

**MINNESOTA
DEPARTMENT OF NATURAL RESOURCES**

In the Matter of the NorthMet Project Permit to Mine Application

**NEWRANGE COPPER NICKEL LLC'S STATUS UPDATE
REGARDING NEWRANGE'S REQUEST TO EXTEND STAY**

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INTRODUCTION

In the press release that prompted the present stay, NewRange said it was starting “four key studies” that would help shape the future of its NorthMet mining project. At the time—August 2024—NewRange expected to complete those studies “over the next year.” But such significant scientific studies cannot be held to an artificial deadline. And since the study most relevant to this proceeding is still not done, NewRange asks that the Commissioner’s designee continue the stay.

NewRange is not trying to finagle an advisory opinion from the stay. If it proposes a different tailings storage plan, NewRange agrees that the ALJ’s recommendation will be moot. As things stand today, though, NewRange has not proposed any change to that plan. Unless and until it does, the best course is to leave the current stay in place. That way, any dismissal of this matter will be based on formally proposed project changes, rather than speculation about NewRange’s intent.

To the extent NewRange’s opponents want a ruling on the proper procedure for changing a mining plan, the Commissioner’s designee should demur. The opponents insist that NewRange needs to start over if it makes changes. But the Minnesota Supreme Court did not “reverse” NewRange’s permit to mine, as the opponents claim. Indeed, NewRange has been complying with its permit for the last seven years, including the four years since the Supreme Court’s decision. If NewRange wants to change something about its permit, it will follow the process in the non-ferrous mining rules. For now, all that matters is that no such change has been proposed, which means this case is not moot.

BACKGROUND

The Minnesota Department of Natural Resources issued a permit to mine for the NorthMet project more than seven years ago. Project opponents soon brought a trio of court challenges. In 2020, the Minnesota Court of Appeals responded to those challenges by “revers[ing] the DNR’s decisions granting the permit to mine” and “remand[ing] for the DNR to hold a contested-case hearing” on NewRange’s entire permit application. *Matter of NorthMet Project Permit to Mine*, 940 N.W.2d 216, 238 (Minn. App. 2020).

The Minnesota Supreme Court reversed the court of appeals’ judgment in nearly every respect. Rather than order a contested case on all issues, the Supreme Court held that a contested case was necessary only “to determine whether the bentonite amendment” aspect of NewRange’s tailings storage facility “was a practical and workable reclamation technique” that would “satisfy” the reactive mine waste rules. *Matter of NorthMet Project Permit to Mine*, 959 N.W.2d 731, 754 (Minn. 2021) (internal quotation marks omitted). The Supreme Court thus “remand[ed] to the Department of Natural Resources to conduct the contested case hearing,” but it did not reverse DNR’s permit to mine decision. *Id.* at 759–60. And it declined to address “the legal sufficiency of the permit[.]” *Id.* at 738 n.4.

Almost two years later, in March 2023, the contested case described in the Supreme Court’s opinion was held. Eight months after that, the Administrative Law Judge made his recommendation. See Findings of Fact, Conclusions of Law, and Recommendation of Administrative Law Judge James E. LaFave (Nov. 28, 2023). Neither side was satisfied with what the ALJ said, so both objected to the Commissioner’s designee. Months of briefing followed.

Meanwhile, NewRange kept moving forward. In August 2024, the company announced that it was “embarking on four key studies to assess whether new mining technology and sustainability developments can further enhance environmental safeguards and mining performance for [its] NorthMet project.” Press Release, NewRange Embarks on Project-Wide Studies to Further Enhance Environmental Safeguards and Project Performance (Aug. 14, 2024).¹ By then, it had been almost six years since DNR permitted the NorthMet project, and NewRange had brought on “a new team” with “global expertise.” *Id.* NewRange’s press release explained that one of its studies would consider “a variety of tailings storage options” including “keeping the current design detailed in permits, potentially refining the current design to use a centerline dam design, or possibly relocating tailings storage to nearby unused mining pits.” *Id.* The press release gave no precise timeline, but said that the studies would happen “over the next year.” *Id.*

In its final brief to the Commissioner’s designee, filed two weeks after NewRange’s press release, DNR sought a stay of the contested case process while NewRange conducted its studies. DNR Reply Brief (Aug. 30, 2024). The Commissioner’s designee granted a stay in November 2024, and at the same time asked NewRange to provide periodic updates on the status of its studies. NewRange has provided these updates, but it has not yet completed the study most relevant here, much less proposed a change to its tailings storage plan.

