

# **Rainy River Withdrawal**

## **Tribal Traditional Needs and Values Report**

**Prepared by:**

Lee R. Johnson, Forest Archaeologist  
Juan Martinez, Tribal Relations Specialist

**for:**

Superior National Forest

June 2022

---

We make every effort to create documents that are accessible to individuals of all abilities; however, limitations with our word processing programs may prevent some parts of this document from being readable by computer-assisted reading devices. If you need assistance with any part of this document, please contact the Superior National Forest at 218-626-4300.

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

USDA is an equal opportunity provider, employer and lender.

## Contents

Introduction .....	1
Relevant Laws, Regulations, and Policy .....	1
Regulatory Framework .....	1
Topics and Issues Addressed in This Analysis .....	3
Resource Concerns and Issues .....	3
Methodology .....	3
Incomplete and Unavailable Information .....	3
Spatial and Temporal Context for Effects Analysis .....	3
Affected Environment .....	4
Existing Condition .....	4
Environmental Consequences .....	7
Alternative A – Proposed Action (Withdrawal) .....	7
Alternative B – No Action (No Withdrawal) .....	7
Compliance with Superior National Forest Land and Resource Management Plan .....	10
References .....	11

## Tables

Table 1. Summary of compliance with the land and resource management plan .....	10
---	----

## Introduction

This analysis considers the effects of the proposed action and the no-action alternative on tribal traditional needs and values.

This report (along with other resource reports such as recreation, wilderness, lands, and socioeconomics) was prepared to satisfy the withdrawal regulation requirements for a case file outlined at 43 CFR 2310.3-2(b)(1), that requires “A report identifying the present users of the lands involved, explaining how the users will be affected by the proposed use and analyzing the manner in which existing and potential resource uses are incompatible with or conflict with the proposed use of the lands and resources that would be affected by the requested action.” This report also discloses effects to tribal traditional needs and values to inform the analysis in the environmental assessment.

For the purposes of this analysis, tribal or treaty resources include both natural and cultural resources of significance to tribes that retain reserved rights under the Treaty of 1854 which do not fit the definition of historic properties or sacred sites per 36 CFR 800 or Executive Order 13007. These resources are valued by the tribes for traditional purposes and are considered vital for cultural survival. These resources and associated issues would include traditional subsistence and medicinal resources, access to ceded territory lands to exercise treaty rights, and larger issues with sovereignty as it relates to usufructuary rights on the federal estate in the 1854 Ceded Territory, where the withdrawal is requested.

## Relevant Laws, Regulations, and Policy

### Regulatory Framework

#### Land and Resource Management Plan

The 2004 Superior National Forest Land and Resource Management Plan provides desired conditions, standards and guidelines for tribal traditional needs and values. See summary table at the end of this report.

#### Federal Law and Regulation

##### *Federal Trust Responsibility*

The federal trust responsibility centers upon federally recognized tribes special status in relationship to the United States derived from their pre-existing and inherent sovereignty. The Supreme Court has held that Indian tribes exercise **inherent sovereign authority** that is subject only to plenary control by Congress (*Oklahoma Tax Commission v. Citizen Band Potawatomi*, 1991; *Santa Clara Pueblo v. Martinez*, 1978). While the Constitution grants Congress powers described as “plenary and exclusive” to “legislate in respect to Indian tribes,” yet constitutional law informs us that tribes remain “separate sovereigns, pre-existing the Constitution” (*Cherokee Nation v. Georgia*, 1831). Thus, unless and until Congress acts, the tribes retain their historic sovereign authority (*United States v. Wheeler*, 1978) (Forest Service 2015).

##### **Reserved Rights Doctrine and Treaty Rights**

The basis of Indian policy in the United States begins with the commerce clause of the U.S. Constitution, the constitutional powers of the President to make treaties with consent of the Senate, the Indian Non-Intercourse Act as amended, and the generous body of constitutional case law arising out of both the U.S. Appellate and Supreme Courts. The most influential of the case law is arguably *United States v. Winans* (1905). *Winans* is a fishing rights case that has had far-reaching implications for the reserved rights.

