Fond du Lac Band of Lake Superior Chippewa
Resource Management Division

Administration; Conservation Enforcement; Environmental; Fisheries
Forestry; Land Information; Natural Resources; Wildlife

Attn: GTAC
Minnesota Department of Natural Resources
500 Lafayette Road, Box 45
St. Paul, MN 55155-4045

November 25, 2024

The Fond du Lac Band of Lake Superior Chippewa (the Band) submits the following comments, questions and observations from our very abbreviated review of the Gas Resources Technical Advisory Committee (GTAC) draft "Working Recommendations and Statutory Language for Permitting Gas Resource Development Under a Temporary Regulatory Framework", provided to tribal staff on November 15, 2024. Our first and overarching comment is that tribal leadership and tribal technical staff should have been provided earlier access to participants on the GTAC, with earlier opportunities to elevate tribal resource concerns in a timely way as to ensure that the emerging regulatory framework adequately incorporated protections for tribal trust resources.

Tribal nations are sovereign, not stakeholders. The Band retains hunting, fishing, and other usufructuary rights that extend throughout the entire northeastern portion of the state of Minnesota under the 1854 Treaty of LaPointe[1], and through central Minnesota into Wisconsin under the Treaty of St. Peters, 1837 (lands ceded to the federal government). These rights have been reaffirmed by federal courts, including the US Supreme Court[2]. Throughout these ceded territories, all signatory Bands have a legal interest in protecting natural resources, and in the state of Minnesota, all state agencies are under Executive Order and statutory requirements to engage in timely and meaningful government to government consultation[3]. The proposed helium gas extraction project, Pulsar Helium's "Topaz" project, which predicated this Legislature-directed expedited regulatory framework and preliminary statutory process, lies within the 1854 Ceded Territory and upstream of the Fond du Lac Reservation.

Over several decades of coordinated resource monitoring, management, and engagement with state and federal regulatory agencies in the review of industrial and extractive projects

[1] Treaty with the Chippewa, 1854, 10 Stat. 1109, in Charles J. Kappler, ed., Indian Affairs: Laws and Treaties, Vol. II (Washington: Government Printing Office, 1904)
[2] 2 Among others, see: Lac Courte Oreilles v. Voigt, 700 F. 2d 341 (7th Cir. 1983), cert. denied 464 U.S. 805 (1983); Lac Courte Oreilles v. State of Wisconsin, 775 F.Supp. 321 (W.D. Wis. 1991); Fond du Lac v. Carlson, Case No. 5-92-159 (D. Minn. March 18, 1996) (unpublished opinion); Minnesota v. Mille Lacs Band of Chippewa Indians, 119 S.Ct. 1187 (1999); United States v. State of Michigan, 471 F. Supp. 192 (W.D. Mich. 1979); United States v. State of Michigan, 520 F. Supp. 207 (W.D. Mich. 1981).
[3] MN Executive Order 19-24; 2024 Minnesota Statutes, Section 10.65

posing significant adverse environmental impacts and risks to natural and cultural resources, the Band's clear and consistent position has been to ensure these resources remain healthy, sustainable, and accessible for future generations. We have substantial concerns about a new (to this state) extractive industry and the unknown risks that its construction and operation poses, and the demand on state regulatory agencies to scramble to allow a project like this to be *permitted for operations* before environmental and human health hazards are fully understood, and a robust statutory process established. This urgency on the part of the Legislature neither respects tribal standing, nor ensures the public interest is upheld. The claim that the company *could* start commercial exploration within 12-18 months should not be the primary driver for unduly rushing the creation of a framework for responsible state agency review and regulatory oversight.

The following are specific questions and concerns about each of the GTAC agencies' recommendations and rationales:

Minnesota Department of Natural Resources Recommendations

- DNR-5, regarding a gas resource development permit and the areas that are disturbed (gas resource development locations), acknowledges that a project "footprint" extends beyond the immediate vicinity of a drilled well. This is a critical factor for environmental review and permitting, as project impacts include needed infrastructure development (roads, pipelines, compressor stations), nonpoint source impacts (erosion, sedimentation), increased traffic, noise, air emissions and more. Permitting a gas resource like helium has the potential for substantially more impacts than exploration borings for minerals and should be managed from the beginning as such.

- DNR-7, regarding application and permit fees. The DNR acknowledges that the $50,000 application fee paid by nonferrous mining permittees "has been dwarfed by order of magnitude by the legal fees paid by the DNR to defend the related permit decision in court." Fond du Lac and other tribal agencies have also expended substantial resources in staff environmental and permit review, and outside technical support and legal counsel to defend our right to access sustainable treaty resources imperiled by proposed extractive projects permitted by the DNR. We recommend that project proposers provide affected tribes with the same $75,000 fee for gas resource development projects that is provided to the DNR. This reflects the amount of staff time required to review and provide substantive input to permits for projects that may affect treaty and reservation resources.

- DNR-8: Gas resource development permits issued under a temporary regulatory framework must be considered temporary, expiring once ruled for a permanent regulatory framework are promulgated. Although the MN Legislature has directed state agencies to rush this framework on behalf of Pulsar, the company itself has stated they haven't yet finished their exploratory phase and won't have a defined project ready for review and permitting for at least another 18 months (meeting between Pulsar and tribal leaders at the 1854 Treaty Authority 11/15/2024).

Further, the DNR maintains: “The risks that a permanent regulatory framework for gas resource development would be dramatically different than a temporary framework might be a strong disincentive to invest in a project if the permittee was forced to reapply for a new “permanent” permit once rules were promulgated.” This rationale is disingenuous at best; any company proposing a new gas project in a state without an existing regulatory framework must be willing to risk their need to update a temporary permit issued prior to final rulemaking. Deferring to one company’s desire to accelerate their project without adherence to final state rules would provide an improper advantage to that specific company.

- DNR-9, regarding siting and setbacks for gas resource development projects. The Band maintains that setbacks or separations that have been deemed appropriate for nonferrous mineral development projects may not in fact be appropriate for a gas resource development project. And the DNR assumption that gas projects are not likely to present higher risks that nonferrous mineral projects is simply not supported; unless and until a comprehensive environmental impact statement (EIS) is completed for a gas resource development project, the agency cannot assume a particular level of risk. For example, the risk of release of radioactive compounds must be fully considered and incorporated into risk assessment, monitoring and permitted controls. Helium is a radioactive decay product, and uranium is present in these geologic formations. The DNR has not even considered how to require Pulsar or any future gas resource development project to monitor for and control the release of radioactive gases, including radon. In fact, the only mention of radioactive products is found in the MPCA recommendations, regarding disposal of radium in solid waste.

- DNR-14, Financial Assurance. The DNR contends that, while there is not yet a framework for requiring financial assurance for a gas resource development project, there is an existing robust framework for mineral development project. While acknowledging that this ‘robust framework’ was established in the absence of active mining projects, it fails to note that this financial assurance framework is still untested. Financial assurance is an absolutely pivotal element for responsible regulatory enforcement, including reclamation (including closure and post-closure maintenance no matter when operations cease), corrective action for noncompliance, and ensuring natural resources can be restored or mitigated without taxpayer dollars. The fast-tracking of rulemaking for gas projects is also heedlessly short-circuiting the necessary protections for tribal and public resources.

- DNR-22. In the absence of voluntary pooling (of mineral interests), the DNR would allow a person that owns or has secured the consent of the owners of at least fifty percent of the mineral interests within a spacing unit to apply to the DNR Commissioner for a pooling order that would combine all of the mineral interests within a spacing unit for the development of gas resources within that unit. The rationale further speaks to the state having “a compelling interest to pool the interests of both consenting and nonconsenting owners.” If the state is going to force nonconsenting owners to surrender their legal holdings (a ‘taking’?), the process should require at least 75% of the owners to consent to pooling within a spacing unit. Nonconsenting landowners may have other plans for their legal property that are not conducive to gas wells and extraction infrastructure.

- DNR-28. Unleased mineral interest tied to an American Indian tribe or band owning reservation lands in Minnesota or owned by the federal government should be shielded from pooling orders. While the Band agrees that tribal lands should be "shielded" from pooling orders, we ask that this term be clarified and that no pooling of gas/mineral rights should occur within the boundaries of reservation lands regardless of surface or subsurface ownership. This recommendation applies to both the temporary and permanent regulatory frameworks.

Minnesota Department of Health Recommendations

- The MDH acknowledges that existing state well drilling regulations apply to exploratory boring or prospecting, and do not anticipate that those same borings would likely also be used for gas production. In addition to the recommended statutory changes (MDH-1, MDH-2, MDH-3, MDH-6), we urgently recommend that MDH also explicitly acknowledge the risk of release of radioactive compounds and ensure regulatory control during drilling, production, and sealing of gas wells.

- MDH-7, MDH-8 prohibits injection or disposal of liquid, gas, or chemicals in gas wells, and acknowledges the US Environmental Protection Agency's federal permitting authority for Class 2 injection wells. The GTAC should be transparent with the public and the Legislature in that the USEPA is not bound by state directives to accelerate environmental review and permitting of a gas resource development project. Additionally, a gas resource development project should not move forward, under either temporary or permanent state permitting, unless and until it has secured all necessary permits, including a federal Class 2 injection well permit.

Environmental Quality Board Recommendations

- Despite a concerted effort in recent years on the part of the EQB to improve tribal consultation and coordination around environmental review and decision-making, nowhere in their recommendations for gas resource development do they incorporate tribal consultation or ensure opportunities meaningful tribal input. Yet tribal communities and treaty-protected resources are at significant and disproportionate risk for degradation from yet another resource-extractive industry.

- EQB-1, establishing a new mandatory category for environmental review and designating the DNR as the responsible governmental unit (RGU). While we agree that this new type of industrial development should be subject to a new mandatory environmental review category, we strongly advocate for the EQB to require a full environmental impact statement (EIS). This is the appropriate approach for an industry that *does have the potential for significant environmental effects*, alongside the state's complete lack of experience in regulating, mitigating and enforcing compliance on gas development projects. An EIS has more requirements for analyses and alternatives, mitigation of adverse environmental and human health effects (including the toxic and carcinogenic effects from radioactive compounds or elements), cumulative impacts, environmental justice, greater public involvement, and tribal consultation.

The draft recommendations state that mandatory category thresholds are triggered by the project size or "footprint," without defining those size thresholds. In fact, EQB is apparently suggesting that allowing the Pulsar project to proceed under temporary permitting and a less robust or comprehensive EAW will enable them to define that threshold in the future. This approach is simply not consistent with state or federal environmental policy, nor is it protective of the public interest. Pulsar has stated its direct footprint will be five times the size that DNR has estimated for gas well projects (10 acres). And this preliminary project footprint estimate is provided by a company that currently holds over 4,000 acres of surface rights surrounding its currently active drilling sites. The overall scale of this project could significantly increase, and an EIS is the appropriate mandatory environmental review instrument.

Finally, the Band does not agree with the recommendation for the DNR to be the "natural fit" as RGU for mandatory environmental review. The DNR is responsible for pooling, spacing, siting, financial assurance and reclamation for state-leased mineral rights; in the case of private mineral rights on private or federal lands, the DNR's sole responsibility is to ensure the project does not extract resources they do not own or lease, and that closure/reclamation plans are followed. The MPCA has responsibility for significantly more regulatory oversight, including water quality permits, wastewater permits, industrial stormwater permits, construction stormwater permits, air quality permits, storage tank regulation and permitting, and potentially for solid waste permitting. The Band recommends that MPCA be designated the RGU for mandatory environmental review of gas resource development projects.

Minnesota Pollution Control Agency Recommendations

MPCA was the only agency to specifically acknowledge the need for tribal consultation in their regulatory role.

The MPCA also called attention to significant uncertainties about air permitting requirements and management of greenhouse gas emissions, as well as industrial solid waste management. These uncertainties would be more adequately addressed and clarified through an EIS process.

Minnesota Department of Revenue Recommendations

DOR-1, DOR-2, DOR-3: The Minnesota Department of Revenue is recommending that gas extraction be taxed in the same way that non-ferrous mineral mining is taxed, through a Gross Proceeds or severance tax, and an Occupation or income tax (applicable to all mining). They have not apparently conducted any type of economic analysis to determine what are likely significant differences in revenue streams vs. production expenses to demonstrate that in fact this vastly different type of resource extractive industry should be assessed in exactly the same way and at the same rate as non-ferrous mining. That analysis should be conducted to ensure the public is fairly compensated for private company profit.

Finally, a percentage of the Gross Proceeds Tax and Occupation Tax should be allocated to each tribe with reserved rights in the ceded territory where the resource is being extracted, to nominally compensate for the diminishment of irreplaceable natural resources.

The Band looks forward to further opportunities to review the emerging regulatory framework, and to engage in consultation with the state agencies on this new type of industrial development.

Sincerely,

Nancy Schuldt, Water Projects Coordinator
Fond du Lac Environmental Program

Grand Portage Band of Lake Superior Chippewa
77 Stevens Road, PO Box 428
Grand Portage, Minnesota 55605

Sent via email only

GTAC Members:

Michael Liljegren (DNR), michael.liljegren@state.mn.us
Don Elsenheimer (DNR), donald.elsenheimer@state.mn.us
Teresa Purrington (MDH), teresa.purrington@state.mn.us
Mark Malmanger (MDH), mark.malmanger@state.mn.us
Steven Severson (MDOR), Steven.Severson@state.mn.us
Steven Diaz (MDOR), Steven.Diaz@state.mn.us
Jesse Krzenski (EQB), Jesse.Krzenski@state.mn.us
Theresa Haugen (MPCA), theresa.haugen@state.mn.us

Re: Draft rules for Gas Extraction

November 25, 2024

Dear GTAC Members:

The Grand Portage Band of Lake Superior Chippewa (the "Band") hereby submits these comments in connection with the Gas Technical Advisory Committee draft rules for gas extraction provided to Tribes at 4:10 pm on November 15, 2024, with our comments due by close of business on November 25th, 2024. This timeframe is far too short, and we criticize all the GTAC agencies for not consulting with all Tribes whose nations are within the State of MN boundaries as the rules were drafted. This appears to be purposeful and does not allow adequate time to respond before the draft rules are provided to the public for comment. This violates MN Executive Order 13175 – Consultation and Coordination With Indian Tribal Governments (Nov. 6, 2000) stating "the United States has recognized Indian tribes as domestic dependent nations under its protection . . . .," there is a "trust relationship with Indian tribes," and "[a]gencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian Tribal Governments.").

