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May 18, 2023

Bill Johnson (bill.johnson@state.mn.us)
Mining Planning Director
Minnesota Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155

RE: Mile Post 7 West Ridge Railroad Relocation, Dam Extensions, and Stream Mitigation Project – Environmental Assessment Worksheet

Dear Mr. Johnson,

The attached comments on the Mile Post 7 West Ridge Railroad Relocation, Dam Extensions, and Stream Mitigation Project – Environmental Assessment Worksheet ("EAW") are submitted by WaterLegacy and joined by Northeastern Minnesotans for Wilderness ("NMW"). We request that the Minnesota Department of Natural Resources ("DNR") take the following actions:

A. Prepare an environmental impact statement ("EIS") for all proposed new, extended and expanded Mile Post 7 tailings basin features, including cumulative impacts of project developments since the 1977 EIS because the proposed project, including cumulative impacts, has the potential for significant environmental effects not subject to effective mitigation by ongoing public authority. Minn. Stat. § 116D.04; Minn. R. 4410.1700, subp. 7(A)-(D); Minn. R. 4410.2000, subp. 3(A).

B. Analyze in that EIS: 1) the potential environmental and safety impacts of dam breach and failure for upstream and "offset upstream" dam raises constructed on top of uncompacted tailings near Lake Superior; 2) all project features with the potential for significant impacts to wetlands and water resources; and 3) potential alternatives to avoid, minimize, or mitigate such effects.

C. Require the applicant, Northshore Mining Company ("Northshore"), a wholly owned subsidiary of Cleveland-Cliffs, Inc. ("Cliffs") to apply for a Dam Safety Permit for the Mile Post 7 tailings basin and evaluate issuance of that permit in a formal, open process that allows for public notice and comment. Minn. Stat. ch. 103G, Minn. R. ch. 6115.

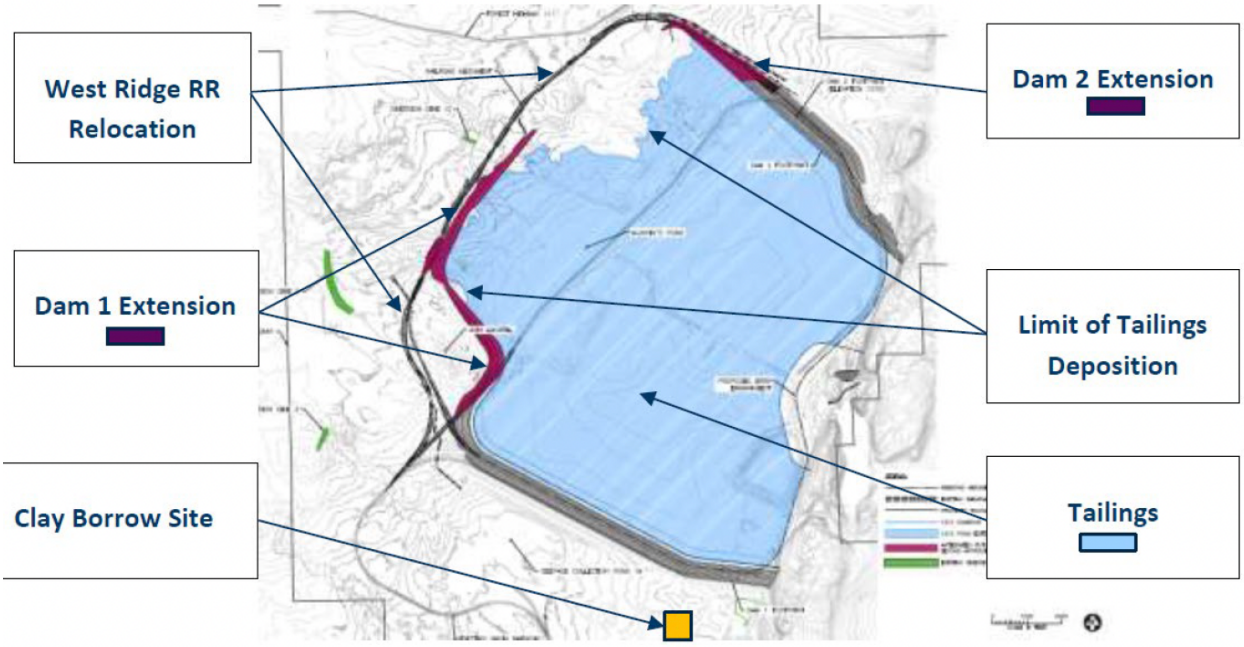
D. Require Northshore to apply for renewal of its permit to mine and an amendment pertaining to the Mile Post 7 tailings dam and evaluate approval of that renewal and amendment as a substantial change requiring an open public process. Minn. Stat. ch. 93, Minn. R. ch. 6130.

Many of the facts supporting the requested actions are not disputed. The factual background and the authorities and arguments upon which we rely are stated in the following pages.

I. PROPOSED MILE POST 7 PROJECT

1. Details of the Mile Post 7 Proposed Project are provided in the DNR EAW for Mile Post 7 West Ridge Railroad Relocation, Dam Extensions, and Stream Mitigation Project, December 2022 version ("*EAW*") and in the DNR's Record of Decision Findings of Fact, Conclusions and Order Denying an EAW for the Mile Post 7 Tailings Basin Progression, February 4, 2022, EAW appendix j7 ("*DNR 2022 ROD*").

2. Elements of the Proposed Project, *DNR 2022 ROD* ¶48, are shown below:



3. Based on these DNR documents, the Proposed Project would include:

a) Extension of existing Dams 1 and 2 at their western ends by 8,100 feet and 4,100 feet respectively, for a total increase of 12,200 feet of tailing dams. *DNR 2022 ROD* at 78.[1]

b) Relocation of the West Ridge Railroad approximately 4000 feet to the northwest. *DNR 2022 ROD,* ¶47c. The proposed rail embankment would allow relocation of the railroad currently on the west side of the tailings basin; it be approximately 3,700 feet long and would cover 8.40 acres. *EAW* at pdf 7.

[1] The EAW states that Dam 1 extension would be 6,600 feet and the Dam 2 extension 2,350 feet. *EAW* at pdf 5 (the EAW is not paginated).

c) A 650-acre extension of the tailings basin, increasing the current area covered with tailings from approximately 2,150 acres to an anticipated 2,800 acres of tailings *DNR 2022 ROD*, ¶47b, page 78.

d) Permitting elevations of Dams 1, 2, and 5, which are currently at 1,242 feet above mean sea level ("amsl"), 1,244 feet amsl, and 1,255 feet amsl respectively to increase to 1,315 amsl. *EAW* at pdf 5-6, 15.

e) Loss of 66.73 acres of wetlands and shallow lakes and 249.54 acres of wooded/forest. *EAW* at 30. Approximately 264 acres of direct wetland impacts and 45 acres of indirect wetland impacts. *DNR 2022 ROD* at 78.

f) Filling the remaining portions of Big Thirtynine Creek and Little Thirtynine Creek, located within the Tailings Basin, *EAW* at 5, resulting in direct impacts to 5,150 feet of Big Thirtynine Creek and 3,420 feet of Little Thirtynine Creek. Minnesota Pollution Control Agency ("MPCA") Section 401 Certification, June 29, 2021, EAW appendix j16 ("*MPCA 401*") at 1.

g) Effects on 8,570 linear feet of stream resources due to: construction of the Dam 1 extension and rail switchback (1,675 feet), tailings basin progression (3,368 feet), and impoundment or the seepage pond and pumphouse (3,527 feet). DNR Internal Memo Mile Post 7 Environmental Review Need Determination, June 28, 2021, EAW appendix j2 ("*DNR 2021 ER Memo*") at 37.

h) Excavation of a clay borrow site of approximately 100 acres outside the EIS study area for ongoing construction of Dam 5. *DNR 2022 ROD*, ¶47d.

i) Approximately 30.08 acres of new Dam 2 and railroad construction occurring outside the EIS study areas of both the 1975-76 DNR Final EIS and the 1977 USACE Final EIS for the Mile Post 7 tailings basin. *DNR 2022 ROD,* ¶96.

II. OVERVIEW OF HISTORY

4. In 1974, the United States District Court found that the discharge of tailings into Lake Superior by Reserve Mining Company was a violation of the Federal Water Pollution Control Act, enjoined further disposal in the Lake, and ordered Reserve Mining to find an on-land disposal site for its tailings. *See EAW* appendix j31.[2]

[2] *United States v. Reserve Mining Co*., 380 F. Supp. 11 (D. Minn. 1974) aff'd and modified by *Reserve Mining Co. v. EPA*, 514 F.2d 492 (8th Cir. 1975).