In writing for the majority, Justice McKenna not only upheld the Yakima Treaty of 1855 but stated that a “*Treaty between the United States and the Indians... is not a grant of rights to the Indians, but a grant of rights from them—a reservation of those granted.*” This established for the first time the “reserved rights” doctrine in federal Indian law. The Court noted the historical and traditional importance of fishing and hunting to the Indians and viewed these rights as part of a larger bundle of rights preserved under the treaty (Ibid).

Many tribal leaders in the treaty-making era (1778–1871) sought to ensure that certain rights were protected in perpetuity within the land areas being ceded for settlement and other uses. These were enumerated within the text of the treaties and are referred to as “treaty reserved rights.” Treaty reserved rights are those rights that were retained, in writing, at the time of treaty-making. These rights which the tribes’ retained are generally to ensure the continued connection and continuity with their ancestral land, whether it be for subsistence, cultural or ceremonial purposes. In most cases, it was to ensure that the tribes’ members could continue to hunt fish and gather foods and plants on the lands that had been theirs from time immemorial. The courts have consistently declared these rights to remain in effect to this day, unless specifically abrogated by congress (Ibid).

As discussed below, the withdrawal application area lies entirely within the 1854 Ceded Territory, which was ceded to the United States on September 30, 1854, by the Lake Superior Chippewa Tribe in the Treaty of La Pointe (Kappler 1904, Royce 1899). The 1854 Ceded Territory comprises approximately 5.5 million acres of lands in the Arrowhead Region of northeastern Minnesota, including approximately 2,048,000 acres of the Superior National Forest. Several federally recognized Ojibwe Bands retain and have affirmed their reserved rights within the 1854 Ceded Territory, and the federal trust doctrine applies to federal land management agency decisions affecting lands within the ceded territory.

#### *Forest Service Manual Direction*

Forest Service Manual direction for American Indian and Alaskan Native Relations is found in Chapter 1563, and the introductory statement states that, “the relationship between the United States and Tribes extends to all federal agencies and is unique and distinct from those that apply to other interests and constituencies served by the Forest Service.” Forest Service Manual 1563.01a through 1563.01i set out the legal authorities relevant to Forest Service relationships with tribes, including procedures for consultation on Forest Service decisions and considerations for treaty rights in forest planning.

Current Forest Service policy [Forest Service Manual 1563.03] requires the agency to:

- Implement Forest Service programs and activities consistent with and respecting Indian treaty rights and fulfilling the federal government’s legally mandated trust responsibility with tribes.
- Manage Forest Service administered lands and resources on which tribal treaty rights exist in coordination with tribes.
- Administer programs and activities in a manner that is sensitive to traditional American Indian and Alaska Native spiritual beliefs and practices and assist tribal members in securing ceremonial and medicinal plants, animals, and the use of specific geographic places.

## Topics and Issues Addressed in This Analysis

### Resource Concerns and Issues

The following concerns have been identified:

- Effects to treaty resources that span the definition of both cultural and natural resources, to include but not are limited to, moose, deer, manoomin (wild rice), fish, berries, sugar maple, cedar, and other medicinal plants. Effects could be direct or indirect, and affect the viability, productivity, access and or availability of resources that have value as both traditional subsistence and cultural resources.
- Effects that would potentially degrade surface water, ground water, soils, and air quality and thereby diminish the productivity, availability, and integrity of natural systems such that treaty resources of cultural significance are affected.
- Historically, Native Americans have not benefited from mineral extraction. The withdrawal application area is within the 1854 Ceded Territory. Mineral extraction and exploration activities have the potential to reduce the amount of the federal estate available to the Ojibwe people to practice traditional and cultural activities.

### Methodology

Methods for analysis include a qualitative assessment of risks associated with types of activities projected by the reasonably foreseeable development report. Tribal consultation was conducted to identify resource concerns and issues. In addition, effects analysis for other resources areas completed for the requested withdrawal were reviewed and incorporated into this report, as applicable. For example, resource reports covering key traditional subsistence resources such as moose, wild rice, and fish were used to inform this analysis, in addition to resource reports detailing hydrology, air quality, and aquatics.

