stipulations that do not preclude such unacceptable risks and instead are aimed at promoting quick development of a mine on the Leases, and to a stipulation that curtails the agency's ability to withhold consent to future lease renewals. The Forest Service's decision to agree to these stipulations without rationally explaining the departure from its prior position was arbitrary, capricious, and not in accordance with law.

JURISDICTION AND VENUE

11. The Court has subject matter jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1331 and under the APA, 5 U.S.C. §§ 701-06, which waives the Defendants' sovereign immunity. The Court may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201-2202 and 5 U.S.C. §§ 705-706. There exists an actual controversy between the parties within the meaning of 28 U.S.C. § 2201.

12. Venue is appropriate under 28 U.S.C. § 1391(e) because at least one Defendant resides in the District of Columbia and because Plaintiff The Wilderness Society resides in the District of Columbia.

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PLAINTIFFS

13. Plaintiff The Wilderness Society, founded in 1935, is a national, non-profit membership organization headquartered in Washington, D.C., devoted to protecting wilderness and inspiring Americans to care for wild places. It has led the effort to permanently protect 109 million acres of wilderness and ensure sound management of our shared national lands. The Wilderness Society has more than 1 million members and supporters, including over 2,600 members and 7,200 supporters in Minnesota, and has long worked to protect the Boundary Waters. A member of the Campaign to Save the Boundary Waters, The Wilderness Society has advocated for permanent protection of the Boundary Waters watershed from the threat of sulfide-ore copper mining, and has worked to inform the public about threats to the Boundary Waters, including with its 2017 report "Too Wild to Drill." Members and staff of The Wilderness Society regularly visit the Boundary Waters and surrounding Superior National Forest lands to paddle, hunt, fish, harvest wild rice, and enjoy the splendor of the areas' pristine lakes, rivers, and forests.

14. Plaintiff Izaak Walton League of America ("the League") is a non-profit membership organization devoted to conserving outdoor America for future generations. The League has more than 40,000 members and about 200 community-based chapters nationwide, including over 1,000 members in Minnesota. League members pledge "[t]o strive for the purity of water, the clarity of air, and the wise stewardship of the land and its resources; to know the beauty and understanding of nature and the value of wildlife, woodlands, and open space; to the preservation of this heritage and to man's sharing in it." Beginning in about 2009, the League has worked to educate its members, the public, state and federal administrative agencies, and legislators about the potential impacts of copper-nickel mining in Minnesota by holding public

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forums, submitting comments and petitions, sponsoring and hosting informational events, litigating, meeting with agency decision makers, joining the Campaign to Save the Boundary Waters, and working with several other Minnesota organizations. In 2016, the League spoke against renewing the Leases at a Forest Service listening session and submitted petitions to the Forest Service asking that the Leases not be renewed.

15. Plaintiff Center for Biological Diversity ("the Center") is a non-profit organization with over 74,000 members. The Center is headquartered in Tucson, Arizona, and has offices across the United States, including in Duluth and Minneapolis, Minnesota, and Washington, D.C. The Center works to ensure the long-term health and viability of animal and plant species across the United States and elsewhere, and to protect the habitat these species need in order to survive. The Center believes that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked. The Center has long advocated for northeastern Minnesota's animal and plant species in administrative processes and in court, including by commenting on mining-related proposals, petitioning for Endangered Species Act protections for the Minnesota moose population, and joining litigation over proposed mining that would destroy habitat for Canada lynx and gray wolves in the Superior National Forest.

16. Plaintiff Friends of the Boundary Waters Wilderness ("Friends") is a Minnesota non-profit corporation with a mission "[t]o protect, preserve and restore the wilderness character of the Boundary Waters Canoe Area Wilderness and the Quetico-Superior Ecosystem." Founded by Miron "Bud" Heinselman, a preeminent scientist and researcher for the Forest Service, Friends was the principal organization that promoted passage of the 1978 Boundary Waters Canoe Area Wilderness Act ("the Boundary Waters Act"), which increased the size of the

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Boundary Waters to approximately 1.1 million acres and removed incompatible uses from the Boundary Waters, and protected the Boundary Waters through an independent federal statute. Pub. L. 95-495, 92 Stat. 1649.

17. Friends has been involved in nearly every significant litigation involving the Boundary Waters since its founding. These include cases defending the constitutionality of the 1978 Boundary Waters Canoe Area Act, cases challenging the Forest Service's Forest Management Plans for the Superior National Forest and proposed timber sales adjacent to the Boundary Waters, and many others that would have adversely impacted the serene wilderness character of the Boundary Waters and surrounding areas. Through its "No Boundaries to the Boundary Waters" program, since 2007, Friends has sponsored 600 underserved children to visit the Boundary Waters free-of-charge. Friends' members have an interest in maintaining and improving the ecological diversity of wilderness habitat of the Boundary Waters and greater Superior-Quetico ecosystem, including the land at issue in this case. Friends' members include residents who own land and houses near the leased land on which Twin Metals seeks to open a mine. Friends' members regularly visit and plan to visit the Boundary Waters, the leased land, and/or areas surrounding the leased land, and use those lands for various purposes, including recreation, wildlife viewing, canoeing, fishing, photography, and/or other aesthetic enjoyment.

18. Plaintiff Northeastern Minnesotans for Wilderness ("NMW") is a non-profit, tax-exempt, charitable corporation organized under the laws of Minnesota. Formed in 1996 and based in Ely, Minnesota, NMW's mission is to protect and preserve wilderness and wild places in Minnesota's Arrowhead region, to advocate for the protection of the Boundary Waters and Voyageurs National Park and the enhancement of their wilderness aspect, and to foster education about the value of wilderness and wild places. NMW was formed to continue the local tradition

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of working to protect wild places, particularly the Boundary Waters, against increasing commercial pressures, so that the area's natural features and processes remain intact for future generations.

19. NMW has approximately 23,500 members, all of whom have contributed financially, and more than 185,000 additional supporters across all 50 states. NMW's members rely on, appreciate, and benefit from the natural resources in the Superior National Forest, especially the waters, lands, plant communities, and wildlife in the Boundary Waters, as well as in Voyageurs National Park. They have a long-standing interest in lynx, moose, wolf, and forest conservation, both in the Boundary Waters and across the Superior National Forest. NMW members and staff regularly visit the Boundary Waters, Voyageurs National Park, the Superior National Forest, and surrounding areas for recreation, wildlife observation, and other uses. Many NMW members plan to visit the Boundary Waters over the coming days, weeks, months, and years.

20. Plaintiff Ely Outfitting Company & Boundary Waters Guide Service ("Ely Outfitting") is a professional guide and outfitting service based in Ely, Minnesota, and founded in 2008 primarily to service the needs of customers and clients around the nation who travel to and explore the Boundary Waters. A significant percentage of Ely Outfitting's customers enter the Boundary Waters through the South Kawishiwi River, Gabbro Lake, Snake River, Isabella River, Farm Lake, Lake One, and Fall Lake entry points. These entry points, located in and around Ely and the Kawishiwi Triangle, are popular with first-time paddlers because they offer excellent wilderness and outdoor recreation characteristics with comparatively easy access.