5. In 1975 and 1976, DNR and MPCA jointly prepared an EIS for the proposed Reserve Mining Company On Land Tailings Disposal Plan. The *1975 Draft EIS* is provided in EAW appendix j9a.

6. Public hearings were held from June 23, 1975 through March 18, 1976; 17,884 pages of transcript were taken from 160 witnesses; the State's Final EIS was deemed complete on June 2, 1976; and Findings and Conclusions, and Recommendations for the Final EIS were issued. DNR and MPCA, Final EIS for Northshore MP7 Tailings Basin, June 2, 1976, EAW appendix found in j9a starting at pdf page 356 ("*1976 FEIS*") at 3, 46 (numbered FEIS pages).

7. The 1976 Final EIS recommended the Midway alternative tailings basin site concluding, "The record in this proceeding clearly establishes that Mile Post 7 is not a suitable location for disposal of Reserve's tailings and would be contrary to law." *1976 Final EIS* at 3, 46.

8. DNR and MPCA denied permits for use of the Mile Post 7 site, and Reserve Mining appealed to state district court, which ordered the state agencies to grant Reserve Mining permits for the Mile Post 7 site. U.S. Army Corps of Engineers ("USACE") Final EIS, Mar. 1977, WL Ex.1 ("*1977 USACE FEIS*") at 5.

9. On appeal, the Minnesota Supreme Court ordered DNR and MPCA to issue a permit for its preferred site at Mile Post 7. *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808 (Minn. 1977).

10. On August 23, 1977, DNR issued a Master Permit for the Mile Post 7 tailings basin and dams pursuant to Minnesota Statutes Chapters 105 and 116D. EAW appendix j.3 (*"1977 Master Permit*") at 4.

11. On March 1, 1985, DNR issued a permit to mine for the Peter Mitchell mine, stockpiles, railroad, plant, and tailings basin. EAW appendix j.5 ("*1985 PTM*") at 1. The 1985 permit to mine incorporated the 1977 Master Permit plans and schedules by reference. *Id*. at 3.

12. DNR has not identified other formal permits or amended permits pertaining to the Mile Post 7 tailings basin and dams. *See e.g*., *EAW, DNR 2022 ROD, DNR 2021 ER Memo*.

13. The EAW's chronology states, "August 1995 1977 Master Permit renewed." The document cited by DNR is a letter renewing the "master permit" that was issued on August 17, 1989 and citing several later unspecified modifications. DNR Letter, August 30, 1995, EAW appendix j.4. ("*DNR 1995 Letter*").

14. The August 17, 1989 document cited by DNR is a stipulation reflecting the Cyprus Northshore Mining Corporation ("Cyprus") purchase of Reserve Mining assets from the bankruptcy trustee and providing for shutdown, closure, and reclamation of Mile Post 7. Stipulation Agreement in re Reserve Mining Co., August 17, 1989, EAW appendix j27 ("*1989 Stipulation*").

15. According to a 2005 document, Cliffs through a wholly owned subsidiary mining company, purchased the stock from Cyprus in 1994 and renamed the mining company Northshore Mining Company. *See* Mile Post 7 Master Permit Amendment and Assignment of the Permit to Mine, March 7, 2005*,* EAW appendix j6 *("2005 PTM Assignment*").

16. Eleven years later, in March 2005, DNR and Cliffs signed a document assigning the permit to mine to Northshore and stating that the Mile Post 7 tailings basin permit, the "1977 Master Permit" in these proceedings, was "amended and transferred" to Cyprus in 1989 and "further modified," "renewed," and "extended" numerous times through 2004. *2005 PTM Assignment*.

17. On August 18, 2016, Northshore notified DNR that it proposed to relocate the Mile Post 7 railroad, extend the existing tailings basin to the west, and increase the height of the tailings basin to 1,365 feet amsl. DNR Memo, Mile Post 7 Railroad Realignment & Tailings Basin Progression, March 16. 2017, WL Ex. 2 ("*DNR 2017 ER Memo*") at 1-2. DNR denied the need for a supplementary EIS for the Mile Post 7 Project on March 16, 2017. *Id*. at 6.

18. On September 21, 2020, in response to a Clean Water Act Section 404 Notice for the Mile Post 7 tailings basin expansion, WaterLegacy sent both DNR and USAE comments requesting environmental review before approving the project. WaterLegacy Comments on Milepost 7 Tailings Basin Expansion, September 21, 2020, WL Ex. 3.

19. In response to WaterLegacy's September 2020 comments, DNR denied the need for environmental review. *DNR 2021 ER Memo* at 65.

20. WaterLegacy, along with 365 Minnesota residents, petitioned DNR on November 9, 2021 to prepare an EAW for the Mile Post 7 Project. WaterLegacy Petition for EAW, November 9, 2021, WL Ex. 4 ("*WL Petition*").[3] The Petition asserted that stream impacts, among other factors, made preparation of an EAW mandatory. *Id.* at [CITE]

21. In response to WaterLegacy and MCEA petitions for an EAW, on February 4, 2022, DNR's formal Record of Decision concluded that an EAW would not be prepared for the Mile Post 7 Project. *DNR 2022 ROD* at 82.

[3] The Minnesota Center for Environmental Advocacy ("MCEA") and more than 100 individuals also petitioned DNR for an EAW for the Mile Post 7 Project in the fall of 2021.

22. On March 15, 2022, DNR published an EAW for the Big Thirtynine and Little Thirtynine Creek Mitigation Project. Northshore notified DNR that the mitigation project would be withdrawn to provide new data and requested that DNR stop work on the EAW.[4]

23. DNR subsequently resumed the process of preparing an EAW for the Mile Post 7 West Ridge Railroad Relocation, Dam Extension, and Stream Mitigation Project, which was provided to the public on April 18, 2023.[5]

III. ENVIRONMENTAL REVIEW REQUIREMENTS

24. Minnesota Statutes 116D.04, subd. 2a requires: "(a) Where there is potential for significant environmental effects resulting from any major governmental action, the action must be preceded by a detailed environmental impact statement prepared by the responsible governmental unit." In addition, subd. 2a (d) states that the "responsible governmental unit's decision on the need for an environmental impact statement must be based on the environmental assessment worksheet and the comments received during the comment period."

25. Minnesota Rules part 4410.2000, subp. 3A, directs a responsible governmental unit ("RGU") to prepare a discretionary EIS:

> A. when the RGU determines that, based on the EAW and any comments or additional information received during the EAW comment period, the proposed project has the potential for significant environmental effects; or
>
> B. when the RGU and the proposer of the project agree that an EIS should be prepared.

26. Criteria that must be used to decide whether a project has the potential for significant environmental effects include these factors: A. "type, extent, and reversibility of environmental effects"; B. "cumulative potential effects"; and C. "the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority." Minn. R. 4410.1700, subp. 7.

27. "Cumulative potential effects" includes incremental effects of a project on the environment in addition to other past and future projects in the environmentally relevant area that might reasonably be expected to affect the same environmental resources. Minn. R. 4410.0200, subp.11a.

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[4] DNR, Big 39 and Little 39 Creek Mitigation Project Decision to Terminate EAW, available at https://www.dnr.state.mn.us/input/environmentalreview/big-39-and-little-39-creek-mitigation-project/index.html.

[5] DNR's Project website page is https://www.dnr.state.mn.us/input/environmentalreview/mile-post-7-tailings-basin-project.html.

28. DNR has concluded that the Mile Post 7 Proposed Project does not fall within any of the exemptions from environmental review contained in Minn. R. 4410.4600. *DNR 2022 ROD*, ¶56.

IV. BASIS FOR ENVIRONMENTAL IMPACT STATEMENT

A. Dam Construction Method and Tailings Basin Dam Breach or Failure.

29. The State's 1976 Final EIS required that tailings dams for the Mile Post 7 be constructed using the downstream method and found that other construction methods were unsuitable as follows:

> The proposed design utilizes the "downstream" method of dam construction, which is desirable from an engineering standpoint. As the height of the dam increases, the dam is constructed in the direction away from (or downstream from) the basin. Thus, in contrast with the upstream method of dam construction which had been used in prior years, the downstream method avoids the placement of dam construction materials on previously deposited fine materials, which would be unsuitable as a base for the dam.

