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March 18, 2015

Sent by Electronic Mail

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Minnesota Department of Natural Resources

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Douglas Bruner (Douglas.W.Bruner@usace.army.mil)

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RE: PolyMet NorthMet Sulfide Mine Project
State and Federal Environmental Review
Clean Water Act Section 404 Compliance

Dear Ms. Naramore, Mr. Bruner, Mr. Jiminez:

With this letter, WaterLegacy updates our request for consideration of alternatives to the PolyMet NorthMet copper-nickel mine proposed action. Requests for consideration of alternatives were provided in WaterLegacy's March 13, 2014 consolidated comments on the PolyMet NorthMet Supplemental Draft Environmental Impact Statement, Clean Water Section 404 permit application, and proposed Superior National Forest Land Exchange (PolyMet SDEIS comments).

In WaterLegacy's comments, we requested consideration of various alternatives, including dry tailings disposal. WaterLegacy also emphasized that the Co-Lead Agencies must identify a least environmentally damaging practicable alternative to reduce direct and indirect wetlands and water quality impacts of the PolyMet sulfide mine project.

Since WaterLegacy's PolyMet SDEIS comments were submitted, the Mount Polley tailings impoundment suffered a catastrophic failure on August 4, 2014. The Independent Expert Engineering Investigation and Review Panel *Report on Mount Polley Tailings Storage Facility*

Breach, dated January 30, 2015, determined that the Mount Polley impoundment failed due to its design and concluded:

[T]he future requires not only an improved adoption of best applicable practices (BAP), but also a migration to best available technology (BAT). Examples of BAT are filtered, unsaturated, compacted tailings and reduction in the use of water covers in a closure setting. (*Id.*, at iv)

The Panel explained, “There are no overriding technical impediments to more widespread adoption of filtered tailings technology.” (*Id.*, at 122) The Panel challenged the practice of maintaining a water cover over tailings to reduce reactivity, stating that so-called water cover runs counter to best available technology principles. (*Id.*, at 124). The Panel also criticized as a “limited view” cost comparisons that do not include risk costs, both direct and indirect, associated with failure potential, advising, “Full consideration of life cycle costs including closure, environmental liabilities, and other externalities will provide a more complete economic picture.” (*Id.*, at 123).

After the Mount Polley tailings breach, the Environmental Assessment Office of British Columbia ordered the Pacific Booker Minerals, Inc. company to suspend their plans for the \$517 million Morrison gold and copper mine in British Columbia, pending the independent investigation of the Mount Polley.¹ This month, the Environmental Assessment Office ordered Pacific Booker Minerals to reassess its plan for storing tailings under water and behind an earth and rock dam based on the recommendation of the independent *Report on Mount Polley Tailings Storage Facility Breach* that mines implement dry stacking to eliminate risks of tailings failure.²

We have attached a copy of the *Report on Mount Polley Tailings Storage Facility Breach* with this letter. WaterLegacy reiterates the request made in our PolyMet SDEIS comments for a thorough evaluation of alternatives for the location and management of PolyMet tailings, including the specific alternative of dry stack tailings disposal.

We assert as additional grounds for considering the alternative of dry stack disposal for PolyMet tailings both the catastrophic impoundment breach of the Mount Polley tailings storage facility on August 4, 2014 and the conclusions reached by the Independent Expert Engineering Investigation and Review Panel in their *Report on Mount Polley Tailings Storage Facility Breach*.

WaterLegacy explicitly requests that, in the Final EIS, the Co-Lead Agencies analyze alternatives for dry stack tailings, both on and off the site currently proposed for PolyMet tailings

¹ Order under Sections 30 and 24(4), *In the Matter of the Environmental Assessment Act [etc.] for the Morrison Copper/Gold Mine Project* (August 18, 2014), available at https://a100.gov.bc.ca/pub/epic/apps_data/p224/1408395801785_QkJNTyJTH1VnhnShMrFn9jMLJx2vphdkS2jWkcQ2jst4tCJ4fDjl!-2005870191!1408373806159.pdf

² Hoekstra, Gordon, “Morrison mine ordered to review plan for storing mine waste. Government call comes as a result of Mount Polley tailings dam collapse last summer,” *Vancouver Sun* Mar. 8, 2015, available at <http://www.vancouver.sun.com/technology/Morrison+mine+ordered+review+plan+storing+mine+waste/10872560/story.html>

disposal. We believe this analysis is needed in order to comply with National Environmental Policy Act regulations and in order to identify the least environmentally damaging practicable alternative for the project pursuant to regulations implementing Clean Water Act Section 404. In addition to the factors identified in our prior PolyMet SDEIS comments, we believe that new information on the catastrophic failure of the Mount Polley tailings impoundment, the recommendations in the independent *Report on Mount Polley Tailings Storage Facility Breach* that dry stack tailings be adopted as best available technology, and the particular risks of the proposed PolyMet tailings site location underscore the requirement that dry stack tailings be thoroughly analyzed in the Final EIS and Section 404 process for the PolyMet NorthMet project.

WaterLegacy further requests that the analysis of dry stack tailings alternatives for the PolyMet project include a rigorous cost-benefit analysis focused on long-term costs during operations, reclamation and closure. The long-term benefits of dry stack tailings disposal for PolyMet could include reductions in adverse effects to water quality and wetlands as a result of tailings basin seepage, reduced costs for long-term water quality treatment, reduction in adverse impacts to water quality and wetlands in the event of a catastrophic impoundment failure, and avoided financial and ecological costs of remediation. WaterLegacy would specifically request that the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency engage an independent analyst to provide this cost-benefit evaluation of dry stack tailings alternatives.

Thank you for your attention to our request for assessment of the best available technology alternative of dry stack tailings for the PolyMet NorthMet project to protect water quality, wetlands and avoid the risk of catastrophic failure, in compliance with applicable regulations. Please confirm by electronic mail your receipt of this letter and attached report.

Sincerely yours,



Paula Goodman Maccabee
Advocacy Director/Counsel for WaterLegacy

cc: Alan Walts, U.S. Environmental Protection Agency (walts.alan@epa.gov)
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Enclosure: *Report on Mount Polley Tailings Storage Facility Breach*