21. Plaintiff Hungry Jack Outfitters ("Hungry Jack") is a family-owned accommodation and camping-outfitting business located on the Gunflint Trail north of Grand

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Marais, Minnesota. Founded in 1983, Hungry Jack is primarily a rental operation that provides canoes, camping gear, food, and overnight accommodations for people who want to experience the Wilderness. The clients and customers of Hungry Jack come from all across the globe, and from a wide range of socio-economic backgrounds, to visit the Boundary Waters and surrounding areas.

22. Plaintiff Northstar Canoes is a canoe-manufacturing business located in Princeton, Minnesota. Founded in 2014, Northstar Canoes manufactures canoes and sells them directly to outfitters and retailers. Northstar Canoes sells around 200 canoes each year to outfitters, most of which are located in or near the Boundary Waters and in the Midwest. The company employs, off and on, about 20 full-time and part-time individuals. Northstar Canoes' business depends largely on the Boundary Waters—so much so that it focuses about 90 percent of its advertising on the Boundary Waters area.

23. Plaintiff Piragis Northwoods Company, Inc. ("Piragis Northwoods") is a canoe-trip outfitting and guide business located in Ely, Minnesota. Founded in 1979 to serve the needs of wilderness canoe paddlers visiting the Boundary Waters and the outdoor needs of the local population, Piragis Northwoods currently employs 18 full-time, year-round staff. In the peak summer months, that number increases to 55 employees. Piragis Northwoods' payroll exceeds $1 million.

24. Plaintiff River Point Resort and Outfitting Company ("River Point") is a tourism and hospitality business located in Ely, Minnesota that has been in operation since 1944. Owned and operated continually by the Koschak family since its founding, River Point offers lodging in the form of 16 housekeeping cabins, villas, and chalets, along with auxiliary recreational opportunities such as swimming, boating, kayaking and canoeing, guided fishing, hiking and

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other family activities. River Point accommodates approximately 2,000 housekeeping guests per season, which runs from mid-May through mid-October. As a complement to its lodging and accommodations, River Point also outfits trips in the Boundary Waters. River Point's outfitting business includes more than 100 canoes, and it outfits more than 775 people traveling in the Boundary Waters in the course of a summer. River Point offers both partial and complete outfitting services, which can include meals, routing, maps and permits, and transportation to any of the approximately 30 entry points into the Boundary Waters in the Ely area.

25. River Point's property consists of 34 acres, with one mile of shoreline, in the heart of the Superior National Forest. Prior to construction of the resort, the land had been unoccupied and undeveloped since the time of the Laurel Indians, who lived there about 500 years before the Common Era. The land includes a significant archeological site that was discovered in 1982, the first discovery of a site occupied by the Laurel Indians in the United States. An archeological covenant with the Forest Service protects this site on the south shoreline. The Boundary Waters lies five river miles to the northeast of the River Point resort property and is accessible from the River Point property by canoe through Entry Point 32 (South Kawishiwi River). Most River Point customers and clients are attracted to River Point's location on the edge of the Boundary Waters, the area's natural beauty, the clean air, the quiet, and the wilderness setting.

26. Plaintiff Sawbill Canoe Outfitters, Inc. ("Sawbill") is a family-owned canoe outfitting business located in a remote, off the grid location on the Sawbill Trail north of Tofte, Minnesota. Sawbill provides outfitting services to clients entering the Boundary Waters. In addition to operating an outfitting shop and store, Sawbill issues Boundary Waters entry permits and operates as the concessionaire for three Forest Service campgrounds, one of which is located onsite. Sawbill's customers rely on its outfitting services and campground both before and after

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their trips. Many customers also choose to stay onsite at the campground and complete day trips into the Boundary Waters. Sawbill relies exclusively on visitors to the Boundary Waters to sustain its customer base. On average, Sawbill employs 15 full-time employees from May to October. Sawbill customers come from all across the United States and from a number of foreign countries.

27. Plaintiff Voyageur Outward Bound School ("VOBS") is a nonprofit organization that focuses on leadership and outdoor experiential education through multi-week outdoor and wilderness expeditions. Since 1964, VOBS's basecamp has been located in Ely, Minnesota within the Superior National Forest, along the South Kawishiwi River adjacent to the Boundary Waters. VOBS expeditions bring more than 600 people a year into the Boundary Waters. VOBS employs approximately 25 people year-round, all of whom live in and around Ely, Minnesota, and it employs an additional 75 people in Ely during the summer months. VOBS expeditions cater to a wide range of people, including but not limited to military veterans, young people struggling to make positive choices, adults undergoing major life changes, families, and college students. The pristine wilderness setting provided by the Boundary Waters is a critical aspect of the VOBS expeditions.

28. Plaintiff Wenonah Canoe, Inc. ("Wenonah Canoe") is an independent, family-owned corporation that is one of the largest manufacturers of Kevlar canoes in the world. Founded in the early 1970s in Winona, Minnesota, Wenonah Canoe employed nearly 100 people in 2019 and produced more than 4,000 canoes and kayaks per year. Wenonah Canoe has many customers who frequent the Boundary Waters area, and 25 percent of its canoes are sold in Minnesota.

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29. Plaintiff Women's Wilderness Discovery, LLC ("Women's Wilderness Discovery") was founded in March 2014 as the only female-owned, female-packed, female-guided professional outfitting and guide business in Ely, Minnesota. Women's Wilderness Discovery provides year-round, fully outfitted, and guided Boundary Waters canoe camping, hike camping, day canoe trips, day hikes, and winter camping treks catered principally to women. Women's Wilderness Discovery seeks to provide a safe, positive model for women and girls to enrich their lives through the wilderness experience and outdoor adventure, with clients coming from Minnesota and many other states, as well as from a few foreign nations.

30. Each of the Plaintiff organizations has individual members, customers, owners, employees, and clients (hereinafter, "Plaintiffs and Plaintiffs' members") who regularly use and enjoy the Boundary Waters and Superior National Forest for a variety of purposes, including canoeing and outdoor recreation, wildlife viewing, cultural and spiritual purposes, and aesthetic appreciation. Plaintiffs and Plaintiffs' members value the remoteness, beauty, and largely unspoiled nature of the landscape and the ecological and hydrological resources found throughout the Boundary Waters and Superior National Forest, including the area covered by the Leases.

31. Members of Plaintiff organizations, including John Ipsen and Jon Nelson, members of The Wilderness Society and the League, and Collette Adkins, a member of the Center for Biological Diversity, regularly use and enjoy the Boundary Waters, the leased land, and/or areas surrounding the leased land for various purposes, including recreation, wildlife viewing, education, research, photography, and/or aesthetic and spiritual enjoyment. These members intend to continue to use and enjoy the Boundary Waters, for example, during planned trips in summer 2020. These and other members of Plaintiff groups also enjoy or otherwise use

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migratory wildlife, fish, and birds from the Boundary Waters, the leased land, and/or areas surrounding the leased land.

