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The Stratified Regulation of Mine Permitting in Minnesota



Agenda

- Introduction
- Trump Administration Developments
- Vertical Stratification
- Horizontal Stratification

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Introduction

The Stratified Regulation of Mine Permitting in Minnesota

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Speaker



Brian B. Bell
Partner
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Brian Bell assists clients in obtaining environmental and operating permits for controversial natural resources, energy, and industrial projects. As part of this work, Brian advocates for companies before local, state, and federal regulatory bodies and on judicial review. Brian also represents clients in defending against agency enforcement actions.

Brian's natural resources practice involves helping mining companies with project permitting, investments, and acquisitions.

Trump Administration Developments

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Trump Administration Updates

- **Withdrawal of CEQ Regulations & *Seven County***
- **Executive Order (EO) 14241 — Immediate Measures to Increase American Mineral Production (Mar. 20, 2025)**
- **EO 14261 — Reinvigorating America's Beautiful Clean Coal Industry (April 8, 2025)**
- **FAST-41 Critical-Mineral Project Designations**
- **DOI announcement regarding expediting permitting review**
- **Minnesota: Reinstating Solicitor Opinion Facilitating Twin Metals Project (July 17, 2025)**
- **Alaska: Ambler Road Project Approval (Oct. 6, 2025)**

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NEPA Updates

Executive Action

- **Council on Environmental Quality (CEQ) withdrew NEPA regulations effective April 11, 2025**
  - **After D.C. Circuit concluded CEQ lacked authority to adopt NEPA regulations**
  - **Agencies directed to adopt their own rules**
- **Eliminated consideration of the social cost of carbon**
- **Eliminated consideration of environmental justice**

Judicial Action: Seven County v. Eagle County

- **Agency need not consider upstream and downstream indirect effects governed by another agency**
- **Deference owed to agency scope of environmental review**
- **Courts should not overturn final agency action unless decisions if it would conclude the agency would have reached the same decision**

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EO 14241 – Immediate Measures to Increase American Mineral Production (Mar. 20, 2025)

- Earliest
- Most general
- Applies to critical minerals and uranium, copper, potash, gold, and allows National Energy Dominance Council to designate more
- Directs agencies to identify ready-to-be-approved projects and expedite approval
- Allows Secretary of Defense to use the Defense Production Actto provide for:
  - Subsidy payments
  - The construction or enhancement public or private mineral production facilities
- Eases the path to agencies to provide financial support to natural resources projects

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EO 14261 — Reinvigorating America's Beautiful Clean Coal Industry (April 8, 2025)

- Directs the Department of the Interior (DOI) and U.S. Forest Service (USFS) to lift barriers to coal mining on federal lands
- Terminates EIS for coal-leasing moratorium
- Directs DOI, EPA, and other agencies to consider revising regulations or policies that discourage coal production
- Directs agencies to expand use of categorical exclusions for coal projects
- Evaluate whether coal is a critical mineral



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Coal Updates (cont.)

- Department of Energy (DOE) declared coal used in steel production a critical mineral under Energy Act of 2020
- DOI reduced royalty rates on federal coal
- DOI opened more land to coal leasing
  - One Big Beautiful Bill Act required DOI to open 4 million acres to coal leasing
  - DOI opened 13.1 million acres to coal leasing

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FAST-41 Critical-Mineral Project Designations

- **Trump Administration designated approximately 10 mining projects as FAST-41 projects**
- **Permitting Council**
  - **Implements Fast-41 and provides permitting support**
  - **Establishes project deadlines**
  - **Supports interagency coordination**



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DOI Emergency Permitting Procedures

- **Relies on an alternative NEPA compliance process to:**
  - **Allow Environmental Assessments to be prepared in 14 days**
  - **Allow Environmental Impact Statements to be prepared in 28 days**
- **Expedites Endangered Species Act consultation**
- **Expedites National Historic Preservation Act review by shortening comment period to seven days**

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Minnesota: Reinstating Solicitor Opinion Facilitating Twin Metals Project (July 17, 2025)