This analysis considers indirect, direct, and short- and long-term changes to treaty resources of cultural significance under the federal trust responsibility.

### Incomplete and Unavailable Information

This analysis used information gathered during tribal consultation specific to the withdrawal proposal and information derived from past project reviews on Superior National Forest lands.

This analysis has made no assumptions about the specifics of any future mineral management activities beyond what is described in the reasonably foreseeable development scenario (site-specific location, timing, nature, intensity, site-specific mitigations, project design criteria, or viable alternatives), as any such assumptions would be speculative. Given the speculative nature of analyzing specific project design, the analysis evaluates potential risks associated with minerals management under each alternative as informed by the reasonably foreseeable development scenario, the regulatory framework, available scientific information, and professional judgment.

### Spatial and Temporal Context for Effects Analysis

The spatial boundaries for analyzing effects to treaty resources is the withdrawal application area plus downstream and adjacent portions of the Boundary Waters Canoe Area Wilderness and mining protection area that may be affected by downstream flow or other edge effects from minerals exploration and development activities located outside the wilderness. The analysis area is within the 1854 Ceded Territory. The withdrawal encompasses National Forest System lands in central Lake County, west-central

Cook County, and scattered portions of St. Louis County on the Kawishiwi, LaCroix, Laurentian, and Tofte Ranger Districts as identified in figure 1 of the environmental assessment. The bulk of the withdrawal application area encompasses National Forest System lands within the original 1909 proclamation area in central Lake County, south of the Boundary Waters Canoe Area Wilderness.

The reasonably foreseeable development scenario for the no-action alternative projects that mining activities could begin within or beyond a 20-year timeframe, and last for 30 years or more. This means that the direct and indirect effects under the no-action alternative on treaty resources would occur when mining activities commence and could last for 30 years or more depending on how long the mining remains in operation. As described below, some effects to treaty resources may be long term or permanent.

## **Affected Environment**

### **Existing Condition**

The land requested for withdrawal includes the homelands and/or traditional use areas of the Gichigamiwininiwag (Lake Superior Chippewa) Tribe, comprised of multiple independent bands living around Lake Superior in what is now the northern parts of Wisconsin, Minnesota, and Michigan.<sup>1</sup> These Ojibwe Bands were signatories of key treaties executed between the federal government in the 19th century (referred to as Chippewa or Ojibwe, but who refer to themselves as Anishinaabe (s) or Anishinaabeg (pl)). The withdrawal application area falls entirely within the 1854 Ceded Territory of the Lake Superior Chippewa, from lands deemed to have been under the sole control of the signatories at the time of signing.

The Treaty of 1854 established two reservations (Fond du Lac and Grand Portage) in Northeastern Minnesota and reserved off-reservation hunting and fishing rights for the signatory bands (Kappler 1904). The Treaty of 1866, which ceded lands to the west of the withdrawal application area, formalized the establishment of a reserve (Nett Lake and Deer River) for the Bois Forte Band which were guaranteed in article 12 of the Treaty of 1854. The Vermilion Lake Reserve was established for the Bois Forte Band by Executive Order 853 on December 21, 1881. Currently, the Bois Forte Band of Chippewa, the Fond du Lac Band of Lake Superior Chippewa, and the Grand Portage Band of Lake Superior Chippewa assert and actively exercise treaty rights in the 1854 Ceded Territory, to include the withdrawal application area.

Since 1989, the 1854 Treaty Authority, an inter-tribal natural resource management agency, has managed the off-reservation hunting, fishing, and gathering rights of the Bois Forte Band of Chippewa and the Grand Portage Bands of Lake Superior Chippewa within the 1854 Ceded Territory. The Fond du Lac Band does not manage reserved rights in the 1854 Ceded Territory through an inter-tribal resource authority but does manage reserved rights in the adjacent 1837 and 1842 ceded territory via the Great Lakes Indian Fish and Wildlife Commission. The commission provides natural resource management expertise, conservation enforcement, legal and policy analysis, and public information services in support of the exercise of treaty rights throughout the 1837, 1842 and 1854 ceded territories in Wisconsin, Michigan, and Minnesota.