¹ Available at <https://www.newrangecoppernickel.com/newrange-embarks-on-project-wide-studies-to-further-enhance-environmental-safeguards-and-project-performance/>.

ARGUMENT

In granting DNR’s requested stay, the Commissioner’s designee explained that this case was not moot because “[t]he mere possibility that PolyMet may revise its permit application in the future does not render it impossible for me to grant relief by issuing a final decision.” Commissioner’s designee letter at 10 (Nov. 25, 2024). That reasoning still applies. Indeed, NewRange agrees that if it materially revises its tailings storage plans, the ALJ’s recommendation will be mooted. But dismissing this case now, before NewRange has proposed any changes, would risk wasting the years of effort that went into the contested case hearing. And going even further to rule on the process NewRange must use to make any changes would exceed the authority delegated to the Commissioner’s designee.

I. The stay should last until NewRange officially notifies DNR of its tailings storage plans.

When NewRange issued its August 2024 press release, it never thought so much would turn on its use of the phrase “over the next year.” It has now been fifteen months since that release, and NewRange’s study of tailings storage options is not done. But NewRange should not be penalized for taking its time with a complex study—especially given the time it has already taken to get to this point. Soon enough, NewRange will decide among its tailings storage options. Until then, this case should remain stayed.

A. Because NewRange’s tailings storage study is not yet complete, it has not made a tailings storage decision.

As NewRange has consistently explained, it is devoting significant resources to the studies it announced in August 2024. More broadly, it should surprise no one that a mining company like NewRange is continuing to refine its plans, especially when it gains access to new technical and scientific resources. That is just what

happened when NewRange became a joint venture of two international mining companies.

Mining companies are filled with scientists and engineers. They do not stop working when permits issue and litigation starts. Nor do mining technologies and best practices stop evolving. NewRange announced its “four key studies” to assure the public that it was taking full advantage of its new resources, and that it would not let litigation delays block progress. NewRange wants the NorthMet project to be a state-of-the-art mine that both protects the environment and delivers the critical minerals necessary to our way of life.

NewRange’s studies are not for show. The company truly has not decided the proper course for tailings management. It must evaluate a massive amount of technical data about a range of options, all while weighing the costs and benefits of those options. In performing this analysis, NewRange has no incentive to delay—just the opposite. NewRange is a for-profit business, and it wants to build the NorthMet project as soon as it can.

B. If NewRange materially changes its tailings storage plan, the ALJ’s recommendation will be moot.

The NorthMet project opponents are skeptical. They claim that NewRange has already decided to change its tailings storage plan, and that it is now looking for a way to get an “advisory decision” that would require the Commissioner’s designee to compare NewRange’s new plan with its old one. COs Letter at 4–5 (Oct. 10, 2025); *see* Fond du Lac Letter at 2 (Oct. 10, 2025); WaterLegacy Letter at 3 (Oct. 10, 2025). This is not true.

As soon as NewRange finalizes a tailings storage plan, it will tell both DNR and the Commissioner’s designee. If that plan is materially different from its current

plan, the ALJ's recommendation will be moot and NewRange will seek to dismiss this proceeding. What would be "materially different"? Any plan that does not involve an upstream dam or a bentonite amendment like the one addressed in the ALJ's recommendation. For example, the ALJ never considered a centerline dam like the one mentioned in NewRange's press release or the use of nearby mining pits. And while some of the evidence from the contested case hearing could still be relevant to the DNR's analysis of a new plan, the ALJ's recommendation would not be. DNR would have to decide in the first instance whether to permit a new tailings storage plan.

As the Commissioner's designee has explained, mootness requires an "event ... that definitively resolves the issues presented in [the] case." Commissioner's designee Letter at 10 (Nov. 25, 2024) (citing *Isaacs v. Am. Iron & Steel Co.*, 690 N.W.2d 373, 376 (Minn. App. 2004)). Thus, in a recent case cited by project opponents, see COs Letter at 5, a license decision was mooted when the license applications were withdrawn. *Aranguiz v. Minn. Off. of Cannabis Mgmt.*, No. A24-1873, 2025 WL 2102352, at *3-*4 (Minn. App. July 28, 2025). The comparable definitive event here would be a formal proposal by NewRange to change its tailings storage plan—a step NewRange has not taken. If and when it does, it will let the Commissioner's designee know.