Introduction

Grand Portage is a federally recognized Tribe that has retained hunting, fishing, and other usufructuary rights in the lands and waters that extend throughout the entire northeast portion of the state of Minnesota under the 1854 Treaty of LaPointe[1] (the "Ceded Territory"). Usufructuary rights were

[1] Treaty with the Chippewa, 1854, 10 Stat. 1109, in Charles J. Kappler, ed., *Indian Affairs: Laws and Treaties*, Vol. II (Washington: Government Printing Office, 1904), available on-line at

Grand Portage Band of Lake Superior Chippewa
77 Stevens Road, PO Box 428
Grand Portage, Minnesota 55605

retained to ensure hunting, fishing, and gathering for subsistence, economic, cultural, medicinal, and spiritual needs could continue into perpetuity. *"Reserved property rights, explained by the Supreme Court in 1905 in United States v. Winans, 198 U.S. 371, are not 'a grant of rights to the Indians, but a grant of rights from them'. In Winters v. United States, 207 U.S. 564 (1908), the Supreme Court applied this principle in a water rights case. These two cases are the basis of the "reserved rights doctrine", that recognizes tribes retain those rights of a sovereign government not expressly extinguished by a federal treaty or statute."*[2] In order to fully exercise these guaranteed treaty rights, abundant unpolluted natural resources must be available.

Because of their unique government-to-government relationship with the Minnesota tribes, state[3] and federal agencies[4] are legally responsible for maintaining treaty-reserved natural resources. All state agencies are required to consider the input gathered from tribal consultation in their decision-making processes, with the goal of achieving mutually beneficial solutions,[5] yet this has not occurred with respect to the draft rules for gas extraction. Due to constraints by the GTAC for review of the draft rules, these comments should not be considered exhaustive.

Radioactive Waste Management

The risk of release and the concentrations of radioactive components must be discussed and rules developed to ensure radioactive waste is captured and disposed of safely. Helium is created by the natural radioactive decay of radioactive elements, primarily uranium and thorium. Yet, there is little discussion regarding radioactive releases that are likely to occur with gas extraction and in particular, helium extraction. In fact, the only mention of this potential in the draft rule includes: *"No solid waste permits would be required. This is not an industrial activity that treats, transfers, stores, processes, or disposes of solid waste. However, a guidance document on water filter backwash solids has criteria for the disposal level criteria for radium. Should there be a need to dispose of solid waste that has radium contained in, the acceptable radium disposal limit is in guidance only. Moving forward, the MPCA could consider adding a rule disposal restriction related to radium levels for any waste generated from the gas*

---

http://digital.library.okstate.edu/kappler/Vol2/treaties/chi0648.htm

[2] The Federal-Tribal Trust Relationship: Its Origin, Nature, and Scope, Pevar, Stephan L., 2009.

[3] *See, e.g.*, Exec. Order 19-24, "Affirming the Government-to-Government Relationship between the State of Minnesota and Minnesota Tribal Nations: Providing for Consultation, Coordination, and Cooperation."

[4] *See, e.g.*, Exec. Order 13175—Consultation and Coordination With Indian Tribal Governments (Nov. 6, 2000) (stating "the United States has recognized Indian tribes as domestic dependent nations under its protection . . . .," there is a "trust relationship with Indian tribes," and "[a]gencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.").

[5] *See, e.g.*, Exec. Order 19-24, "Affirming the Government-to-Government Relationship between the State of Minnesota and Minnesota Tribal Nations: Providing for Consultation, Coordination, and Cooperation."

Grand Portage Band of Lake Superior Chippewa
77 Stevens Road, PO Box 428
Grand Portage, Minnesota 55605

industry in the section that lists the industrial waste types that must be addressed in the Industrial Solid Waste Management Plans."(GTAC draft rules)

There must be rules for any radioactive waste or discharges to the air or water that may occur as a result from extracting gas that was created by radioactive decay, in an area where the known concentrations of radon already approach unhealthy or dangerous concentrations. Because radon usually shows up later in the extraction processes, it's much harder to manage than other pollutants.

The idea that no solid waste permits will be needed for future gas projects assumes that all the industrial equipment needed to separate, process, store, and transfer gas to market will be maintained off-site. Each gas or oil extraction project will likely be different so unless there is more information that has not been provided in these draft rules, there should be an assumption that all gas and oil extraction projects will need Industrial Solid Waste Management Plans that include safe capture, storage, and disposal of all radioactive waste generated.

Suggesting that *"[W]here recovery and use of the methane is not feasible, converting the methane to CO2 through flaring may be the next best option. Flaring, sometimes used in managing landfill gases, would also provide the benefit of reducing or eliminating non-methane hydrocarbons, air toxics, and odor causing compounds that may be found at lower concentrations in the well gas and that would otherwise be released to the atmosphere..."*(GTAC draft rules) Flaring will not eliminate radioactive components (e.g. radon gas or radium nitride).

<u>An Environmental Impact Statement Must Be Required for Gas and Oil Extraction Projects</u>

An Environmental Impact Statement (EIS) has more requirements than an Environmental Assessment (EA) to explore methods to reduce adverse environmental and human health effects, including cumulative effects, requires more public evaluation and consultation with Tribal leaders, and includes reviews by Tribal Historic Preservation Officers. The draft suggests that mandatory category thresholds are based on project size, with EAW thresholds associated with projects of a smaller size while an EIS is triggered by a larger project. However, those size thresholds are not disclosed in this draft. The draft suggests that most gas wells cover about a ten-acre footprint. In consultation with Pulsar, the company has stated its direct footprint will be 5 times the size the MNDNR has suggested for gas well projects, or about 50 acres. This is a preliminary estimate from a company that currently holds more than 4,181 acres of surface rights for its project, so the footprint and overall scale of the project could significantly increase.

An Environmental Impact Statement (EIS) must be required for all gas projects because of the potential for significant environmental effects, including the release of radium isotopes, all of which are radioactive, including radon, and are considered toxic, and carcinogenic due to radioactivity. ^{226}Ra is the most stable isotope of radium and is the last isotope in the $(4n + 2)$ decay chain of uranium-238 with a half-life of 1,600 years, making up almost all naturally occurring radium. The immediate decay product of radium is radon. Radon is 2.7 million times more radioactive than the same molar amount of natural uranium (mostly uranium-238), due to its proportionally shorter half-life. Radium can also form a

Grand Portage Band of Lake Superior Chippewa
77 Stevens Road, PO Box 428
Grand Portage, Minnesota 55605

solid phase, radium nitride (Ra_3N_2), when it is exposed to air because it reacts with nitrogen rather than oxygen to form a black surface layer.

Ethane will be released by the project, potentially flared off as it converts to methane upon exposure to the atmosphere. Methane is a potent greenhouse gas that must be captured. At or above 5 percent ethane or methane, a gas mixture can become explosive. It appears that Pulsar may have concentrations of ethane and/or methane at or near 5 percent (GTAC draft rules), creating the potential for explosion or fire that must be thoroughly investigated.

A frequent occurrence resulting from gas extraction is very saline water being pushed to the surface. This can have disastrous impacts on local vegetation and aquatic life that have evolved in conditions with very low concentrations of salts. Very saline water from 1,371 feet below the surface was contacted causing the unauthorized discharge of 330,000 gallons of to the surrounding surface environment during the AMAX copper-nickel exploration in 1976 (MPCA memo AMAX Exploration Unauthorized Discharge, 9/2/1976) killing over an acre of vegetation surrounding the drill site. At every copper/nickel test drill site where samples were collected, the US Forest Service found saline waters that exceeded the safe drinking water criteria of 250 milligrams per liter of chloride (USFS. Marty Rye. 2012). There may be metals at concentrations that exceed human health in the saline water including, but not limited to barium, strontium, and arsenic. An EIS is needed to assess the potential need for deep injection wells or other pollution control methods that may be required to protect human health and the environment. Both the EA and EIS costs should be borne by the applicant and an EIS must be mandated for every proposed gas project.

<u>Occupation and Gross Proceed Taxes for Tribes with Ceded Territory Where Gas and Oil Will be Extracted</u>

"There are commonly two types of taxes collected on mining in Minnesota and nationally: A severance tax for removing the natural resource from the earth and an income tax. In Minnesota, the severance tax for non-ferrous minerals is known as the Gross Proceeds Tax and the income tax for all mining is known as the Occupation Tax. The scope of recommendations on taxation includes incorporating gas and oil into existing mining tax laws, aligning the exemptions for the newly created gas and oil taxes with exemptions in place for existing mining industries, and improving tax administration for both the taxpayer and Revenue. Rulemaking is not included in the scope of these recommendations. Rulemaking is not specifically included in the scope of these recommendations because the Department believes the draft statutory language is sufficient on its own. The Department already has rule making authority under Minnesota Statutes, section 270C.06, should it be determined rules are needed later." (GTAC draft rules)

A portion of Gross Proceeds and Occupation taxes collected for natural resource extraction should be granted to each Tribe with reserved rights in the ceded territory where the resource is extracted to compensate for the loss of irreplaceable natural resources.

<u>Application and Permit Fees for Resource Extraction Should be Provided to Tribes</u>

The DNR has recommended a $50,000 application fee for a gas resource development permit and a $75,000 annual permit fee for gas resource development projects, as well as the ability to assess

Grand Portage Band of Lake Superior Chippewa
77 Stevens Road, PO Box 428
Grand Portage, Minnesota 55605

supplemental fees to cover the costs of reviewing an application above the application fee amount. (GTAC draft rules) We recommend fees for Tribes of an equal amount for review and regulatory oversight within our ceded territories.

Temporary Permits Should Only be Allowed Until Final Rules are Approved
Gas resource development permits issued under a temporary regulatory framework must be considered temporary, expiring once rules for a permanent regulatory framework are promulgated. *"The DNR recommends that the word "temporary" be removed from the phrase "temporary permit," to make clear that a permit issued during rulemaking will not be limited to a term less than what is proposed by the applicant, nor revoked once rules are promulgated."* (GTAC draft rules) This is an unnecessary "gift" to Pulsar. Although this rulemaking is being rushed for Pulsar, the company has stated they haven't

finished the exploration stage yet, and don't anticipate having a "project" defined for at least another 18 months (Meeting held at the 1854 Treaty Authority 11/15/2024). We strongly disagree with the MNDNR's rationale because it potentially allows Pulsar to operate with advantage over any future companies exploring for helium in MN and allow unmitigated pollution to occur that could adversely impact human and environmental health despite the final rules being adopted.

The draft further provides: *"The risks that a permanent regulatory framework for gas resource development would be dramatically different than a temporary framework might be a strong disincentive to invest in a project if the permittee was forced to reapply for a new "permanent" permit once rules were promulgated."* (GTAC draft rules) This is false rhetoric. At a million dollars per day of expected revenue once operating, there is no disincentive to wait for the final rulemaking other than wanting lax temporary rules that may not be as restrictive as the final rules. *"The initial land package is being expanded through applications with the State Government meaning that all areas of interest have now been quarantined by Pulsar for further development. Importantly, the State of Minnesota passed new helium legislation allowing production to occur from 15 January 2025."* (Pulsar Helium Inc. - Projects – Topaz). Any company proposing a new gas extraction project in MN must be willing to risk an update to the permit as soon as final rulemaking has occurred, not at some undetermined later date, or possibly never. Pulsar knows it is taking a risk by developing plans before rulemaking has been completed and should expect to be able to operate under a temporary permit *only until the rules are finalized*, complying with the legislature's desire for a viable mechanism to enable gas resource development project permitting during rulemaking without providing an improper advantage to a specific company.

Applicants Must Own 75 Percent of Mineral Interests to Receive a Pooling Order
The DNR recommends that a person applying for a pooling order control at least fifty-percent of the mineral interests within an established spacing unit. We do not think fifty percent ownership of mineral interests is enough for a pooling order. We recommend a minimum of a 75 percent interest requirement for pooling. The MNDNR recommends that the operator of wells under a pooling order in which there is a nonconsenting owner furnish the nonconsenting owner with a monthly statement of all costs incurred, together with the quantity of gas produced, and the amount of proceeds realized from the sale of production during the preceding month. This is a good recommendation, but only if the pooling order is provided when there is at least 75 percent ownership of the mineral estate. 50 percent is an unfair

Grand Portage Band of Lake Superior Chippewa
77 Stevens Road, PO Box 428
Grand Portage, Minnesota 55605

advantage to the right holder that wants to develop gas if their neighbor has other plans that may not be conducive to gas wells.

"Until more information is available about the nature and extent of Minnesota's gas resources, the DNR recommends that gas resource development permittees submit to the commissioner, as a permit condition, a pre-production report that includes the engineering and geological data obtained from any gas wells drilled as part of their project (whether or not the permittee plans to take a gas well into production). The report must compare the hard data obtained from their gas wells against any estimates submitted to the commission before drilling. The commissioner will use the data to evaluate potential changes to an established spacing unit or pool unit and consider the potential impacts of bringing the project into production." (GTAC draft rules) This information must be simultaneously provided to the tribes.

Although the DNR recommends that unleased mineral interests tied to an American Indian tribe or band owning reservation lands in Minnesota should be shielded by state law from state-issued pooling orders, we believe that pooling should be prohibited within any Tribe's reservation boundaries regardless of surface or subsurface ownership. This recommendation is for both the temporary and post-rulemaking regulatory frameworks.

Site and Setbacks
"Legislation passed in May 2024 requires the commissioner to develop rules for siting gas resource development projects (93.514). Gas resource development locations need to be at sites that minimize adverse impacts on natural resources and the public, with setbacks or separations that are needed to comply with environmental standards, local land use regulations, and requirements of other appropriate authorities." Siting could be a huge issue that may collide with the wants and needs of non-ferrous mining proposals moving forward. Siting should be assessed in an EIS.

What Agency Should be the RGU
"The final component of a framework for environmental review is determining who should serve as the Responsible Governmental Unit. EQB recommends that the Department of Natural Resources serve as the Responsible Governmental Unit." We do not agree that the MNDNR is the natural fit for serving as the RGU because they do not have the greatest responsibility for supervising or approving the project as a whole. Instead, we recommend that MPCA become the RGU for gas extraction projects because they are the agency tasked with the most regulatory oversight including: wastewater permits, industrial stormwater permits, construction stormwater permits, air quality permits, storage tank regulation and permitting, and solid waste permitting. Along with MDH, MPCAs authorities are tied to protecting human health and the environment. When the state is leasing mineral rights MNDNR has pooling, spacing, siting, financial assurance, and reclamation for the extraction of gas. In the case of private minerals on private or federal lands, the MNDNR is only assigned to ensure that the projects do not extract resources they do not own or lease, and that closure plans that protect and maintain the surface are followed. In either case, state-leased or privately held minerals, MPCA has more regulatory authorities than the MNDNR, and therefore should be considered the RGU.