---

1. The words tribe and band are used interchangeably here, but both refer to federally recognized sovereign nations.

Terrestrial wildlife such as moose and deer, fish, berries, wild rice, sugarbush sites (maple stands utilized for sap and sugar production), white cedar stands, ducks, and other forest resources used by the bands and identified as treaty resources are located within the withdrawal application area, however the list of resources meeting that definition is more expansive. Within the context of traditional values and needs, the importance of treaty resources to the bands is multifaceted. Within the 1854 Ceded Territory, both the locations where treaty resources are commonly encountered, and the practices associated with harvest continue to function as vital places and processes for sharing and maintaining traditional knowledge and spiritual connections to the world; both of which are fundamental to the cultural identity and survival of the Ojibwe people. Additional context and history are described in the socioeconomics report.

Manoomin or wild rice (*Zizania aquatica*) is a culturally significant resource that is foundational to Ojibwe culture in the western Lake Superior Basin. Manoomin defies singular characterization as a resource in the Ojibwe world; it is valued as a subsistence resource, a sacred resource, a traditional resource, and a treaty reserved resource. It is each of these things and all of them at the same time. Manoomin is not only the centerpiece of traditional Ojibwe subsistence strategies, but it also plays a defining role in origin stories and oral histories that explain how the Lake Superior Ojibwe Bands came to the region and were able to thrive (Benton-Benai 1988). Anthropologist Thomas Vennum describes how manoomin “was endowed with spiritual attributes, and its discovery was recounted in legends. It was used ceremonially as well as for food, and its harvest promoted social interaction in the late summer each year” (Vennum 1988: 1). It is important to note that manoomin’s significance in Ojibwe culture is not a discussion that takes place in the past tense, and that to modern Ojibwe, the survival of wild rice on the landscape is inextricably linked to the survival of the Ojibwe people (Fond du Lac 2018).

For the Ojibwe people, there is an important cultural and ecological distinction between wild, hand harvested manoomin and paddy grown, mechanically harvested wild rice. From a commercial perspective, prior to the 1970s, hand-harvested rice from natural stands in Minnesota accounted for half of the global market. By the 1990s, following the increase of paddy grown wild rice, that market share had dropped to under 10 percent (MTWRTF 2018). Manoomin from natural stands is revered not only for its traditional cultural significance, but also for its diversity of flavor, time of ripening, size, and overall quality, with individual stands being noted for having early or later ripening times, larger kernels, or more desirable flavor. As such, many Ojibwe have resisted efforts by scientists and commercial entities to selectively breed, conduct genomic studies, or otherwise manipulate the resource for commercial purposes (Fond du Lac 2018).

Manoomin is sensitive to fluctuations in water level and water requires relatively specific alkalinity and water chemistry to survive. Vennum (1988: 14) reports that, “it requires the circulation of mineral-rich water and does not tolerate chemical pollutants”. The detrimental effects of higher sulfate loads on manoomin have been documented through both laboratory research and long-term field monitoring (Fond du Lac 2018). The distribution of manoomin in the 1854 Ceded Territory has diminished over the last 170 years as a result of development, which includes alteration of drainage patterns, wetland conversion, industrial development, competition from non-native invasives, and discharge from iron ore tailings basins (1854 Treaty Authority 2021b, 1854 Treaty Authority 2022, David et al 2019, Vennum 1988). In addition, monitoring of wild rice waters in the area shows a general decline in abundance over the last 20 years (1854 Treaty Authority 2022). Declining abundance may be related to several factors, however there is concern that climate change will bring further stress to the resource (David et al 2019). See the wild rice report for more information.