1976 FEIS, ¶16.

30. The 1976 Final EIS determined that, even with the downstream method of tailings dam construction, an alternative location should be selected due to the potential for significant environmental effects of a dam breach at Mile Post 7, as follows:

> A 1,000 foot breach in the south dam at Mile Post 7 "would produce a 28 foot high wall of water moving down the Beaver River valley at more than 20 miles per hour to Lake Superior." *1976 FEIS* at 41, Conclusion ¶4.
>
> "Significant water resources would be destroyed, impaired and polluted." *Id*. at 42, ¶6.
>
> Major failure at Mile Post 7 would "thwart the entire purpose of on land disposal by emptying stored tailings into Lake Superior." *Id*. at 41, ¶5
>
> "The threat to Lake Superior would not end when operations cease, but would persist indefinitely." *Id*.
>
> DNR has acknowledged that the "risk of dam failure was a significant part of the EIS analysis in selecting a site for Reserve Mining's tailings basin." *DNR 2022 ROD* ¶194.

31. DNR considers Mile Post 7 dams to be High Hazard or Class I dams. *DNR 2022 ROD* ¶197. A Class I dam is a dam in which "failure, mis-operation, or other occurrences or conditions would probably result in…any loss of life or serious hazard, or damage to health, main highways, high-value industrial or commercial properties, major public utilities, or serious direct or indirect, economic loss to the public." Minn. R. 6115.0340, subp. A.

32. The 1977 USACE Final EIS also evaluated the Mile Post 7 tailings basin only with the planned downstream construction method, explaining that the "downstream construction method planned for the dams is generally considered to be preferable to the more commonly employed upstream construction method, since it does not place coarse dam material on previously deposited slimes." *1977 USACE FEIS* at pdf 173.

33. Early construction of all three Mile Post 7 dams was consistent with the State's 1976 Final EIS and the 1977 USACE Final EIS. *DNR 2022 ROD* ¶211. However, by 1995 Northshore requested that DNR allow future dam raises by the "upstream" method. Northshore Five Year Operating Plan for Milepost 7 Tailings Basin, November 28, 1995, EAW appendix j17 ("*1995-1998 FYOP*") at 19.

34. In 1997, DNR approved Northshore' plans to "continue operations utilizing upstream construction methods instead of the Reserve-proposed downstream construction." The new operating plan included "progressive raising of dams by upstream construction methods." *DNR 2017 ER Memo* at pdf 14.

35. In 2004, the upstream construction method was modified, and Northshore adopted an "offset upstream" or "modified centerline" construction method with tailings and aggregate both upstream and downstream of the centerline core. Northshore Five-Year Operating Plan Years 2019-2023 for Milepost 7 Tailings Basin, January 2019, EAW appendix j19 ("*2019-2023 FYOP*") at 2*; DNR 2022 ROD*, ¶173.

36. Since 2004, Mile Post 7 Dams 1 and 2 "have been raised using the offset upstream construction method to minimum elevations of 1,241 feet and 1,243.9 feet, respectively." *2019-2023 FYOP* at 2.

37. Although downstream construction methods were originally used for dam construction, since the late 1990s upstream and offset upstream construction methods were used for the Mile Post 7 dams. *DNR 2021 ER Memo* at 3; *DNR 2022 ROD,* ¶173.

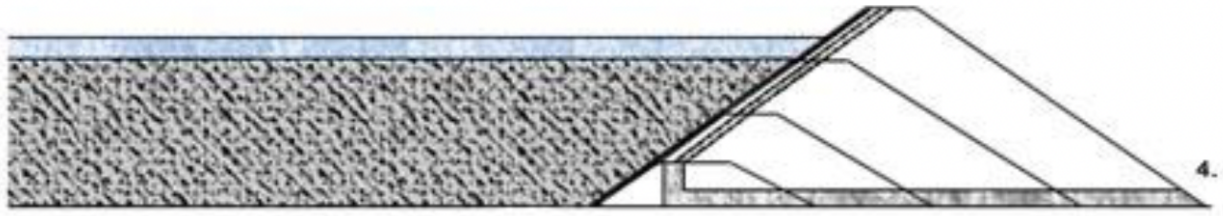
38. The proposed new horizontal extensions of Dams 1 and 2 in the Mile Post 7 proposed project would be undertaken using a centerline construction method. *2022 DNR ROD* ¶194. This construction method is neither an "upstream" method nor the "downstream" construction method studied and adopted for the Mile Post 7 tailings dam in both the 1976 Final EIS and the 1977 USACE Final EIS.

39. It is not disputed that proposed Mile Post 7 Project would continue to use what DNR describes as the "offset upstream" or "modified centerline" method to increase the heights of all of the main Dams 1, 2, and 5. *DNR 2022 ROD*, ¶¶194, 211, including the dams facing toward Lake Superior.

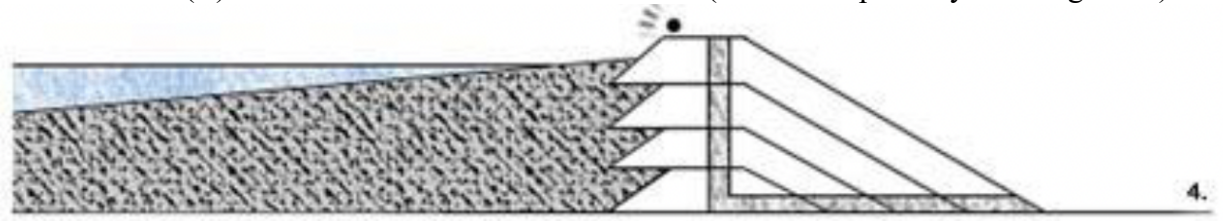
40. Dr. Steven Emerman has an M.A. in Geophysics from Princeton University, a Ph.D. in Geophysics from Cornell University, 31 years of experience teaching hydrology and geophysics, 70 peer-reviewed publications, and national and international expertise in the evaluation of proposed and existing tailings dams. Steven Emerman, Evaluation of the Proposed Tailings Dam Extensions at the Cleveland-Cliffs Mile Post 7 Tailings Storage Facility, Northeastern Minnesota, September. 30, 2021, WL Ex. 5 ("*Emerman 2021*") at 63.

41. The following figures from Dr. Emerman's report, *Emerman 2021* at 12-14, 23, illustrate the (A) downstream, (B) centerline, (C) upstream and (D) modified centerline/offset upstream construction methods:

(A) Downstream dam construction method (new raises rest on ground).

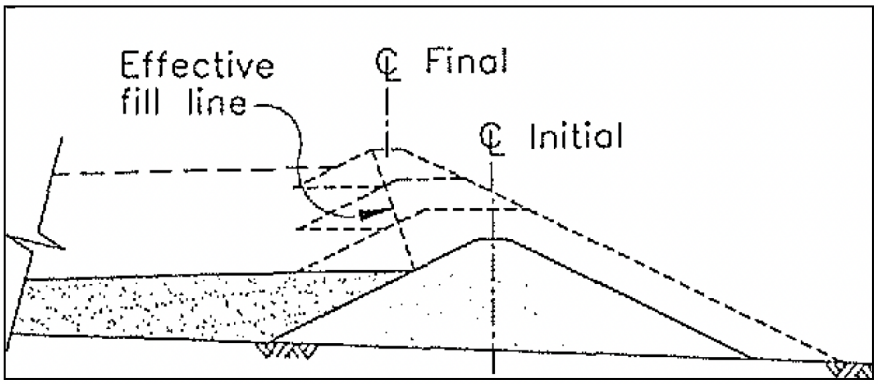


(B) Centerline dam construction method (new raises partially rest on ground).



(C) Upstream dam construction method (new raises rest on tailings)

(D) Modified centerline/offset upstream method (new raises rest on tailings).



42. Dr. Emerman's report, summarized recent data on dam failure risks:

> "Empirical databases that have become available since the late 1970s have reinforced the high risk of failure of upstream dams, which made up only 19% of new facilities by the decade 2010-2019."
>
> "Considering only upstream, centerline and downstream dams, on a global basis, upstream dams make up 54% of existing dams, but 71% of dam failures, while downstream dams make up 38% of existing dams, but 20% of dam failures."
>
> "A recent analysis of the Global Tailings Portal has shown that upstream facilities have a higher incidence of stability issues (18%) than other facility types (even after controlling for age), being twice that of downstream facilities."

Emerman 2021 at 62.

43. Dr. Emerman's conclusion that upstream dams have a higher likelihood of failure than downstream dams has not been disputed by DNR.