- Solicitor Opinion's are binding on most divisions of DOI
- 2015 Solicitor Opinion concluded Twin Metals (TMM) not entitled to federal lease renewal
- 2017 Solicitor revoked the 2015 decision and concluded TMM was entitled to renewal
- In 2019, the leases were renewed
- In 2022, the Solicitor concluded that the Bureau of Land Management had improperly renewed TMM's leases and the leases were subject to cancellation
- In 2025, the Solicitor withdraw the 2022 decision

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Ambler Road

- Congress required approval of a road to the Ambler Mining District in Alaska
- Trump 1.0 approved the application for the Ambler Road
- Biden revoked the approval
- Trump 2.0 granted an appeal from the Ambler Road's sponsor to review the Biden Administration's denial



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Vertical Stratification

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Regulators

- **Three levels of government may be at issue:**
  - **Federal**
  - **State**
  - **Local**
- **Depends, in part, on the type of land at issue**

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Three Types of Federal Mineral Tenure

- Locatable minerals (hardrock minerals)
  - Placer claims
  - Lode claims
- Leasable minerals
  - Chemical/Energy minerals
  - Competitive v. Non-competitive
- Salable minerals
  - Sand
  - Gravel



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Federal

- **Federal agencies have broad authority over whether to permit mining on federal land in Minnesota**
  - **The General Mining Law of 1872 (locatable) inapplicable in Minnesota, Wisconsin, and Michigan. *See* 30 U.S.C. § 48**
  - **Public domain lands**
  - **Acquired lands**

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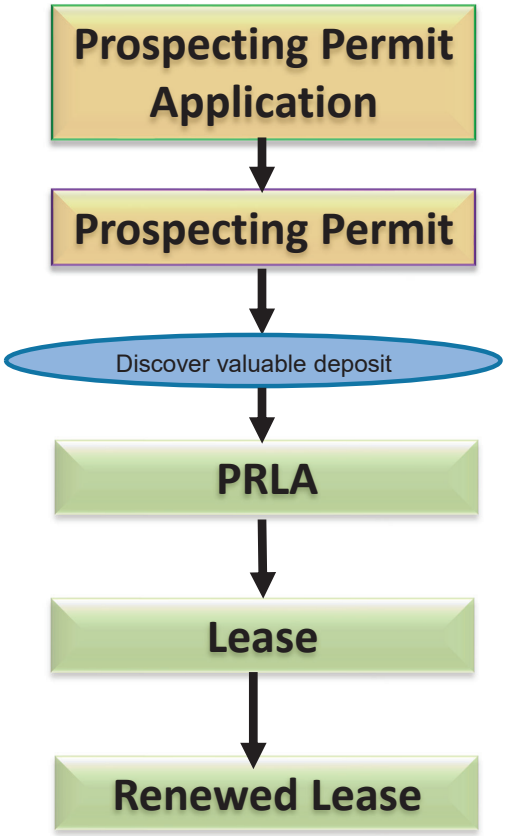
Federal Hardrock Mineral Leasing in Minnesota



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State Leasing, Ferrous v. Nonferrous

- Ferrous & nonferrous occurs through leases on state land
- Differences
  - Fees
  - Focus on leachate
- Similarities
  - Environmental review
  - Negotiated lease or lease sale
  - Executive Council approval
  - Permit to mine



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Local

- **Regulate aggregate mines on private land through land-use regulations**
- **Conditional Use Permit or Interim Use Permit**