1854 Treaty Authority identifies 521 wild rice waters within the ceded territory (1854 Treaty Authority 2021a). This includes lakes, portions of lakes, rivers, and portions of rivers that have produced measurable stands of wild rice. As noted in the wild rice report prepared for this requested withdrawal, “there are approximately 99 waterbodies within the withdrawal application boundary as well as Fall Lake, Newton Lake, and Basswood Lake downstream of the application boundary that support populations of wild rice (Greenlee 2022). See the wild rice report for further analysis.

Maintaining the integrity of and access to the federal estate within the 1854 Ceded Territory is also a key issue for the bands. Projects that would remove, impinge, or otherwise impact band member access to federal surface lands within the 1854 Ceded Territory are viewed by the bands within the context of an already diminished federal estate where the federal trust responsibility is in effect. The federal estate within the 1854 Ceded Territory has been reduced by nearly 50 percent since the treaty was signed, and the amount that is considered accessible to the bands is further reduced when taking into account the 1-million-acre Boundary Waters Canoe Area Wilderness (Forest Service 2022). Superior National Forest is the primary federal land holder within the 5.5-million-acre 1854 Ceded Territory, managing approximately 2,047,710 acres, or 37 percent of the total area. Within the context of ownership change through time and maintenance of the federal trust responsibility, the integrity of and continued access to the remaining federal land base is of paramount interest to the tribes with reserved rights. As such, the tribes generally view proposals that would impinge, remove, or otherwise change existing opportunities to exercise treaty rights on the federal land base as an adverse effect and a further loss to an already diminished federal land base in the 1854 Ceded Territory.

Band members continue to rely on locally harvested fish as a key subsistence resource and may be disproportionately affected by biocontamination of pollutants such as methylmercury. As such, the bands place a high value on water quality and air quality, to the extent that several bands have more protective water quality standards on their Reservations lands than those available at the State level. Water quality standards on the Fond du Lac Band of Lake Superior Chippewa Reservation, for example, include a “more restrictive mercury criterion to protect subsistence fish consumption and a more stringent anti-degradation policy to protect reservation waters at their existing generally very high-quality condition” (Nancy Schuldt 2022, Grand Portage Band of Lake Superior Chippewa 2017, Fond du lac Band of Lake Superior Chippewa 2020). See the water and aquatic species report for more information on fish.

Mooz (Moose) are a culturally significant animal to the Ojibwe and are viewed as an important treaty reserved resource within the 1854 Ceded Territory. Moose have long held an important spiritual and economic position within Ojibwe culture, and moose harvest was at the center of test cases affirming off-reservation treaty rights in the 1854 Ceded Territory. Harvesting a moose allows band members to set aside 400 to 700 pounds of meat that is typically shared with the extended community and tribal elders. Moose experienced a sharp decline in population in the 1854 Ceded Territory ca. 2006–2012, and there are concerns over the long-term viability of the species-which is already at the southern end of its range- due to climate change, disease, predation, and habitat loss. See the terrestrial wildlife report for more information on moose.

Sugar maple (*Acer saccharum*) is an important forest resource for the Ojibwe and, along with white cedar and paper birch, is considered a treaty reserved forest resource of traditional significance. Historically, extended Ojibwe families would move to sugar camps in late winter to tap trees and process maple sap down into sugar (sisibakwat); which was a key subsistence resource at a lean time of the year. Sugar camps and the traditional process of making sugar (sugarbushing) continue to function as both places and processes for sharing and maintaining traditional knowledge and spiritual connections to the world, which are fundamental practices to the cultural identity of the Ojibwe. Scattered, mixed sugar maple stands are

located within the withdrawal application area, however most maple stands on Superior National Forest lands that have historically been utilized and continue to have characteristics that would lend themselves to use for traditional sugarbushing are located outside the withdrawal application area on the Lake Superior Highlands and Laurentian Divide (Giant's or Mesabi Range).