44. Peer-reviewed literature published in 2021, Franks *et a*l. (2021) cited in *Emerman 2021* at 37, graphed tailings dam stability issues by type of facility, as reproduced on the next page:

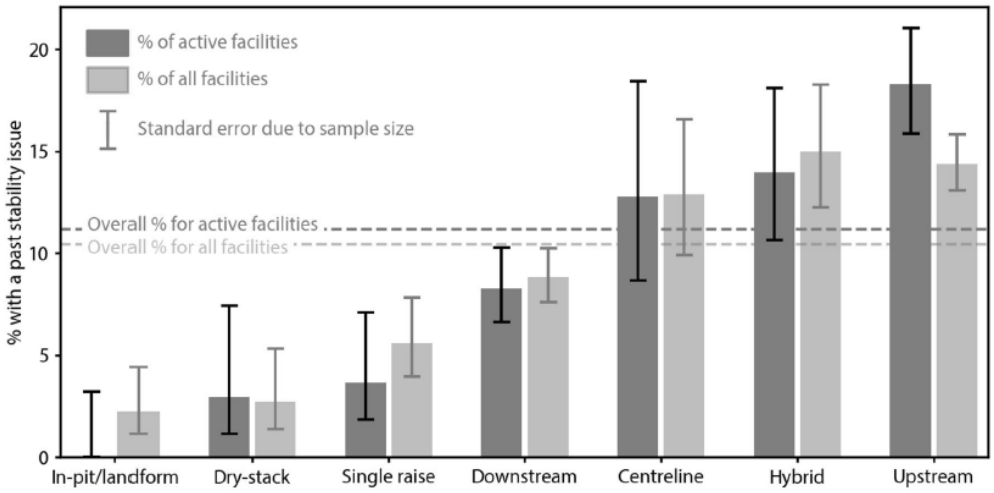


Figure 3. Stability of tailings facilities. Proportion of facilities with a stability issue by raise type. Error bar lengths are binomial confidence intervals for the subsample represented by each bar, showing ± 1 standard error (approximately 68%).

45. Dr. Emerman's report explained that tailings dams "constructed using the upstream method are especially vulnerable to failure by either seismic liquefaction or static liquefaction because the dam is built on top of the uncompacted tailings." *Emerman 2021* at 17. As a result, "even if the dam temporarily maintains its structural integrity while the underlying tailings liquefy, the dam could fail by either falling into or sliding over the liquefied tailings. *Id*.

46. Dr. Emerman explained that "modified centerline or offset-upstream dams" are "simply upstream dams, in which the dam is constructed out of coarse tailings on top of the uncompacted fine tailings that they are confining." *Emerman 2021* at 61. This method of dam construction "retains the essential feature that makes the upstream method vulnerable to failure by seismic or static liquefaction (placement of dam construction material on top of uncompacted tailings)." *Emerman 2021* at 22.

47. DNR stated that for the Mile Post 7 offset upstream dams placed on tailings "there is a degree of compaction present in the tails lying under the dams that affords some degree of improved stability." *DNR 2022 ROD* ¶219.

48. However, DNR has not disputed the premise that, other things being equal, "offset" upstream dams or "modified" centerline dams built on tailings have less stability than dams using the downstream construction method evaluated and required by the 1976 Final EIS.

49. It is undisputed that no EIS has studied the potential environmental impacts of Mile Post 7 tailings dam raises constructed on top of uncompacted, previously deposited tailings. *DNR 2022 ROD* ¶¶217, 219.

50. DNR has stated that the "type of impacts due to dam construction and operation are generally the same regardless of the method of construction." *DNR 2022 ROD* ¶211.

51. However, no EIS has considered the potential scope, extent, and severity of dam breach or dam failure impacts of the Mile Post 7 tailings dam with methods of construction that deviate from the planned downstream method.

52. No EIS has evaluated the differential probability of dam breach or dam failure of the Mile Post 7 tailings dam due to the fact that Northshore has used upstream and offset upstream raises to increase dam height since the late 1990s, rather than the downstream raises prescribed and studied in 1975-1977 environmental review.

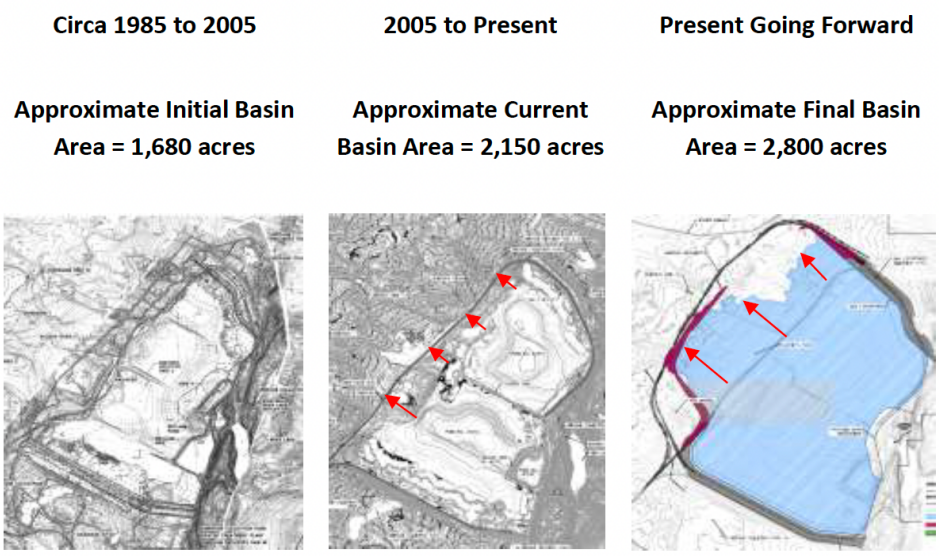
53. No EIS has evaluated the cumulative potential effects on the environment of the increased heights of the Mile Post 7 Proposed Project dam raises to 1,315 amsl, given the use of upstream and offset upstream tailings dam construction since the late 1990s.

54. Dr. Emerman concluded that the use of upstream dam raises at Mile Post 7 "must be reconsidered in light of the new knowledge regarding the unsafe nature of upstream dams" based on data made available since 2020. *Emerman 2021* at 3, 61-62. He recommended that "no action should be taken regarding the proposed tailings dam extension at the Mile Post 7 tailings storage facility without a new Environmental Impact Statement at a minimum." *Id.* at 63.

B. Tailings Basin Extension, Railroad Relocation, and Coal Ash Landfill Not Assessed.

1. Enlargement of Tailings Basin by 650 Acres

55. It is undisputed that the Mile Post 7 proposed project would extend the tailings basin and add 650 acres to the current tailings basin area, as shown in the images below from the *DNR 2021 ER Memo* at 17.



56. It is also true, as DNR has emphasized, that the crude outline of the Mile Post 7 tailings site during 1975-1977 environmental review included most of the area into which the proposed project plans to expand. *See e.g., DNR 2022 ROD*, ¶74.

57. DNR admits that the 1975 Draft EIS proposed that, of the 7.6 square miles for tailings, 4.6 square miles would contain fine tailings and 3.0 would store coarse tailings. *DNR 2022 ROD* ¶74.

58. However, DNR has asserted that, since the 1976 Final EIS did not break down the areas assigned for fine tailings and coarse tailings, the record could be interpreted to allow ~2,950 acres allocated for a tailings basin containing 753,023,000 tons of wet slurry tailings. *DNR 2022 ROD*, ¶¶75, 83.

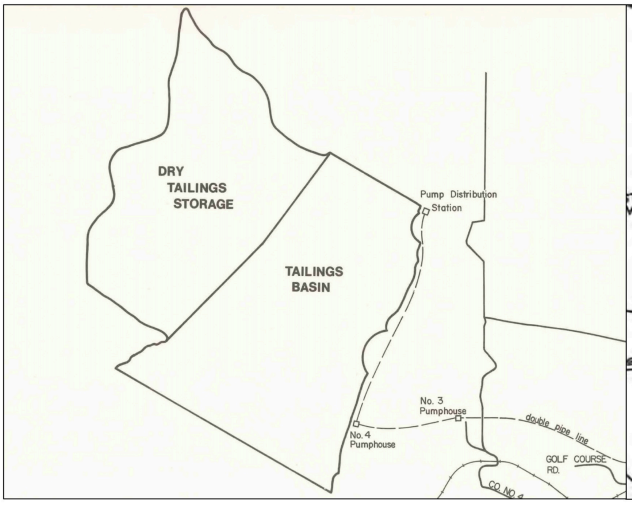
59. DNR's interpretation is not supported by federal and state environmental review documents. Plans for Mile Post 7 storage of dry coarse tailings are not equivalent to plans for containment of wet slurry fine tailings in a tailings basin.

60. The 1975 Draft EIS clearly stated that the "proposed Mile Post 7 plan includes a separate storage/disposal area" for coarse dry tailings which "is to be located to the northwest of the proposed fine tailings disposal basin." *1975 Draft EIS* at 45.