Grand Portage Band of Lake Superior Chippewa
77 Stevens Road, PO Box 428
Grand Portage, Minnesota 55605

Financial Assurance Tools and Investments
We agree that corporate guarantees are worth no more than the paper they are written on, and the State must have much more robust tools for financial assurance for gas projects. Financial assurances are a source of funds to be used if the permittee fails to perform:

- Reclamation activities including closure and post-closure maintenance needed if operations cease; and
- Corrective action as required by the MPCA and the MNDNR if noncompliance with engineering design and operating criteria occurs; *and*
- *To ensure that other natural resources are not damaged or can be repaired or mitigated using financial assurance instead of taxpayer revenue.* (Here, italicized font is suggested additional text provided by Grand Portage)

The MNDNR should not allow money collected as part of financial assurance for gas resource development projects to be invested by the State Board of Investment unless there is a requirement to supplement any funds that are diminished by investment to their original amount. If investment yields generate more money that is helpful. However, if the investments decrease the amount of financial assurance a company has provided, there may not be enough funds to deal with the work that is needed. Therefore, interest bearing accounts must be very conservative in nature to ensure no loss of funds.

Closing
The agencies represented on the GTAC did not consult with Tribes as required by law and instead the MNDNR simply provided informational updates, and nothing more except reassurances that the GTAC was looking at all the same issues Tribes were concerned about. Clearly, this is not the case after reviewing the draft gas extraction rules. Stating that the MN Legislature gave the MNDNR a very short time to define the members of the GTAC and draft the rules is not an excuse. Further, there was an opportunity in the legislation allowing federal agencies and the University of MN to be involved, yet the MNDNR chose to exclude Tribes from the GTAC and only invite representatives from MN agencies, who all chose to not consult with tribes.

An EA is a helpful first tool to consider what issues may need further vetting. However, a full EIS must be required for all gas projects to ensure that human health and the environment are protected because it is unlikely that two projects will be exactly the same in terms of the mixture of gases present and the location of projects.

The RGU for gas extraction projects should be the MPCA, as this is the agency tasked with the most regulatory oversight.

A portion of Gross Proceeds and Occupation taxes collected for natural resource extraction should be granted to each Tribe with reserved rights in the ceded territory where the resource is extracted to compensate for the loss of irreplaceable natural resources.

Grand Portage Band of Lake Superior Chippewa
77 Stevens Road, PO Box 428
Grand Portage, Minnesota 55605

The DNR has recommended a $50,000 application fee for a gas resource development permit and a $75,000 annual permit fee for gas resource development projects, as well as the ability to assess supplemental fees to cover the costs of reviewing an application above the application fee amount. We recommend fees for Tribes of an equal amount for review and regulatory oversight within our ceded territories.

Pooling orders should be restricted to a minimum of 75% mineral estate ownership.

The MNDNR should not allow money collected as part of financial assurance for gas resource development projects to be invested by the State Board of Investment unless there is a requirement to supplement any funds that are diminished by investment to their original amount.

Sincerely,

Robert Deschampe
Grand Portage Chairman

Grand Portage Band of Lake Superior Chippewa
77 Stevens Road, PO Box 428
Grand Portage, Minnesota 55605

December 23, 2024

Sent via email only

GTAC Members:

Michael Liljegren (DNR), michael.liljegren@state.mn.us
Don Elsenheimer (DNR), donald.elsenheimer@state.mn.us
Teresa Purrington (MDH), teresa.purrington@state.mn.us
Mark Malmanger (MDH), mark.malmanger@state.mn.us
Steven Severson (MDOR), Steven.Severson@state.mn.us
Steven Diaz (MDOR), Steven.Diaz@state.mn.us
Jesse Krzenski (EQB), Jesse.Krzenski@state.mn.us
Theresa Haugen (MPCA), theresa.haugen@state.mn.us

Re: Grand Portage Band Comments on Gas Technical Advisory Committee "Working Recommendations and Statutory Language for Permitting Gas Resource Development Under a Temporary Regulatory Framework."

Dear GTAC Members:

The Grand Portage Band of Lake Superior Chippewa (Band) hereby submits these comments on the above, MNDNR-led Gas Technical Advisory Committee (GTAC) Recommendations during the Public Comment Period ending December 23, 2024. These follow the Band's earlier comments (incorporated and reiterated here), which tribes received only on November 15, and upon which we had to submit comments within just six working days, with a pre-public comment period that ended November 25, 2024.

Introduction

Grand Portage is a federally recognized Tribe that has retained hunting, fishing, and other usufructuary rights in the lands and waters that extend throughout the entire northeast portion of the state of Minnesota under the 1854 Treaty of LaPointe[1] (1854 Ceded Territory). The first proposed gas extraction project is located within the 1854 Ceded Territory.

In the 1854 Ceded Territory, usufructuary rights were retained to ensure hunting, fishing, and gathering for subsistence, economic, cultural, medicinal, and spiritual needs could continue into perpetuity:

> Reserved property rights, explained by the Supreme Court in 1905 in United States v. Winans, 198 U.S. 371, are not 'a grant of rights to the Indians, but a

[1] Treaty with the Chippewa, 1854, 10 Stat. 1109 (Sept. 30, 1854).

Grand Portage Band of Lake Superior Chippewa
77 Stevens Road, PO Box 428
Grand Portage, Minnesota 55605

> grant of rights from them'. In Winters v. United States, 207 U.S. 564 (1908), the Supreme Court applied this principle in a water rights case. These two cases are the basis of the "reserved rights doctrine", that recognizes tribes retain those rights of a sovereign government not expressly extinguished by a federal treaty or statute."[2]

Due to their distinct unique government-to-government relationship with the Minnesota tribes, all state[3] and federal agencies[4] are legally obligated to maintain treaty-reserved natural resources. All state agencies are required to consider the input gathered from tribal consultation in their decision-making processes, with the goal of achieving mutually beneficial solutions, yet this has not occurred with respect to preparation of the Draft Rules.

The state agencies participating in the GTAC (except for MPCA[5]) to date have all but ignored Minn. Stat. § 10.65. The statute requires "timely and meaningful consultation" with tribes, which means "done or occurring at a favorable or useful time that allows the result of consultation to be included in the agency's decision-making process for a matter that has Tribal implications."[6] A pre-public notice period of less than a week is hardly timely or meaningful. "Matters that have Tribal implications" expressly include "rules, legislative proposals, policy statements, or other actions that have substantial direct effects on one or more Minnesota Tribal governments."[7] Yet the Draft Rules, which stand to directly and profoundly impact off-reservation reserved treaty resources, have been rushed through without sufficient opportunity for consultation and input, much less study. That the result of the Recommendations are proposed rules labeled as "temporary" in no way excuses this failure to consult.

Comments

I. An Environmental Impact Statement must be required for *all* gas and oil extraction projects.

[2] Pevar, Stephen L., "The Federal-Tribal Trust Relationship: Its Origin, Nature, and Scope" (Jan. 1, 2009), at https://cawaterlibrary.net/document/the-federal-tribal-trust-relationship-its-origin-nature-and-scope/.
[3] Minn. Stat. § 10.65, Government-to-Government Relationship with Tribal Governments.
[4] *See*, *e.g.*, Exec. Order 13175—Consultation and Coordination With Indian Tribal Governments (Nov. 6, 2000) (stating "the United States has recognized Indian tribes as domestic dependent nations under its protection ....," there is a "trust relationship with Indian tribes," and "[a]gencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments."); White House, Memo. on Uniform Stds. For Tribal Consult. (Nov. 20, 2022), at https://www.whitehouse.gov/briefing-room/presidential-actions/2022/11/30/memorandum-on-uniform-standards-for-tribal-consultation/.
[5] MPCA, Reg. Framework for Developing Gas Resources in Minn. ("Furthermore, the MPCA will comply with Minnesota Statute Section 10.65 which requires timely and meaningful consultation between the state and tribal governments on matters under MPCA's authority that may have Tribal implications."), at https://gasproductionrules.mn.gov/mpc-recommendations.html.
[6] Minn. Stat. Sec. 10.65 subd. 2(5).
[7] *Id.* at subd. 2(3).

An Environmental Impact Statement (EIS) has more requirements than an Environmental Assessment (EA) to explore methods to reduce adverse environmental and human health effects, including cumulative effects, requires more public evaluation and consultation with Tribal leaders, and includes reviews by Tribal Historic Preservation Officers.

The Recommendations suggest that mandatory category thresholds are based on project size, with EAW thresholds associated with projects of a smaller size and an EIS triggered by a larger project. However, those size thresholds are not disclosed, which must be corrected.

Additionally, the Recommendations suggest that most gas wells cover about a ten-acre footprint. This directly contradicts comments made to the Band by Pulsar Helium, the company behind the initial “Topaz” project proposal located outside of Babbitt at the Bald Eagle Intrusion. Pulsar currently holds more than 4,181 acres of surface rights and has stated that the Topaz Project direct footprint will be about 50 acres, or five times the size the MNDNR has suggested would be typical for gas well projects. This is just a preliminary estimate, so the footprint and overall scale of the project could significantly increase. In addition, MNDNR has stated that Pulsar intends to lease more than 34,000 acres of state minerals for gas exploration.[8]

The Recommendations should require that all projects require an EIS to investigate serious risks to the environment and human health, and mitigation measures must be identified before extraction begins.

II. The Recommendations insufficiently address radioactive waste management.

The risk of release and the concentrations of radioactive components must be discussed, and rules must be developed to ensure radioactive waste is captured and disposed of safely. Helium is created by the natural radioactive decay of radioactive elements, primarily uranium and thorium. Yet there is limited discussion regarding radioactive releases linked to gas extraction, especially concerning helium extraction. In fact, the only mention of this potential in the Draft Rules include the following:

> No solid waste permits would be required. This is not an industrial activity that treats, transfers, stores, processes, or disposes of solid waste. However, a guidance document on water filter backwash solids has criteria for the disposal level criteria for radium. Should there be a need to dispose of solid waste that has radium contained in, the acceptable radium disposal limit is in guidance only. Moving forward, the MPCA could consider adding a rule disposal restriction related to radium levels for any waste generated from the gas industry in the section that lists the industrial waste types that must be addressed in the Industrial Solid Waste Management Plans.[9]

---

[8] Oral cmts. by MNDNR Rep. Henderson at State/Tribal Mining Meeting (Dec. 3, 2024).
[9] MPCA, “Gas Prod. Rules: MPC Recs.,” at 35, at https://gasproductionrules.mn.gov/mpc-recommendations.html.

Grand Portage Band of Lake Superior Chippewa
77 Stevens Road, PO Box 428
Grand Portage, Minnesota 55605

Rules must be established for any radioactive waste or discharges to the air or water that may occur because of extracting gas created by radioactive decay. In areas where radon concentrations are high, helium concentrations are usually also high, suggesting that both gases use the same fracture systems as preferential routes of leakage.[10] Further, the highest concentrations of radon are found in gas-producing zones and show up at higher concentrations as the gas is depleted, evolving from the immediate vicinity of the wells.[11] Radon readily reacts with nitrogen (rather than oxygen) upon exposure to air, creating radium nitride, which may adhere to dust or other aerosol particulates to form a surface layer that is hazardous to wildlife and people. Because radon usually shows up later in the extraction processes, it's much harder to manage than other pollutants and should be considered before gas wells are allowed to operate in Minnesota.

III. The Recommendations also fail to adequately address solid waste management.

The assumption that future gas projects won't require solid waste permits relies on the idea that all industrial equipment for separating, processing, storing, and transferring the gas to the market will be kept off-site. But each gas or oil extraction project will likely be different, so unless there is more information that has not been provided in these Draft Rules, there should be a more protective assumption that *all* gas and oil extraction projects will need Industrial Solid Waste Management Plans that include safe capture, storage, and disposal of all radioactive waste generated.

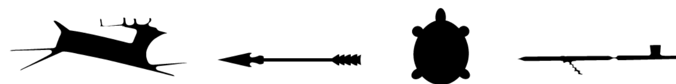
IV. Significantly more work is needed to protect air quality.

A. Flaring.

Flaring waste gas significantly contributes to local air pollution and global greenhouse gas emissions.[12] Gas field-produced ozone is a serious air pollution problem in the USA, similar to concentrations found in large urban areas. It can spread up to approximately 200 miles beyond the immediate region where gas is being produced.[13] Over 250 toxins have been identified as being released from flaring, including carcinogens such as benzopyrene, benzene, carbon di-sulphide (CS2), carbonyl sulphide (COS), and toluene; metals such as mercury, arsenic, and

---

[10] Hernandez, P., et al., "Radon and helium in soil gases at Cañadas caldera, Tenerife, Canary Islands, Spain" at 59-76, Journal of Volcanology and Geothermal Research, Vol. 131, Issues 1-2 (Mar. 2004), at https://www.sciencedirect.com/journal/journal-of-volcanology-and-geothermal-research.
[11] Faul, H., et al. (USGS), "Radon and Helium in Natural Gas" (June 1, 1953), at https://babel.hathitrust.org/cgi/pt?id=mdp.39015095015551&seq=3.
[12] Marland, G., et al. (Carbon Dioxide Information Analysis Center, Oak Ridge National Laboratory, U.S. Department of Energy), "Global, Regional, and National CO2 Emissions," Trends: A Compendium of Data on Global Change (2005).
[13] Bolden AL, Schultz K, Pelch KE, Kwiatkowski CF. Exploring the endocrine activity of air pollutants associated with unconventional oil and gas extraction. Environ Health. 2018 Mar 21;17(1):26. doi: 10.1186/s12940-018-0368-z. PMID: 29558955; PMCID: PMC5861625, at Exploring the endocrine activity of air pollutants associated with unconventional oil and gas extraction - PubMed



chromium; sour gas with H_2S and SO_2; nitrogen oxides (NOx); carbon dioxide (CO_2); and methane (CH_4), which contributes to greenhouse gases.[14]

Yet the Recommendations *endorse* flaring:

> …where recovery and use of the methane is not feasible, converting the methane to CO_2 through flaring may be the next best option. Flaring, sometimes used in managing landfill gases, would also provide the benefit of reducing or eliminating non-methane hydrocarbons, air toxics, and odor causing compounds that may be found at lower concentrations in the well gas and that would otherwise be released to the atmosphere.[15]

This ignores prevailing science and known health risks. Moreover, flaring will not eliminate radioactive components (e.g. radon gas or radium nitride).