Birch and white cedar are additional forest resources of traditional significance to Ojibwe Bands that are viewed as treaty resources. White cedar is utilized as both a traditional medicine and, like paper birch, as a resource for production of traditional utilitarian objects. Berries, including blueberry, chokecherry, raspberry, highbush cranberry, lowbush cranberry, and pin cherry are important subsistence resources for Ojibwe Band members, and locations currently utilized by band members are known to exist within the "area of highest potential for mine infrastructure" (see figure 1 in the environmental assessment). Numerous additional plants that may be gathered by band members (Great Lakes Indian Fish and Wildlife Commission 2002), many of which are likely to be located in the withdrawal application area given its wide-ranging forest habitats and ecosystem components (see sensitive plant species and terrestrial wildlife reports for more information on habitats in the analysis area).

## **Environmental Consequences**

A description of each alternative can be found in the environmental assessment.

### **Alternative A – Proposed Action (Withdrawal)**

There would be no direct or indirect effect to tribal traditional needs and values because the withdrawal would provide certainty that no new prospecting permits or mineral leases would be authorized.

Alternative A would avoid the potential effects and risk to tribal traditional needs and values described under alternative B.

### **Alternative B – No Action (No Withdrawal)**

This analysis evaluates risks to treaty resources associated with potential mining operations and prospecting permits as projected in the reasonably foreseeable development scenario.

#### **Mineral Development**

Mineral development described in the reasonably foreseeable development scenario would encumber land for the use of mining activities. While the exact amount and location of land encumbered for mining activities is too speculative to predict for this analysis, such impacts are most likely in the area of highest potential for mine infrastructure (see figure 1 in the environmental assessment). Based on information in the reasonably foreseeable development scenario, an area on the scale of 2,600 to 5,700 acres could be directly impacted by mining activities, with a mix of federal and non-federal land within the withdrawal application area used.

Land would be used for at least the duration of mining operations, which is likely to be at least 30 years. However, some features such as tailings facilities would be permanent. To the extent mining infrastructure is located on federal land, access to that land provided by the Forest Service would be lost during operations, and possibly after closure if the site is considered unsafe for access. In addition, if mining infrastructure is located on state lands, access would also be lost during operations, and possibly after closure.

The natural and cultural resources used for the exercise of treaty rights located on land directly used for mining activities is likely to be adversely affected or permanently removed, depending on the mining activity. Given the mining activities in the reasonably foreseeable development report, the greatest

potential sources of impact are aboveground tailings facilities, waste rock storage facilities, and plant facilities. Wildlife habitat, plants, wetlands, and associated cultural resources of value to the tribes that are located within the footprint of these features may be permanently lost, given the removal of surface resources associated with these features (see the botany, wildlife, and water and aquatic resource reports for details). Post mining reclamation may restore a vegetation community to these areas; however it is unlikely the original ecosystem or resources would be restored.

Mitigation and avoidance measures would be required by the Forest Service in consultation with the tribes on a project-specific basis. While these may reduce effects, they would not be eliminated because surface disturbance, including permanent removal of surface resources, is unavoidable with mining operations as described in the reasonably foreseeable development scenario. This includes underground mining because surface use is generally needed for permanent tailings or waste rock storage.

In addition to the effects to access and treaty resources at the location of mining activities, there is the risk of effects from pollution and habitat fragmentation to additional nearby and downstream lands and resources containing treaty resources. These include risk of acid mine drainage and other water and air pollution from mines, which has the potential to adversely affect fish and other aquatic species used by band members, affect the health of people who eat the fish, and adversely affect wild rice (see the water and aquatic resources, wild rice, and socioeconomics reports). Effects may also include noise and light pollution. Noise and light pollution may adversely affect the sense of place and cultural value the bands hold for ceded territory lands (see the soundscapes and dark skies reports). Wildlife habitat in the broader landscape would be fragmented to some degree by areas directly impacted by mining activities. This habitat fragmentation, changes where and how wildlife use an area, resulting in potentially reduced opportunity for Band members to exercise their traditional treaty rights in that area (see the terrestrial wildlife report). Overall, mining activities may disproportionately affect the bands, as discussed in the socioeconomics report.

