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Keeping Wilderness Wild

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October 10, 2017

Connie Cummins, Forest Supervisor
Superior National Forest
8901 Grand Avenue Place
Duluth, MN 55808

Sent via: comments-eastern-superior@fs.fed.us

Re: School Trust Land Exchange Draft EIS

Dear Supervisor Cummins,

The following comments come from Wilderness Watch on the Draft Environmental Impact Statement (DEIS) for the School Trust Land Exchange. Wilderness Watch is a national wilderness conservation organization headquartered in Missoula, Montana, with a long interest in the protection and stewardship of the Boundary Waters Canoe Area Wilderness (BWCAW).

To further explain Wilderness Watch's long interest in and expertise on BWCAW issues, Wilderness Watch's Senior Advisor, Stewart Brandborg, actively promoted passage of the 1964 Wilderness Act from 1956 until 1964, and then worked across the nation to implement the Wilderness Act after passage. He was heavily involved in the discussions over the BWCA during those years, including those that led to Section 4(d)(5) of the Wilderness Act dealing with the BWCA, the Selke Committee's work in 1964, and Secretary Orville Freeman's 1965 BWCA regulations. He remains deeply concerned with the BWCAW today.

Similarly, I have personally been involved with the protection of the BWCAW for more than 40 years. I was actively involved with the effort to pass the 1978 BWCAW Act (P.L. 95-495) through Congress. I testified at the St. Paul Congressional field hearing on BWCAW legislation in July of 1977, and spent many weeks in Washington, DC, to help lobby for the BWCAW Act. I was the lead author of the 1995 book that documented that effort, *Troubled Waters: The Fight for the Boundary Waters Canoe Area Wilderness*, which has been used as a

text in many university and college classes since it was first published. I also researched and wrote a 155-page policy analysis in 1984, *After the Shouting Stopped: Implementation of the Boundary Waters Canoe Area Wilderness Act*, which documented and analyzed the first five years of the implementation of the 1978 law.

I have further researched and written extensively about the BWCAW and wilderness policy, including articles in the *William Mitchell Environmental Law Journal*, *Denver University Law Review*, *International Journal of Wilderness*, and *Minnesota History*. I have testified at additional Congressional hearings on the BWCAW, and have presented at national and international conferences on the BWCAW and Wilderness.

As an aside, but pertinent to the discussion over the State of Minnesota's school trust lands within the BWCAW, I attended the two-day Congressional hearing on the BWCA legislation in September of 1977 in Washington, DC. Neither Minnesota Governor Rudy Perpich nor his Commissioner of the Department of Natural Resources (both of whom testified) even mentioned the school trust lands inside the BWCA in their written or oral testimony. The school trust lands were a non-issue at that point. Had anyone from the State of Minnesota brought up the school trust lands during those years when Congress wrestled with the future of the BWCAW, Congress would have most likely addressed the issue.

In 1997 while in Washington, I helped garner the formal signatures of all Members of Minnesota's Congressional delegation in support of utilizing the Land and Water Conservation Fund to purchase the state school trust lands. All members of the delegation supported it and signed the letter. But local northeastern Minnesota politicians seeking to develop new copper-nickel sulfide mining on the Superior vocally opposed the effort, causing Congressman Oberstar and others to back off the Land and Water Conservation Fund effort at that time. But that avenue remains the best option for addressing the issue of school trust lands and minerals inside the BWCAW.

As for the current DEIS, Wilderness Watch supports Alternative 1, the No Action alternative as presented in the DEIS for the following reasons.

1. The DEIS analyzes an inadequate range of alternatives. The primary point of an EIS is to push agencies to think about alternative ways to meet society's needs or provide benefits that have less impact on the environment. This only happens if the agency looks at the *real* need or benefit, rather than one that has been handed to them by whomever wants to see a project go through. In this case, the DEIS turns the purpose and need of "generat[ing] revenue to benefit Minnesota Public Schools" into "Allow[ing] the State to actively manage lands outside the wilderness to generate revenue to benefit Minnesota Public Schools." This impermissibly eliminates several alternatives that might generate equal (or more) revenue with less environmental impact.

