

October 10, 2025

Grant Wilson  
Commissioner's Designee  
Minnesota Department of Natural Resources  
500 Lafayette Road  
St. Paul, MN 55155  
grant.wilson@state.mn.us



VIA EMAIL

RE: In the Matter of the NorthMet Project Permit to Mine Application,  
OAH-60-2004-37824

Dear Designee Wilson:

The Conservation Organizations (the “COs”) send this letter in response to PolyMet Mining, Inc.’s (“PolyMet”) request of a further stay of this proceeding to November 28, 2025. Because PolyMet has indicated in this proceeding, informed the U.S. Army Corps of Engineers, and announced publicly that it intends to make changes to its mining proposal, the COs ask that the Designee lift the stay and dismiss the proceeding as moot. Once PolyMet submits a new application, or attempts to submit an “amended application,” for a Permit to Mine to the Minnesota Department of Natural Resources (“DNR”), the case would unquestionably become moot and must be immediately dismissed. Because PolyMet’s mining proposal clearly has changed, there is no appropriate path forward in this proceeding—the Designee can neither make a decision on an inaccurate and outdated record nor accept new evidence necessary for an analysis of PolyMet’s revised mining proposal. Accordingly, the COs request that the case be dismissed.

**A. PolyMet has changed its Mining Plan**

In its September 30, 2025 letter, PolyMet asserted that it “aims to have all studies complete and an amended application submitted by November 28, 2025.” Despite this assertion, PolyMet asks the Designee not to dismiss this proceeding because PolyMet may still decide to keep its current application for its Permit to Mine unchanged, or because the proposed changes may not materially implicate the issues in the contested case.

Now, the circumstances are much different than last November, when the Designee previously imposed a stay. At this point, the idea that PolyMet might not propose any changes that would affect issues in the current case simply is not plausible. PolyMet has taken 15 months to conduct studies that the company itself asserts “involve serious science and engineering effort” and it has informed the Designee that it expects those studies to “result in proposed changes that would lead to an amended application.” Sept. 30 PolyMet Letter at 1. PolyMet has informed the Designee of what it intends to do, and its intent is to change its mining proposal.

PolyMet’s pronouncements about its intent to move forward with a substantially revised plan have been even clearer outside of this proceeding. First, PolyMet has informed the federal government that it intends to introduce a new mining plan. As indicated by the federal government’s Fast 41 website for infrastructure projects, PolyMet has indicated to the U.S. Army

Corps of Engineers that it intends to file an application for a new Section 404 Clean Water Act permit, which will require a federal Supplemental Environmental Impact Statement.<sup>1</sup> This suggests that PolyMet’s plan must be significantly changed. Only substantial changes would require additional environmental review.<sup>2</sup> In addition, as the Army Corps previously determined there were “no conditions” that could be placed on PolyMet’s permit that would allow it to be issued<sup>3</sup>—minor changes alone could not be sufficient to support a new application with any possibility of being approved.

Secondly, PolyMet has announced publicly that it intends to make significant revisions to its mining proposal. In July 2025, Colin Marsh, head of external affairs for NewRange Copper Nickel (the successor of PolyMet) stated:

While final project decisions are still forthcoming as we iron out the final details, we anticipate the plan to incorporate most or all of the modifications the company announced that it would study last August. ... Proposed changes will increase mine efficiency, decrease emissions, and incorporate new tailings and water management strategies.<sup>4</sup>

These are not minor details, but critical pieces of any new mining plan. Almost any change in the mining proposal would affect its plan for storing waste, which would affect the construction,

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<sup>1</sup> Permitting Council, *Federal Infrastructure Projects: NorthMet Project*, Permitting Dashboard, <https://www.permits.performance.gov/permitting-project/fast-41-transparency-projects/northmet-project> (last visited Oct. 7, 2025) (Ex. 1). As the Designee has recognized, the Designee may take official notice of judicially cognizable facts, so long as the parties are given an opportunity to contest the facts noticed, and those facts are “not subject to reasonable dispute” because they are “capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned.” Minn. Stat. § 14.60, subd. 4; Minn. R. Evid. 201(b); Nov. 25, 2024 Order at 4-5. An official website of the federal government regarding permit applications, environmental review, and timelines for permitting is a “source whose accuracy cannot be reasonably questioned” with regard to the federal government’s expectations regarding permitting processes. If PolyMet is given an opportunity to contest the information and does not credibly do so, the Designee may take judicial notice of it for the limited purpose of determining mootness.

