northeastern minnesotans ***for wilderness***
P.O. Box 625 Ely, Minnesota 55731 www.nmw.org

REPORT TO THE NMW MEMBERSHIP

May, 2007

Contents

p.1 Introduction
2 Report of the 2005-06 Chair
2 Metallic Sulfide Mining
3 Lead-Free Tackle
3 Motorized Recreation
4 Wilderness Advocacy and Legal Advocacy: The Role of NMW

Introduction

Our intention in this Report is to summarize NMW activities in 2006 and to provide some outlook for 2007. Much has occurred in 2006. Some of these activities have been reported in previous newsletters. We believe drawing this material together will give the Board and members a better perspective on our several program areas and our general direction as an organization.

Most of NMW's activities were spurred and often implemented by the 2005-06 Board Chair, Kris Wegerson. The Board and Membership owe Kris a special vote of thanks for her leadership on behalf of wilderness and wild places.

An annual report typically is published early in the year. We were simply overtaken by events. So much has occurred to date in 2007 that pulling together a summary of 2006 was postponed several times. Some of the 2007 activities are referenced in the current program reports.

A grassroots advocacy organization is only as effective as the willingness of its membership to get out "on the ground." For NMW this means literally tramping the SNF and canoeing the BWCAW. Increasingly it also requires shuffling the thousands of pages of documents submitted by SNF, DNR, MPCA, and by PolyMet and similar corporations. We need more members "on the ground." Please respond on your next membership renewal. (You will have more time to volunteer thanks to our new preprinted renewal forms.) Better yet, contact us directly at www.nmw.org, or through our Ely office.
Brad Sagen,
Chair, NMW Board of Directors

NMW 2006-07 Board

Officers:
Chair, Brad Sagen, Fall Lake Twp. - Ely
Vice-Chair, Sharon Magliulo, Ely
Secretary, Will Hauser, Ely
Treasurer, Dave O'Donnell, Ely

Members:
Mike Hofer, Maple Grove
Sally Nankivell, Grand Marais
Kris Wegerson, Duluth

Report of the 2005-06 Board Chair

Congratulations to NMW's new officers for 2006-07. I've had the pleasure of working with them as Vice-Chair, Co-Chair and Chair over the past three years. In this time we have revamped our website (nmw.org) and streamlined and updated our membership data base.

The Board has also created task forces to address three key issues: OHV use on public land in northeastern Minnesota; mining expansion and development, particularly metallic sulfide mining; and banning lead tackle. We remain committed to our principles of protection and preservation of wilderness and wild places. Read the accompanying articles to see what we are doing. We invite you to become involved in one of the task forces. Please contact kris@nmw.org or sharon@nmw.org if you are interested.
Kris Wegerson
NMW Board Chair, 2005-06

Metallic Sulfide Mining

Proposals to initiate sulfide mining on the Iron Range and in the Arrowhead are a source of major potential problems for health and public safety and for wilderness and wild places. Sulfide mining is more formally defined as non-ferrous metals mining (copper, lead, and zinc being the major extractions). The term "sulfide mining" is applied because the non-ferrous metals are found in rock formations containing larger amounts of sulfur. Sulfur, when mined and exposed to air and especially to water, creates sulfuric acid which is an extremely toxic waste component.

The initial proposal has been submitted PolyMet Corporation to mine near Hoyt Lakes. This Vancouver B.C. company has no corporate history in an industry whose track record is one of air, water and soil pollution.

NMW has been involved in scrutinizing PolyMet's proposals and in drawing public attention to the problems associated with sulfide mining. Much of this effort has occurred through the ACT NOW Coalition, an Arrowhead based coalition whose participants have included NMW, Minnesota Center for Environmental Advocacy, North Star Chapter of Sierra Club, and Save Lake Superior Association. ACT NOW has prepared and presented to several audiences a slide presentation on the history and dangers of sulfide mining. A presentation and discussion last fall in Duluth attracted over 50 participants.

PolyMet has now submitted for State and Federal reviews a proposal to begin mining in 2008 at the NorthMet site south of Babbitt (20 mi. S.of the BWCAW) using processing facilities near Hoyt Lakes formerly owned by LTV Steel. Mining will create millions of tons of sulfur laden waste which must be contained in sites using unproven plastic liners and restoration processes. In anticipation of the proposal, NMW and Save Lake Superior Association received a grant from the Tip of the Mitt Foundation to obtain professional analysis of the information submitted by PolyMet for State and Federal approval.

NMW has also joined with NorthStar Chapter of the Sierra Club to submit a legislative brief proposing that Minnesota enact a law on sulfide mining similar to the Wisconsin Moratorium. The Wisconsin Law was adopted after substantial pollution occurred at the Flambeau Mine site near Ladysmith and in similar disasters in Colorado, South Dakota and other states. The Wisconsin law stipulates that no further sulfide mining will occur in the State until a similar operation in another state has proven successful for ten years, and until a similar mine has been closed for ten years without harmful pollution. In other words, Wisconsin will not be the guinea pig for this type of mining. (Wisconsin advocates have been careful not to label the legislation as "anti-mining," just "anti – guinea pig.")