Furthermore, to contain fluids produced from flaring of the gas-associated liquid hydrocarbons and brine water, earthen flare pits are constructed beneath the flare stacks. Soil surrounding these pits is typically hydrocarbon and salt-contaminated and mixed with other toxic chemicals that are hazardous to birds and wildlife.[16] Yet this risk is also not evaluated.

B. Ethane.

Ethane will be released by the Topaz Project, potentially flared off as it converts to methane upon exposure to the atmosphere. Methane is a potent greenhouse gas that must be captured. Methane has an explosive range between 5% and 15% and the concentration of 9.5% is the most dangerous.[17] It appears that Pulsar may have concentrations of ethane and/or methane at or near five percent, creating the potential for explosion or fire that must be thoroughly investigated.

V. The Recommendations do not adequately evaluate the risk of saline water discharges (brines).

A frequent occurrence resulting from gas extraction is very saline water being pushed to the surface. This can have disastrous impacts on local vegetation and aquatic life that have evolved

[14] Elehinafe, Francis et al. "Natural Gas Flaring in Nigeria, its Effects and Potential Alternatives – A Review." Journal of Ecological Engineering 2022, 23(8), 141–151 https://doi.org/10.12911/22998993/149822 ISSN 2299–8993, License CC-BY 4.0 at pdf-149822-76612
[15] GTAC Recs. at 34.
[16] *See* US Fish and Wildlife Servs., "Avoidance and Minimization Measures: Oiled and Produced Waters," Avoidance and Minimization Measures: Oiled and Produced Water | U.S. Fish & Wildlife Service
[17] Jianwei Cheng, Cheng Wang, Shaoshuai Zhang, "Methods to determine the mine gas explosibility – An overview." Journal of Loss Prevention in the Process Industries, Volume 25, Issue 3,2012, Pages 425-435,ISSN 0950-4230, (https://doi.org/10.1016/j.jlp.2011.12.001). Methods to determine the mine gas explosibility – An overview - ScienceDirect

in conditions with very low concentrations of salt. Freshwater salinization can impact safe drinking water, ecosystem health and biodiversity, infrastructure corrosion, and food production. Freshwater salinization originates from many anthropogenic and geologic sources including mine drainage and gas extraction.[18]

Minnesota has an unfortunate example to learn from. During the AMAX copper-nickel exploration in 1976, very saline water from 1,371 feet below the surface was contacted, causing the unauthorized discharge of 330,000 gallons to the surrounding surface environment, killing over an acre of vegetation surrounding the drill site.[19] At every copper/nickel test drill site where samples were collected, the US Forest Service found saline waters that exceeded the safe drinking water criteria of 250 milligrams per liter of chloride.[20]

There may also be metals at concentrations that exceed human health in saline water including, but not limited to, barium, strontium, and arsenic. There is a potential need for deep injection wells or other pollution control methods that may be required to protect human health and the environment. Again, an EIS must be mandated for every proposed gas project and it must evaluate the risk of saline water discharges.

VI. The state should share occupation and gross proceeds taxes with tribes where the extraction sites are within Ceded Territory.

The Recommendations address existing state severance and income taxes.[21] While this proposal would require additional development, the Band proposes that a possible means of mitigation of costs and impacts to Ceded Territory resources would be for the state to pay forward to tribes a portion of taxes that the state collects for natural resource extraction.

VII. The state should likewise share a portion of application and permit fees with tribes where the extraction sites are within Ceded Territory.

The DNR has recommended a $50,000 application fee for a gas resource development permit and a $75,000 annual permit fee for gas resource development projects, as well as the ability to assess supplemental fees to cover the costs of reviewing an application above the application fee amount.[22] We recommend fees for Tribes of an equal amount for review and regulatory oversight within our Ceded Territories.

VIII. Temporary permits should only be allowed until Final Rules are approved.

[18] Kaushal, S.S., Likens, G.E., Pace, M.L., et al., "Freshwater salinization syndrome: from emerging global problem to managing risks." *Biogeochemistry* 154, 255–292 (2021), at https://doi.org/10.1007/s10533-021-00784-w.
[19] MPCA Memo, AMAX Exploration Unauthorized Discharge (Sept. 2, 1976).
[20] USFS Interoffice Memos. Technical Memorandum No. 4, Brackish Water intrusion into Aquifers March 19, 2012. Technical Memorandum No. 9b, Water Sampling from Active Exploration Drill Sites on February 14, 2012.
[21] GTAC Recs. at 36.
[22] *Id*. at 9.

Gas resource development permits issued under a temporary regulatory framework must be considered truly temporary, expiring once rules for a permanent regulatory framework are promulgated, contrary to MNDNR's current proposal, which is "that the word "temporary" be removed from the phrase 'temporary permit,' to make clear that a permit issued during rulemaking will not be limited to a term less than what is proposed by the applicant, nor revoked once rules are promulgated."[23] This is an unnecessary "gift" to Pulsar. Although this rulemaking is being rushed for Pulsar, the company has stated to tribes they haven't finished the exploration stage yet and don't anticipate having a "project" defined for at least another 18 months. We also strongly disagree with the MNDNR's rationale because it potentially allows Pulsar to operate with an advantage over any future companies exploring for helium in MN and allows unmitigated pollution to occur that could adversely impact human and environmental health despite the final rules being adopted.

The draft further provides that "[t]he risks that a permanent regulatory framework for gas resource development would be dramatically different than a temporary framework might be a strong disincentive to invest in a project if the permittee was forced to reapply for a new 'permanent' permit once rules were promulgated."[24] This does not make sense when Pulsar estimates one million dollars per day of expected revenue once operating. There is no disincentive to wait for the final rulemaking other than a desire for lax temporary rules that are less protective of the environment and human health and are less expensive to implement than final rules. Indeed, Pulsar appears so confident that the state will follow its lead that its website (incorrectly) states that "the State of Minnesota passed new helium legislation allowing production to occur from 15 January 2025."[25]

Any company proposing a new gas extraction project in Minnesota must be willing to "risk" an update to the permit as soon as final rulemaking has occurred. Pulsar knows it is taking a risk by developing plans before rulemaking has been completed and should expect to be able to operate under a temporary permit *only until the rules are finalized*, in compliance with the Legislature's desire for a viable mechanism to enable gas resource development project permitting during rulemaking *without providing an improper advantage to a specific company*.

IX. Applicants must own 75 percent of mineral interests to receive a pooling order.

The DNR recommends that a person applying for a pooling order control at least 50 percent of the mineral interests within an established spacing unit. We do not think 50 percent ownership of mineral interests is enough for a pooling order. We recommend a minimum of a 75 percent interest requirement for pooling. The MNDNR recommends that the operator of wells under a pooling order in which there is a nonconsenting owner furnish the nonconsenting owner with a monthly statement of all costs incurred, together with the quantity of gas produced, and the amount of proceeds realized from the sale of production during the preceding month. This is a

[23] *Id.* at 11.
[24] *Id.*
[25] At https://pulsarhelium.com/projects/topaz/default.aspx.

good recommendation—but only if the pooling order is provided when there is at least 75 percent ownership of the mineral estate. 50 percent provides an unfair advantage to the rights holder who wants to develop gas if their neighbor has other plans that may not be conducive to gas wells.

This goes to the need for an equitable provision of information, especially given the unknowns of the resource. Currently, the MNDNR requires relatively limited information disclosure:

> Until more information is available about the nature and extent of Minnesota's gas resources, the DNR recommends that gas resource development permittees submit to the commissioner, as a permit condition, a pre-production report that includes the engineering and geological data obtained from any gas wells drilled as part of their project (whether or not the permittee plans to take a gas well into production). The report must compare the hard data obtained from their gas wells against any estimates submitted to the commission before drilling. The commissioner will use the data to evaluate potential changes to an established spacing unit or pool unit and consider the potential impacts of bringing the project into production.[26]

The Band asks that this information must be simultaneously provided to the tribes.

Finally, although the DNR "recommends" that unleased mineral interests tied to an American Indian tribe or band owning reservation lands in Minnesota should be shielded by state law from state-issued pooling orders, we believe that state law should prohibit pooling within any tribe's reservation boundaries regardless of surface or subsurface ownership. This recommendation is for both the temporary and post-rulemaking regulatory frameworks.

At the same time, the Band reiterates that tribes reserve all their rights under tribal and federal law, and in no way concede that the state may unilaterally authorize gas exploration activity within their lands.

X. Site and Setbacks must be addressed in EISs for each project.

Siting could be a huge issue that may collide with the wants and needs of non-ferrous mining proposals moving forward:

> Legislation passed in May 2024 requires the commissioner to develop rules for siting gas resource development projects (93.514). Gas resource development locations need to be at sites that minimize adverse impacts on natural resources and the public, with setbacks or separations that are needed to comply with

[26] GTAC Recs. at 13.

environmental standards, local land use regulations, and requirements of other appropriate authorities."[27]

Siting should be assessed in an EIS.

XI. MPCA, not MNDNR, should be the RGU.

We do not agree that the MNDNR is the natural fit for serving as the RGU because they do not have the greatest responsibility for supervising or approving the project as a whole. Instead, we recommend that MPCA become the RGU for gas extraction projects because they are the agency tasked with the most regulatory oversight, including wastewater permits, industrial stormwater permits, construction stormwater permits, air quality permits, storage tank regulation and permitting, and solid waste permitting. Along with MDH, MPCA authorities are tied to protecting human health and the environment. When the state is leasing mineral rights, MNDNR has pooling, spacing, siting, financial assurance, and reclamation for the extraction of gas. In the case of private minerals on private or federal lands, the MNDNR is only assigned to ensure that the projects do not extract resources they do not own or lease and that closure plans that protect and maintain the surface are followed. In either case, state-leased or privately held minerals, MPCA has more regulatory authorities than the MNDNR and, therefore, should be considered the RGU.

XII. Financial assurance tools and investments should be more conservative and detailed.

We agree that corporate guarantees are worth no more than the paper they are written on, and the State must have much more robust tools for financial assurance for gas projects. Financial assurances are a source of funds to be used if the permittee fails to perform, with additional language we propose indicated by underlines:

- Reclamation activities including closure and post-closure maintenance needed if operations cease; and
- Corrective action as required by the MPCA and the MNDNR if noncompliance with engineering design and operating criteria occurs; <u>and</u>
- <u>To ensure that other natural resources are not damaged or can be repaired or mitigated using financial assurance instead of taxpayer revenue</u>.

Furthermore, the state should not allow money collected as part of financial assurance for gas resource development projects to be invested by the State Board of Investment unless there is a requirement to supplement any funds that are diminished by investment to their original amount. If investment yields generate more money, that is helpful. However, if the investments

[27] GTAC Recs at 12.

Grand Portage Band of Lake Superior Chippewa
77 Stevens Road, PO Box 428
Grand Portage, Minnesota 55605

decrease the amount of financial assurance a company has provided, there may not be enough funds to deal with the work that is needed. Therefore, interest-bearing accounts must be very conservative in nature to ensure no loss of funds.

Conclusion

The agencies represented on the GTAC did not consult with Tribes as required by law. Instead, the MNDNR simply provided informational updates. Tribal interests have not been addressed. Stating that the Legislature gave the MNDNR a very short time to define the members of the GTAC and draft the temporary rules is not an excuse for ignoring the requirements of Minn. Stat. Sec. 10.65, which apply to all state agencies and actions that affect tribes.

We reiterate that the Recommendations and draft temporary rules must go further to protect the interests of both the public and tribes. A full EIS must be required for all gas projects to ensure that human health and the environment are protected. It is unlikely that any two projects will be exactly the same in terms of the mixture of gases present and their location. And the RGU should be the MPCA, as the agency tasked with the most regulatory oversight for the actual work of gas extraction projects.

Sincerely,

Robert Deschampe, Grand Portage Chairman

LEECH LAKE BAND OF OJIBWE
DIVISION OF RESOURCE MANAGEMENT

Via Email: GTAC@state.mn.us November 25, 2024
Minnesota Department of Natural Resources
c/o GTAC
500 Lafayette Road, Box 45
Saint Paul, MN 55155

RE: Gas Resources Technical Advisory Committee (GTAC) Working Recommendations and Statutory Language for Permitting Gas Resource Development Under a Temporary Regulatory Framework

The Leech Lake Band of Ojibwe is a Sovereign Tribal Nation with Treatment as a State (TAS) authorities under Section 106, Section 401, & 303(c), and Section 319 of the Clean Water Act and Section 505(a)(2) of the Clean Air Act. The Leech Lake Band of Ojibwe holds usufructuary rights to hunt, gather and fish within the Leech Lake Reservation and 1855 Ceded Territory. Protection of environmental quality in this region is of utmost importance to protection of the treaty protected resources that Leech Lake Band members rely on for spiritual and physical wellbeing.

The recent discovery of a commercially viable helium reserve in Northern Minnesota has generated economic interest and prompted the State of Minnesota to begin developing a temporary framework for regulating oil and gas extraction. The establishment of this new industry in Minnesota presents an opportunity to create a robust and protective regulatory framework.

This document developed by GTAC was created without consultation or coordination with Tribes. Pre-public notice was provided to Tribes late in the afternoon of Friday, November 15, with a request to have comments returned by Monday, November 25. During this extremely brief period for review, the Leech Lake Band of Ojibwe has identified a number of concerns, which are documented below.

The current document recommends that a forced/involuntary pooling order may be issued if the ownerships of at least 50% of the mineral interests in a spacing unit requests an order from the DNR. This is entirely unacceptable and forced pooling should not be allowed unless a minimum of 75% of mineral interests request it, as is the practice in other states. Although this document suggests nonconsenting owners be provided proportionate and equitable compensation, additional compensation should be provided to nonconsenting owners. The extent of helium or other gas resources in Minnesota is not currently known, and helium is a critical finite resource with global demand. A reasonable owner of mineral interests may well determine they are better served by exercising their right to develop that interest in the future. Additional compensation

should be provided to nonconsenting owners in a forced pool to recompense those owners' lost opportunity cost. If additional compensation is not provided for, at a minimum, nonconsenting owners should not be assessed a "risk penalty" or other costs of infrastructure development which they did not agree to.