<sup>2</sup> U.S. Army Corps of Engineers NEPA Implementing Procedures, 33 C.F.R. § 333.34 (2025) (requiring supplements to environmental documents if there are “substantial changes to the proposed action that are relevant to environmental concerns”).

<sup>3</sup> *Revocation of CWA Section 404 Permit*, Regulatory File No. MVP-1999-05528-TJH (U.S. Army Corps Eng’rs June 6, 2023), available at [https://www.mvp.usace.army.mil/Portals/57/docs/regulatory/PolyMet/NorthMet%20Decision%20Memo\\_Signed.pdf?ver=B9KGCuLR0I6w1JfB35pR5Q%3d%3d](https://www.mvp.usace.army.mil/Portals/57/docs/regulatory/PolyMet/NorthMet%20Decision%20Memo_Signed.pdf?ver=B9KGCuLR0I6w1JfB35pR5Q%3d%3d).

<sup>4</sup> Marshall Helmberger, *Developments coming soon for NewRange*, The Timberjay (July 2, 2025), available at <https://www.timberjay.com/stories/developments-coming-soon-for-newrange,23208> (Ex. 2). This public announcement is similar to the PolyMet press release previously subject to judicial notice. Nov. 25, 2024 Order at 5. If PolyMet is given an opportunity to contest the information in this article and does not do so, the Designee may take judicial notice of it for the limited purpose of determining mootness. *Id.*

operation, and remediation of the tailings basin and thus issues related to this proceeding. Changes to tailings and water management would by definition affect issues in this case.

In sum, while the details of the changes to PolyMet's proposal have not yet been announced, the fact that the company has a significantly changed mining proposal is entirely clear. That means PolyMet's current application for a Permit to Mine is outdated and no longer accurate.

**B. PolyMet must submit a new permit application, not an “amended application”**

The fact that PolyMet has significantly changed its mining plan means that PolyMet's current, outdated application cannot move forward as it is. PolyMet asserts that the permit to mine rules allow it to amend its application, but the rule it cites authorizes changes to a *permit* to mine, not to an *application* for a permit to mine. Minn. R. 6132.4200. PolyMet does not currently hold a permit to mine. *In re NorthMet Project Permit to Mine Application*, 959 N.W.2d 731, 759-60 (Minn. 2021) (reversing and remanding Permit to Mine to DNR). Even PolyMet itself recognizes that it has a “pending permit application.” Sept. 30 PolyMet Letter, at 1. This rule does not apply.

Nor do DNR's other rules provide an avenue to amending an application once a permit to mine application has been determined complete, has been publicly noticed, and is considered to be filed. *See* Minn. R. 6132.4000 (detailing permit application process). At that point in the application process, the public is allowed to object to a mining plan, and if the proposer were allowed to amend its application thereafter, this public process would be undermined. Accordingly, PolyMet cannot amend its application. Instead, because PolyMet has evidently made significant changes to its mining proposal, it must restart the application process.<sup>5</sup>

**C. There is no clear procedural pathway for this proceeding to move forward**

Whether PolyMet appropriately files a new application or attempts to file an “amended application,” allowing this contested case to move forward while significant changes are made to its proposal would be profoundly prejudicial to the other parties to this case. Already, this proceeding has been on hold for more than a year, and the hearing was now 18 months ago. PolyMet apparently believes it may keep this proceeding on hold for as long as it wishes by simply continuing to assert that its studies are ongoing, without providing any substantive information about the studies it has performed or the direction of its revised proposal. At some point, such an approach offends fairness and renders this hearing beyond the original scope as well as the purpose of the contested case process.

Importantly, while PolyMet asserts that dismissing this case as moot would create a “procedural muddle,” in fact, an attempt to move forward with this proceeding while the underlying proposal changes would create a far greater muddle.

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<sup>5</sup> It appears that PolyMet wants to file an “amended application” instead of a new application because it believes that it may then assert that the issues in this proceeding have not materially changed, and the Designee may still issue a decision based on the existing hearing record. Sept. 30 PolyMet Letter at 1-2. In fact, this option is not open to PolyMet under DNR's rules.

Already, PolyMet is suggesting to the Designee that its changes may not materially affect issues in this case. In the COs' view, almost any changes to the mining plan would affect how reclamation occurs, which in turn would affect how reactive mine waste is stored. Resolving this dispute would require in-depth, technical analyses by all parties of the details of PolyMet's new plan to determine whether any changes would have effects on the tailings basin's construction, operation, or contents that would affect the bentonite proposal.