NewRange hopes that by explaining its views on what would moot the ALJ's recommendation, it can find some common ground with project opponents. NewRange does not want an "advisory decision." It just wants time to complete its tailings storage study and decide on a plan.

C. Leaving the stay in place protects the parties' investment in the contested case hearing and harms no one.

Maintaining the status quo stay while NewRange completes its work and decides how to proceed is still the best path. True, things are taking longer than NewRange suggested in its August 2024 press release. But it took nearly two years to go from the Supreme Court's permit-to-mine decision to the contested case hearing, nine months to get from the hearing to an ALJ recommendation, and a year from that recommendation to reach the original stay. It is hard to see how this timeline is hurting the project opponents, who are trying to stop the NorthMet project as proposed. In any case, a few more months pose no threat.

On the other hand, prematurely dismissing the case risks wasting the years of work that went into the contested case. If NewRange keeps the tailings storage plan that was the subject of the contested case hearing, the ALJ's findings of fact and conclusions of law would still be relevant—as would the already-fully-briefed objections to those findings and conclusions. No doubt everyone wants this process to end. But given how much the parties, the ALJ, and the Commissioner's designee have invested, the wisest course is to keep the stay in place unless and until it is certain that the case is moot.

In arguing for dismissal, project opponents claim that continuing with the contested case would prejudice them. *See* WaterLegacy Letter at 4–5; COs Letter at 3. But those claims of prejudice rest on the idea that the contested case would “move forward while significant changes are made to [NewRange's] proposal” COs Letter at 3; *see* WaterLegacy Letter at 5 (arguing that “project changes ... would require evidentiary analysis” that “would be highly prejudicial”). As noted above, NewRange will agree to dismiss if it materially changes its tailings storage plan. It will not try

to shoehorn a different plan into the existing contested case. Thus, the stay is nothing for project opponents to fear. Their speculation about possible future changes is not a valid ground to dismiss.

II. The Commissioner’s designee should not use extra-record evidence to speculate about NewRange’s plans.

In an effort to show that NewRange has already changed its tailings storage plan, project opponents offer a lot of extra-record evidence. They cite, among other things, an amendment to NewRange’s dam safety permit, “documents obtained under the Minnesota Government Data Practices Act,” a timeline for one of NewRange’s federal permits on a federal website, and a quote made in the media. WaterLegacy Letter at 4–5; COs Letter at 1–2, nn. 1, 2, 4. The Commissioner’s designee asked the parties to explain whether it is proper to take judicial notice of these materials. The answer is a qualified no.

Agencies and ALJs may take official notice of “judicially cognizable facts” in contested case hearings so long as all parties have an opportunity to contest them. Minn. Stat. § 14.60, subd. 4; see Minn. R. 1400.7300, subp. 4; *Hibbing Taconite Co. v. Minn. Pub. Serv. Comm’n*, 302 N.W.2d 5, 12 (Minn. 1980). But an opportunity to contest a fact is not the sole limit on the power to take judicial notice. Any fact, judicially noticed or not, must “possess[] probative value commonly accepted by reasonable prudent persons in the conduct of their affairs.” Minn. Stat. § 14.60, subd. 1. Evidence that is “irrelevant” or “immaterial” can be excluded. *Id.*

Whether evidence is “probative” or “irrelevant” depends on the question being asked. *State v. Schultz*, 691 N.W.2d 474, 478 (Minn. 2005) (“Evidence is relevant and has probative value when it, in some degree, advances the inquiry.”); see *In re Denial of Contested Case Hearing Requests*, 993 N.W.2d 627, 656–57 & n.11 (Minn.

2023) (taking judicial notice of public materials for a limited purpose). Here, the only question is whether the contested case is moot. NewRange does not object to judicial notice of any otherwise eligible materials that help answer that question. But much of what the project opponents want to force into the record does not qualify.