Under federal law and as recommended in this document, unleased mineral interests tied to Tribes within their Reservations are shielded from forced pooling orders. Far too much has already been taken from Tribes by deception or force; this protection from forced pooling should also be extended to all mineral interests within Reservations and all mineral interests owned by Tribes within Ceded Territories.

Recommendation MDH-6 requires notification to the Commissioners of Health, Natural Resources, and the Pollution Control Agency of events with the potential for significant adverse public health or environmental effects. This notification should also be provided to Tribes with rights or interests in the Ceded Territory or at the site.

Recommendation EQB-1 requires a mandatory EAW for any gas resource development project, with Department of Natural Resources as the Responsible Government Unit (RGU). This is absolutely inadequate, especially for the development of a temporary regulatory framework for an industry that has never before existed in the state. Because of the new nature of the industry to Minnesota, and the unexplored environmental risks such as radioactive materials related to gas production, an EIS is needed for all gas projects under the temporary framework and likely under permanent rules as well. The EQB has previously talked about the importance of equitable treatment and providing Tribes the opportunity to engage in projects and regulation. The only way to guarantee this equitable treatment and to allow Tribal participation is to require an EIS for all gas projects.

The RGU for this project should be the Minnesota Pollution Control Agency, not the Department of Natural Resources. The majority of regulatory oversight for gas extraction would fall to MPCA in the form of water quality permits, stormwater permits (both construction and industrial), wastewater permits, air quality and solid waste permits, and storage tank regulations and permits. Under the draft rules, DNR would be responsible for pooling, spacing, siting, financial assurance, and site reclamation on leases of state mineral interests. On minerals privately held on private or federal land, DNR is only responsible for ensuring resources not owned/leased by the project are not extracted, and that protective closure plans are followed. In all cases, the MPCA has more regulatory authority for gas extraction projects than DNR, and should be the RGU.

Methane and CO_2 are likely to be large constituents of any gas development projects and a plan is needed for these gases. While Pulsar has discussed the capture of CO_2 at the Topaz site, it may not be captured at other sites in the future. The direct venting of methane or CO_2, or flaring of methane, at gas development projects is unacceptable. These are potent greenhouse gases which are currently securely stored within the existing geological formations. If a company intends to extract resources, then those resources need to be captured and put to beneficial use rather than destroyed or discharged to the atmosphere as a pollutant. In order to ensure that greenhouse gases are used, the rules governing development of gas resources should include a carbon fee of

at least $200/ton of CO_2-equivalent pollution, a rate which reflects the estimated social cost of carbon developed by the EPA in 2023 based on a 2% discount rate.

The temporary and permanent rules need to discuss solid waste created by these projects. Helium is a product of the decay of radioactive elements such as uranium and thorium, and will likely occur with other decay products such as radium. There must be rules developed for potential radioactive waste and discharges of radioactive material to the air and water. Additionally, it is unknown what the extent of the eventual oil and gas industry in Minnesota will be, or what development of that industry may look like. It is short-sighted to not include solid waste management in the drafting of these rules.

The draft rules discuss the prohibition of hydraulic fracturing – fracking – for the future extraction of gas resources. We fully agree with this and support a complete ban on fracking for all gas and oil projects.

Financial assurances for gas extraction projects are critical to ensuring that reclamation, mitigation, and corrective actions will be paid for in the event that a mining company is unable to for any reason. Money provided by projects for financial assurances should only be invested by the State Board of Investment if it is guaranteed by the State that any losses will be replaced to the original amount.

When a violation occurs at gas extraction project, any fines and fees assessed as a result should be based on a percentage of the project's gross revenue rather than a fixed dollar amount. Fines for environmental violations should be substantial – possibly 10% of gross revenue per violation as that is comparable to some European Union regulations. If a company has the option of assessing the fixed potential cost of an environmental violation, it becomes a cost of doing business. By assessing fines as a percentage of gross revenue, violators would face true penalties for illegal actions and greater compliance rates should be expected.

In order to ensure equitability for Tribes, any application or annual operating permit fees paid to Minnesota should also be paid to Tribes in whose Ceded Territory a project is proposed or exists. A portion of Gross Proceeds and Occupation taxes collected from natural resource extraction projects should also be paid to Tribes with reserved rights in a Ceded Territory where projects occur. These funds would support the ability of Tribes to participate in the environmental review and regulation of these projects and compensate for the loss of natural resources and the opportunity to exercise treaty-protected rights.

Conclusion

This draft document was developed without consultation with Tribes and was provided after 4pm on a Friday for a 10-day review period, which functionally yielded 6 working days for review and comment.

Forced pooling of non-consenting owners should not be allowed without the ownership of at least 75% mineral interests, and a review should be performed to assess whether non-consenting owners should be provided additional compensation for the opportunity cost in addition to an

equitable and proportionate share of profits. At a minimum, nonconsenting owners should not bear any of the costs of infrastructure development for a project they did not agree to. Forced pooling should also be prohibited within Reservations and on mineral interests owned by Tribes within Ceded Territories.

All gas extraction projects developed under a temporary regulatory framework, and likely under permanent rules, should require an EIS. This will ensure Tribes have the opportunity to be involved in the process and that human health and the environment are protected.

The RGU for all gas extraction projects should be the agency with the most regulatory authority, which is the MPCA.

Extraction of natural resources should not result in the wasteful release of greenhouse gas pollutants such as CO_2 and methane, whether through venting or flaring. To ensure the capture and beneficial use of these gases, a carbon fee of at least $200/ton of CO_2 equivalent should be implemented for gas extraction projects.

Application and permitting fees and tax revenue generated from natural resource extraction should be shared with Tribes to ensure equitable opportunity for participation in environmental review and regulation, and that the loss of natural resources and the access to treaty rights is fairly compensated.

Thank you for the opportunity to provide pre-public notice comments on the GTAC Working Recommendations. We reserve the right to provide additional comments during the public comment period based on revisions to the draft based on Tribal input and additional time for review. The Leech Lake Band of Ojibwe looks forward to continued coordination with the State of Minnesota to protect the environment.

Sincerely,

Craig Tangren
Deputy Environmental Director, Leech Lake Band of Ojibwe
craig.tangren@llojibwe.net
(218) 335-7429

MILLE LACS BAND OF OJIBWE
DEPARTMENT OF NATURAL RESOURCES

November 25, 2024

Gas Technical Advisory Committee
Minnesota Department of Natural Resources
500 Lafayette Road, Box 45
St. Paul, MN 55155-4045

e-mail: GTAC@state.mn.us

Re: Initial Comments on the Draft Recommendations and Statutory Language for Gas Extraction in Minnesota

Dear Mr. Liljegren and the Committee,

The Mille Lacs Band of Ojibwe (the "Band") appreciates this opportunity to review and provide our initial comments to the draft Recommendations and Statutory Language for Gas Extraction in Minnesota, as proposed by the Gas Technical Advisory Committee ("GTAC" or the "Committee") for submittal to the Minnesota State Legislature by January 15, 2025, ahead of the Public Comment Period to be held December 2, 2024, through December 23, 2024. Our intent is to submit a more robust set of comments by December 23, 2024. However, we would like to take this opportunity to express some of the Band's concerns for the Committee's consideration.

Oftentimes, the gas reserves found underground are in high pressure environments and of unknown volume. We have safety concerns regarding situations where an underground mine accidentally strikes one of these large pockets of high-pressure gas, flooding the underground mine with gas that may detrimentally impact mine workers due to limited ventilation below ground. From our quick review of the proposed regulatory language, there seems to be no language to protect workers in that work environment.

Like water, the nature of gas is diffuse, moving throughout porous spaces in the underlying geology. Consequently, we view gas resources differently from hard-rock resources. We believe that it is naive for the State to assume that gas resources have similar properties as non-ferrous hard-rock resources. Consequently, modeling a regulatory framework, whether temporary or final, on regulatory structures that apply to non-ferrous hard-rock resources raises significant substantive concerns. Assuming there will be similarities between hard-rock

DISTRICT I
43408 Oodena Drive • Onamia, MN 56359
(320) 532-7439 • Fax (320) 532-7514

DISTRICT II
36666 State Highway 65 • McGregor, MN 55760
(320) 384-6240 • Fax (218) 768-3903

DISTRICT III
45749 Grace Lake Road • Sandstone, MN 55072
(218) 768-3311 • Fax (320) 384-6190

URBAN OFFICE
1404 E. Franklin Avenue • Minneapolis, MN 55404
(612) 872-1424 • Fax (612) 872-1257

resources and gas resources misconstrues the differences between hard-rock extraction and gas extraction, and their geophysical property differences.

The Band encourages the State not to proceed with its current plans for a temporary regulatory framework. We encourage the State to continue with its moratorium on all gas extraction development until a robust and final regulatory framework has been developed, received public comment, and been duly approved in accordance with state law. Statements from GTAC or its officials suggesting that gas extraction will occur regardless of whether there is a regulatory framework shirks the State's duty to ensure compliance with environmental laws and undermines the State's regulatory powers to develop a protective and thoughtful regulatory framework for this type of extraction. We remind the State that it has the authority to continue to halt gas extractive activities, until a robust regulatory framework has been developed that will protect the health of the people, the quality of air, land, and waters, and the other natural resources dependent upon them. We encourage the DNR and GTAC to work together with the Tribes to develop a robust final regulatory framework through meaningful Tribal Consultation as established in Minnesota Statutes Section 10.65.

The Band appreciates the work the Committee has undertaken in such a compressed schedule. And again, the Band appreciates this opportunity to provide the Committee with our initial comments regarding the draft recommendations and statutory language for gas extraction in the State of Minnesota. Our intent is to submit a more robust set of comments by December 23, 2024. If you have questions or would like further discussion before the January 15, 2025, delivery date to the State Legislature, we encourage the Committee to request from us a formal Government to Government Consultation.

Sincerely,

Kelly Applegate
Commissioner of Natural Resources

cc: Virgil Wind, Chief Executive, Mille Lacs Band of Ojibwe
Susan Klapel, Executive Director, Mille Lacs Band of Ojibwe DNR
Perry Bunting, Director of Environmental Programs, Mille Lacs Band of Ojibwe DNR

MILLE LACS BAND OF OJIBWE
DEPARTMENT OF NATURAL RESOURCES

December 23, 2024

Gas Technical Advisory Committee
Minnesota Department of Natural Resources
500 Lafayette Road, Box 45
St. Paul, MN 55155-4045

e-mail: GTAC@state.mn.us

Re: Comments on the Draft Recommendations and Statutory Language for Gas Extraction in Minnesota

Dear Mr. Liljegren and the Committee,

The Mille Lacs Band of Ojibwe (the "Band") appreciate this opportunity to review and provide comments to the draft Recommendations and Statutory Language for Gas Extraction in Minnesota, dated November 15, 2024, as proposed by the Gas Technical Advisory Committee ("GTAC" or the "Committee") for submittal to the Minnesota State Legislature by January 15, 2025. We appreciate the Minnesota Department of Natural Resources ("DNR") extending the Tribes in Minnesota additional time to review, assess, and provide comments to the GTAC via the DNR. Below, the Band provides comments regarding each identified proposal.

DNR Recommendation to focus on gas resource development during construction of temporary regulatory framework and expedited rulemaking:

The Band realizes the terminology used by the State and the Band differ greatly due to differing relationships to the land, but at the core we hope that we have common vision for our shared future. The Band agrees that the newly proposed or amended State statutes and rules, regardless of whether the rulemaking process is standard or expedited, must to establish protections for the health of the air, land, and aquatic environments, and for the health of the people, our relatives in nature, and our economy when extracting these gas resources and gifts of the Earth. Newly proposed or amended statutes and rules developed under the current expedited rulemaking process should establish procedures for exploring and accessing the state's gas resources. These rules should also be developed with future amendments in mind, should liquid hydrocarbon and/or non-

DISTRICT I
43408 Oodena Drive • Onamia, MN 56359
(320) 532-7439 • Fax (320) 532-7514

DISTRICT II
36666 State Highway 65 • McGregor, MN 55760
(320) 384-6240 • Fax (218) 768-3903

DISTRICT III
45749 Grace Lake Road • Sandstone, MN 55072
(218) 768-3311 • Fax (320) 384-6190

URBAN OFFICE
1404 E. Franklin Avenue • Minneapolis, MN 55404
(612) 872-1424 • Fax (612) 872-1257

hydrocarbon resources be discovered, or if there are future efforts toward liquids exploration in the State. The Band agrees that Chapter 93 of the Minnesota Statutes is the appropriate place to incorporate these changes.

DNR Recommendation regarding MDH rulemaking authority for gas wells:

The Band agrees with this recommendation, given MDH's existing authority related to the sealing of aquatic wells and exploratory boreholes. The DNR's recommendation is a logical and consistent application of current Minnesota Statute 103I.301.

DNR Recommendations on permitting requirements and processes:

Regarding the Recommendation DNR-3: The Band agrees with the general premise of the DNR's recommendation to use existing statutes and rules for permitting mine projects in Minnesota as a model for establishing comparable permitting requirements and policies for gas resource development projects, however, the Band does not agree with the specific recommendations here. For instance, the Band does not agree that the State should use existing Minnesota statutes and rules related to the evaluation and permitting of mining projects as a model for establishing comparable permitting requirements and policies for gas resource development projects. There are significant geologic distinctions between the fluidity of gas and the solid ore resources, which make mining a poor corollary for natural gas permitting. The Band believes that the better model is the permitting structure for groundwater, another fluid resource.

Regarding the Recommendation DNR-4: The Band agrees with the DNR's recommendation that permits for gas resource development projects should be required before gas wells are drilled. However, the currently proposed statutory language for Minnesota Statute 93.5174 offers no procedure for the inadvertent discovery of gas resources during mineral exploration, or for transferring permits from mineral resources to gas resources. The Band encourages GTAC to consider procedures related to inadvertent discovery of natural gas.

Regarding the Recommendation DNR-5: The Band agrees with the DNR's recommendation that permits for gas resource development projects should apply to "gas resource development locations," where gas development operations disturb the ground surface. the Band also agrees that these "gas resource development locations," should be treated as distinct from spacing units or extraction areas that are the undisturbed surface expression of subsurface gas extraction.

Regarding the Recommendation DNR-6, the Band agrees that the extraction of gas resources should be limited to gas wells at permitted gas resource development locations. The Band believes that the extraction of gas resources from exploratory borings that are located outside of permitted gas resource development locations should be prohibited by statute.