But there is appropriate procedure available in this contested case hearing proceeding to resolve such a dispute. As the Designee has previously pointed out, the options for an agency decision under the Minnesota Administrative Procedure Act ("MAPA") at this point are limited to accepting, modifying, or rejecting the ALJ's report. May 9, 2024 Order at 5. The Designee does not have the option of reopening the hearing record for new substantive evidence regarding PolyMet's revised mining proposal or of remanding to the ALJ to take new evidence. *Id.* at 4-5, 6. Although the Designee may take judicial notice of certain undisputed information, documents relating to a new or attempted amended application are likely to be lengthy and technical, requiring expert explanation that would be unlikely to fit under the parameters for judicial notice. And even if the Designee somehow accepted some new evidence, the parties opposing PolyMet would be at a disadvantage in countering any of PolyMet's assertions, having far less detail and far less time to analyze than PolyMet would have. There does not appear to be a way for the Designee to reach a defensible decision regarding the materiality of changes to PolyMet's mining proposal.

The other possibility—having the Designee make a decision about the safety of PolyMet's new, revised mining proposal based on technical, specific, and outdated information about an old proposal—is even more untenable. The Designee cannot determine which parts of the ALJ's report to accept, reject, or modify without information about what details of the plan have been changed.

Far from simplifying matters, forcing this proceeding forward to provide PolyMet with a decision about its outdated bentonite plan would be extremely complicated, if not impossible.

#### **D. This proceeding must be dismissed as moot**

Immediately, or certainly when PolyMet files a new—or attempts to file an amended—application, this proceeding should be dismissed as moot. The doctrine of mootness requires that a decisionmaker “decide only actual controversies and avoid advisory opinions.” *N. States Power Co. v. City of Sunfish Lake*, 659 N.W.2d 271, 274 (Minn. App. 2003) A proceeding should be dismissed as moot “when a decision on the merits is no longer necessary or an award of effective relief is no longer possible.” *Dean v. City of Winona*, 868 N.W.2d 1, 5 (Minn. 2015).

In this case, because PolyMet's mining proposal has undergone significant changes, it cannot continue to pursue the permit to mine at issue in this proceeding. A decision on a permit for an outdated mining proposal, which the proponent is no longer planning to construct, would be both a disallowed advisory decision and entirely unnecessary, as the permit would not be operable even if approved. Forcing the Designee to make extensive, detailed findings of fact on an outdated and inaccurate record for a plan abandoned by its proposer would be absurd. The alternative, attempting to brief how the two proposals differ, would create an untenable procedural situation, under which the Designee could neither accept necessary evidence nor reach an informed decision

without it. Under such circumstances, the appropriate action is to dismiss a proceeding related to the outdated application while the new application proceeds. *See Aranguiz v. Minnesota Off. of Cannabis Mgmt.*, No. A24-1873, 2025 WL 2102352, at \*3 (Minn. App. July 28, 2025) (finding appeal of license denial was moot when relators withdrew their applications and submitted new applications on a separate track).

Accordingly, the COs respectfully request that the stay not be extended, and that this proceeding be dismissed as moot. Alternatively, if the Designee extends the stay, the COs respectfully request that if and when PolyMet submits a new application or attempts to submit an amended application to DNR, the Designee be immediately informed and this case be dismissed..<sup>6</sup>

/s/Joy R. Anderson

Joy R. Anderson

Ashlynn Kendzior

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cc: Robert Cary, Minnesota DNR  
*General Counsel*

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*Counsel for Fond du Lac Band of Lake Superior Chippewa*

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*Counsel for WaterLegacy*

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<sup>6</sup> Notably, even if the Designee chooses not to take judicial notice of either of the exhibits submitted with this letter, based on PolyMet's own admissions in its Sept. 30 letter about its intent to submit an "amended application," the Designee may still require PolyMet to inform it of the submission of a new or amended application and dismiss this proceeding when such submission is made.

Home

## NorthMet Project

All dates below are specific to the schedule of the Environmental Review and Permitting processes for this project.