32. The Bureau's May 15, 2019 decision to renew Twin Metals' Leases directly and imminently injures Plaintiffs' and Plaintiffs' members' interests. Renewing the Leases entitles Twin Metals to casual use of the leased lands and to request permits for more extensive use of the leased lands. After the reinstatement of the Leases, Twin Metals installed gates at entrances to public land on the Leases. Since renewal of the Leases, Twin Metals has engaged in further activities on the leased land, including (but not limited to): the clearing of trees; widening and hardening of roads; sealing up exploratory boreholes, including backfilling holes with cement; maintaining hydro-geological wells; and limiting access to the leased land by closing and locking gates. These industrial activities interfere with Plaintiffs' and Plaintiffs' members' use and enjoyment of the leased land and surrounding lands by blocking access and by causing noise, increased traffic, disturbance of wildlife, water quality reductions, and a landscape that is visibly degraded. The Boundary Waters, among other protected land and waters, would be in the path of pollution if a mine complex is developed. The development of a sulfide-ore copper mine in the watershed would inevitably pollute surrounding lakes, groundwater and downstream waters in the Boundary Waters, and both the quality and public image of the Boundary Waters as an authentic, pure, natural outdoor recreational paradise—"[t]he last great pure experience," as the Ely, Minnesota Chamber of Commerce calls it—would be harmed. Routes that include or cross the pollution flow path downstream from the mine site would effectively bisect the Boundary Waters. These circumstances would dissuade Plaintiffs and Plaintiffs' members from visiting the leased land and surrounding lands. Plaintiffs and Plaintiffs' members will in fact be dissuaded

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from visiting the Boundary Waters, and the value of their experiences will be reduced when they do.

33. Plaintiffs and Plaintiffs' members live, work, and recreate in and around the federal lands at issue in this case. They will be harmed by the development of a copper-nickel sulfide ore mine on the Leases. A copper-nickel sulfide ore mine on the Leases would cause long-term harm to Plaintiffs' and Plaintiffs' members' interests in the leased land and surrounding lands, including the Boundary Waters and areas accessible via the nearby Boundary Waters entry points, through increased noise, increased traffic, and visible degradation of the landscape on the leased lands. It would damage Plaintiffs' and Plaintiffs' members' aesthetic, recreational, and other interests in the leased lands, the surrounding lands, and the Boundary Waters by causing ecological harm and creating an ongoing risk of additional ecological harm in those areas. Ecological harm would include (but not be limited to): degradation of water quality and its numerous indirect effects on fish, plants, and animals; loss of habitat due to occupation by mine facilities; disturbance of wildlife by noise, traffic, air pollution, and light pollution; increased risk of the spread of invasive species; and degradation of air quality. Drainage of mine pollution is likely to occur, further decreasing water quality and multiplying harmful indirect effects to plants and animals. Collectively, these impacts would degrade the wilderness character of the Boundary Waters, including by fouling its pristine and interconnected waterways, disturbing its outstanding opportunities for solitude and primitive recreation, and diminishing its untrammeled, natural appearance. Plaintiffs' members have already suffered economic damage in the form of decreased property values and a depressed market for owned residences and lands in the area, which largely depends on maintaining the area's wilderness character. A mine would also deprive Plaintiffs and Plaintiffs' members of access to the leased lands during the life of the

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mine, if not beyond. These harms are imminent and flow from the decision to renew Twin Metals' Leases.

34. The Defendants' unlawful actions adversely affect Plaintiffs' organizational interests in their members' use and enjoyment of the Boundary Waters, the leased land, and areas surrounding the leased land. The Bureau's May 15, 2019 decision to renew Twin Metals' Leases directly injures these interests.

35. In reliance on the June 2016 Forest Service announcement that it did not plan to renew the Leases, several Plaintiff businesses made considerable financial investments in their respective businesses with the understanding that mining would not be allowed on the leased lands.

36. Plaintiffs and Plaintiffs' members also have a substantial interest in ensuring that the Bureau complies with federal law, including the procedural requirements of NEPA and the APA. Plaintiffs' injuries are actual and concrete and would be remedied by the relief sought in this case.

37. Sulfide-ore copper-nickel mining will leave Plaintiff and Plaintiff member property owners with devalued land, and those with homes or businesses dependent upon the Boundary Waters will be forced to sell their property at steep discounts or close their doors. If the mine is developed, several Plaintiffs will be forced to close their businesses and will lose even more property value than they have already lost due to the exploratory work that has already occurred. One 2014 University of Minnesota study showed that 23 percent of area property owners said they would move away from the area if mining were allowed in the area. The development of the mine would cause some of Plaintiffs' members to move away from their current homes.

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38. To prevent these harms, various laws require the Bureau to consider wilderness, habitat, recreational, spiritual, non-extractive business, and other non-mining values on public lands when deciding whether to authorize mineral activity where the Leases are located. 16 U.S.C. § 508b; *id.* § 520; Sec. 402 of Reorganization Plan No. 3 of 1946; 43 C.F.R. § 3507.19(b); 43 U.S.C. § 1732(a). The Federal Land Policy and Management Act ("FLPMA") also requires the Secretary of the Interior, acting through the Bureau, "[i]n managing the public lands . . . [to] take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C. § 1732(b). Before authorizing mineral activity where the Leases are located, the Bureau is required by law to find that it is in the best interests of the United States and to obtain the consent of the Forest Service. 16 U.S.C. § 508b. The Forest Service has statutory duties to consider wilderness, habitat, recreational, spiritual, non-extractive business, and other non-mining values in managing National Forest System Lands, *see* 16 U.S.C. § 1600(2), (3), and to preserve the wilderness character and values of the Boundary Waters, Pub. L. 95-495, 92 Stat. 1649 (1978), including by protecting the Boundary Waters from potentially harmful external activities, 16 U.S.C. § 1133(b). The laws described in this paragraph protect the interests of Plaintiff groups and their members in the Boundary Waters, the leased land, and the areas surrounding the leased land.

39. Plaintiffs participated extensively in the Bureau's administrative process, including commenting on the Environmental Assessment for the lease renewals. Plaintiffs have exhausted administrative remedies.

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DEFENDANTS

40. Defendant David Bernhardt is sued in his official capacity as Secretary of the Interior. Secretary Bernhardt heads the U.S. Department of the Interior, the Cabinet-level agency responsible for the Lease renewals.

41. Defendant Bureau of Land Management is an agency of the U.S. Department of the Interior authorized to allow mining on the land covered by the Leases on behalf of the Secretary of the Interior if it is in the best interests of the United States, and with the consent of the Secretary of Agriculture.

42. Defendant ~~Gary Torres~~Mitchell Leverette is sued in his official capacity as ~~Acting~~ Eastern States Director for the Bureau of Land Management. The Eastern States Director for the Bureau of Land Management signed the Decision Record approving the Lease renewals.

43. Defendant Dean Gettinger is sued in his official capacity as District Manager for the Northeastern States District for the Bureau of Land Management. Mr. Gettinger signed the Finding of No Significant Impact for the Lease renewals.

44. Defendant Casey Hammond is sued in his official capacity as Acting Assistant Secretary for Land and Minerals Management for the United States Department of the Interior. The Assistant Secretary for Land and Minerals Management for the U.S. Department of the Interior signed the Lease renewals Decision Record after the Eastern States Director for the Bureau of Land Management, concurring in that decision and making it final agency action.

45. Defendant U.S. Department of the Interior is a Cabinet-level agency that manages the country's natural and cultural resources.