For example, WaterLegacy uses the federal FAST-41 website to argue that because the U.S. Army Corps of Engineers plans to prepare a supplemental environmental review as part of its federal permitting process, NewRange must be making “substantial changes” to its project. WaterLegacy Letter at 1–2; see COs Letter at 1–2 & n.2.² But the project opponents fail to mention that the NorthMet Project has many features that were not part of the contested case so that, even if the tailings storage plan stays the same, the Corps may have other reasons for a supplemental review. In any case, the Corps has “discretion” to prepare a new environmental review even in the absence of “substantial changes to the proposed action.” 33 C.F.R. § 333.34(a), (b). Nothing on the FAST-41 website explains the Corps’ reason for preparing a supplemental environmental review in NewRange’s case. Nor has NewRange yet submitted a permit application to the Corps that would show any changes—that process awaits the same decisions as this one.³ The FAST-41 website is thus not relevant here.

A recent amendment to NewRange’s dam safety permit also has absolutely nothing to do with the contested case. That amendment simply allowed NewRange to

² WaterLegacy cites withdrawn environmental rules in support of this argument. See WaterLegacy Letter at 2 (citing 40 C.F.R. § 1502.9(c)(1)(i)).

³ As the FAST-41 website now shows, NewRange plans to submit its amended Clean Water Act permit application by January 28, 2026. See <https://www.permits.performance.gov/permitting-project/fast-41-transparency-projects/northmet-project>.

modernize the spillway system on the existing taconite tailings storage facility, conforming it to updated global standards. This spillway would be used only “during extreme precipitation events.”⁴ Even so, WaterLegacy speculates that this change “may have already altered modeling projections for the bentonite plan.” WaterLegacy Letter at 4. Such speculation is hardly reason to think that the entire contested case hearing is moot. Taking judicial notice of the materials on which the speculation is based would thus serve no purpose.

WaterLegacy’s request for judicial notice of documents about plant roots, animal burrows, and erosion at the tailings basin is even further afield. WaterLegacy Letter at 4–5. To its credit, WaterLegacy is up front about this. It never says that this evidence has anything to do with mootness, only that it “call[s] into question evidence” that the ALJ “relied” on. *Id.* at 4. The rule allowing judicial notice does not create such a large loophole in the fundamental rule that “[a]ll evidence” must “be made a part of the hearing record.” Minn. Stat. § 14.60, subd. 2, 4 If it did, limiting review of the ALJ’s recommendation to evidence in the record would be pointless. Parties could ignite new evidentiary debates—without the usual evidentiary protections—just by pointing to a public document or a Data Practices Act response. The Commissioner’s designee should thus reject WaterLegacy’s effort to challenge evidence that was fully vetted at the contested case hearing.⁵

⁴ DNR, Dam safety permit amendment on existing taconite tailings basin (July 2025), available at <https://www.dnr.state.mn.us/polymet/permitting/index.html>.

⁵ There is nothing new in the photos WaterLegacy cites. Project opponents argued at the contested case hearing that vegetation, animal burrows, and other physical processes would degrade the proposed bentonite amendment. The ALJ disagreed. *See* ALJ Findings at 19–20.

As for taking judicial notice of NewRange’s submissions to DNR, the question is not ripe because NewRange has not sent DNR anything about its tailings storage plan. When it does, it will share those submissions with the Commissioner’s designee. And it would not object to the Commissioner’s designee taking judicial notice of its submissions for purposes of deciding whether the ALJ’s recommendation is moot—though, as stated above, NewRange will move to dismiss it if it materially changes its tailings storage plan. In the meantime, NewRange is not asking the Commissioner’s designee to take judicial notice of anything.

III. The Commissioner’s designee should not say anything about the status of NewRange’s permit.

Beyond mootness and admissibility, the Commissioner’s designee has asked whether Minnesota law allows NewRange to submit “applications or amendments” to its permit to mine. Because the sole issue in this case is the ALJ’s recommendation, whether NewRange’s permit is amendable is both irrelevant and outside the scope of this case. If NewRange materially changes the tailings storage plan in its permit, the ALJ’s recommendation will be moot and the permit’s amendability will be a question for DNR to answer. As for the project opponents’ claim that NewRange no longer holds a permit to mine, the Supreme Court’s 2021 decision and the facts on the ground prove that claim false.