Mitigation and avoid measures would be required by the Forest Service in consultation with the tribes on a project-specific basis. These may reduce but not eliminate risk and potential effects extending beyond the location of mining activities. More information on this is in the air quality, soundscapes, dark skies, terrestrial wildlife, sensitive plant species, water and aquatic resources, and socioeconomics reports.

Communications from Bois Forte Band, Grand Portage Band, and Fond du Lac Band, as well as other tribes with interests in the Superior National Forest, including the White Earth Band, state that the mining development within the Rainy River watershed will adversely affect their exercise of reserved treaty rights to hunt and fish, and adversely affect other resources of concern to the tribes.

Prior to authorizing any prospecting permits and lease applications, the Forest Service would conduct tribal consultation to identify specific treaty resource issues.

## **Mineral Exploration**

The effects of minerals exploration were analyzed in the 2012 Federal Hardrock Mineral Prospecting Permits Environmental Impact Statement (2012 prospecting permits EIS), which is incorporated by reference into this analysis. While a full analysis of minerals exploration can be found in chapter 3 of the 2012 prospecting permits EIS, section 1.8.1 of that document summarizes effects related to issues of tribal concern raised in the minerals exploration analysis. Points of concern raised by tribal government were for access to treaty resources, effects to harvest of traditional plants, effects to game species with a priority on moose, effects to wild rice, effects to water quality and fisheries, and effects to heritage sites.

As described in section 1.8.1 of the 2012 prospecting permits EIS:

- There would be no change to tribal access from minerals exploration because no existing roads would be closed.
- Habitat for plants would be impacted in the short term by temporary road and drill pad construction associated with minerals exploration, which could disturb small patches of plants such as blueberries, raspberries, birch and other species.
- There could be a limited benefit to some game species favoring young trees or shrubs for forage based on creating young forest in drill pad areas. There may be limited adverse effects from temporary road construction associated with minerals exploration to some wildlife species.
- Resource stipulations would adequately protect wild rice lakes from impacts of minerals exploration.
- Resource stipulations and project design would result in minimal effects to water and aquatic resources from minerals exploration.
- Impacts to heritage sites would be avoided with stipulations in permits (e.g. buffering sites).

## Compliance with Superior National Forest Land and Resource Management Plan

**Table 1. Summary of compliance with the land and resource management plan**

<b>Resource Area</b>	<b>Applicable Forest Wide Desired Conditions, Standards and Guidelines</b>	<b>Alternative A (Withdrawal) - Consistency with Plan</b>	<b>Alternative B (No Action) – Consistency with Plan</b>
Tribal Traditional Needs and Values	<p>Lands within the Forest serve to help sustain American Indians' way of life, cultural integrity, social cohesion, and economic well-being.</p> <p>The Forest Service continues to work within the context of a respectful government-to-government relationship with tribes, especially in areas of treaty interest, rights, traditional and cultural resources, and ecosystem integrity. The Forests provide opportunities for traditional American Indian land uses and resources.</p> <p>Superior National Forest facilitates the exercise of the right to hunt, fish and gather as retained by Ojibwe whose homelands were subject to treaty in 1854 and 1866 (10 Stat. 1109 and 14 Stat. 765). Ongoing opportunities for such use and constraints necessary for resource protection are determined in consultation with the 1854 Ceded Territory bands, to include the Grand Portage Band of Lake Superior Chippewa, the Fond du Lac Band of Lake Superior Chippewa, and the Bois Forte Band of Chippewa.</p> <p>Affected tribes will be consulted early in the planning process regarding proposed Forest land management activities in order to identify and address tribal interests.</p> <p>Forest management activities will be conducted in a manner to minimize impacts to the ability of tribal members to hunt, fish, and gather plants and animals on Forest Service administered lands.</p> <p>Environmental documents will disclose potential effects on cultural resources, traditional use areas and areas of special interest that include tribal cultural values, properties, and uses, and species of special concern.</p>	<p>Withdrawal is consistent because it would result in no direct or indirect effects to tribal resources and Interests. The withdrawal would prohibit authorizations of new ground disturbance, facilities development, surface stockpiling of waste rock, mine dewatering discharge, and other activities associated with mineral exploration, extraction, and reclamation that could adversely impact reserved rights and treaty resources.</p>	<p>Consent authority would be used on a case-by-case basis to achieve consistency. However, the risks of inconsistency that would be avoided under alternative A are possible under alternative B, particularly with regards to potential future impacts to treaty resources and/or access to the federal estate to exercise treaty rights (see effects section above).</p> <p>Prior to authorizing any action that is subject to NEPA review for prospecting permits and lease applications, the Forest Service would consult with tribes and develop mitigation measures to avoid, minimize or mitigate impacts to treaty resources and reserved rights.</p>