46. Defendant U.S. Forest Service is an agency of the U.S. Department of Agriculture and is responsible for the management and protection of the Superior National Forest and

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Boundary Waters Canoe Area Wilderness. In that capacity, the Forest Service has jurisdiction and responsibility to protect and maintain the character and quality of the Boundary Waters Canoe Area Wilderness and to withhold consent to any mineral leasing that it finds would adversely affect the Boundary Waters.

47. Defendant U.S. Department of Agriculture is a Cabinet-level agency that is responsible for the management and protection of the Superior National Forest and Boundary Waters Canoe Area Wilderness.

48. Defendant Victoria Christiansen is sued in her official capacity as Chief of the Forest Service.

LEGAL BACKGROUND

I. STATUTORY AND REGULATORY REQUIREMENTS FOR ENSURING ENVIRONMENTAL PROTECTION PRIOR TO ISSUING MINERAL LEASES ON PUBLIC LAND

49. Mineral leasing on more than ninety percent of the land that is the subject of the Leases at issue in this case is governed by 16 U.S.C. § 508b. This statute allows the Secretary of the Interior to permit mineral prospecting, development, and utilization on certain lands in the national forests in Minnesota otherwise withdrawn from the mining laws of the United States, but requires that the Secretary of the Interior act in the best interests of the United States. *Id.* The Secretary of the Interior "shall not" permit mineral development or utilization on § 508b lands without the consent of the Secretary of Agriculture. *Id.*

50. In determining whether to consent to mineral development or utilization on § 508b lands, the Forest Service, acting for the Secretary of Agriculture, is bound by the Wilderness Act, the Boundary Waters Act, and the National Forest Management Act ("NFMA"). The Wilderness Act charges the Forest Service with preserving the wilderness character of the

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Boundary Waters, including by protecting the Boundary Waters from potentially harmful external activities. *See* 16 U.S.C. § 1133(b). The Boundary Waters Act directs the Forest Service to "minimize to the maximum extent possible, the environmental impacts associated with mineral development affecting" the Boundary Waters and Mining Protection Area. Pub. L. 95-495, §§ 1-2, 92 Stat. 1649 (1978). NFMA requires the Forest Service to consider wilderness, habitat, recreational, spiritual, non-extractive business, and other non-mining values on National Forest System Lands when managing those lands. *See* 16 U.S.C. § 1600(2)-(3). Consistent with these directives, the 2004 Superior National Forest Plan requires that the Forest Service manage the Boundary Waters in a manner that "perpetuates and protects its unique natural ecosystems, provides an enduring wilderness resource for future generations, and provides opportunities for a primitive and unconfined recreation experience." 2004 Superior National Forest Plan at 2-50.

51. Mineral leasing on the remainder of the land that is the subject of the Leases is governed by the Weeks Act, 16 U.S.C. § 520. This provision allows the Secretary of Agriculture to permit mineral prospecting, development, and utilization on forest lands acquired under the Weeks Act. *Id.* In doing so, the Secretary of Agriculture must act in the best interests of the United States. *Id.* Section 402 of the Reorganization Plan No. 3 of 1946 transfers the functions of the Secretary of Agriculture under § 520 to the Secretary of the Interior, but provides that the Secretary of the Interior may only authorize mineral activity when the Secretary of Agriculture determines that it will not interfere with the primary purposes for which the land was acquired. The Bureau, acting for the Secretary of the Interior, must consider environmental impacts before granting a lease under Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099. 43 C.F.R. § 3507.19(b).

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52. The FLPMA requires the Bureau to "manage the public lands under principles of multiple use and sustained yield," and to "take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C. § 1732. These principles require balancing the potential economic benefits of additional mining against the possible risks to environmental and cultural resources.

53. 16 U.S.C. § 508b, 16 U.S.C. § 520, Section 402 of Reorganization Plan No. 3 of 1946, and FLPMA require the Bureau to consider environmental values on public lands on and around the Leases, including the Boundary Waters, in exercising its discretion with respect to the Leases.

II. THE NATIONAL ENVIRONMENTAL POLICY ACT

54. NEPA is "our basic national charter for protection of the environment." 40 C.F.R. § 1500.1(a).

55. NEPA's goals are to (1) "prevent or eliminate damage to the environment and biosphere," (2) "stimulate the health and welfare of" all people, and (3) "encourage productive and enjoyable harmony" between human kind and the environment. 42 U.S.C. § 4321. NEPA recognizes that "each person should enjoy a healthful environment" and ensures that the federal government uses all practicable means to "fulfill the responsibilities of each generation as trustee of the environment for succeeding generations" and "assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings." *Id.* § 4331(b)-(c).

56. To fulfill these purposes, NEPA requires that: (1) agencies take a "hard look" at the environmental impacts of their actions before the actions occur, thereby ensuring "that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts," and (2) "the relevant information

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will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

57. NEPA requires federal agencies to prepare an EIS for "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). To determine whether the nature and extent of a proposed action's environmental effects requires preparing an EIS, federal agencies prepare an EA. 40 C.F.R. § 1501.4(b)-(c). If, on the basis of the EA, the agency finds that the proposed action will produce "no significant impact" on the environment, then an EIS need not be prepared. *Id*. § 1501.4(e). An agency's finding of "no significant impact" and consequent decision not to prepare an EIS can be overturned if the decision was arbitrary, capricious, or an abuse of discretion. *See, e.g.*, *Am. Rivers v. Fed. Energy Regulatory Comm'n*, 895 F.3d 32, 49-52 (D.C. Cir. 2018).

58. A finding of "no significant impact" will be overturned when an agency commits to an action that will significantly affect the environment without evaluating the impacts of the decision. NEPA requires an agency to evaluate the environmental effects of its action at the point of commitment. This "critical agency decision" is made when the decision results in "irreversible and irretrievable commitments of resources" to an action that will affect the environment. *Sierra Club v. Peterson*, 717 F.2d 1409, 1414 (D.C. Cir. 1983). In the mineral leasing context, an agency makes "irreversible and irretrievable commitments of resources" when it issues a lease without reserving absolute authority to prevent development on the lease. *Id*. at 1414-15. If it has issued a lease without reserving absolute authority to prevent development, the agency must prepare an EIS that examines the consequences of the ultimate development on the lease. *Id.* at 1415.

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59. Among other things, the agency's NEPA analysis must assess the cumulative impacts of the action "result[ing] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions." 40 C.F.R. §§ 1508.7, 1508.27(b)(7). This analysis must include more than "conclusory remarks, statements that do not equip a decisionmaker to make an informed decision about alternative courses of action." *Nat. Res. Def. Council, Inc. v. Hodel*, 865 F.2d 288, 298 (D.C. Cir. 1988). An agency must prepare an EIS if it is reasonable to anticipate a cumulatively significant impact on the environment. *Grand Canyon Tr. v. Fed. Aviation Admin.*, 290 F.3d 339, 346 (D.C. Cir. 2002).

