

August 9, 2013

Joseph Comuzzi, Chair  
Canadian Section  
International Joint Commission  
234 Laurier Avenue West, 22<sup>nd</sup> Floor  
Ottawa, ON K1P 6K6

Lana Pollack, Chair  
U.S. Section  
International Joint Commission  
2000 L Street, NW, Suite 615  
Washington, D.C. 20440

Dear Commissioners Comuzzi and Pollack,

We the undersigned, representing *non-governmental organizations, tribal governments, businesses, recreation interests, hunting and fishing interests, citizen's groups and faith communities* from the United States and Canada, request that the International Joint Commission (IJC) examine and report upon the water-related impacts from sulfide mining exploration and development within the Rainy River and Lake Superior Basins. We also request that the IJC make recommendations which would assist governmental bodies in both countries in ensuring that the provisions of Article IV of the Boundary Waters Treaty of 1909 are honored.

The Boundary Waters Treaty of 1909 provides the principles and mechanisms to resolve and prevent disputes, particularly those concerning water quantity and quality, along the boundary between Canada and the United States. Article IV of the Treaty states, "It is further agreed that the waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other."

Sulfide mining is the mining of metals, such as copper, lead, nickel, gold and zinc, when these metals are embedded in a sulfide ore body. It may also be known in some contexts as "non-ferrous" or "hardrock" mining. In recent years, the lands surrounding Lake Superior and within the Rainy River Watershed in Minnesota, Wisconsin, Michigan and Ontario have experienced increasing sulfide mineral exploration and development. This form of mining has a history of severe and long-lasting water pollution associated with it in the United States and Canada as well as other locations around the world.

The water resources of the Lake Superior and Rainy River Watersheds are critical to the healthy functioning of their ecosystems, to the economies of the region, to human and wildlife health, to cultural values, and to the many recreational uses enjoyed by people in both countries. The expansion of sulfide mining brings particular risks to the First Nations of Canada and American Indian communities in the U.S., for whom mining pollution threatens cultural resources such as wild rice, subsistence fishing, human health, and the fulfillment of legal treaty rights.

Given the demonstrated risks of significant water pollution associated with this industry, and the rapidly increasing mineral exploration and development taking place in the region, we believe a thorough understanding of the cross-boundary impacts to water resources is greatly needed.

We request that the Commission examine and report upon the following matters regarding the Lake Superior and Rainy River Basins:

1. The present state of water quality and quantity at the border and the current water uses in the Lake Superior and Rainy River Basins
2. The nature, location and significance of fisheries and wild rice currently dependent on the waters of the Lake Superior and Rainy River Basins
3. The effects on present water quality and quantity at the border and consequent effects on current water uses resulting from existing and foreseeable new sulfide mineral exploration and mine projects in the Basins
4. Such other matters that the Commission may deem appropriate and relevant to water quality and quantity at the border as they relate to sulfide mineral activities in the Basins
5. Recommendations which would assist governmental bodies in both countries in ensuring that waters flowing across the boundary are not polluted on either side to the injury of health or property on the other as a result of sulfide mining activities within the Basins

#### Sulfide Mining Pollution History

Sulfide mining has a record of significant water pollution everywhere it has been conducted. The United States Environmental Protection Agency (EPA) estimates that the headwaters of 40 percent of the watersheds in the western U.S. are contaminated by pollution from these mines. The U.S. Forest Service estimates that between 20,000 and 50,000 mines are currently generating acid mine drainage on its lands, impacting between 8,000 and 16,000 km of streams. In both the U.S. and Canada, mining generates more toxic waste than any other industry. According to the EPA, mining is the largest source of mercury contamination to the Lake Superior Basin. To date, mining companies are unable to identify a single sulfide mine that has been developed, operated and closed without producing polluted drainage.

#### Expansion of Sulfide Mining in the Region

In the last decade, sulfide mineral exploration and development have rapidly increased in the Lake Superior and Rainy River Basins (see attached maps for mineral activities in the Lake Superior Basin and for a portion of the Rainy River Basin). Examples of mine projects in the Rainy River Watershed include the proposed Twin Metals mine in northern Minnesota adjacent to the Boundary Waters Canoe Area Wilderness, and the Goliath Gold and Rainy River Gold projects in Ontario. Lake Superior Basin mine projects include the proposed PolyMet mine in Minnesota, the recently permitted Eagle Mine and the proposed Copperwood mine in Michigan, and the proposed Marathon and the operating Lac des Isles mines in Ontario. Many other mines exist across the region. Widespread exploration occurs across the region in Minnesota, Wisconsin, Michigan and Ontario. This increase in sulfide mining activity has been noted in recent reports to the IJC by the International Rainy Lake Board of Control and the International Rainy River Water Pollution Board.

