

Statement for the Record
U.S. Department of the Interior
House Committee on Natural Resources
Subcommittee on Energy and Mineral Resources
H. Con. Res. 34

May 11, 2023

Thank you for the opportunity to provide this Statement for the Record on H. Con. Res. 34, *Expressing disapproval of the withdrawal by the Secretary of the Interior of approximately 225,504 acres of National Forest System lands in Cook, Lake, and Saint Louis Counties, Minnesota, from disposition under the United States mineral and geothermal leasing laws, subject to valid existing rights.*

The resolution seeks to terminate Public Land Order (PLO) 7917, withdrawing certain National Forest System lands from operation of the mineral and geothermal leasing laws under section 204(c) of the Federal Land Policy and Management Act (FLPMA). PLO 7917 is necessary to protect the Boundary Waters Canoe Area Wilderness, the surrounding watershed, wildlife, Tribal and treaty rights, and robust recreation economy of northern Minnesota. The Department of the Interior (DOI) strongly opposes any action to reverse the locally driven efforts to protect and conserve this critically important and fragile landscape. Furthermore, the resolution cannot terminate the withdrawal established by PLO 7917, as the resolution relies upon an unconstitutional provision in section 204(c) of FLPMA. The resolution can therefore have no effect on the validity of the PLO.

Background

The Bureau of Land Management (BLM) manages approximately 245 million surface acres, located primarily in 12 western states, as well as 30 percent of the nation's onshore mineral resources across 700 million subsurface acres, overlain by properties managed by other Federal agencies, such as the Department of Defense and the United States Forest Service, as well as state and private lands. Section 204 of FLPMA authorizes the Secretary of the Interior to make, modify, extend, or revoke most withdrawals on Federal lands, including withdrawals from the operation of mineral leasing and mining laws. Under FLPMA, the surface managing agency may apply to the Secretary of the Interior for a withdrawal.

On September 29, 2021, the Forest Service submitted a withdrawal application to the BLM requesting that the Secretary of the Interior withdraw approximately 225,504 acres of Forest Service-managed lands in the Superior National Forest from disposition under the mineral and geothermal leasing laws for a 20-year period, subject to valid existing rights. The BLM published a notice in the Federal Register on October 21, 2021, announcing its receipt of the Forest Service's application, initiating a two-year segregation of the lands from disposal under the mineral and geothermal leasing laws, commencing a 90-day comment period, and announcing that the agencies would hold public meetings regarding the withdrawal application.

Secretary Haaland signed PLO 7917 on January 26, 2023, withdrawing approximately 225,504 acres from disposition under the U.S. mineral and geothermal leasing laws for a period of 20

years, subject to valid existing rights. This action was the culmination of extensive evaluation by Federal partners and robust public involvement regarding the potential impacts of mining on the important natural and cultural resources of the Rainy River watershed.

The purpose of the withdrawal is to protect and preserve natural and cultural resources in the Rainy River watershed, including the Boundary Waters Canoe Area Wilderness, the Boundary Waters Canoe Area Mining Protection Area, and the 1854 Ceded Territory, in a holistic manner from the known and potential adverse environmental impacts arising from mineral exploration and development. The Boundary Waters Canoe Area Wilderness and the surrounding watershed are a spectacular network of rivers, lakes, and forests that comprise the most heavily visited wilderness area in the United States. More than 150,000 visitors from around the world are drawn annually to the 1.1-million-acre Boundary Waters. The area contains over 1,100 lakes interspersed with islands and surrounded by forests that extend nearly 150 miles along the border with Canada. The Boundary Waters boasts more than 1,200 miles of canoe routes, 12 hiking trails, and 2,000 designated campsites, and it contributes up to \$17.4 million annually to the more than \$540 million recreation and tourism economies in Cook, Lake, and St. Louis Counties.

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H. Con. Res. 34 seeks to invalidate the withdrawal established by PLO 7917 under the legislative disapproval provision of section 204(c) of FLPMA, which provides that a withdrawal over 5,000 acres shall terminate and become ineffective if Congress adopts a concurrent resolution stating that it does not approve of the withdrawal. This provision contains additional procedures for Congressional approval and does not require the resolution to be presented to the President for approval following passage by Congress.

Analysis

The Department strongly opposes H. Con. Res. 34 and any efforts to roll back the protections of this sensitive and irreplaceable area from the adverse impacts of new mineral and geothermal exploration and development. The 20-year withdrawal, which was made in accordance with the authority in section 204 of FLPMA, is critically needed to protect and preserve the fragile and vital social and natural resources, ecological integrity, and wilderness values in the Rainy River watershed and the Boundary Waters Canoe Area Wilderness. The withdrawal builds upon years of locally led conservation efforts to protect the landscape, watershed, and the outdoor recreation economy they support. A detailed description of the rationale underlying the recommendation and decision to withdraw the lands is contained in the BLM's decision memorandum for the withdrawal, which was signed by Secretary Haaland on January 26, 2023.

As noted above, H. Con. Res. 34 relies on the legislative disapproval provision in section 204(c) of FLPMA. That provision is unconstitutional under longstanding Supreme Court caselaw holding that Congress cannot invalidate a decision of the Executive Branch absent presentment to the President. (*INS v. Chadha*, 462 U.S. 919 (1983)). In *Chadha*, the Supreme Court held that a provision that allows Congress to take action that is “essentially legislative in purpose and effect” without approval by the President violates the presentment requirements of Article I of the United States Constitution. The Court explained that once Congress delegates authority to the Executive Branch, Congress must abide by that delegation until it is legislatively altered or revoked in accordance with the bicameral and presentment requirements of the Constitution. The

United States Court of Appeals for the Ninth Circuit has directly applied the Supreme Court's decision to Section 204(c) of FLPMA and concluded that the legislative disapproval provision that H. Con. Res. 34 relies on is unconstitutional (*National Mining Association v. Zinke*, 877 F.3d 845 (9th Cir. 2017)).

For this reason, any resolutions passed pursuant to that authority would have no effect on withdrawals that are validly established by the Secretary of the Interior. Even if approved, the resolution would not terminate PLO 7917, and the approximately 225,504 acres of National Forest System lands in Cook, Lake, and Saint Louis Counties, Minnesota, that are subject to PLO 7917 would remain withdrawn from disposition under the United States mineral and geothermal leasing laws, subject to valid existing rights.

Conclusion

Thank you for the opportunity to provide this statement for the record.