60. As part of its NEPA review, an agency is also required to prepare a detailed statement regarding the alternatives to a proposed action. *See* 42 U.S.C. § 4332(2)(C)(iii), (E). This alternatives analysis is the "heart" of NEPA review. 40 C.F.R. § 1502.14; *see also id.* § 1508.9(b). Consideration of reasonable alternatives is necessary to ensure that the agency has taken into account all possible approaches to, and potential environmental impacts of, a particular project. *Calvert Cliffs' Coordinating Comm., Inc. v. U. S. Atomic Energy Comm'n*, 449 F.2d 1109, 1114 (D.C. Cir. 1971). An agency must "[r]igorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. § 1502.14(a). These alternatives must include a "no-action" alternative. *Transmission Access Policy Study Grp. v. Fed. Energy Regulatory Comm'n*, 225 F.3d 667, 736 (D.C. Cir. 2000). The "no-action" alternative for when an agency is approving a proposed activity "would mean the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward." Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026, 18,027 (Mar. 23, 1981). This is true even if the agency is "under a court order or

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legislative command to act." *Id.* When a member of the public proposes an alternative for the agency to consider, the agency must also give a reasoned explanation for why it has rejected a proffered alternative. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 50 (1983) (requiring a rational connection between "the facts found and the choice made").

III. THE ADMINISTRATIVE PROCEDURE ACT

61. The APA provides a right to judicial review for any "person suffering legal wrong because of agency action." 5 U.S.C. § 702. Final agency actions "for which there is no other adequate remedy in a court" are reviewable under the APA. *Id.* § 704.

62. Under the APA, a reviewing court shall "hold unlawful and set aside agency action . . . found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Id.* § 706(2)(A). Agency actions may also be set aside if the action is "without observance of procedure required by law." *Id.* § 706(2)(D). Courts will also set aside agency action that contradicts an agency's prior position, "when, for example, its new policy rests upon factual findings that contradict those which underlay its prior policy" and the agency has given no reasoned justification for the change. *Fed. Commc'ns Comm'n v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). "[W]hen an agency rescinds a prior policy its reasoned analysis must consider the alternatives that are within the ambit of the existing policy." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1913 (2020) (internal quotations and alterations omitted).

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63. Courts will also set aside agency action as arbitrary and capricious when it is the product of undue political interference. *Aera Energy LLC v. Salazar*, 642 F.3d 212, 220 (D.C. Cir. 2011) (explaining that political pressure will invalidate agency action "when it shapes, in whole or in part, the judgment of the ultimate agency decisionmaker"); *D.C. Fed'n of Civic Ass'ns v. Volpe*, 459 F.2d 1231, 1246 (D.C. Cir. 1971) (an agency decision to approve a project would be arbitrary and capricious where it was "based in whole or in part on the pressures emanating" from a member of Congress). When a decisionmaker "suddenly" reverses course or reaches "a weakly-supported determination" after being pressured by Congress, courts may infer that undue political pressure "may have caused the agency to take action it was not otherwise planning to take." *Connecticut v. U.S. Dep't of the Interior*, 363 F. Supp. 3d 45, 64-65 (D.D.C. 2019) (quoting *ATX, Inc. v. U.S. Dep't of Transp.*, 41 F.3d 1522, 1529 (D.C. Cir. 1994)).

FACTUAL BACKGROUND

I. THE BOUNDARY WATERS CANOE AREA WILDERNESS, A 1.1-MILLION ACRE PROTECTED EXPANSE IN NORTHEASTERN MINNESOTA, OFFERS EXCEPTIONAL AND UNIQUE WILDERNESS EXPERIENCES

~~63.~~64. The Leases at issue are adjacent to the Boundary Waters, a 1.1-million-acre wilderness in the Superior National Forest in northeastern Minnesota. With 250,000 visitors annually, it is the most visited wilderness in the United States. The Boundary Waters contains more than 1,000 lakes, over 1,200 miles of canoe routes, and 2,000 remote water-access-only campsites. Visitors canoe the wilderness, as well as fish, hike, camp, cross-country ski, dog sled, harvest wild rice and other edible wild plants, and hunt. The outfitters, guides, and other Minnesota businesses that cater to summer-only visitors who enter the Boundary Waters generate tens of millions of dollars annually in direct economic benefits to the region. The

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Boundary Waters provides important habitat for loons, pike, trout, walleye, grouse, eagles, great gray owls, moose, deer, beavers, bears, wolves, bobcats, lynx, bats, waterfowl, over a hundred species of migratory breeding birds, and many other kinds of wildlife, including three species listed as threatened under the Endangered Species Act, 16 U.S.C. §§ 1531-1544. The U.S. Fish and Wildlife Service has designated most of the Boundary Waters and Superior National Forest as critical habitat for the threatened Canada lynx and gray wolf.

~~64.~~65. For nearly a century, Congress and the Executive Branch have recognized that the Boundary Waters is a resource of national importance worthy of special consideration and protection. In 1909, President Theodore Roosevelt created the Superior National Forest from previously withdrawn public domain lands, including parts of what was later designated the Boundary Waters Canoe Area Wilderness. In 1926, Secretary of Agriculture W. M. Jardine set aside 640,000 acres of the Superior National Forest as roadless wilderness, writing, "[t]he purpose of this program is to conserve the value of the Superior National Forest as a game and fish country. . . . Not less than one thousand square miles containing the best of the lakes and waterways will be kept as wilderness recreation areas." In 1938, the Forest Service established the Superior Roadless Primitive Area along boundaries similar to the modern Boundary Waters. In 1964, Congress passed the Wilderness Act "to secure for the American people of present and future generations the benefits of an enduring resource of wilderness," making the Boundary Waters Canoe Area part of the new National Wilderness Preservation System.
16 U.S.C. § 1131(a). Most recently, in 1978, Congress passed the Boundary Waters Act, which expanded and enhanced protections for the Boundary Waters and added a Mining Protection Area. Pub. L. No. 95-495, 92 Stat. 1649 (1978). Congress recognized "the special qualities of the area as a natural forest-lakeland wilderness ecosystem of major esthetic, cultural, scientific,

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recreational and educational value to the Nation," and sought among other things to "minimize to the maximum extent possible, the environmental impacts associated with mineral development affecting" the Boundary Waters and Mining Protection Area. *Id.*, §§ 1-2.

~~65.~~66. The Superior National Forest, including the Boundary Waters, is an outstanding freshwater resource. The Superior National Forest holds 20 percent of the fresh water in the entire National Forest System. These water-rich Minnesota forests purify water, sustain surface and ground water flow, maintain fish habitat, control erosion, and stabilize streambanks.

~~66.~~67. The Boundary Waters is among the most expansive, wild, untrammeled places in the United States. The largest wilderness area east of the Rocky Mountains and north of the Everglades, the Boundary Waters was recognized by the National Geographic Society as one of "50 Places of a Lifetime" in the entire planet—under the category "Paradise Found"—and the only one in the Midwest. *See* National Geographic Traveler, 50 Places of a Lifetime (1999). To preserve the wilderness character of the Boundary Waters, the Forest Service allows camping only on designated campsites, limits the number of persons who can enter the Boundary Waters each day, and restricts entry to specific, numbered and designated entry points.