Regarding the Recommendation DNR-7, the Band agrees that the application fee and annual development fee for gas resource development projects should mirror comparable fees for nonferrous mine projects. The Band further agrees that the commissioner for the Responsible Government Unit must not issue the gas resource development permit until the applicant has paid all fees in full.

Recommendation DNR-8 incorporates two sub-recommendations: (a) gas resource development permits issued during rulemaking and the temporary regulatory framework should remain valid after the completion of rulemaking; and (b) if gas resource projects permitted during the temporary framework require permit amendments or substantive changes after rulemaking, the permit should be updated to reflect the permanent regulatory framework. As to each sub-part of Recommendation DNR-8, the Band reminds the DNR that State regulatory agencies have the power to decline to issue permits, and maintain a moratorium on any gas resource development until there has been proper, substantive, and meaningful consultation with the Tribes. The Band's position is that the state must first conduct consultation under Minnesota Statute section 10.65, and can then craft a robust and comprehensive regulatory framework for gas development. State regulatory agencies should begin to review applications and issue permits only after the State has implemented a comprehensive regulatory framework for gas development.

Recommendation DNR-9 incorporates two sub-recommendations: (a) a temporary regulatory framework for permitting gas development projects should include the same setbacks and separations used for nonferrous mining projects; and (b) the statutory language related to setbacks and separations should sunset once siting rules for gas resource development projects are promulgated. The Band addresses each sub-recommendation separately, as DNR-9(a) and DNR-9(b), respectively.

Regarding the Recommendation DNR-9a: although the Band agrees that the setbacks contemplated here should not be less-than those proposed for nonferrous mining projects for different classes of lands around the proposed site. However, some gasses are heavier than air, and have the potential to asphyxiate personnel in the vicinity without proper personal protection equipment. Accordingly, the Band recommends that a person must not place, construct, or install a gas well less than 1,600 feet from a residential building; 1,600 feet from a water supply well; or 3,200 feet from a school facility or a care facility, such as childcare centers, nursing homes, hospitals, and clinics.

Regarding the Recommendation DNR-9b, the Band reiterates the caution it expressed with regard to Recommendation-DNR 8, and urges the DNR to engage in consultation pursuant to Minnesota Statute 10.65, prior to developing the permanent regulatory framework for gas development. Once the comprehensive regulatory framework for gas development has been implemented, then the State's regulatory agency may begin issuing permits after review of the

permit application, with the proper setbacks promulgated with siting rules for gas resource development projects.

Additionally, please note that though the recommendation cites Minnesota Statute 93.5174, subd. 8, the draft regulations at Section 14 have no such subdivision. There is a Section 15 for Temporary regulatory framework with items (1) through (6), but this is not explicitly marked as Minnesota Statute 93.5174, subd. 8.

Recommendation DNR-10 includes two sub-recommendations: (a) a temporary regulatory framework for permitting gas development projects should include annual reporting requirements that are modeled after those used for nonferrous mining projects, and (b) the temporary regulatory framework for permitting gas development projects regarding annual reporting should sunset once annual reporting rules specific for gas resource development projects are promulgated. As to each, the Band again encourages the DNR to defer decisions on permitting until a robust and comprehensive permanent framework has been developed with the benefit of Tribal consultation, pursuant to Minnesota Statute section 10.65. Once the comprehensive regulatory framework for gas development has been crafted, then the State's regulatory agency may implement proper annual reporting requirements and develop the annual reporting rules specific for gas resource development. Again, please note that though the recommendation cites Minnesota Statute 93.5174, subd. 8, the draft regulations at Section 14 have no such subdivision. There is a Section 15 for Temporary regulatory framework with items (1) through (6), but this is not explicitly marked as Minnesota Statute 93.5174, subd. 8.

Recommendation DNR-11 includes two sub-recommendations: (a) prior to commercial production of gas resources, a gas resource development permittee should be required (as a permit condition) to submit to the DNR pump test data and other information derived from the gas wells drilled under the permit; and (b) the pump test data will be used to determine whether the associated spacing units and pool areas should be adjusted. However, DNR-11 only applies to the temporary regulatory framework, and is intended to sunset once the rules are promulgated. Due to the temporary nature of this recommendation, the Band reasserts its objection to permitting prior to the implementation of the permanent framework (*see, e.g.*, Comments as to Recommendation DNR-8). In any event, as to Recommendation DNR-11(a), the Band agrees with this recommendation, but urges the DNR to add a provision related to inadvertent discoveries of gas and liquid resources, and should incorporate safety procedures through pump test data and other information derived from the wells drilled under the permit. The Band agrees with Recommendation DNR-11(b).

Regarding the Recommendation DNR-12, the Band agrees that a person applying for a gas resource development permit or permit amendment should be assessed fees to recover the costs incurred for environmental review. However, a fee schedule should also be set in statute such that

there are clear understanding and expectations of what the assessed fees for gas resource development permit or permit amendment are.

Regarding the Recommendation DNR-13, the Band agrees that there should be statutory procedures for contested case hearings. Statute prescribed procedures bring about clear roles for the parties involved.

DNR Recommendation on financial assurance:

Regarding the Recommendation DNR-14, the Band agrees that financial assurance requirements for a gas resources development projects should as a guide, follow similar financial assurance processes for nonferrous metallic mining projects.

Regarding the Recommendation DNR-15, the Band agrees that financial assurance requirements should not rely upon corporate guarantees.

Regarding the Recommendation DNR-16, the Band agrees that money collected as part of financial assurance for gas resource development permits should be allowed to be invested by the State Board of Investment. But for this recommendation, financial assurances would not grow at the rate of inflation, reducing the amount and impact of the financial assurance over time.

Regarding the Recommendation DNR-17, the Band reasserts that meaningful consultation should be conducted, followed by development and implementation of the permanent framework (*see, e.g.*, Comments as to Recommendation DNR-8). Once consultation has been conducted under Minnesota Statute 10.65, a robust and comprehensive regulatory framework for gas development can be crafted, including rules on financial assurance.

DNR Recommendation on correlative rights, pooling, and spacing units:

Regarding the Recommendation DNR-18, the Band agrees with the broad concept that the correlative rights of the owners of a shared gas resource should be protected. The Band agrees with the legal concept of "correlative rights" and that all rights holders should have access to the resources. However, knowing that there already are correlative rights issues with groundwater access in southwestern Minnesota, the Band urges the State to be conservative regarding authorizations to access gas resources, which may be more easily exploited than groundwater resources.

Regarding the Recommendation DNR-19, the Band is concerned with the recommendation that the State DNR commissioner be given statutory authority to establish or modify spacing units. Because gas exploration can quickly become gas extraction, we believe that this process is likely to be consistent with the industrial gas storage and transfer process, and that the Minnesota

Pollution Control Agency (MPCA) is better equipped to provide technical expertise in these matters. Consequently, the Band recommends that the MPCA commissioner, and not the State DNR commissioner, be given statutory authority to establish or modify spacing units, with consultation with the State DNR and with the University of Minnesota State Geological Survey.

Regarding the Recommendation DNR-20, the Band disagrees with the recommendation that the State DNR commissioner should have statutory authority to determine the process for establishing operator-proposed spacing units, and to collect and application fee for operator-proposed spacing units. First, the Band disagrees that the State should even consider operator-proposed spacing units, as operator's primary interest is generally focused on securing profit for themselves and their investors. The commissioner that is given the authority to establish or modify spacing units must be concerned first and foremost with the public interest and must protect the health of people and the environment. Revenue generation for the State should be a secondary goal, only after all other safety issues have been considered, and revenue from tapped resources should benefit all Minnesotans. Accordingly, the State must be responsible for establishing spacing units, and not the operator. The commissioner should have the authority to develop a fee schedule to impose on the operator related to the number of spacing units the operator chooses to utilize out of the total number of spacing units the State allocates to the operator for the project. But the State—and not the operator—must retain to the right to establish and enforce spacing units.

Regarding the Recommendation DNR-21, the Band agrees that landowners should be permitted to voluntarily pool their mineral interests for the joint development of a shared gas resource. If there is a known gas resource, allowing landowners to voluntarily pool their resources would eliminate the competition to extract their rights area, allowing for a cooperative and less intense gas extraction in that gas resource area.

Recommendation DNR-22 includes two sub-recommendations: (a) in the absence of a voluntary pooling, allowing a person that owns or has secured the consent of the owners of at least fifty percent (50%) of the mineral interest within a spacing unit to apply to the commissioner with authority for a pooling order that would combine all of the mineral interests within a spacing unit for the development of gas resource for extraction within that unit; (b) providing the commissioner with statutory authority to issue pooling orders, and authority to determine the application process for pooling orders; and (c) allowing the commissioner to impose fees for involuntary pooling order applications be set in statute. The Band addresses each sub-recommendation in turn.

The Band agrees with the premise of Recommendation DNR-22(a), however, the Band recommends that the operator be required to secure the consent of owners of at least two-thirds of the mineral interest within a spacing unit to apply to the commissioner with authority for a pooling order that would combine all the mineral interests within a spacing unit for the development of gas resources for extraction within that spacing unit.

Regarding the Recommendation DNR-22(b), the Band agrees with the recommendation to give the commissioner with statutory authority to issue pooling orders, and authority to determine the application process for pooling orders. However, the Band believes that because gas exploration can quickly become gas extraction, such an industrial framework should rest under the authority of the MPCA commissioner, and not the DNR commissioner.

Regarding the Recommendation DNR-22(c), the Band agrees with allowing the commissioner to impose fees for involuntary pooling order applications be set in statute. If a resource within the State is extracted, whether from voluntary or involuntary pooling, the State should recover the cost of action through fees. Establishing a set fee schedule in statute provides clear expectations to both the State and the operator. Such clarity and stability are needed to ensure smooth operations.

Regarding the Recommendation DNR-23, the Band agrees that processes and procedures must be put in place that allow an owner to challenge a proposed pooling order to protect the correlative interests of the owners of unleased mineral rights within a spacing unit, and that challenges should be resolved before a pooling order is issued.

Regarding the Recommendation DNR-24, the Band agrees that gas wells should not be drilled before a pooling order is issued for the associated spacing unit.

Regarding the Recommendation DNR-25, the Band agrees that statutory language should be adopted that describes how pooled mineral interests are managed during gas development operations, and how the correlative interests of nonconsenting mineral interest owners are protected by ensuring they receive a proportionate share of the profits from a gas resource development project. Clarifying procedures and establishing protections for nonconsenting owners will avoid conflict and streamline the management of pooled interests.

Recommendation DNR-26 includes two sub-recommendations: (a) that a person applying for a pooling order must present evidence to the commissioner that they have made reasonable offers, in good faith, to lease all of the mineral interests within a spacing unit; and (b) that the person applying for a pooling order must prove that they provided each owner relevant information about their ownership interests within the pooled area and informed them about the pooling procedures described in these new statutes and their options under these statutes. The Band agrees with each sub-part, and notes that transparency and fairness are important policy goals, particularly where nonconsenting owners may still be ordered to pool their mineral interests. …

Regarding the Recommendation DNR-27, the Band agrees that the operator of gas wells under a pooling order should provide monthly statements to nonconsenting landowners of all costs incurred, together with the amount of gas produced and the proceeds realized from the sale of production during the previous month.

Regarding the Recommendation DNR-28, the Band agrees that unleased mineral interests tied to an American Indian Tribe or Band owning reservation lands in Minnesota or owned by the federal government should be shielded from pooling orders. Additionally, any land tied to an American Indian Tribe or Band, regardless of whether or not it is reservation land in Minnesota, and any land owned by the Federal government on behalf of any American Indian Tribe or Band, regardless if in Fee or Trust, should be shielded from pooling orders, because the Tribe or Band may seek to convert Fee lands into Federal Trust on behalf of the Tribe or Band at any time in the future.

DNR Recommendations on gas development on Forfeited severed mineral interests:

Regarding the Recommendation DNR-29, the Band agrees that it should be set in statute that commercial extraction of gas resources is prohibited on forfeited severed mineral interests.

DNR Recommendations on other topics:

Regarding the Legislative request for recommendation and statutory language regarding boring monitoring and inspection protocols, the Band recommends the State adopt, as a minimum standard, regulatory language on monitoring requirements similar to that in the California Code of Regulations, Title 14, § 1726.7.

Regarding the Legislative request for recommendation and statutory language regarding taxation, the Band has no recommendations or statutory language to recommend to the Committee.

Minnesota Department of Health Recommendations

Regarding the Recommendation MDH-1, the Band Agrees that the Commissioner of Health's existing authority to explore and prospect for natural gas and oil should be repealed and the Commissioner should be granted new rulemaking and fee authority for the regulation of gas wells. However, there are no provisions in the existing or the proposed statutory language change in Minnesota Statutes 103I.005 defining when a boring becomes a well, as in the case of inadvertent discovery of gas resources while boring for mineral resources. If this is addressed in a different statutory section, then this should be referenced in Minnesota Statute 103I.005.

Recommendation MDH-2 incorporates two sub-recommendations: (a) to repeal natural gas from the well definition; and (b) to grant new rulemaking and fee authority to the Commissioner of Health for the regulation of gas wells. With regard to Recommendation MDH-2(a), the Band agrees with the recommendation to broaden the scope of Minnesota Statute 103I.005 by taking the focus off of petroleum products, and incorporating new definitions associated with gas, including both hydrocarbon and non-hydrocarbon gasses.

Regarding the Recommendation MDH-2(b), the Band agrees that vesting rulemaking authority with the Commissioner of Health will streamlines the fees, registration, and licensing processes. Because the Commissioner of Health manages these processes for similar activities, including boring and water wells, and because gas exploration can lead to gas extraction development, applying these established processes to gas wells ensures consistency across all of these production spheres.

Regarding the Recommendation MDH-3, the Band agrees that a person or company should be required to have a license issued by the Commissioner of Health to conduct regulated work on gas wells. The Band believes that this recommendation will streamlines fees, registration, and licensing processes, and will ensure consistency. *See, e.g.*, Comments as to Recommendation MDH-2.

Regarding the Recommendation MDH-4, the Band agrees that a person must submit a gas well construction notification and fee for each proposed gas well. If there are multiple gas wells that are connected for production purposes, the gas well construction notification must also disclose these connections and the relationship of each gas well to other connected wells.

Regarding the Recommendation MDH-5, the Band agrees that a person must grant the Commissioner of Health access to a gas well site to inspect. However, all regulatory agencies, and not just the MDH, must have the ability to inspect a well site for their regulatory jurisdictional subjects.