A. This case is about the ALJ’s recommendation, not NewRange’s permit to mine.

At the outset, the project opponents argue that, because NewRange “has significantly changed its mining plan,” it “must restart the application process.” COs Letter at 3; see WaterLegacy Letter at 5. But since NewRange has not yet changed its mining plan, that argument’s premise is flawed. If NewRange does make a material

change, then it agrees that this case should be dismissed. What happens after that should be in DNR's hands.

NewRange will have to seek DNR approval for any changes it proposes to its mining plan, including tailings storage changes. That is why NewRange's letters have talked about submitting an "amended application" to DNR. The point is that when NewRange finalizes its plan, it must go to DNR, making any proposed changes clear to all. NewRange's letters have never suggested that the Commissioner's designee must decide the proper process for making such changes. The sole issue in this case is the ALJ's recommendation. Mine plan changes matter only insofar as they make that recommendation moot.

Since NewRange agrees that a material change to its tailings storage plan would moot the ALJ's recommendation and lead to dismissal of this case, the only relevant question for the Commissioner's designee is whether NewRange has made such a change. As discussed above, it has not. When NewRange concludes its studies and decides what to do, it will provide formal notice to both DNR and the Commissioner's designee. The shape that notice takes should not matter here.⁶ NewRange thus asks the Commissioner's designee to decide only whether to keep the stay in place.

B. Because the Minnesota Supreme Court only remanded NewRange's permit to mine, NewRange still holds its permit.

Doubling down on their permitting arguments, the project opponents claim that NewRange "does not currently hold a permit to mine." COs Letter at 3; *see* Fond du

⁶ If NewRange ultimately tells the Commissioner's designee that it has not materially changed its plans, and the project opponents disagree with that assessment, the parties can brief that issue then.

Lac Letter at 3 (“PolyMet is not a permittee and does not have a permit to mine.”) They reach this conclusion because they think that the Minnesota Supreme Court “reversed” the permit to mine. WaterLegacy Letter at 5. As they see it, then, NewRange cannot amend a permit that it does not hold; it must start over if it makes changes. *Id.*; see COs Letter at 3; Fond du Lac Letter at 3–4.

But NewRange’s permit to mine was not reversed. It was remanded. Under the Minnesota Administrative Procedure Act, those are two different things.

MAPA gives courts authority to (1) “affirm the decision of the agency” (2) “re-mand the case for further proceedings,” or (3) “reverse or modify the decision.” Minn. Stat. § 14.69. Acknowledging these statutory choices, the Supreme Court’s decision addressing NewRange’s permit to mine said that the Court had authority to “affirm, remand, or reverse an agency decision.” *In re NorthMet Project Permit to Mine*, 959 N.W.2d at 749. It chose to remand: “[W]e affirm in part and reverse in part the decision of the court of appeals and *remand to the DNR* to conduct the contested case hearing required by this decision” *Id.* at 738 (emphasis added).

The Supreme Court’s choice to remand without reversing DNR’s decision contrasts with other cases in which Minnesota courts have expressly reversed a permit. For example, when the court of appeals concluded that an agency should have done more to study a wastewater treatment plant, it “*reverse[d] the order granting the permit and remand[ed]*” the matter to the agency. *Minn. Ctr. for Env’tl Advocacy v. Comm’r of Minn. Pollution Control Agency*, 696 N.W.2d 95, 107 (Minn. App. 2005) (emphasis added). Similarly, when the court of appeals held that DNR exceeded its authority to approve wetland credits, the court “*reverse[d] the [agency’s] final order in relevant part,*” and sent the case back for “further proceedings.” *In re Hibbing*

Taconite, 888 N.W.2d 336, 348 (Minn. App. 2016) (emphasis added). Even the court of appeals in this case was clear that it would have “reverse[d] the DNR’s decision[] to issue the permit to mine” before “remand[ing] for the DNR to hold a contested-case hearing.” *Matter of NorthMet Project Permit to Mine*, 940 N.W.2d at 222 (emphasis added).

The difference in the Supreme Court’s opinion here is stark. The Supreme Court noted that the court of appeals had “reversed the DNR’s decision to grant the permit to mine.” *Matter of NorthMet Project Permit to Mine*, 959 N.W.2d at 738. Yet the Court said nothing in its own opinion about reversing the DNR’s permitting decision. *Id.* Indeed, it specifically said the opposite: that “a decision on the legal sufficiency of the permits is premature.” *Id.* at 738 n.4.