## References

- 1854 Treaty Authority 2021a. Wild Rice Waters in the 1854 Ceded Territory. Accessed at: <https://www.1854treatyauthority.org/management/biological-resources/fisheries/reports.html?id=236&task=document.viewdoc>
- 1854 Treaty Authority 2021b. Sandy Lake and Little Sandy Lake Monitoring Report (2010-2021). Technical Report 21-11. December 2021. Sandy Lake and Little Sandy Lake Monitoring (2010) Accessed at: <https://www.1854treatyauthority.org/management/biological-resources/fisheries/reports.html?id=249&task=document.viewdoc>
- 1854 Treaty Authority 2022. Wild Rice Monitoring and Abundance in the 1854 Ceded Territory (1998-2021). Technical Report 22-03. February 2022. <https://www.1854treatyauthority.org/management/biological-resources/fisheries/reports.html?id=251&task=document.viewdoc>
- Benton-Banai, Edward 1988. The Mishomis Book. University of Minnesota Press. Minneapolis, MN.
- David, Peter et al. 2019. Manoomin, Version 1.1. Great Lakes Indian Fish and Wildlife Commission. 158pgs [Manoomin Chapter.Appendices.2019.final.pdf](#) <https://glifwc.org/reports/>
- Fond du Lac Band of Lake Superior Chippewa 2018. The Effects of Wild Rice Water Quality Rule Changes on Tribal Health. Cloquet, MN. <http://www.fdlrez.com/RM/downloads/WQSHIA.pdf>
- Fond du Lac Band of Lake Superior Chippewa 2020. Water Quality Standards of the Fond du Lac Reservation, Ordinance #12/98, as amended. <http://www.fdlrez.com/government/ords/12-98WaterQualityStandard2020.07.pdf>
- Forest Service 2015. Tribal Relations Strategic Framework for the Eastern Region, Northeastern Area State & Private Forestry, and Northern Research Station.
- Grand Portage Band of Lake Superior Chippewa 2017. Grand Portage Reservation Water Quality Standards. December 17, 2017. [Grand Portage Reservation Water Quality Standards \(epa.gov\)](#)
- Great Lakes Indian Fish and Wildlife Commission. 2002. Onjiaiking-From the Earth: Non-Medicinal Uses of Plants by the Great Lakes Ojibwe. Odanah, WI.
- Kappler, Charles 1904. Indian Affairs, Laws and Treaties. Volume II. Government Printing Office, Washington (648-652). <https://digitreaties.org/treaties/kappler/517/>.
- Minnesota Tribal Wild Rice Task Force 2018. Tribal Wild Rice Task Force Report. December 15, 2018. [Minnesota Chippewa Tribe \(mnchippewatribe.org\)](#)
- Royce, Charles C. 1899. Indian Land Cessions in the United States. Part Two of Eighteenth Annual Report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institution, 1896-97. Government Printing Office. Washington D.C. (p. 794-795). [https://memory.loc.gov/cgi-bin/query/D?hlaw:1:/temp/~ammem\\_z46D::](https://memory.loc.gov/cgi-bin/query/D?hlaw:1:/temp/~ammem_z46D::)
- Vennum, Thomas 1988. Wild Rice and the Ojibwe People. Minnesota Historical Society Press. St. Paul, MN.
- Wilkinson, Charles F. 1988. Indian Tribes as Sovereign Governments. American Indian Resource Institute Press. Oakland, CA.