ENVIRONMENTAL REVIEW AND PERMITTING STATUS  
IN PROGRESS



ESTIMATED COMPLETION DATE OF ENVIRONMENTAL  
REVIEW AND PERMITTING  
06/14/2027



Project Primary Address  
**Primary Location**

Project Address  
6500 Kensington Drive  
Hoyt Lakes, MN 55750  
United States



ENVIRONMENTAL REVIEW  
AND PERMITTING  
PROCESSES  
COMPLETED



SECTOR  
Mining



CATEGORY  
Project Category FAST-41  
Transparency Projects



LEAD AGENCY  
Department of the Army,  
US Army Corps of  
Engineers - Regulatory

### Lead Agency Information:

**POC Name:** Samantha Kitchen  
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**Agency/Department:** US Army  
Corps of Engineers - Regulatory

### Sponsor Contact Information:

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### Other Agencies with Actions or Authorizations:



Department of the  
Interior, Fish and Wildlife  
Service



Minnesota

### Description:

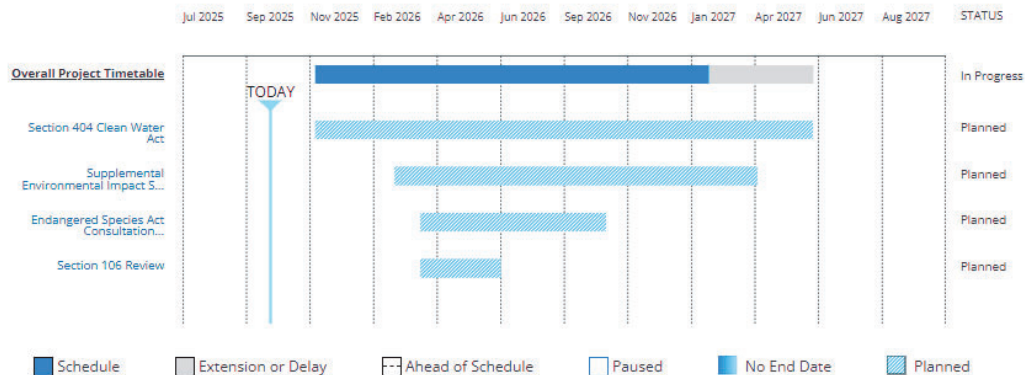
Open pit mining operation to produce copper and nickel-copper concentrates.

This project is posted in the interest of transparency and response to Executive Order 14241.

## Permitting Timetable

The permitting timetable below displays data as reported by agencies. Dates for Environmental Review and Permitting processes (Actions) that are in 'Paused' or 'Planned' status are subject to change and are not indicative of a project's final schedule.

- For information about extensions, select an Action from the timetable below and select 'View Action Details' at the bottom of the page.



### Action Information

For additional information, please select an Action from the Permitting Timetable above.

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# Developments coming soon for NewRange



(<https://beta.creativecirclecdn.com/timberjay/original/20250702-090115-7de-NweRangeBanner.jpg>)

Posted Wednesday, July 2, 2025 8:16 am

**Marshall Helmberger**

Exhibit 2

REGIONAL— Officials with NewRange Copper Nickel say they expect to publicly share more details of their plans to revive the NorthMet copper-nickel project near Babbitt by September.

That's when the company is hoping to submit a new application for a Section 404 federal wetlands permit, one of the key permits necessary for the planned mining operation. And they plan to do so without the streamlined process offered by the Trump administration back in May.

That's when the administration designated the NorthMet project as one of 20 mining projects in the country to qualify as a FAST-41 "transparency project," which is designed to streamline permitting on infrastructure-related projects. Mining is one of about two dozen project categories that can qualify for the FAST-41 process.

The designation was welcomed at the time by officials at NewRange, a joint venture between PolyMet Mining and Teck Resources Ltd., but it is doubtful the designation will have a practical impact on the timeline for advancing the project to actual operations. Colin Marsh, the company's new head of external affairs, said NewRange is not seeking designation as a FAST-41 project, which means the project will go through the same degree of environmental scrutiny on a similar timeline as any other major project.

Under the timeline indicated on the FAST-41 website, federal permitting for the NorthMet project would potentially be completed by December 2026, roughly 18 months from now. But even if that timeline was realistic, it is highly unlikely that state permits would be issued that quickly.

While the federal government oversees some key permits for the mine, most notably the Section 404 wetlands permit issued by the Army Corps of Engineers, most of the permits required for the mine are issued by the state of Minnesota. DNR officials confirmed to the Timberjay this past week that the FAST-41 designation had no bearing on the state process for permitting the mine.