State and Federal decisions are expected in 2007 regarding the PolyMet proposal to begin mining in 2008. The initial submission and review of PolyMet documents was postponed. The review should now be completed by mid-November and the results disseminated for public comment. NMW and associated organizations may be faced with difficult choices about whether and how to contest PolyMet proposals and State and Federal

responses. Member views will be sought should NMW face such choices. The next issue of the Newsletter will devote considerable coverage to the dangers of sulfide mining.

Note: A State District Court Judge has issued a temporary injunction against St. Louis County halting work on a project near Floodwood to restore wetlands that would replace similar wetlands lost if the PolyMet mine is built. The injunction was obtained by several ACT NOW colleagues and fellow NMW members.

Lead-Free Tackle

The Centers for Disease Control has named lead as the number one environmental toxin in the US. The Minnesota State Health Department believes it is harmful enough to require blood lead level testing in every one and two year old child in the state.

Lead is also known to be toxic to over 25 species of waterfowl including loons, ducks, geese, swans and eagles. Studies in the northeastern US have shown that 25-50% of adult loon mortality is due to ingestion of lead tackle. A single lead sinker can kill a loon in 2-3 weeks. Lead tackle has been banned in some form in Great Britain, Canadian National Wildlife Areas and National Parks, three US National Wildlife Refuges, Yellowstone and five northeastern US states.

Legislation was introduced in Minnesota in 2003 to ban lead sinkers weighing one ounce or less. Instead of a ban, legislation created an educational program called "Get The Lead Out". Conservation and environmental groups have joined in to sponsor lead tackle exchanges. In the summer of 2004 and spring of 2005, NMW sponsored lead tackle exchanges and provided "Get The Lead Out" educational materials to most of the outfitters and tackle shops in the Ely, Tofte and Grand Marais areas.

NMW and the Midwest Chapter of the Izaak Walton League have developed legislation to ban lead fishing tackle in Minnesota. The Bill was introduced in the 2007 Minnesota Legislature by Senator Yvonne Prettner-Solon of Duluth. We can use your help. Contact kris@nmw.org or sharon@nmw.org to become involved.

Motorized Recreation

Motorized recreation is a major outdoor activity in the Arrowhead Region. It is also a major threat to the wilderness and wild places NMW seeks to preserve and protect. "Unmanaged Recreation" (i.e.) motorized recreation is identified by USFS as one of the four major threats to the Nation's forests.

Motorized recreation has been a significant focus of NMW advocacy for several years. The NMW Board in 2004 adopted a position statement: "Northeastern Minnesotans for Wilderness (NMW) opposes current policies and proposals that establish and extend ATV trails and usage in ways harmful to the wild places that are Northeastern Minnesota's signature characteristic. NMW will devote its organizational resources to oppose inappropriate ATV use in Northeastern Minnesota. NMW will make special efforts to cooperate with and enlist the support of other groups and individuals that share these goals. NMW seeks to be included in ATV trail planning for Northeastern Minnesota."

Most of NMW efforts have been devoted to ATV trail planning. Until 2004, National Forests were essentially open to ATV use. The 2004 restriction of ATV to designated Forest Roads and approved trails necessitated planning for ATV use in Superior National Forest. A major element in SNF planning has been an inventory of existing Forest Roads and the decision to reclassify or decommission these to open or restrict use by ATV. SNF, DNR and the Arrowhead counties have largely completed trail and road inventories in the region. Their efforts have now shifted to reclassification of forest roads regarding ATV use and to planning of new ATV trails. Tentative plans have been released concerning the SNF Gunflint and Tofte Districts. Similar DNR plans for the major State forests in the region will be released in '07. NMW members have participated actively in area meetings concerning ATV planning. We expect to submit formal comments at the several stages of the planning

process. Email alerts will be sent to the membership if particular issues warrant member communications to planners

Road and trail planning is an implementation activity subject to administrative procedures and substantive regulations. SNF has been responsive to comments by NMW and other organizations regarding tentative plans. Occasionally, significant differences remain. Differences regarding the proposed S.Fowl snowmobile trail lead to the legal action by NMW and other organizations against USFS described elsewhere in this newsletter. Road and Trail issues have also become part of larger SNF planning efforts. NMW's current administrative appeal of the SNF Echo Trail Project addresses several road building issues with implications for motorized recreation in inappropriate areas.