Several other alternatives exist to address this situation that are not analyzed in the DEIS, and should be analyzed in the Final EIS. Some options could be pursued entirely by the State of Minnesota alone, and not require any action on the part of the U.S. Forest Service. These other alternatives include:

- Federal purchase of all state school trust lands and school trust minerals within the BWCAW.
- State of Minnesota purchase of school trust lands and minerals within the BWCAW.
- State of Minnesota purchase of just the trust fund interest in lands and minerals within the BWCAW. (Minn. Stat. 92.83 sets out this procedure.)
- State of Minnesota exchange of school trust lands and minerals within the BWCAW for state lands and minerals outside the BWCAW. The State has done similar such exchanges for school trust lands inside state parks.
- State of Minnesota exchange of just trust fund interest in lands and minerals within the BWCAW for state lands and minerals outside the BWCAW.

2. The Proposed Action involves only surface ownership and not minerals. If state-owned school trust mineral rights remain within the BWCAW, the Proposed Action does not solve the long-term problem. The pressures to develop state-owned school trust minerals within the BWCAW will remain even if all the school trust surface lands are exchanged or purchased.

This flaw alone makes the Proposed Action inadequate and unacceptable. After years of time, effort, and expense, the problem would still not be resolved under the Proposed Action.

3. The exchange will shrink the National Forest lands within Superior National Forest and will lead to development – most likely mineral development – outside of the BWCAW but within the borders of Superior National Forest. The Proposed Action will shrink the amount of National Forest lands in the Superior National Forest outside of the BWCAW by some 30,000-35,000 acres.

Furthermore, this exchange will lead to development – most likely mineral development – on some of those exchanged lands. Indeed, the biggest problem lies with the parcels on maps 6A and 6B of the DEIS. In particular, Township 60 North, Range 12 West has seen extensive drilling for mineral exploration by Encampment Minerals, Teck, Duluth Metals, and Franconia Minerals.

The Proposed Action will most likely result to new mining on those lands, since the Minnesota Department of Natural Resources is a mining promotion agency with far fewer environmental protections than has the Superior National Forest.

4. Federal purchase of surface lands AND mineral rights via funding through the Land and Water Conservation Fund is the best option.

The best option to protect the BWCAW, Superior National Forest, and still provide income to the State of Minnesota's Permanent School Fund is for a long-term purchase effort by the federal government, utilizing funds from the Land and Water Conservation Fund, to purchase the State of Minnesota's school trust fund lands and minerals within the BWCAW.

Wilderness Watch has supported and continues to support the efforts to acquire funding from the Land and Water Conservation Fund for these federal purchase efforts. The purchase effort would most likely require a number of years of funding from the LWCF, but it can be accomplished.

In addition to these reasons stating our opposition to the Proposed Action, we have additional points to make:

5. The DEIS also contains a significant factual error that must be corrected and re-analyzed.

On page 40, the DEIS claims, “Within the BWCAW, state-owned lands including School Trust lands are designated as state wilderness areas under Minnesota Statute 86A.05, subdivision 6 (see also Minnesota Statute 84.523).” This is not true.

In 2003, the Minnesota Legislature passed HF 13, codified as 2003 Session Laws, Chapter 13. The pertinent portion of this statute reads as follows: “Acquired lands owned by the state within the boundary waters canoe area defined in subdivision 1 are designated as state wilderness areas under section 86A.05, subdivision 6.” This provision was codified as Minnesota Statutes 84.524, subd. 6.

This statute did not cover School Trust lands, which are not considered “acquired” lands under Minnesota Statutes. The statute did cover acquired lands such as the Burntside State Forest within the BWCAW, for example, but not the School Trust lands. So the School Trust lands are NOT designated as state wilderness lands.

State-owned trust lands within the BWCAW comprise the majority of all state-owned lands within the BWCAW. This error in the DEIS must be corrected in the Final EIS and the analyses throughout the EIS must also be corrected.

Please keep Wilderness Watch informed of future steps in this issue.

Sincerely,

A handwritten signature in dark ink that reads "Kevin Proescholdt". The signature is written in a cursive, flowing style.

Kevin Proescholdt
Conservation Director