The state permitting process is on hold currently, while NewRange finishes a series of engineering studies designed to address some of the issues raised in the litigation that resulted in the revocation of key permits. PolyMet seemed poised to open the NorthMet mine back in 2018, but a series of losses in the courts invalidated three of the major permits issued to the company, including the Section 404 permit, along with the water discharge permit issued by the state's Pollution Control Agency, and the all-important permit to mine issued by the Minnesota Department of Natural Resources.

The DNR, environmental groups, and NewRange have been engaged in a contested case hearing before an administrative law judge for more than a year. That process, which was ordered by the state's Supreme Court back in 2021, has been stayed at the request of NewRange since last August, while the company completes its new studies. As of May, the company indicated in a letter to the judge that those studies remained ongoing. The company is expected to provide a new update to the court on July 14. The current stay in the contested case proceedings expires on Aug. 15 and DNR Assistant Commissioner Jess Richards said the agency expects a more substantive response from NewRange by that time.

NewRange's Marsh, in a statement to the Timberjay, said the studies' results would be released "in the coming months."

"While final project decisions are still forthcoming as we iron out the final details, we anticipate the plan to incorporate most or all of the modifications the company announced it would study last August," said Marsh. "The changes will ensure the project remains on the cutting edge, so that Minnesotans and the nation can benefit from responsible clean energy mineral resource development. Proposed changes will increase mine efficiency, decrease emissions, and incorporate new tailings and water management strategies."

The contested case hearing is focused on the company's proposed use of bentonite clay as a liner for the tailings basin and its dam, both of which are holdovers from the former taconite processing

operation run by LTV Steel. The Supreme Court had determined nearly four years ago that the DNR had insufficient evidence to support the use of the specialized clay for that purpose. Indeed, some of the experts hired by the DNR to review the proposal, had expressed serious doubts about its effectiveness as a liner to eliminate seepage of contaminated water and protect the dam's integrity.

Looking ahead

Whichever way the contested case hearing is resolved, the process forward for NewRange is likely to continue to be complicated, with additional issues that may well wind up in court. Paula Maccabee, head legal counsel for Duluth-based Water Legacy, who has litigated several cases against the NorthMet project, argues that the courts have indicated that changes are needed in the mine plan in order to pass muster with the state's mining rules. "Both the Minnesota Supreme Court and the ALJ [administrative law judge] have said the current plan is not good enough," said Maccabee. "If they do change it, that may require additional (environmental) supplementation." NewRange officials appear to agree. In his comments to the Timberjay, Marsh indicated that the company expects to undertake a supplemental environmental impact statement as part of assessing the changes the company plans to propose.

Among the changes NewRange is considering is increasing the production level of the operation from the previous plan for 32,000 tons per day to 40,000 tpd. A 2018 financial review of the project suggested a higher rate of return on investment with a higher level of production. That same review suggested that profitability was marginal for a 32,000 tpd operation.

According to Marsh, the larger throughput "better aligns with mill and other equipment sizes and would function more efficiently."

But other major changes could require additional review, according to Maccabee. She notes that the joint venture announced by PolyMet and Teck Resources back in 2022 is expected to include development of the Mesaba deposit, another significantly larger ore body located several miles northeast of the NorthMet deposit.

"The Mesaba deposit could be 8-10 times the size of NorthMet," said Maccabee. "We're talking potentially about a mega mine."

The new joint venture isn't making a secret of it. The company's website refers to the Sunrise project, a plan to develop the Mesaba deposit, although that idea is at an earlier stage of development than the NorthMet proposal. Both proposed mines are within the Duluth Complex, a vast area of low-grade mineralization that encompasses a wide swath of Minnesota's Arrowhead and includes copper and nickel, along with recoverable amounts of cobalt, palladium, platinum, and gold. While the NorthMet deposit is located within the Lake Superior watershed, the Mesaba deposit is located within the upper reaches of the Rainy River watershed, which encompasses the Boundary Waters Canoe Area Wilderness.

Maccabee said she can't say how she'll approach the need for any additional environmental review until she sees proposed revisions to the mine plan. "We're certainly going to advocate for the DNR to keep its head out of the sand on this project," she said.

She added that it will likely be up to Minnesotans to determine whether the process moving forward has substance to it. "There is no federal safety net any longer. That means it will be up to us to protect what we have here in Minnesota. I think the real question is whether state regulators will adhere to the science or whether they will let the federal pressure from power and money hold sway."

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## OTHER ITEMS THAT MAY INTEREST YOU

### Exhibit 2