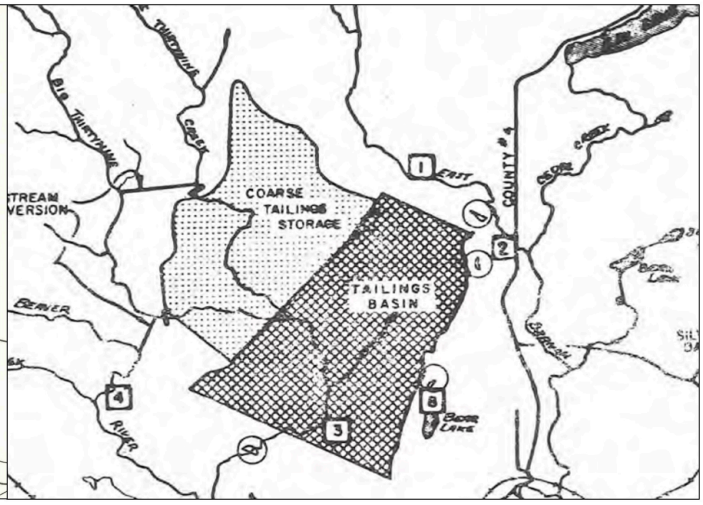
61. The 1977 USACE Final EIS explained that coarse tailings (also described to include dry cobbs and filtered tailings) would be transported by rail to the Mile Post 7 site, but "fine tailings" would be sent to clarifiers and dewatered to a slurry and then piped to the proposed tailings basin. *1977 USACE FEIS* at 11, ¶¶1.042-43.

62. The ultimate height of the Mile Post 7 tailings basin was designed not to contain the total tonnage of tailings, but rather to be sufficient to store all of the fine tailings and some coarse tailings, although coarse tailings to the maximum extent would be used for dam construction. *1977 USACE FEIS* at 13-14, ¶¶1.055, 1.061.

63. The state's 1975 Draft EIS and the federal 1977 USACE Final EIS both clearly distinguished between the tailings basin area and dry storage of coarse tailings as shown in the illustrations on the next page:



DNR, Mile Post 7 Tailings Basin, *1975 Draft EIS,* Fig. 12, pdf 74



USACE, Mile Post 7 Tailings Basin, *1977 USACE FEIS* at A-58, pdf 280

64. In addition, in response to critical comments from the U.S. Department of Interior, the USACE clearly stated that the coarse tailings storage area was completely "removed from the project design." *1977 USACE FEIS*, at pdf 189 (unpaginated comments).

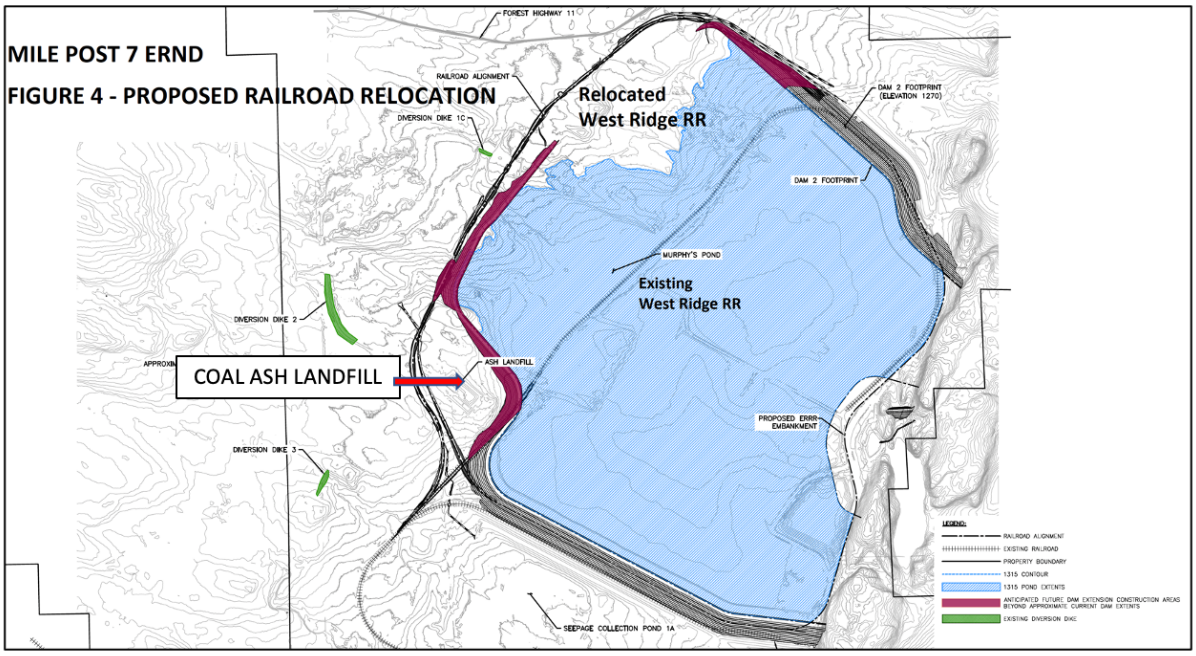
65. DNR has acknowledged, "The Proposer reports coarse tailings storage as envisioned in the 1975-76 Final EIS and 1977 USACE Final EIS never occurred at the tailings basin site and is not expected to occur." *DNR 2022 ROD* ¶104.

66. The use of the site area west of the existing railroad line for dry storage of coarse tailings was explicitly evaluated in the 1975 Draft EIS and in the 1977 USACE Final EIS, but that proposed use was rejected by the USACE in response to comments by another federal agency and is neither proposed nor expected in the future. Findings 63-66.

67. Expansion of the wet slurry tailings basin 650 acres west of the existing railroad line was never evaluated in 1975-1976 state environmental review or 1977 federal environmental review. Findings 57-67.

2. Coal Ash Landfill, Dam Extension, and Railroad Relocation.

68. The Mile Post 7 site contains a 30-acre coal ash landfill with a total capacity of 566,000 cubic yards and is intended to be used for the disposal of coal ash and other approved wastes up to its design capacity. *EAW* at pdf 23-24. Construction of the coal landfill began in 2000, and its location is at the southwest corner of the proposed expansion of the Mile Post 7 tailings basin, *DNR 2021 ER Memo* at 53, Figure 4, shown on the next page with a larger label added.



69. Northshore anticipates that at some point when the tailings pond elevation is higher, the pond on the west side of the western extension of Dam 1 would become a seepage pond and that seepage would occur along the portion of the dam extension (red in above figure) "in the vicinity of the ash landfill." *DNR 2021 ER Memo* at 54.[6]

70. DNR acknowledges that the "need for this disposal and eventual development of a landfill was neither anticipated nor analyzed in the 1975-76 Final EIS, nor in the 1977 USACE Final EIS. Neither mandatory nor discretionary Environmental Review has occurred for the facility." *EAW* at pdf 24. No permit refers to this disposal facility. *See 1977 Master Permit*; *1985 PTM*.

71. DNR acknowledges that an estimated 8,100 feet of new Dam 1 construction is needed for the Mile Post 7 proposed project in order to avoid the coal ash landfill. This new Dam 1 construction to avoid the coal ash landfill results in a net increase of 5.500 feet of dam construction beyond what was considered in the 1976 Final EIS. *DNR 2022 ROD*, ¶214.

72. DNR similarly acknowledges that Mile Post 7 Dam 2 is already 800 feet longer than the length studied in the state's1976 Final EIS and will require an additional 4,100 feet of new construction to accommodate the relocation of the railroad. This results in a net increase of 4,900 feet of new construction for Dam 2 beyond that estimated in the 1976 Final EIS. *DNR 2022 ROD*, ¶214.

[6] Northshore modeling suggests that the future tailings pond, even at 1,355 feet amsl, would not elevate groundwater levels beneath the landfill. *DNR 2021 ER Memo* at 54-55. It has not been shown that this modeling was independently validated.

73. It is undisputed that for the Mile Post 7 proposed project, taken together, "the total length of new dam construction beyond that anticipated in the 1975-76 Final EIS is 10,400 feet." *DNR 2022 ROD*, ¶214.

74. The EAW states that the 1977 USACE Final EIS describes a Construction Railroad General Alignment at the tailings, while the 1975 Draft EIS only refers generally to a "possible railroad spur" off the Reserve Railroad basin to convey coarse tailings for Mile Post 7 dam construction. *EAW* at pdf 22.