Violations of motor use regulations have become a major concern for NMW. Illegal snowmobile entries in the BWCAW have been a problem for many years. Increased use of ATV has resulted in similar problems and in considerable damage to wild places in SNF. NMW members investigated ATV and snowmobile violations in the Range River area of SNF and the BWCAW. A report was submitted to the SNF Kawishiwi District. NMW also co-sponsored a report by Kevin Proescholdt, "Wilderness Between the Cracks: Where Motor Use and other Wilderness Violations Have Degraded the Eastern Part of the Boundary Waters Canoe Area Wilderness." (A copy of the report may be obtained by writing NMW or by contacting us through the NMW website.) As a result of the Wilderness report a meeting was held with SNF officials and a follow-up meeting is scheduled. NMW is seeking ways to more actively involve the membership and the public in monitoring motorized violations. Suggestions from the membership will be welcome.

Wilderness Advocacy and Legal Advocacy: The Role of NMW

Introduction

Legal advocacy is a new activity for NMW. But it is an activity consistent with our mission to protect and preserve wilderness and wild places in Northeastern Minnesota. NMW is currently participating in two lawsuits and an Administrative Appeal against the U.S. Forest Service. This report is intended to inform members of NMW litigation activities and to provide a rationale for these activities.

SNF Forest Plan

NMW is a co-plaintiff in two lawsuits against the Forest Service. The two suits were filed in August, 2006. The first suit contests the Forest Plan for Superior National Forest adopted by the FS in 2004. The suit followed rejection by FS of an Administrative Appeal of the Plan. NMW was joined in the appeal and the suit by Friends of the BWW, Sierra Club, and Defenders of Wildlife.

The major issues addressed in the appeal and the Forest Plan suit largely involve FS procedures used in preparing the Plan.

1) FS is required by law to select and monitor Management Indicator Species (MIS) as a means of maintaining species diversity. The 1986 Forest Plan used 34 MIS. The 2004 Plan used just 4 and instead substituted Management Habitat Indicators without empirical linkage between habitat and species viability.

2) FS is required to create and maintain an accurate inventory of roads, trails and roadless areas. Accurate data for roads, trails, and roadless areas is required to fully analyze the environmental impacts of the Plan alternatives. This issue is of particular concern because an independent analysis concluded that the FS had significantly underestimated both road miles and road density within the SNF

3) FS is required to analyze the impact of its plans upon the BWCAW. For example, FS failed to analyze the impacts of extensive timber harvesting along the wilderness edge.

4) FS is required to use accurate baseline data to analyze the impacts of the Forest Plan on the threatened lynx. For example, FS failed to utilize an adequate inventory of lynx, lynx habitat, and connectivity between lynx habitats.

The suit contends FS failed to meet its statutory obligations in these areas and instead used "arbitrary and capricious decision-making" in preparing the Forest Plan. The Forest Plan is a required document that will govern Forest Service activities in SNF for the next 10-15 years. A flawed plan will have lasting repercussions.

South Fowl Lake

The second suit is known as the South Fowl suit. South Fowl Lake is directly North of Hovland (Grand Marais area) and appears on most maps as just outside the BWCAW. The original issue was the FS decision to build a two mile snowmobile trail on a 'bench' running along a cliff face to provide access to South Fowl Lake. The trail would replace an illegal trail in the vicinity. In addition to damaging the cliff, trail preparation would endanger plant and animal species in the area. The trail would be visible from Royal Lake which is within the BWCAW and would degrade the wilderness experience in the area and invite illegal snowmobile activity in the BW. The suit charges the FS with failure to follow Agency standards in trail planning regarding protection of wilderness character, and protection of the Canadian Lynx.

The suit has become more complicated. Legal research in preparation for the suit revealed that South and North Fowl Lakes lie within the BWCAW and should be included among the lakes in the BW with motor size limits, established quotas for motor boat usage, and prohibition of snowmobiling. The suit, therefore, further contends that FS has failed to manage North and South Fowl Lakes as wilderness and to enforce the required regulations. NMW was joined in the South Fowl suit by the Izaak Walton League, Sierra Club Northstar Chapter, and Wilderness Watch.

Echo Trail Project

The third NMW action is an Administrative Appeal of the Final Environmental Impact Statement (FEIS) regarding the SNF Echo Trail Project. The Appeal was filed in March. NMW has joined in the Appeal with Audubon Minnesota, Defenders of Wildlife, Friends of the BWW, Sierra Club Northstar Chapter, and the Wilderness Society. The Echo Trail Area Forest Management Project (the Project) area borders the Boundary Waters Canoe Area Wilderness (BWCAW) on the north and south sides of the Echo Trail and completely surrounds the Trout Lake Unit of the wilderness. Some timber stands identified in the Project could be cut right to the wilderness boundary.