Regarding the Recommendation MDH-6, the Band agrees that a person must notify the Commissioners of Health, Natural Resources, and the Pollution Control Agency of an occurrence during a construction or sealing of a gas well that has a potential for significant adverse public health or environmental effect.

Regarding the Recommendation MDH-7, the Band agrees that a person must not use a gas well to inject or dispose surface water, groundwater, or any other liquid, gas, or chemical. The Band also has concerns that any groundwater brines may be high in salinity, or may have dissolved minerals of value. The Band therefore recommends that any dissolved salts and minerals from groundwater brines should be extracted, to the greatest extent possible, prior to treating and then disposing of, the remaining wastewater.

Regarding the Recommendation MDH-8, the Band heartily agrees that a person is prohibited from hydraulic fracturing a gas well.

Regarding the Recommendation MDH-9, the Band agrees that a person must ensure that drilling fluids, cuttings, treatment chemicals, and discharge water are disposed of according to

federal, state, and local requirements. This rule should also cite to and incorporate the specific Federal and State requirements.

Regarding the Recommendation MDH-10, the Band agrees that drilling fluids used during the construction of a gas well must be water or air based. With regard to additives, the Band recommends that the additives must meet the requirements of NSF/ANSI/Can 60-2024 Standard.

Regarding the Recommendation MDH-11, the Band agrees that a person must meet gas well casing and grout requirements. The Band recommends that a person specifically must meet API Specification 5CT (11th Edition) gas well casing and grout requirements.

Regarding the Recommendation MDH-12, the Band agrees that a person must meet gas well isolation distances. However, because some gasses are heavier than air, and have the potential to asphyxiate personnel in the vicinity without proper personal protection equipment, the Band recommends a person must not place, construct, or install a gas well less than 1,600 feet from a residential building; 1,600 feet from a water supply well; or 3,200 feet from a school facility or a care facility, such as childcare centers, nursing homes, hospitals, and clinics.

Regarding the Recommendation MDH-13, the Band agrees that a person must protect groundwater during the construction and sealing of a gas well.

Regarding the Recommendation MDH-14, the Band agrees that a person must seal a gas well to prevent contamination of groundwater and the environment, but also recommends that a gas well sealing notification be valid for 18 months from the date filed, consistent with Minnesota Administrative Rules 4725.1832.

Regarding the Recommendation MDH-15, the Band agrees that a person must submit a gas well sealing notification and fee for each proposed gas well to be sealed, and recommends that a gas well sealing notification be valid for 18 months from the date filed, consistent with Minnesota Administrative Rules 4725.1832.

Environmental Quality Board Recommendations

Regarding the Recommendation EQB-1, the Band agrees with the recommendation to require a mandatory environmental assessment worksheet (EAW) for any gas resource development project. However, since any exploratory boring operation potentially can become a gas resource development, we recommend that any boring operation greater than 985-ft (300-m) require an EAW, and any gas resources extraction require an Environmental Impact Statement (EIS).

The Band, also believes that the DNR should not be designated as the responsible government unit (RGU). The Band believes that the extractive operations related to natural case more closely

resemble industrial activities in which the Minnesota Pollution Control Agency (MPCA) regulates. Consequently, the Band recommends that the State designate MPCA as the RGU for gas resources development, extraction, and injection.

Minnesota Pollution Control Agency Recommendations

Regarding the Recommendation PCA-1, the Band agrees that Minnesota currently has permitting rule and regulations in place to regulate the proposed gas extraction industry. However, Minnesota does not have the necessary framework for underground gas storage/sequestration, which the State should consider in the permanent rules and regulations. If the State does not have primacy in this, then the United States Environmental Protection Agency must implement the regulatory framework on behalf of the State.

The Band appreciates that the MPCA will comply with Minnesota Statute Section 10.65 which requires timely and meaningful consultation between the State and Tribal governments on matters under MPCA's authority that may have Tribal implications. However, this requirement applies to all State agencies and departments identified in Minnesota Statute Section 10.65, not only MPCA. The Band is disappointed that other GTAC member agencies have not explicitly identified this responsibility.

Thus far in this process, the State agencies have done a good job in information sharing for technical coordination, and the Band has appreciated the technical information sessions the State has provided. Although Band technical staff have briefed Band leadership regarding GTAC's activities, and the State has also provided technical briefing to Band leadership, the State has fallen short of meaningful government to government consultation with Tribes. Meaningful consultation is a political act between sovereigns, and a dialogue regarding possible impacts to each Party's sovereignty. This conversation is separate, but not isolated, from the technical merits of the regulatory issues at hand.

Minnesota Department of Revenue Recommendations

Regarding Recommendations DOR-1 through DOR-4, and DOR-6, the Band does not have specific recommendations regarding the structure or application of Occupation Tax, Gross Proceeds Tax, modified Gross Proceeds Tax, or deadlines for sales information related to a Gross Proceeds Tax.

Regarding Recommendation DOR-5, the Band encourages the Department of Revenue and other GTAC member-agencies to carefully consider whether, and under which specific circumstances, to apply the same exemptions and exclusions for gas and oil producers that exist for other mining operations. The Band is concerned that granting tax exemptions and exclusions

to extractive industries may limit benefits to the general public related to the extraction of shared resources.

Proposed Regulatory Language

Please adjust the section numbers as follow:

Section 8. 93.5152 to *Section 8. 93.5153*
This is because there already is a *Section 7. 93.5152*
Section 9. 93.5153 to *Section 9. 93.5154*
Adjusting *Section 8.* causes adjusting *Section 9.*
Section 20. Items (5)–(14) to *Section 20. Items (7)–(16)*
This is because *Section 15.* contains *Items (1)–(6).*
103I.001 to *Section 23. 103I.001*
103I.005 to *Section 24. 103I.005*
103I.706 to *Section 25. 103I.706*
103I.707 to *Section 26. 103I.707*
103I.708 to *Section 27. 103I.708*
116D.04 to *Section 28. 116D.04*
Section __. 272.02 to *Section 29. 272.02*
Section __. 272.03 to *Section 30. 272.03*
Section __. 273.01 to *Section 31. 273.12*
Section __. 289A.02 to *Section 32. 289A.02*
Section __. 289A.12 to *Section 33. 289A.12*
Section __. 289A.19 to *Section 34. 289A.19*
Section __. 290.0134 to *Section 35. 290.0134*
Section __. 290.0135 to *Section 36. 290.0135*
Section __. 290.05 to *Section 37. 290.05*
Section __. 290.923 to *Section 38. 290.923*
Section __. 297A.68 to *Section 39. 297A.68*
Section __. 297A.71 to *Section 40. 297A.71*
Section __. 298.001, subd. 3a to *Section 41. 298.001, subd. 3a*
Section __. 298.001, subd. 10a to *Section 42. 298.001, subd. 10a*
Section __. 298.001, subd. 14 to *Section 43. 298.001, subd. 14*
Section __. 298.001, subd. 15 to *Section 44. 298.001, subd. 15*
Section __. 298.001, subd. 16 to *Section 45. 298.001, subd. 16*
Section __. 298.01, subd. 3 to *Section 46. 298.01, subd. 3*
Section __. 298.01, subd. 3a to *Section 47. 298.01, subd. 3a*
Section __. 298.01, subd. 3b to *Section 48. 298.01, subd. 3b*
Section __. 298.01, subd. 4a to *Section 49. 298.01, subd. 4a*
Section __. 298.01, subd. 4b to *Section 50. 298.01, subd. 4b*
Section __. 298.01, subd. 5 to *Section 51. 298.01, subd. 5*
Section __. 298.01, subd. 6 to *Section 52. 298.01, subd. 6*
Section __. 298.015, subd. 1 to *Section 53. 298.015, subd. 1*
Section __. 298.016 to *Section 54. 298.016*

Combine *Section __. 298.016, subd. 4* with *Section 54. 298.016*
Section __. 298.016, subd. 4a to *Section 55. 298.016, subd. 4a*
Section __. 298.018 to *Section 56. 298.018*
Section __. 298.17 to *Section 57. 298.17*

The Band recognizes the work the Committee has undertaken in such a compressed schedule. The Band very much appreciates this opportunity to provide the Committee with our comments regarding the draft recommendations and statutory language for gas extraction in the State of Minnesota. If you have questions or would like further discussion before the January 15, 2025, delivery date to the State Legislature, we encourage the Committee to request for a formal Government to Government Consultation.

Sincerely,

Kelly Applegate
Commissioner of Natural Resources

cc: Virgil Wind, Chief Executive, Mille Lacs Band of Ojibwe
Susan Klapel, Executive Director, Mille Lacs Band of Ojibwe DNR
Perry Bunting, Director of Environmental Programs, Mille Lacs Band of Ojibwe DNR

WHITE EARTH RESERVATION

CHAIRMAN Michael Fairbanks SECRETARY-TREASURER Michael LaRoque
DISTRICT I Henry Fox DISTRICT II Eugene Sommers DISTRICT III Laura Lee Erickson

November 25, 2024

Attn: GTAC
Minnesota Department of Natural Resources
500 Lafayette Road, Box 45
St. Paul, MN 55155-4045
GTAC@state.mn.us

RE: Gas Resources Technical Advisory Committee Draft Recommendations and Statutory Language Comments

Dear GTAC Representatives,

White Earth would like to thank you for the opportunity to comment on the Gas Resources Technical Advisory Committee draft recommendations and Statutory Language. White Earth would like GTAC to consider the following recommendations.

Radioactive Waste Management

White Earth has concerns on the radioactive waste management. This is not addressed in the recommendations provided by GTAC. The potential release and concentration of radioactive components must be thoroughly addressed, with clear rules established to ensure the safe capture and disposal of radioactive waste. Helium, produced through the natural radioactive decay of elements such as uranium and thorium, raises concerns about radioactive releases during gas extraction—particularly helium extraction. However, the draft rules provide limited guidance on this issue, stating only:

> No solid waste permits would be required. This is not an industrial activity that treats, transfers, stores, processes, or disposes of solid waste. However, a guidance document on water filter backwash solids has criteria for the disposal level criteria for radium. Should there be a need to dispose of solid waste that has radium contained in it, the acceptable radium disposal limit is in guidance only. Moving forward, the MPCA could consider adding a rule disposal restriction related to radium levels for any waste generated from the gas industry in the section that lists the industrial waste types that must be addressed in the Industrial Solid Waste Management Plans.

It is essential to establish regulations for managing any radioactive waste or discharges to air or water resulting from the extraction of gases formed by radioactive decay, particularly in regions where radon concentrations are

P.O. Box 418 | White Earth, Minnesota 56591 | Tel. (218) 983-3285 | Fax (218) 983-3641 | whiteearth.com

already near hazardous levels. The presumption in the draft rules that solid waste permits will not be necessary assumes that all industrial equipment for processing, storing, and transferring gas will be located off-site. However, gas and oil extraction projects vary significantly. Without additional information provided in these draft rules, the default assumption should be that all such projects require Industrial Solid Waste Management Plans that detail the safe capture, storage, and disposal of radioactive waste.

Furthermore, the suggestion that "[w]here recovery and use of the methane is not feasible, converting the methane to CO2 through flaring may be the next best option," overlooks the persistence of radioactive components. While flaring may reduce non-methane hydrocarbons, air toxics, and odors, it does not eliminate radioactive substances such as radon gas or radium nitride.

White Earth Nation recommends rulemaking on the issue of radioactive waste radioactive waste or discharges to air or water resulting from the extraction of gases formed by radioactive decay.

An Environmental Impact Statement must be Required for Gas and Oil Extraction Projects

An Environmental Impact Statement (EIS) should be mandated for all gas projects due to the potential for significant environmental effects, including the release of radioactive and toxic substances like radium isotopes, radon, and radium nitride. Radium-226, the most stable isotope of radium, is a key concern. It is the final isotope in the (4n + 2) decay chain of uranium-238, with a half-life of 1,600 years, and constitutes nearly all naturally occurring radium. Its immediate decay product, radon, is 2.7 million times more radioactive than the same molar amount of natural uranium due to its shorter half-life. Additionally, radium reacts with nitrogen in the air to form radium nitride (Ra_3N_2), a solid black compound, further demonstrating its hazardous nature.

Unlike an Environmental Assessment (EA), an EIS has stricter requirements to assess methods for reducing environmental and human health risks, including cumulative effects. It also involves greater public scrutiny, consultation with Tribal leaders, and reviews by Tribal Historic Preservation Officers. The draft rules indicate that thresholds for requiring an EAW (Environmental Assessment Worksheet) or an EIS are based on project size, with smaller projects triggering an EAW and larger ones requiring an EIS. However, the specific size thresholds are not disclosed.

According to the draft, gas wells typically have a ten-acre footprint. However, Pulsar, a company involved in these projects, has suggested its direct footprint will be five times larger, covering approximately 50 acres. Pulsar currently holds surface rights to over 4,181 acres, indicating the potential for a significantly larger overall project scale.

White Nation Nation recommends that both EA and EIS costs should be covered by the applicant, but given the

P.O. Box 418 | White Earth, Minnesota 56591 | Tel. (218) 983-3285 | Fax (218) 983-3641 | whiteearth.com

WHITE EARTH RESERVATION

CHAIRMAN Michael Fairbanks SECRETARY-TREASURER Michael LaRoque
DISTRICT I Henry Fox DISTRICT II Eugene Sommers DISTRICT III Laura Lee Erickson

scale and potential risks of gas projects, an EIS must be mandatory for all proposals to ensure thorough evaluation and mitigation of environmental and public health impacts.

Occupation and Gross Proceed Taxes for Tribes with Ceded Territory Rights where Gas and Oil will be Extracted

In Minnesota and nationally, two primary types of taxes are typically collected on mining: a severance tax, which applies to the removal of natural resources from the earth, and an income tax. In Minnesota, the severance tax on non-ferrous minerals is referred to as the Gross Proceeds Tax, while the income tax on mining is known as the Occupation Tax.
Recommendations from the draft regarding taxation include:

- Expanding existing mining tax laws to cover gas and oil extraction.
- Aligning exemptions for new gas and oil taxes with those already established for the mining industry.
- Enhancing tax administration to benefit both taxpayers and the Department of Revenue.

Rulemaking is not explicitly included in these recommendations, as the Department believes the draft statutory language is sufficient. However, the Department retains rulemaking authority under Minnesota Statutes, section 270C.06, should future rules become necessary.