The project opponents may be confused by the last line of the Supreme Court’s permit to mine opinion, which says simply “[a]ffirmed in part, reversed in part, and remanded.” *Id.* at 760. But the meaning of that sentence is clear from the opinion’s opening. When the Supreme Court says “[a]ffirmed in part, reversed in part,” it is talking about “the decision of the court of appeals,” not the permit to mine. *Id.* at 738, 760.

Nor can the project opponents assume permit reversal based on the Supreme Court’s ordering a contested case on a narrow issue. When an agency errs, “the case can either be remanded for additional findings or reversed for lacking substantial evidence supporting the decision.” *In re A.D.*, 883 N.W.2d 251, 258 (Minn. 2016) (quoting *Dokmo v. Indep. Sch. Dist. No. 11*, 459 N.W.2d 671, 675 (Minn. 1990)). The Court in this case chose to remand, not reverse.

C. NewRange is actively complying with the remanded permit to mine.

Because the Supreme Court remanded NewRange’s permit to mine without reversing DNR’s decision to issue it, NewRange still holds the permit. It may be true, as DNR has said, that the remanded permit cannot take full effect until the agency decides to “reissue” it. DNR Exceptions and Argument Regarding ALJ Report at 35 (June 7, 2024). But that does not mean the permit has been vacated. It just means that DNR has to do what the Supreme Court told it to do. The rest of the permit is still in force.

NewRange knows the permit is still in force because it has been complying with the permit for the past seven years—including the four years since the Supreme Court’s 2021 decision remanding the permit to DNR. That compliance includes preparing an annual report for DNR, *see* Minn. R. 6132.1300, maintaining required financial assurance, *see id.* 6132.1200, and paying permit-required fees, *see* Minn. Stat. § 93.482. DNR has never suggested to NewRange that the Court’s decision abrogated those permit obligations.

As the holder of a permit to mine, NewRange can apply to have that permit amended. Under Minnesota Rule 6132.4200, such an application lets DNR decide the appropriate type of review. *See* Minn. Stat. § 93.481, subd. 3(b) (allowing a permit to mine to “be amended upon written application to the commissioner”).⁷ Again,

⁷ Both DNR’s and the Commissioner’s designee’s letters have recognized this potential for permit amendment. *See* DNR Letter (Oct. 16, 2025) (mentioning “an amended permit application”); Commissioner’s designee Letter at 8, 9 (Nov. 25, 2024) (discussing a permit application “which may indeed be later amended or abandoned,” the potential that NewRange “amends or withdraws its application,” and the task “of addressing the new or amended application”); Commissioner’s designee Letter at 5 (May 9, 2024) (stating that “Minnesota’s statutes contain specific procedures for applicants to apply for permits to mine and seek amendments

however, NewRange has neither applied for a permit amendment nor formally notified DNR of a change to its tailings management plan in any other way. Unless and until it does, the current stay should remain in place.

Simply put, the ongoing validity of the permit to mine was never part of the contested case and thus is not an issue that has been referred to the Commissioner's designee. The opponents' efforts to expand the scope of this proceeding to include that issue should be rejected.

CONCLUSION

The Commissioner's Designee should leave the stay in place until NewRange formally notifies DNR of its tailings storage plans.

thereto.") (citing Minn. Stat. § 93.481; Minn. R. 6132.4200). NewRange's reference to an amended permit application was similarly imprecise.

Respectfully submitted,

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GREENE ESPEL PLLP

s/ Monte A. Mills

Monte A. Mills, Reg. No. 030458X
Farah Famouri, Reg. No. 0403295
222 S. Ninth Street, Suite 2200
Minneapolis, MN 55402
mmills@greeneespel.com
ffamouri@greeneespel.com
(612) 373-0830

VENABLE LLP

Jay C. Johnson, Reg. No. 0504306
600 Massachusetts Avenue, NW
Washington, DC 20001
jcjohnson@Venable.com
(202) 344-4000

Attorneys for NewRange Copper Nickel
LLC (*FKA* Poly Met Mining, Inc.)