II. MINING ON THE LEASES POSES SERIOUS RISKS TO THE BOUNDARY WATERS CANOE AREA WILDERNESS

~~67.~~68. The Leases are adjacent to the Boundary Waters and are in the Rainy River watershed, upstream and downstream of the Boundary Waters, and upstream of Quetico Provincial Park and Voyageurs National Park. The Leases include approximately 4,864 acres of land in the Superior National Forest on either side of Minnesota Highway 1, southwest of Ely,

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Minnesota. Specifically, Lease MNES 01353 lies immediately adjacent to the Boundary Waters and southwest of Boundary Waters entry points 32 and 33, which are at the South Kawishiwi River and Little Gabbro Lake, respectively. Lease MNES 01352 is three miles to the southwest of those entry points, straddling the eastern end of Birch Lake, and extending along the south side of the South Kawishiwi River. Surface water in the leased area drains directly into the Boundary Waters and from there into Voyageurs National Park and the Quetico Provincial Park in Ontario, Canada.

~~68.~~69. Twin Metals intends to develop a copper-nickel sulfide ore mine on the Leases. Mining in sulfide-bearing mineral deposits causes significant pollution of air and the surrounding landscape by the deposition of air pollution and water pollution. When sulfide in rock is exposed to air and water by mining, it produces a chemical reaction that creates sulfuric acid. Sulfuric acid then leaches heavy metals from the rock, rock dust, and tailings. A process called acid mine drainage occurs when water collects the acid and metals and then drains or leaks from the mine complex. All major elements of a mining operation can produce acid mine drainage, and mine drainage may not become acidic until years or decades after mining has commenced. Even when mine drainage is not acidic, it consistently includes toxic heavy metals and sulfate, which in low-sulfate waters plays a significant role in the formation of methyl-mercury, the form of mercury that bio-accumulates in nature and poses serious hazards to human and animal health. Hardrock mining in sulfide-bearing mineralizations is known worldwide for producing acid mine drainage that requires continuous management and perpetual treatment. With this continuous management and perpetual treatment come a perpetual risk of contamination due to treatment or containment failure, insolvency, political events, geological events, and weather events. Acidic or not, mine

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drainage adversely affects fish populations and aquatic ecosystems with both direct effects on aquatic life and indirect effects on food supplies and habitat.

~~69.~~70. A copper-nickel sulfide ore mine on the Leases would threaten the integrity of water resources in the Superior National Forest, including the Boundary Waters. The hydrogeology and high degree of interconnectedness of water bodies in northeastern Minnesota makes the area especially susceptible to degradation of water quality. Surface waters of northeastern Minnesota are especially sensitive to changes in pH, acid deposition, and acid runoff. Unlike in some other regions, the bedrock, surficial deposits, and soils of northeastern Minnesota have little capacity to neutralize acids, and the waters are naturally very low in sulfate.

~~70.~~71. Should the Boundary Waters be contaminated by acid mine drainage from a copper-nickel sulfide ore mine on the Leases, it is unlikely that the damage could be successfully remediated. Moreover, all or almost all of the methods available to remediate acid mine drainage would cause additional damage the Boundary Waters' ecosystem, watershed, and wilderness values.

~~71.~~72. In addition to the threat from mine drainage, a copper-nickel sulfide ore mine would degrade the wilderness character of the Boundary Waters and its associated recreational opportunities, ecosystem services, and wildlife habitat. Mining would introduce significant noise and air pollution likely to continue 24 hours per day and 365 days per year, as well as long-term water pollution, contamination of fish and wildlife, and scenic disruption from construction and operation of an industrial mining district.

~~72.~~73. Sulfide-ore copper-nickel mining would also have long-lasting negative effects on fish and wildlife. The Superior National Forest and Boundary Waters forest landscape would be

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altered such that it could no longer provide a habitat for the diverse species and complex chains of life within the forest. Mine construction would counter proper management of critical Canada lynx and gray wolf habitat within the Boundary Waters and Superior National Forest, habitat which would be difficult, if not impossible, to return to its original state if destroyed. A mining complex would also cause habitat fragmentation and devastating loss of forest habitat on the edge of the Boundary Waters, harming moose, northern long-eared bat, gray wolf, and other species' habitat as a result.

III. HISTORY OF THE BUREAU'S UNLAWFUL RENEWAL OF THE LEASES DESPITE THE RISK TO THE BOUNDARY WATERS

~~73.~~74. The Bureau originally issued Leases MNES 01352 and MNES 01353 to the International Nickel Company, Inc. on June 14, 1966, for a primary term of 20 years. The purpose of the Leases was to grant an exclusive right to mine for nickel, copper, and associated minerals on the leased land. After the Bureau granted the Leases to the International Nickel Company, the Leases were assigned to new entities three times. Twin Metals is now the successor in interest of the International Nickel Company with respect to the Leases. No lessee has developed a mine or begun any mineral production on the Leases. There is no record showing that the Forest Service consented to the Leases prior to their issuance in 1966.

~~74.~~75. On May 14, 1986, the lessee applied to renew the Leases. On June 8, 1986, the Bureau requested that the Forest Service advise the Bureau whether the Forest Service had any objections to renewal of the Leases. On June 19, 1987, the Forest Service consented to renewal of the Leases for a ten-year period. The Bureau renewed the Leases for a ten-year period effective July 1, 1989.

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~~75.~~76. On March 25, 1999, the Bureau requested the Forest Service's consent regarding a second request by the lessee to renew the Leases. On July 18, 2003, the Forest Service replied that it had no objection. The Bureau renewed the Leases for a second ten-year period on January 1, 2004.

~~76.~~77. On October ~~21~~16, 2012, Twin Metals applied for a third renewal of the Leases.

~~77.~~78. In processing the application for the third renewal, the Bureau asked the then-Solicitor of the Department of the Interior, Hilary C. Tompkins, for guidance on whether it had discretion to grant or deny the application for renewal of the Leases. On March 8, 2016, Solicitor Tompkins issued a Memorandum Opinion, M-37036, concluding that Twin Metals Minnesota did not have a non-discretionary right to renewal, but rather the Bureau had discretion to grant or deny the pending renewal application.

~~78.~~79. On June 3, 2016, the Bureau requested a decision from the Forest Service on whether it consented to a third renewal. The Forest Service announced that it was considering withholding consent, solicited public input on the issue, and held two listening sessions in Minnesota. On December 14, 2016, after months of deliberation, the Forest Service responded to the Bureau by withholding consent to the third renewal of the Leases.

~~79.~~80. In the December 14, 2016 letter withholding its consent to renewal of the Leases, the Forest Service found that developing a copper-nickel sulfide-ore mine on the Leases would pose an "unacceptable . . . inherent potential risk that development of a regionally-untested copper-nickel sulfide ore mine within the same watershed as the [Boundary Waters] might cause serious and irreplaceable harm to this unique, iconic, and irreplaceable wilderness area." The Forest Service found that "[t]here is a direct flow of water from the lands subject to the [Leases] to the [Boundary Waters]." It also found that "[a]ll of the waste rock and tailings derived from

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the sulfide ore bodies on the Leases would have a high likelihood of oxidizing and becoming sources of [acid mine drainage]" and that once water was contaminated with acid mine drainage, "very few of the available containment and remediation strategies would be compatible with maintaining the [Boundary Water's] quality and character." The Forest Service therefore determined it was "incumbent upon" it to withhold its consent to lease renewal, and that failing to prevent damage to the Boundary Waters that could be caused by mining on the Leases would be inconsistent with its obligations under the Boundary Waters Act. to "protect the special qualities of the [Boundary Waters] as a natural forest-lakeland wilderness ecosystem of major esthetic, cultural, scientific, recreational and education value to the Nation."