75. In fact, Exhibit A-31 of the 1977 USACE Final EIS depicts both the initial location of rail spurs and an "ultimate" railroad alignment similar to the existing West Ridge Railroad alignment at the Mile Post 7 tailings basin. *1977 USACE FEIS*, pdf 252,Ex. A-31.

76. No text or exhibit in the 1977 Final EIS describes or depicts any railroad alignment approximating the railroad alignment proposed in the Mile Post 7 expansion project.

77. State 1975-1976 environmental review did not even evaluate construction of the existing West Ridge Railroad. There are no EIS exhibits depicting any proposed railroad alignment and no text references to construction of any railroad alignment. Text mentioning hauling tailings by rail appear to refer to existing railroad lines. *See e.g*., *1975 Draft EIS* at 17, 269, 289; *1976 FEIS* at 6.

78. In summary, no state or federal EIS has studied the environmental impacts of the relocation of the railroad proposed for the Mile Post 7 project. Findings ¶¶ 74-77.

79. DNR acknowledges that the 1977 Master Permit for the Mile Post 7 tailings basin "did not expressly identify the tailings storage facility as including a materials supply railroad." *EAW* at pdf 22.

80. In fact, the 1977 Master Permit did not mention "railroads" as a feature "proposed by the Permittee and hereby permitted as to overall project concept," but rather in the unrelated context of permitting stream crossings of roads and railroads. *1977 Master Permit* at 3, 28.

81. The 1985 permit to mine that included the Mile Post 7 tailings basin only referred to an existing railroad; it did not authorize railroad construction. *1985 PTM*.

82. No state environmental review document or permit evaluated or permitted the construction of the existing Mile Post 7 railroad alignment, let alone the new alignment proposed in the Mile Post 7 expansion project. Findings ¶¶74-81.

83. DNR acknowledges that the proposed new railroad would abut the full length of the Dam 2 extension and would also be constructed on a small section of the Dam 1 extension. *DNR 2022 ROD*, ¶47c.

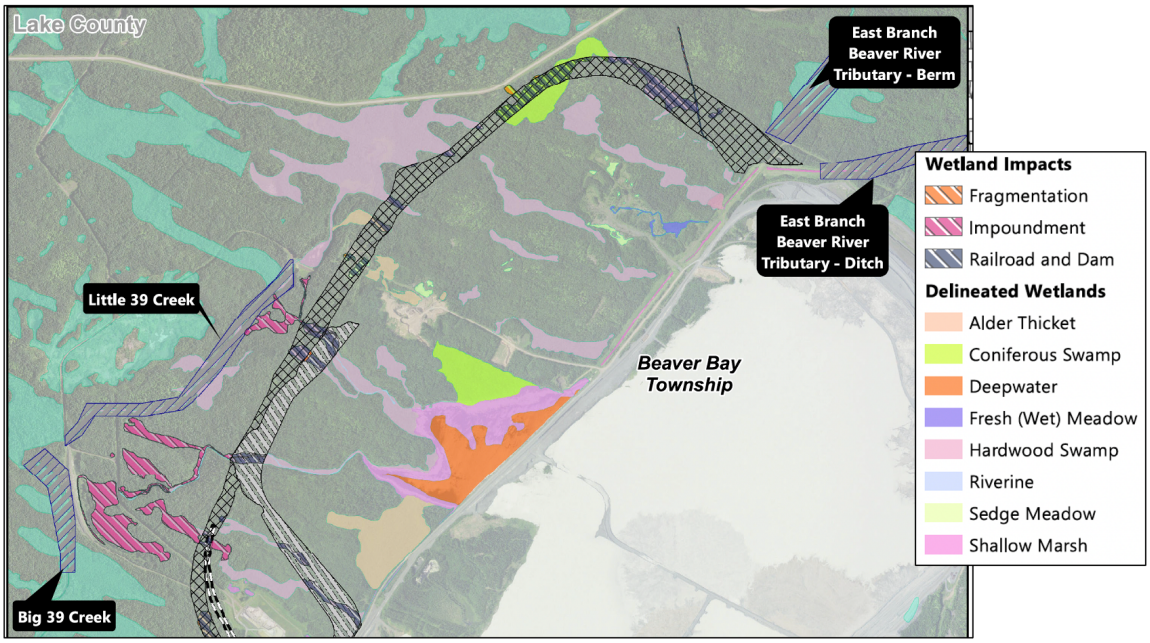
84. None of the 1975-1977 state or federal environmental review documents evaluate a proposal to locate a railroad embankment on a portion of the Mile Post 7 tailings basin dams.

85. No permit pertaining to the Mile Post 7 tailings basin authorizes construction of a railroad on any part of Mile Post 7 dams.

86. DNR acknowledges that the relocation of the West Ridge Railroad in the proposed Project would require an amendment to the Permit to Mine. *EAW* at pdf 22.

87. The EAW proposes mitigation measures for impacts to surface waters and wetlands resulting from the construction of 12,200 feel of extensions of Dams 1 and 2 and the relocation of the west railroad.

88. EAW Figure 7-2 shows the location of wetland impacts and of surface waters that would be affected by the Mile Post 7 tailings basin proposed project.



89. DNR concluded that, when compared to the existing landcover in the Beaver River-Frontal Lake Superior Watershed, the Mile Post 7 project impacts are considered negligible. EAW at 93. DNR also stated that even with development of the remaining 650 acres of "permitted tailings deposition capacity along with the proposed Project" cumulative impacts are considered negligible "as approximately 98-98% (sic.) of the total resource base remains unaffected." EAW at pdf 93.

90. However, the 2023 EAW did not consider "wetland impacts" or impacts on other resources within the 650 acres that DNR viewed as already permitted for tailings storage. *See e.g. EAW* Figure 7-2, Finding ¶88.

91. The only environmental assessment of the effects on wetlands, surface waters, forests, or wildlife Mile Post 7 tailings basin extension to these 650 acres would have been made at least 46 years ago and under different circumstances in the 1975-1977 state and federal EIS processes.

C. Time Horizon and Selection of Alternatives

92. The 1975-1977 state and federal EIS documents described the Mile Post 7 tailings basin project that was assessed as a project with a 40-year life. *See e.g., 1975 Draft EIS* at 17, 98, 242, 289, 290, 293; *1976 FEIS*, ¶¶8-9; *1977 USACE FEIS* at 13, 25, 59, 72.

93. DNR has acknowledged that for the original EIS the "planned operational life of the tailings management facility was 40 years." DNR 2022 ROD ¶25.

94. DNR has suggested that the only significance of the 40-year Mile Post 7 tailings basin operational life is to project the total quantity of tailings for which storage was planned. *See e.g. 2021 DNR ER Memo* at 56.

95. The time Northshore has taken to produce a volume of tailings is not the only issue salient in environmental review.

96. The 1977 USACE Final EIS—the only environmental review document actually supporting implementation of a tailings basin at Mile Post 7—considered the 40-year loss of biological productivity and the time needed for reclamation in its assessment. *1977 USACE FEIS* at 59.

97. The 1977 Final EIS also explicitly weighed the benefits of the proposed tailings basin and the duration of use of the disposal site:

> [T]he proposed on-land tailings disposal site [has] a projected use period of 40 years . . . The above described long-term adverse effects on the environment would be imposed for the following benefits to society and the environment. There would be the cessation of the disposal of taconite tailings into Lake Superior.

1977 USACE FEIS at 145-146.

98. DNR's 2015 Record of Decision denying the need to prepare an EIS for the Northshore progression of the Peter Mitchell Mine pit responded to comments (presumably in 2013) stating that, at the current rate of rise for the Mile Post 7 tailings basin it would take approximately 44 years to reach the ultimate permitted height of 1,312 feet amsl so tailings storage capacity would be "exhausted in 2057." DNR 2015 Peter Mitchell Mine Progression Record of Decision, April 22, 2015, WL Ex. 6 ("*DNR 2015 Mine ROD*") at 5.

99. Based on the DNR 2015 Peter Mitchell progression Record of Decision, *id.*, the proposed Mile Post 7 expansion project would not be needed until 2057, which is 80 years after the 1977 Final EIS was completed and 40 years after the 1977 EIS predicted the operational mine life of the tailings basin would be done.

100. DNR has stated that the construction of the Dam 1 and 2 extensions for the Mile Post 7 proposed expansion project would take place over the course of an estimated 40 years, *EAW* at pdf 8, thus completing construction in the mid 2060s.

101. DNR has not projected for how long after construction the Mile Post 7 proposed tailings basin expansion would extend the operational life of the tailings basin, other than to cite the operating life of the Peter Mitchell Mine. *EAW* at pdf 5. The 2015 Peter Mitchell progression Record of Decision stated that mine closure was "more that 60 years into the future." *DNR 2015 Mine ROD* at 10. This timeline could extend the operational life of the tailings basin to 2075.