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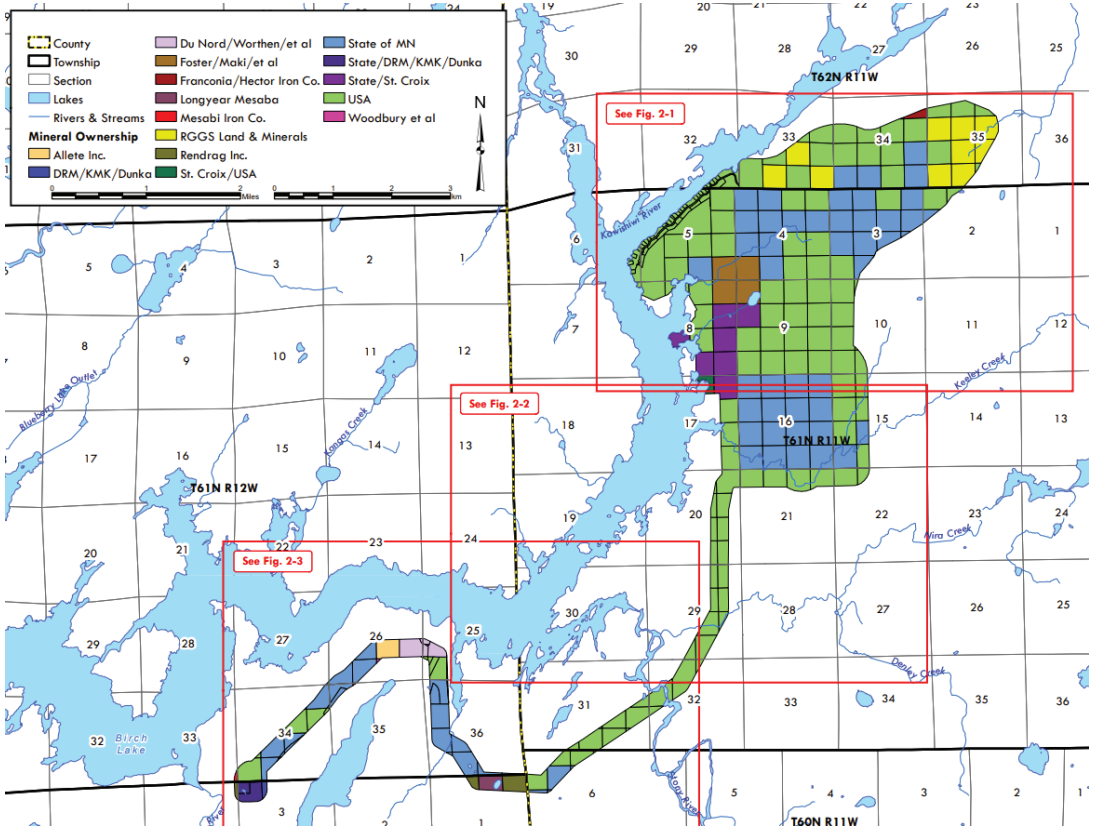
Reality



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Surface and Mineral Estate

- Unified estate
- Split estate
  - Surface estate (subservient estate)
  - Mineral estate (dominant estate)
  - Best practice to enter surface-use agreement
- Can occur on federal, state, or private surface



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Horizontal Stratification

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Agencies Potentially Involved

Federal

- DOI
  - Bureau of Land Management
  - Fish and Wildlife Service
  - Bureau of Indian Affairs
- USDA, Forest Service
- EPA

State

- MDNR, Division of Lands and Minerals
- MPCA
- Board of Water and Soil Resources
- Executive Council

Local

- Governing Board
- Planning Commission
- Board of Adjustments
- Soil and Water Conservation District
- County hazardous waste office

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Permits Involved

Mining-Specific Permits	
Regulatory Requirement	Jurisdictional Agency(ies)
Permit to Mine	State/DNR
Federal Mine Plan of Operations	Federal/BLM (with USFS input)
Environmental Permits	
NPDES/SDS for process water and storm water discharges	State/MPCA; Federal/EPA
Injection of underground fluid	Federal/EPA
Discharge of dredged and fill materials/wetlands conservation	Federal/USACE, USEPA; State/DNR
Water appropriation	State/DNR
Public waters work permit	State/DNR
Dam safety	State/DNR
Air emissions control	State/MPCA; Federal/EPA
Resource Conservation and Recovery Act (RCRA)/solid waste storage	State/MPCA
Transmission Line/Generation	State/Minnesota Public Utilities Commission (MPUC)
Gas pipeline	State/MPUC
Special use and road use permits	Federal/USFS
Local Permits	
Conditional use	County
Building	County

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State Environmental Review

- Environmental Assessment Worksheet (EAW)
  - Metallic (DNR)
    - Exploration activity
    - Expansion of stockpile, tailings basing by ≥320 acres
    - Expansion of processing facility
  - Aggregate mine (Local government)
    - Extraction of 40 ≤ acres (10 ft. depth)
    - 20 ≤ silica sand or sensitive area
- Environmental Impact Statement (EIS)
  - Metallic (DNR)
    - New mine
    - New processing facility
  - Nonmetallic (Local government)
    - 160 ≤ acres (10 ft. depth)
    - 80 ≤ acres in sensitive area

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Questions?



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