80.81. In its letter withholding consent, the Forest Service also noted the lengthy history of federal legislative protection for the Boundary Waters and surrounding areas, including outright bans on mining in the Boundary Waters and the Mining Protection Area, and the special requirement to obtain Forest Service consent for mining of federally-owned minerals in the Superior National Forest.

81.82. On December 15, 2016, the Bureau rejected Twin Metals' October 2012 application to renew the Leases, citing the Forest Service's denial of consent, and the Leases expired.

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82.83. On December 22, 2017, more than a year after the Leases expired and more than five years after the last renewal application, then-Principal Deputy Solicitor of the Department of the Interior Daniel Jorjani issued an opinion about the expired Leases, Memorandum Opinion M-37049, concluding that the Bureau had no discretion to deny Twin Metals' 2012 renewal request.

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~~83.~~84. On May 2, 2018, the Bureau rescinded its December 15, 2016, decision denying Twin Metals' 2012 application to renew the Leases. At the same time, the Bureau reinstated the Leases as written in 2004, as well as Twin Metals' 2012 application to renew the Leases.

~~84.~~85. Plaintiffs filed three suits against the Bureau in the U.S. District Court for the District of Columbia challenging the Bureau's reinstatement decision as violating the APA. *Voyageur Outward Bound Sch. v. United States*, No. 1:18-CV-01463 (TNM) (consolidated cases). Twin Metals joined as a defendant-intervenor. On March 17, 2020, the Court issued a final, appealable order granting summary judgment for the defendants. On April 17, 2020, Plaintiffs in the consolidated case filed notices of appeal to the U.S. Court of Appeals for the District of Columbia Circuit. *Voyageur Outward Bound Sch. v. United States,* No. 20-5097 (D.C. Cir. April 20, 2020) (consolidated cases).

86. In December, 2018, the Bureau issued a draft environmental assessment analyzing the lease renewal. The draft EA included a lease stipulation recognizing the Forest Service's ongoing consent authority under 16 U.S.C. § 508b and providing that future renewals of the leases could only be issued with consent of the Forest Service. The stipulation read: "[n]otwithstanding any other provision, any renewal of this lease is subject to, and may only be issued after, the prior consent of the Forest Service. As a condition of such consent, if any, the Forest Service may prescribe terms and stipulations, for the protection of [National Forest System] resources and uses, and such terms and stipulations shall become requirements of any renewed lease."

87. On January 31, 2019, a legislative assistant for Congressman Tom Emmer emailed the Congressional liaison representing the Forest Service. In his email, he wrote "Hey Rob, I told you on Monday I'd be lobbying you soon. I just didn't expect it to be this soon. Not

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lobbying you per se, but hoping to hop on a call regarding the Twin Metals Minnesota lease renewal at some point over the next few days. Happy to work with your schedule or to coordinate if you're on the hill anytime soon. Also cc'ing my counterpart in [Congressman Pete] Stauber's office, who may want join." The email reflects both a call and a subsequent in-person meeting between Forest Service and the Congressional staff.

88. On March 1, 2019, a legislative assistant for Congressman Pete Stauber emailed the same Congressional liaison representing the Forest Service. In his email, he wrote "I just wanted to touch base on the Twin Metals situation. The company is getting increasingly concerned about the stipulations put forward by the Forest Service on the up or down vote they require for mineral lease renewals every ten years. Both Reps. Emmer and Stauber are increasingly concerned that these stipulations could deter Twin Metals from making further investment in the area and slow down economic development in turn. Do you mind setting up a quick call next week where we can recenter and get on the same page?" The email chain concludes by setting up the requested meeting.

89. Subsequently, Members of Congress pressured the Forest Service to change provisions requiring future Forest Service consent to lease renewal.

~~85.~~90. On May 15, 2019, the Bureau renewed the Leases for an additional ten-year period. The Bureau ~~added~~included new discretionary stipulations. Unlike the 1966 and 2004 Leases, the renewed Leases established by stipulation: (1) a right to perpetual renewal of the Leases if Twin Metals complies with the Leases' terms and stipulations; and (2) a stipulation that if Twin Metals fails to meet certain milestones for developing and constructing a mine during the 10-year renewal period, the Leases will terminate, but with provisions that can toll the Leases' term.

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~~86.~~91. The Forest Service did not withdraw its December 14, 2016 findings that developing a mine would pose "unacceptable . . . inherent potential risk." Nonetheless, the Forest Service included no stipulations to the Leases to prevent those risks and even ~~worked with the Bureau~~agreed to add stipulations that would limit the Forest Service's ability to withhold consent to future renewals~~, including~~. The Forest Service consented to removal of the stipulation included in the draft EA that "renewal of this lease is subject to, and may only be issued after, the prior consent of the Forest Service." In its place, the Forest Service agreed to the inclusion of a stipulation that "if the lessee is in full compliance with the terms and conditions of this lease, the Forest Service will provide consent to a renewal, subject to any reasonable adjustments as described in Section 14." (Emphasis added.) It also agreed to stipulations aimed at promoting mining on the Leases, including a "diligent development and continued operation" requirement. The Forest Service provided no explanation for its change in position.

~~87.~~92. In conjunction with its decision to renew the Leases, the Bureau prepared an EA pursuant to NEPA. However, the EA did not take a hard look at the environmental impacts of mining on the Leases even though (i) the Leases conveyed the right to mine without reserving absolute authority to the Bureau to prevent development on the Leases and (ii) the Bureau considered mining to be a cumulative impact to leasing. The EA also did not consider a true "no action" alternative comparing the proposed mine to no mine. Finally, the EA did not consider other reasonable alternatives to leasing presented by the public, including alternative stipulations that would have reserved the Bureau's authority to prevent development and alternative stipulations that would have been more protective of the environment.

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CAUSES OF ACTION

COUNT I—ARBITRARY AND CAPRICIOUS ACTION (AGAINST THE FOREST SERVICE)

~~88.~~93. All preceding paragraphs are hereby incorporated as if fully set forth herein.

~~89.~~94. In 2016, the Forest Service made factual findings that developing a mine in accordance with the Leases would have the potential to result in acid mine drainage and cause extreme environmental harm to the Boundary Waters.

~~90.~~95. The Forest Service therefore determined that renewing Twin Metals' Leases would pose an "unacceptable . . . inherent potential risk that development of a regionally-untested copper-nickel sulfide ore mine within the same watershed as the [Boundary Waters] might cause serious and irreplaceable harm to this unique, iconic, and irreplaceable wilderness area," and refused to consent to lease renewal.

~~91.~~96. The Forest Service has not withdrawn these factual findings or its determination that it must withhold consent to lease renewal in order to protect the Boundary Waters.

~~92.~~97. The Forest Service has the right to withhold consent to lease renewals under 16 U.S.C. § 508b. The Forest Service also has the right and obligation under the terms of the Leases, and under, among other ~~authority~~authorities, 16 U.S.C. § 508b~~;~~, Section 402 of Reorganization Plan No. 3 of 1946~~;~~, the Boundary Waters Act~~;~~, the Wilderness Act~~;~~, and NFMA, to include lease stipulations it deems necessary to protect the surface resources. Concomitantly, the Forest Service has the right and obligation to object to and to deny consent to stipulations that would interfere with its ability to protect and maintain the character and quality of the Boundary Waters.