White Earth Nation recommends a portion of the Severance and Occupation Taxes collected from natural resource extraction should be allocated to Tribes with reserved rights in the ceded territories where extraction occurs. This allocation would serve as compensation for the loss of irreplaceable natural resources within their ancestral lands.

Application and Permit Fees for Resource Extraction Should be Provided to Tribes

The DNR has recommended a $50,000 application fee for a gas resource development permit and a $75,000 annual permit fee for gas resource development projects, as well as the ability to assess supplemental fees to cover the costs of reviewing an application above the application fee amount. We recommend fees for Tribes of an equal amount for review and regulatory oversight within our ceded territories.

Temporary Permits should only be allowed until final rules are approved

Permits for gas resource development issued under a temporary regulatory framework must remain strictly temporary and should expire once permanent rules are established. The Minnesota Department of Natural Resources (MNDNR) has proposed removing the term "temporary" from such permits, stating that this change would clarify that permits issued during the rulemaking process are not limited to shorter terms than requested by the applicant and would not be revoked once final rules are promulgated. However, this approach appears to

P.O. Box 418 | White Earth, Minnesota 56591 | Tel. (218) 983-3285 | Fax (218) 983-3641 | whiteearth.com

WHITE EARTH RESERVATION

favor Pulsar, a company that has admitted it is still in the exploration phase and does not expect to have a defined project for at least 18 months (per a meeting held at the 1854 Treaty Authority on 11/15/2024).

This reasoning by MNDNR undermines the integrity of the rulemaking process, allowing Pulsar to potentially operate under less restrictive temporary rules, giving it an unfair advantage over future entrants in Minnesota's helium extraction industry. Draft rules also claim:

> The risks that a permanent regulatory framework for gas resource development would be dramatically different than a temporary framework might be a strong disincentive to invest in a project if the permittee was forced to reapply for a new 'permanent' permit once rules were promulgated.

This argument is misleading. With anticipated revenues of $1 million per day once operational, there is no meaningful disincentive to waiting for final rules. The rush to secure permits under temporary, potentially less restrictive rules reflects a desire for regulatory leniency rather than genuine concern over investment risks.

Furthermore, Pulsar has expanded its land package through applications with the State, as indicated in company statements:

> The initial land package is being expanded through applications with the State Government, meaning that all areas of interest have now been quarantined by Pulsar for further development. Importantly, the State of Minnesota passed new helium legislation allowing production to occur from 15 January 2025.

It is essential that any company proposing gas extraction projects in Minnesota operate under the understanding that temporary permits will be subject to revision or expiration once final rulemaking is complete. Allowing indefinite use of temporary permits undermines the legislature's intent to establish a viable regulatory framework during the rulemaking process without granting improper advantages to any single entity. Pulsar and similar companies must accept the risk of temporary permits and should operate under finalized rules to ensure fairness, transparency, and adherence to proper regulatory standards.

White Earth Nation recommends that all temporary permits expire upon the establishment of final rules and corresponding final permit drafts.

Applicants Must Own 75 Percent of Mineral Interests to Receive a Pooling Order

The DNR recommends that applicants for pooling orders control at least 50% of the mineral interests within an established spacing unit. However, we believe this threshold is insufficient. We recommend requiring a minimum of 75% ownership of the mineral interests for a pooling order to ensure fairness.

The DNR also suggests that operators of wells under a pooling order, where there is a nonconsenting owner, provide the nonconsenting owner with a monthly statement detailing all costs incurred, the quantity of gas produced, and the proceeds from the sale of production during the prior month. While this is a reasonable recommendation, it should apply only when the pooling order is based on a minimum of 75% ownership. Allowing pooling with just 50% ownership unfairly favors developers over neighboring landowners who may have conflicting plans for their property that do not align with gas development.

The MNDNR further recommends that, until more is known about Minnesota's gas resources, permittees for gas resource development should submit a pre-production report as a permit condition. This report would include engineering and geological data obtained from any drilled gas wells, whether or not they are taken into production. The report should compare actual data from the wells with any estimates submitted before drilling. This data would enable the commissioner to evaluate potential adjustments to established spacing or pool units and assess the impacts of bringing a project into production. Importantly, this information must also be shared simultaneously with the Tribes.

Although the DNR recommends shielding unleased mineral interests tied to American Indian tribes or bands owning reservation lands in Minnesota from state-issued pooling orders, we believe that pooling should be entirely prohibited within any Tribal Reservation boundaries, regardless of surface or subsurface ownership. This prohibition should apply both during the temporary regulatory framework and after final rulemaking is complete.

Site and Setbacks

Legislation enacted in May 2024 requires the commissioner to establish rules for siting gas resource development projects (Section 93.514). These rules mandate that gas development sites be chosen to minimize adverse impacts on natural resources and the public, with setbacks and separations necessary to meet environmental standards, local land use regulations, and the requirements of other relevant authorities.

Siting could become a significant point of contention, potentially conflicting with the priorities of proposed non-ferrous mining projects. Without a comprehensive Environmental Impact Statement (EIS) for gas extraction, it will be impossible to adequately evaluate whether gas development poses greater or lesser risks compared to non-ferrous mining.

What Agency should be the RGU?

The draft states, "The final component of an environmental review framework is determining the Responsible Governmental Unit (RGU). The Environmental Quality Board (EQB) recommends the Department of Natural Resources (MNDNR) serve as the RGU."

P.O. Box 418 | White Earth, Minnesota 56591 | Tel. (218) 983-3285 | Fax (218) 983-3641 | whiteearth.com

WHITE EARTH RESERVATION

CHAIRMAN Michael Fairbanks **SECRETARY-TREASURER** Michael LaRoque
DISTRICT I Henry Fox **DISTRICT II** Eugene Sommers **DISTRICT III** Laura Lee Erickson

We disagree with this recommendation, as the MNDNR does not have the primary responsibility for supervising or approving gas extraction projects in their entirety. Instead, we recommend that the Minnesota Pollution Control Agency (MPCA) serve as the RGU for gas extraction projects. The MPCA has the most extensive regulatory oversight responsibilities, including:

- Water quality permits
- Wastewater permits
- Industrial and construction stormwater permits
- Air quality permits
- Storage tank regulation and permitting
- Solid waste permitting

These authorities, along with the Minnesota Department of Health (MDH), are directly tied to protecting human health and the environment. In contrast, the MNDNR's role is more limited. Their responsibilities primarily include pooling, spacing, siting, financial assurance, and reclamation for gas and oil production when the state leases the mineral rights. For private minerals on private or federal lands, the MNDNR's oversight is restricted to ensuring that resources not owned or leased by the state are not extracted and that closure plans protect and maintain surface integrity.

Given that the MPCA holds broader regulatory authority and is more directly involved in protecting environmental and human health, White Earth Nation believes MPCA is the most appropriate agency to serve as the RGU for gas extraction projects.

Financial Assurance Tools and Investments

We firmly believe that corporate guarantees are unreliable and insufficient for ensuring accountability in gas projects. White Earth Nation believe the State must adopt stronger financial assurance mechanisms to protect against potential failures by permittees. Financial assurances should provide a reliable source of funds for:

- **Reclamation activities**, including closure and post-closure maintenance, in the event operations cease.
- **Corrective actions** mandated by the MPCA and MNDNR due to noncompliance with engineering design and operating criteria.
- **Repairing or mitigating damage** to other natural resources, ensuring that taxpayer funds are not used to cover these costs.

P.O. Box 418 | White Earth, Minnesota 56591 | Tel. (218) 983-3285 | Fax (218) 983-3641 | whiteearth.com

WHITE EARTH RESERVATION

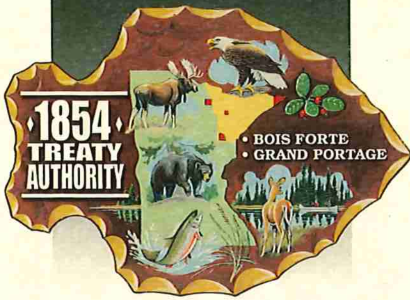
The White Earth Nation requests that MNDNR should prohibit funds collected for financial assurance in gas resource development projects from being invested by the State Board of Investment unless there is a guaranteed requirement to replenish any losses to maintain the original fund amount. While investment yields could increase available funds, any reduction due to investment losses could leave insufficient resources to address necessary reclamation or corrective actions.To safeguard these funds, interest-bearing accounts must be managed conservatively to ensure zero loss of principal, prioritizing the availability of funds over potential investment gains.

White Earth would like to thank you again for the opportunity to submit comments and recommendations.

Sincerely,

Michael Fairbanks,
White Earth Nation Chairman

P.O. Box 418 | White Earth, Minnesota 56591 | Tel. (218) 983-3285 | Fax (218) 983-3641 | whiteearth.com



1854 Treaty Authority

4428 HAINES ROAD • DULUTH, MN 55811-1524
218.722.8907 • 800.775.8799 • FAX 218.722.7003
www.1854treatyauthority.org

December 20, 2024

Attn: Gas Resource Technical Advisory Committee (GTAC)
Minnesota Department of Natural Resources
500 Lafayette Road, Box 45
St. Paul, MN 55155-4045

The 1854 Treaty Authority would like to provide comments on the "Working Recommendations and Statutory Language for Permitting Gas Resource Development Under a Temporary Regulatory Framework" (draft as of November 15, 2024). Under the Treaty of 1854, Bands retain treaty rights to hunt, fish, and gather in the 1854 Ceded Territory. This ceded territory encompasses present-day northeastern Minnesota. Inextricably linked to the exercise of treaty rights is the availability and access to healthy natural/cultural resources. The 1854 Treaty Authority is an inter-tribal resource management agency governed by the Bois Forte Band of Chippewa and Grand Portage Band of Lake Superior Chippewa. The organization is charged to preserve, protect, and enhance treaty rights and related resources in the 1854 Ceded Territory. These comments are submitted on behalf of the 1854 Treaty Authority, with the understanding that the Bois Forte and Grand Portage bands may submit comments from their own perspectives. The 1854 Treaty Authority supports the Bois Forte and Grand Portage bands on ceded territory issues but does not speak for them.

The Minnesota legislature directed the Minnesota Department of Natural Resources (DNR) to form and lead the Gas Resources Technical Advisory Committee (GTAC). The multi-agency committee was charged with developing recommendations on a temporary regulatory framework for gas projects during rulemaking. Other state agencies on the committee include the Environmental Quality Board (EQB), Department of Health (MDH), Pollution Control Agency (MPCA), and Department of Revenue (DOR). State agencies in Minnesota have a responsibility to consult with tribes on a government-to-government basis. As an example of this consultation, processes have been put in place for mining environmental review and permitting. While this process has not been perfect, it has evolved over time and provides a structure to consult with tribes through the development of industrial projects. For the GTAC initiative, appropriate tribal involvement and consultation did not occur. Proper consultation provides an opportunity for tribes to provide early and meaningful input. To our understanding, tribes were not invited to be part of the GTAC or given the opportunity to provide any input during development of the recommendations. Recommendations were provided to tribal staff on 11/15/2024 with a review and comment period through 12/1/2024 before public release on 12/2/2024. Tribes

could further comment during the public period through 12/23/2024. This did not allow for proper tribal consultation before public release, and any tribal input received during the initial comment period did not result in any changes to the recommendations that were released to the public. This lack of consultation was a significant step backwards in Minnesota's responsibility to work appropriately with tribes.

The recommendations included in the plan are to use the mining regulatory and financial assurance frameworks as structures for gas development projects. Varied opinions probably exist on how robust these frameworks are or maybe more specifically on how they are implemented. Perhaps these frameworks are a starting point but not perfect templates to follow. Under the proposed recommendations, a permit application fee would be $50,000 and an annual permit fee would be $75,000. These fees would cover costs incurred by the Minnesota DNR. Tribes (and other state and local agencies) also incur costs during the environmental review and permitting processes. These fees should be further evaluated. Perhaps fees should cover costs and provide funding to tribes for their participation at appropriate times and levels throughout processes. The Minnesota DNR does not propose a revenue stream linked to gas production and instead would use an annual permit fee. We would like to understand more about this approach and further discussion could be helpful to determine if a revenue stream would be more suitable. In addition, consultation is needed on the occupation tax and gross proceeds tax. Gas development and other projects impact ceded territories and the exercise of rights guaranteed by treaty with the United States. How should these taxes be applied in ceded territories where tribes have interests and treaty rights? Discussion and agreement are needed on how tribes should be included in the process or receive any benefits from these taxes.

Under the proposed temporary regulatory framework, permits are good for the lifetime of a project and facilities will not need to comply with requirements under a permanent regulatory framework when developed. While it is understood that a permitted operation would want some regulatory certainty, this process could result in a significant permitting gap or concern unaddressed during an entire project. This feels like potential "fast tracking" of first projects. A more conservative and protective approach should be followed to only permit projects when a permanent regulatory framework is in place. Regulators should not rush and be pressured into pushing projects through immediately before an appropriate permitting process is developed and approved. The proposed framework also recommends that an Environmental Assessment Worksheet (EAW) be prepared for projects. This is not a sufficient environmental review process, as EAWs are used for projects anticipated to have less significant and shorter impacts on the environment. This again feels like "fast tracking" projects without the necessary review process. An Environmental Impact Statement (EIS) should be required to fully understand impacts from a project. Tribal consultation is also needed during the environmental review process, and an EIS would better provide that opportunity. In addition, the document states that federal, state, or local government can file a petition for a contested case hearing. It is our understanding that tribes also have that ability.

Pooling and pooling orders could be contentious and controversial issues, and more evaluation seems needed on these items. The framework states that reservations or mineral interests tied to a tribe should not be tied to pooling orders. Tribes also have interests and treaty rights within ceded territories, so that also must be a consideration during pooling and permitting decisions. Under the current proposal, gas resource development locations must not be within some areas (ex. Voyageurs National Park, Grand Portage National Monument, state parks, etc.) but activities that do not disturb the surface are allowed within ¼ mile. It also states that gas resource development locations could be allowed in places such as national wildlife refuges, state wildlife management areas, peatlands, public waters, etc., if no feasible siting alternatives exist. Further discussion and evaluation are needed to determine if the requirements for site locations and potential impact areas are appropriate.

In summary, we believe that additional work and appropriate tribal consultation are needed to develop a permanent regulatory framework before environmental review and permitting processes proceed for gas development projects. Thank you.

Sincerely,

Millard (Sonny) Myers
Executive Director