102. No EIS considered the potential environmental effects of the Mile Post 7 tailings basin if the operational life were extended beyond 40 years.

103. No EIS considered the balance of benefits and harm to society if the Mile Post 7 tailings basin's operational life were extended beyond 40 years.

104. Based on DNR's decision documents, if the proposed project is approved, the Mile Post 7 tailings basin would remain operational a century after the 1975-1977 state and federal environmental review process. Findings ¶¶98-101.

105. There has been progress in scientific knowledge and availability of information on environmental factors since the state and federal Final EIS documents were approved in 1976 and 1977. For example, any EIS today would consider the effects of climate change in evaluating both tailings dam risks and impacts on water resources and wildlife.

106. DNR stated that climate-related variables were addressed in the 1975 Draft EIS. *DNR 2022 ROD*, ¶242. However, the only climate data used in the 1975 Draft EIS was the "little climatic data" available on prior actual precipitation at specified area weather stations. *1975 Draft EIS* at 109-111.

107. The 1976 Final EIS used the same actual precipitation information to conclude that the "risk of overtopping the dams as a result of unusually heavy rainfall is greater at Mile Post 7 than at the alternative sites." *1976 FEIS*, ¶86.

108. The 1977 USACE Final EIS provided a more thorough discussion of seepage and probable maximum precipitation, but even the USACE analysis relied on "precipitation records from 1906 to the present." *1977 USACE FEIS* at 31. Unsurprisingly for the time, the Final EIS did not mention climate change or global warming.

109. No 1975-1977 EIS considered extreme drought and extreme precipitation, warming trends, hydrological changes to waters and wetlands, ecological stresses to plants, fish, and wildlife, or any other factors resulting from climate change known to modern scientists conducting environmental review.

110. Reliance on an EIS long past any reasonable expiration date is also significant in terms of evaluation of potential alternatives to the proposed Mile Post 7 project.

111. The 1975-1976 state environmental review process for Reserve Mining tailings storage evaluated tailings basin sites at alternative locations. The Final EIS explained that in-pit tailings disposal was not examined in detail due to evidence "sufficient to require its rejection at least for the present." *1976 FEIS*, ¶81.

112. However, the state's 1976 Final EIS proposed future evaluation of in-pit disposal, as follows:

> ¶82. No detailed review of Reserve's mining plan was made by the state to determine whether adjustments could be made to accommodate in pit disposal of tailings . . .
>
> ¶83. In view of the future need for tailings disposal sites, it would be desirable to ascertain the feasibility and desirability of using both depleted and operating pits for that purpose, and to evaluate the relative costs of covering potentially merchantable ores versus the use of additional land areas for tailings disposal.

113. Consideration of in-pit disposal alternatives for Peter Mitchell Mine tailings would be very different today. Factors such as the closure of other taconite operations, the ownership of depleted pits, and availability of information on tailings dam failure and seepage control would influence potential alternatives to extension of the Mile Post 7 tailings basin.

114. Cliffs shuttered the Northshore mine from May 2022 through April 2023 and recently informed the public that its owner "does not expect to run the ore operation at full capacity in 2023." M. Hughlett, Northshore Mining on Iron Range open again after a year of idling, *Star Tribune*, April 25, 2023, WL Ex. 7.

115. Cliffs' CEO, Lourenco Goncalves, explained, "Northshore has been totally idle since the spring of last year. We will continue to treat that facility as our swing operation, and at this time, we still do not expect to operate Northshore in full anytime this year." J. Lovrien, Northshore Mining partially restarts, *Duluth News Tribune*, April 25, 2023, WL Ex. 8.

116. There is no evidence of urgency preventing a current and rigorous consideration of the *potential significant environmental effects* of the proposed Mile Post 7 tailings basin extension by 650 acres as well as features identified by DNR as the proposed project.

117. There is no evidence of urgency preventing a current and rigorous consideration of *alternatives* to the proposed Mile Post 7 tailings basin extensi*on* by 650 acres as well as features identified by DNR as the proposed project.

V. PERMITTING REQUIREMENTS

A. Dam Safety Permitting Requirements.

118. DNR has claimed that the 1977 Master Permit and operation plans provided by Northshore take the place of a dam safety permit for the Mile Post 7 tailings basin, stating:

a) The 1977 Master Permit for the Mile Post 7 tailings basin, by its terms, "was to be updated every five years," which "update was accomplished through Mile Post 7 Operation Plans" prepared by Northshore. *EAW* at pdf 19; *2022 DNR ROD*, ¶42.

b) "Because the laws governing dam safety were not in place until 1979, the 1977 Master Permit regulates dam safety at Mile Post 7." *EAW* at pdf 19; *see also 2022 DNR ROD*, ¶27.

c) "DNR has extensive protocols around dam inspection, maintenance, design safety, operations" and that "are incorporated" into the 1977 Master Permit requirements at Mile Post 7. *DNR 2022 ROD*, ¶193.

d) Any Mile Post 7 tailings basin environmental effects "are subject to mitigation by ongoing regulatory authority . . . under the DNR Permit to Mine and Master Permit, including oversight under the DNR Dam Safety Program." *2022 DNR ROD* at 80.

119. None of these assertions by DNR accurately reflect the terms of the permits, their history, or applicable law.

120. The 1977 Master Permit for the Mile Post 7 tailings dam stated that DNR's approvals of project features, terms, and conditions "shall be based on and comply with the provisions of Minnesota Statutes Chapters 105 and 116D." *1977 Master Permit* at 4.

121. The 1977 Master Permit gave an expiration date for the permit and the mechanism by which the permit could be renewed:

> This permit shall become effective on the date of issuance by the Commissioner. This permit shall expire August 2, 1982. The permit may be renewed by the Commissioner for five-year intervals upon written request by the Permittee made

> not later than 180 days prior to the date of expiration. Renewal shall be pursuant to the provisions of Minnesota Statutes Chapter 105.

1977 Master Permit at 4-5.

122. The 1977 Master Permit specified that renewal "shall be pursuant to the provisions of Minnesota Statutes Chapter 105." At the time, the provisions of Minn. Stat. § 105.37 to 105.64 (Repealed 1990, c. 391 art.10 s.4) [7] applied to work in public waters and dam permits.

123. By March 24, 1980, DNR had enacted dam safety rules implementing Chapter 105, which were codified by the Revisor of Statutes in 1982.[8] Archived DNR Rules, 6 MCAR 1.5030-1.5050, 1980, WL Ex. 9.

124. Among other provisions, DNR rules applicable by 1980 required the classification of existing dams according to their hazard level, 6 MCAR § 1.5032(B)(2) and prohibited the transfer of ownership of any Class I hazard dam without an application and a permit from the Commissioner based on the conditions and financial capabilities of the transferee. 6 MCAR § 1.5032(C), WL Ex. 9.

125. The 1977 Master Permit was issued to Reserve Mining, and a 1989 Stipulation states that Reserve Mining's assets were acquired by Cyprus from the bankruptcy trustee. Findings 10-11.

126. DNR has provided no permit application, evaluation of Cyprus or formal permit documents reflecting transfer of ownership to Cyprus consistent with the rules then applicable to transfer of a Class I hazard dam. Findings 10-12.

127. Minnesota Statutes Chapter 105 was repealed in 1990 and replaced with Chapters 103A through 103G. Ch. 391, Laws of Minn. 1990.[9]

128. Chapter 103G statutes have governed the Mile Post 7 tailings dams since their adoption. A new Mile Post 7 application and permit is required under Chapter 103G:

a) Only dams in existence on and before July 1, 1937 are exempt from compliance with Chapter 103G requirements. Minn. Stat. 103G.531.

b) Dams are subject to "applicable law existing before or after the issuance of the permit," Minn. Stat. § 103G.315, subd. 11(a)(3).

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[7] Minnesota Statutes 1976, Chapter 105, https://www.revisor.mn.gov/statutes/1976/cite/105/pdf.
[8] Minnesota Code of Agency Rules of the Department of Natural Resources in effect on September 15, 1982, https://www.revisor.mn.gov/rules/31/date/1982.
[9] Minnesota Session Laws 1990, ch. 391, https://www.revisor.mn.gov/laws/1990/0/391/.

c) A permit application and permit are required for the transfer of ownership of a dam. Minn. Stat. §103G.245, subd. 1, subd.3.

d) The commissioner may extend the time limit in a permit related to mining only for cause shown and upon application by the permittee. Minn. Stat. § 103G.315, subd. 14(c)

129. Cliffs through its wholly owned subsidiary (renamed Northshore Mining Company) purchased the assets of Cyprus in 1994. The only documentation DNR has provided of this transfer is an assignment document prepared eleven years later. Findings 10-12, 15-16.