Objecting primarily to the Project's potential impact on the BWCAW and surrounding inventoried roadless areas, the appeal claims: The Forest Service failed to consider direct, indirect, and cumulative impacts of the Project on the BWCAW; The Forest Service failed to preserve wilderness character pursuant to section 4(b) of the Wilderness Act of 1964; and the Project violates the 2001 Roadless Rule by allowing temporary roads and timber harvest in inventoried roadless areas (IRAs).

The appellants have also made claims regarding effects on lynx, the need for additional Management Indicator Species (MIS) and the Forest Service's improper substitution of Management Indicator Habitats for MIS, forest composition objectives, zone and forest-wide spatial objectives, and requirements for public involvement in the monitoring program.

As you can see, several of the Echo Trail appeal issue overlap with issues we are currently litigating in the Forest Plan and South Fowl cases, e.g., preservation of wilderness character, MIS designation, and adequate analysis of BWCAW impacts.

NMW and Legal Advocacy

Does the filing of two lawsuits and now an Administrative Appeal within a brief period, after ten initial years of no legal activity, represent a major change in direction for NMW? Not really. NMW's core mission of advocacy for wilderness and wild places remains the same. Tools of advocacy change with the issues and with the context within which issues arise. NMW was founded in large measure over issues arising from proposed Federal Legislation concerning the BWCAW and Voyageurs National Park. The essence of legislative advocacy is give and take and the willingness to compromise in order to achieve major objectives. NMW and similar groups were involved in negotiation, mediation, and indeed compromise during this time.

The major issues of concern to NMW have changed somewhat over the past few years as has the context within which many issues have arisen. The mid to late 90's legislative issues arose in a Congress catering to anti-environmental/wilderness views. The Administration during this era was at least somewhat sympathetic to NMW views. In more recent years the Administration has become less favorable while, until recently, the Congress has been complacent if not complicit. Issue context has thus shifted from legislative give and take, to administrative proceedings and, failing that, to possible litigation over Executive Branch decisions. Legal Advocacy is not a primary tool of NMW. Nevertheless, it is a legitimate part of wilderness advocacy. NMW will consider legal recourse as issues and conditions warrant.

Several current issues have lead NMW to participate in coalitions. Coalition relationships with other organizations have given NMW access to legal resources we have not possessed in the past. Larger organizations may have one or more staff attorneys and coalitions representing larger public segments have access to pro bono attorneys from law firms with resources to contribute to worthy causes. NMW has been fortunate to utilize these resources in recent wilderness advocacy.

Relationships with USFS

NMW has multiple relationships with USFS and specifically with the staff of SNF. For the most part NMW regards SNF staff as partners in our activities and in our mutual dedication to preserving wilderness and wild places for current and future generations. NMW values its working relationships with SNF staff and will make every effort to maintain and enhance these relationships.

At the same time, NMW recognizes that USFS and its staff comprise an agency in the Executive Branch of the Federal Government. FS decisions at some point are made by those reflecting the political perspective of the current Administration. That perspective may not always reflect Federal Law, USFS regulations, or what professional expertise regards as best practices. In such instances NMW will not hesitate to hold USFS accountable through administrative procedures, and should that effort fail, to turn to legal advocacy as the final recourse of citizens and citizen groups concerned with Federal agency violations of laws and regulations. (Note: A California judge recently ruled the entire 2005 Forest Service Rules were written illegally because FS failed to adequately assess the impact on wildlife and the environment and to give sufficient public notice of the major shift resulting from the rules changes.)

Area Newspaper Coverage

The issue of NMW litigation gained local attention as the result of an article and accompanying opinion piece in the January 27, 2007 Timberjay newspapers, with the opinion piece appearing February 3 as a guest column in the Cook County Herald. Several letters to the editor also appeared following publication of the initial articles.

Several major deficiencies in the articles resulted from omissions that are not apparent in the published pieces. The FS record in litigation decisions concerning the BWCAW and related issues was made known to the reporter but not published. With these facts in print the news article could not have avoided the conclusion that FS has an indefensible track record in these matters.

The news article questioned whether environmental/wilderness organizations are split concerning the benefits of litigation. Certainly some individuals believe that litigation has been pushed too far. Concerning its own participation in litigation, NMW disagrees. NMW cooperates with organizations of varying aggressiveness in pursuing litigation but will make its own independent determination regarding participation in specific litigation.

A final issue discussed inadequately in the news article is the cost of litigation to the FS. Litigation over SNF has cost FS in excess of $300,000 in the past ten years. What was not made clear is that these costs are primarily legal costs of plaintiffs imposed on FS by the Equal Access to Justice Act (EAJA) because FS lost the suits. FS is represented by the Department of Justice in legal proceedings and has few direct legal costs. Costs imposed by EAJA may be paid from the program budget against which the suit was filed. FS claims these program costs have limited its ability to maintain the BWCAW. Readers should note that the National program budget from which BWCAW draws its funds has been decreased by 10 percent in the past five years.