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~~93.~~98. The Forest Service consented to or failed to object to lease stipulations on the renewed Leases that encourage development of a mine without preventing the impacts cited in its 2016 analysis and that would limit its ability to withhold consent to future renewals. ~~This directly contradicts its previous position, and violates 16 U.S.C. § 508b, which on its face requires the Forest Service's consent through the Secretary of Agriculture for any development and utilization of mineral deposits in the Boundary Waters~~This directly contradicts its previous position that it was obligated to take action to "protect the special qualities of the [Boundary Waters] as a natural forest-lakeland wilderness ecosystem of major esthetic, cultural, scientific, recreational and education value to the Nation." The Forest Service has offered no justification for its policy reversal, which rests upon factual findings that contradict those which underlay its prior policy. Nor did it consider other lease stipulation options that would have protected the character and quality of the Boundary Waters, within the ambit of its previous position that it was obligated to protect the area.

99. ~~The Forest Service has offered no justification for its policy reversal, which "rests upon factual findings that contradict those which underlay its prior policy." *Fed. Comme'ns Comm'n*~~The Forest Service's consent to a lease stipulation limiting its ability to withhold consent to future lease renewals was a result of undue political interference from Members of Congress and is therefore arbitrary and capricious. The Forest Service has a statutory right under 16 U.S.C. § 508b to withhold consent to future lease renewals, and the renewed Leases initially included a stipulation confirming as much. After Members of Congress pressured the Forest Service to abandon this statutory right out of concern that it could "deter" Twin Metals from making further investment in the area, the Forest Service reversed course, consented to removing the stipulation, and in its place agreed to a stipulation that it "will" provide consent to renewal so

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long as Twin Metals remains in compliance with the terms and conditions of the Leases. The Forest Service provided no explanation for why it curtailed its own authority and consented to this new stipulation.

~~94.~~ The Forest Service's consenting ~~v. *Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (explaining that an agency must provide a detailed justification for changing positions "when, for example, its new policy rests upon factual findings that contradict those which underlay its prior policy").~~

~~95.~~100. ~~The Forest Service's decision to agree~~, or ~~fail~~failing to object, to~~,~~ stipulations on the renewed Leases promoting development of the Leases without preventing the impacts it described in its 2016 conclusion and curtailing its own authority, including under 16 U.S.C. § 508b and Section 402 of Reorganization Plan No. 3 of 1946, was arbitrary and capricious and not in accordance with law under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

COUNT II—VIOLATION OF NEPA, FAILURE TO PREPARE AN EIS (AGAINST THE BUREAU)

~~96.~~101. All preceding paragraphs are hereby incorporated as if fully set forth herein.

~~97.~~102. Under NEPA, an agency must prepare an EIS before it makes an "irreversible and irretrievable commitment of resources" to an action that will significantly affect the environment. 42 U.S.C. § 4332(C); *Sierra Club v. Peterson*, 717 F.2d 1409 (D.C. Cir. 1983).

~~98.~~103. The Bureau's renewal of Twin Metals' Leases was an "irreversible and irretrievable commitment of resources" by the Bureau to allow mine development causing

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significant impacts to the environment, because the Bureau did not withhold absolute authority to prevent development on the Leases.

~~99.~~104. The Bureau did not produce an EIS prior to its renewal of the mine Leases.

~~100.~~105. The Bureau's failure to prepare an EIS evaluating the environmental impacts of mine development violated NEPA. 42 U.S.C. § 4332(2)(C). The Bureau's approval of the Leases was therefore arbitrary, capricious, not in accordance with law, and not in accordance with the procedures required by law. 5 U.S.C. § 706(2)(A), (D).

COUNT III—VIOLATION OF NEPA, FAILURE TO ADEQUATELY CONSIDER CUMULATIVE IMPACTS (AGAINST THE BUREAU)

~~101.~~106. All preceding paragraphs are hereby incorporated as if fully set forth herein.

~~102.~~107. An agency's NEPA analysis must assess the cumulative impacts of the action "result[ing] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions." 40 C.F.R. §§ 1508.7, 1508.27(b)(7). This analysis must include quantified and detailed information. General statements about possible effects and some risk do not constitute a hard look. An agency must prepare an EIS if it is reasonable to anticipate a cumulatively significant impact on the environment.

~~103.~~108. The Bureau has determined that mining is a cumulative action to the Lease renewal.

~~104.~~109. Nevertheless, the EA considers the impacts of mining in only generalized, conclusory statements that fail to take a hard look at the impacts of mining.

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~~105.~~110. The Bureau's failure to adequately analyze cumulative impacts of the Lease renewal violated NEPA. 40 C.F.R. §§ 1508.7, 1508.27(b)(7). The Bureau's approval of the Leases was therefore arbitrary, capricious, not in accordance with law, and not in accordance with the procedures required by law. 5 U.S.C. § 706(2)(A), (D).

COUNT IV—VIOLATION OF NEPA, FAILURE TO CONSIDER ALTERNATIVES (AGAINST THE BUREAU)

~~106.~~111. All preceding paragraphs are hereby incorporated as if fully set forth herein.

~~107.~~112. Under NEPA, an agency is required to prepare a detailed statement regarding the alternatives to a proposed action. *See* 42 U.S.C. § 4332(2)(C)(iii), (E); 40 C.F.R. § 1508.9(b). These alternatives must include a no-action alternative. And when the public proposes an alternative for the agency to consider, the agency must also give a reasoned explanation for why it has rejected a proffered alternative.

~~108.~~113. The Bureau failed to consider a true no-action alternative of no mining on the Leases. It also failed to consider other reasonable alternatives suggested by the public without a reasoned explanation for rejecting them.

~~109.~~114. The Bureau's failure to adequately consider these alternatives violated NEPA. 42 U.S.C. § 4332(2)(C)(iii), (E); 40 C.F.R. § 1502.14. The Bureau's approval of the Leases was therefore arbitrary, capricious, not in accordance with law, and not in accordance with the procedures required by law. 5 U.S.C. § 706(2)(A), (D).

PRAYER FOR RELIEF

Therefore, Plaintiffs respectfully request that the Court:

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A. Issue a declaratory judgment that the Forest Service's decision to agree to stipulations on the renewed Leases promoting development of the Leases without precluding impacts it previously identified and curtailing its own authority was arbitrary and capricious and not in accordance with law under the APA, 5 U.S.C. § 706(2)(A);

B. Issue a declaratory judgment that the Bureau violated NEPA in renewing the Leases;

C. Issue an order setting aside as unlawful the decision record approving the lease renewal, the underlying EA and Finding of No Significant Impact, and the renewed Leases;

D. Enter any other appropriate injunctive relief to ensure that the Defendants comply with NEPA and the APA, and to prevent irreparable harm to the Plaintiffs and to the environment until such compliance occurs;

E. Award Plaintiffs the costs of this action, including reasonable attorneys' fees, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412;

F. Retain continuing jurisdiction over this matter until Defendants remedy the violations of law identified herein; and

G. Grant such other relief as the Court deems just and proper.

Dated this ~~6th~~27th day of ~~May~~August, 2020.

Respectfully submitted,

s/ Eric P. Jorgensen

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