130. Minnesota Rules Chapter 6115 have applied to the Mile Post 7 tailings dams since these rules were adopted in 2008. A new dam safety permit is required for dam enlargement, Minn. R. 6115.0410, subp. 2, and transfer of dam ownership requires a permit. Minn. R. 6115.0370.

131. Under Chapter 6115, a dam safety application and permit approval must contain provisions that comply with Minn. R. 6115.0410, including the following:

a) The application must describe the type, size, height, and storage capacity of the dam extending through the life of the impoundment. *Id*., subp. 2.

b) The preliminary report for the permit must include all other elements related to the total dam project specifically including railroads. *Id.*, subp 3.

c) The final design report must include a dam-break analysis, information on waste materials and disposal practices, stability analysis and design details for dams, impoundments and other features. *Id.*, subp. 6.

d) The permit can only be approved on findings of dam stability "under all conditions . . .based on current, prudent engineering practice" and dam hazards and on "[c]ompliance with prudent, current environmental practice throughout its existence." *Id.*, subp. 8(D), (F).

132. DNR has provided no record demonstrating that an application for a new dam permit, for extension or renewal of the 1977 Master Permit, or for transfer of ownership of the Mile Post 7 tailings dam has been made by any permittee since 1977.

133. In fact, the appendices to the Mile Post 7 proposed project EAW reflect that DNR has relied on various informal, incomplete, and in some cases retroactive documents to renew, modify, extend, or transfer the tailings dam 1977 Master Permit. Findings 10-16, 118.

134. DNR has provided no record demonstrating that the requirements of statutes and rules applicable to dam safety permits have been followed in connection with the Mile Post 7 dam.

135. No Mile Post 7 dam safety permit—including the 1977 Master Permit—classifies the hazard level of the Mile Post 7 tailings dam, describes all related features, demonstrates that the dam provides stability under all conditions, represents current prudent engineering practice for Class I dams, or reflects compliance with prudent current environmental practice throughout its projected existence.

136. In 2021, Petitioners for an EAW specifically requested that DNR require a dam break study and disclose its results to the public in environmental review and prior to approval of the proposed Mile Post 7 project. *WL Petition* at 15-16.

137. Dr. Emerman detailed some of the requirements for a dam breach study and emphasized that potential environmental effects of the Mile Post 7 project cannot be determined without a modern dam-breach study including analysis of at least the following: the area covered by the tailings flood; depths and velocities of the tailings flood; impacts on residents, roads, bridges, and infrastructure; impacts on short-term and long-term human health; impacts on fish and wildlife, including impacts on habitat; impacts on air and water quality; impacts on aquatic life and ecology on Lake Superior and other downstream waters; and a worst-case dam failure scenario. *Emerman 2021* at 60.

138. In response, DNR cited the NMC 2012 Emergency Action Plan ("EAP") and stated that a new dam breach analysis is expected to be available in early 2022. *DNR 2022 ROD,* ¶¶223-224.

139. The 2012 EAP was provided among DNR's attachments to its 2022 Record of Decision denying an EAW for the Mile Post 7 project. However, the methods and results of the dam break analysis were redacted almost in their entirety. *See* Mile Post 7 EAP, Dec. 26, 2012, WL Ex. 10 at pdf 9, 12-16, 46-81. This redacted EAP provides none of the information necessary to review potential significant environmental effects or to address public concerns.

B. Permit to Mine Requirements.

140. DNR has acknowledged that the railroad relocation in the proposed Project will require an amendment to the Mile Post 7 permit to mine. The status of this process is pending Northshore's response to DNR's comments related to tailings basin features. *EAW* at pdf 32.

141. Since the 1985 Permit to Mine was issued, the permit to mine record for the Mile Post 7 tailings basin has lacked regulatory formality, consistency, and transparency. Findings 11-16, 118.

142. Significant tailings basin features, including the coal ash landfill and the existing West Ridge Railroad are not authorized in either the 1977 Master Permit, the 1985 Permit to Mine, or any other permit to mine document. Findings 68-70, 81-86.

143. Whether or not the proposed Mile Post 7 project proceeds, the permit to mine should be formally renewed and amended to comply with applicable statutes and rules and identify all features of the tailings basin.

144. DNR is required to set a definite term for a permit to mine. Minn. Stat. § 93.481, subd. 3(a); *In re NorthMet Project Permit to Mine Application*, 959 N.W.2d 731, 758 (Minn. 2021).

145. The term for the permit to mine pertaining to the Mile Post 7 tailings basin is five years, incorporating the terms of the 1977 Master Permit by reference. *1977 Master Permit* at 4-5, 1985 PTM at

146. A permit to mine must include a plan for reclamation and restoration that complies with lawful requirements and is practical and workable under available technology. Minn. Stat. § 93.481, subd. 1, subd. 2.

147. DNR must require a bond, security or other financial assurance from the operator of a mine and annually review the extent of each operator's financial assurance. Minn. Stat. § 93.49.

148. Neither the 1977 Master Permit, the 1985 Permit to Mine, nor any amendment of these permits contain a reclamation plan or provision for financial assurance. *1977 Master Permit*, *1985 PTM* at 2.

149. The only provision for financial assurance in this record was prepared for potential imminent mine closure in 1989 and required only $19 million dollars for closure and reclamation. *1989 Stipulation* at 11-12.

150. When the DNR commissioner finds that a proposed amendment constitutes a "substantial change" to the permit to mine, public notice and comment is required, and a hearing shall be held if written objections are received. Minn. Stat. § 93.481, subd. 3(b); Minn. R. 6130.4800, subp. 1-2; Minn. R. 6130.5000, subp. 1.

151. As compared to the 1985 Permit to Mine, an amendment to provide a current and accurate description of all tailings basin features, a reclamation plan, and financial assurance would be a substantial change, whether or not the amendment also includes the Mile Post 7 tailings basin proposed project.

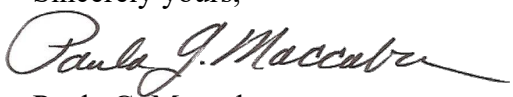
CONCLUSION

Based on the preceding information and the files and records in these proceedings, including the DNR's appendices and WaterLegacy's attached exhibits, WaterLegacy and NMW respectfully request the DNR to take the actions detailed on the first page of this comment.

Specifically, we ask DNR to prepare an EIS that evaluates all potential cumulative environmental impacts of the proposed new construction of a railroad, substantial extension and increase in height of tailings dams, and substantial expansion and change to acreage and location of the wet slurry tailing basin itself, including the impacts on all affected water resources and the impacts of dam breach or catastrophic failure on local communities, proximate streams, and on Lake Superior itself. In this EIS, we request that DNR take a hard look at the Mile Post 7 features that have never been subject to environmental review, the features that are inconsistent with the plans and recommendations that emerged from 1975-1977 federal and state environmental review, and the features that may have seemed appropriate or unavoidable half a century ago in order to stop Reserve Mining from dumping tailings into Lake Superior, but are no longer consistent with current, prudent engineering and environmental practice. Specifically, we would request that the DNR evaluate whether there is a feasible and prudent alternative to expansion of the Mile Post 7 tailings basin, including but not limited to in-pit tailings disposal and a conscientious and financially assured closure plan for the existing tailings basin.

Next, we request that DNR require that the Mile Post 7 tailings basin be subject to formal permitting in compliance with dam safety statutes and rules in Minnesota Statues Chapter 103G and Minnesota Rules Chapter 6115 and with permit to mine statutes and rules in Minnesota Statues Chapter 93 and Minnesota Rules 6115. For the past 40 years, Mile Post 7 has lacked a permit that complies with current statutes and rules. DNR has allowed its series of owners to operate outside regulatory guardrails, based on discretion behind closed doors, rather than a formal process that allows public review and analysis by external and independent experts. WaterLegacy and NMW request that the DNR advise Northshore that the company must apply for a dam safety permit for Mile Post 7 and for a renewed and substantially amended permit to mine in compliance with all applicable laws, including requirements for a permit term, a dam breach analysis, detailed specifications of all dam design and site features, a plan for closure and reclamation, and financial assurance that will protect the community, the environment, and taxpayers from tailings dam failure and tailings basin pollution during unplanned stoppage as well as during closure and post-closure. Thank you for your consideration.

Sincerely yours,



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