#### Compounding Issues of Concern: Regulatory Framework and Mine Waste Disposal

A March 2012 report by the National Wildlife Federation and EcoJustice, "*Sulfide Mining Regulation in the Great Lakes Region*," (see attached report) reviewed the regulatory framework pertaining to sulfide mining for Minnesota, Wisconsin, Michigan and Ontario. It found that the

upper Great Lakes region is “poorly positioned to adequately regulate an onslaught of new sulfide mining. In every jurisdiction, there are significant holes in the laws and their implementation.”

The report analyzed five categories of information for each of the four jurisdictions: the regulatory scope, the review process, enforcement, program resources and reporting of official statements (does the jurisdiction require high-quality data from operators and make data available to the public). “Overall, Michigan lacks significant requirements for adequate regulation,” the report notes. In the four categories, Michigan scored poor to fair. Minnesota scored “fair” for all categories, but “Minnesota’s laws and implementation structure needs improvements in all areas,” and “public participation is not encouraged in a meaningful way....” Wisconsin scored fair to good for the categories of assessment, but “the reclamation standard and overall policy of the program is aimed not merely at environmental protection, but includes economic growth as a balancing factor.” The analysis found Ontario to be “in dire need of improving its laws...and review processes...Ontario is far and away the least equipped jurisdiction to regulate and facilitate public involvement in the establishment of new mines.” The province scored poor to fair in the assessment categories. No permit, environmental review process or reclamation are required for mineral exploration activities in the province.

The lack of an adequate regulatory framework across the region combined with the broad expansion of mining, are cause for concern for long-term water impacts. In addition, for both the U.S. and Canada, it is now legal for mine wastes to be dumped into surface waters, including natural lakes, streams and rivers. If this practice is employed widely by mining companies operating in the region, it may have profound effects on the water resources in both Basins and to the people in both countries.

The expansion of sulfide mining across the region, the pollution history of this industry, and the lack of a strong regulatory framework, highlight the pressing need for an assessment of these activities’ impacts on the region’s water resources. We request that the Commission proceed with this analysis and recommendation development as expeditiously as practical.

Thank you for your consideration of this request. Please use as a contact for responses to this letter: Betsy Daub, Friends of the Boundary Waters Wilderness, 401 North Third Street, Suite 290, Minneapolis, MN, 55401, U.S.A; [betsy@friends-bwca.org](mailto:betsy@friends-bwca.org); 612-332-9630.

Sincerely,

Alliance for the Great Lakes  
Audubon Minnesota  
Center for Biological Diversity  
Environment Minnesota  
Environmental Law and Policy Center  
Ernest Oberholtzer Foundation  
Freshwater Future  
Friends of the Boundary Waters Wilderness  
Friends of the Cloquet Valley State Forest  
Keweenaw Bay Indian Community  
League of Women Voters, Michigan  
League of Women Voters, Minnesota

Marquette Unitarian Universalist Congregation  
Mining Impact Coalition of Wisconsin  
MiningWatch Canada  
Minnesota Center for Environmental Advocacy  
Minnesota Conservation Federation  
National Wildlife Federation  
Natural Resources Defense Council  
Northeastern Minnesotans for Wilderness  
Ontario Rivers Alliance  
Path of the Paddle Chapter of the Trans Canada Trail  
Protect Our Manoomin  
Quetico Superior Foundation  
Rainy Lake Conservancy  
Save Lake Superior Association  
Save Our Sky Blue Waters  
Save the Wild U.P.  
Sierra Club - John Muir Chapter  
Sierra Club - North Star Chapter  
Sierra Club - Ontario Chapter  
The Quetico Foundation  
The Wilderness Society  
Voyageurs National Park Association  
Voyageurs Outward Bound School  
WaterLegacy  
Wilderness Inquiry  
Wilderness Watch  
Wisconsin Environment  
Wisconsin Resources Protection Council  
Yellow Dog Watershed Preserve

Attachments: Map: Sulfide Mining Activity in Northeastern Minnesota  
Map: Mines, Mineral Exploration and Mineral Leasing in the Lake Superior  
Watershed  
Report: Sulfide Mining Regulation in the Great Lakes Region

cc: Gina McCarthy, Administrator, U.S. Environmental Protection Agency  
Susan Hedman, Regional Administrator, U.S. Environmental Protection Agency, Region 5  
Mike Goffin, Co-Chair, International Rainy-Lake of the Woods Watershed Board  
Colonel Daniel Koprowski, Co-Chair, International Rainy-Lake of the Woods Watershed Board  
Stephen Locke, Director, International Joint Commission Great Lakes Regional Office  
Dr. Kerri-Ann Jones, Assistant Secretary, Bureau of Oceans and International Environmental  
and Scientific Affairs, U.S. Department of State  
The Honourable Lynne Yelich, Minister of State (Foreign Affairs and Consular), Foreign  
Affairs, Trade and Development Canada