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To: [DEP, MiningComments2016](#)
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Subject: Public Comments concerning Chapter 200. Proposed Mining Rules as provided at the BEP August 18 meeting
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Jeff/Cynthia

Please distribute to BEP board members and to the all interested parties list.

Respectfully

Lew Kingsbury

Public Comments concerning Chapter 200. Proposed Mining Rules

The AG's office has stated that Maine's public lands, and specifically Maine's public reserve lands may currently be mined for metallic minerals under 12 M.R.S.A. 549. I do not believe that this is the case because 12 M.R.S.A. 549 was not passed in accordance with the Constitution of the State of Maine, Article IX Section 23. This constitutional article states in part, "State Park land, public lots or other real estate held by the state for conservation or recreation purposes and designated by legislation implementing this section may not be reduced or its use substantially altered except on the vote of 2/3 of all the members elected to each House."

12 M.S.R.A 598 titled Designated Lands states, "The following lands are designated lands under the Constitution of Maine, Article IX Section 23. Designated lands under this section may not be reduced or use substantially altered, except by a 2/3 vote of the legislature. It is the intent of the legislature that individual holdings of land or classes of land may be added to the list of designated lands under this section in the manner normally reserved for amending the public laws of the state. Once so designated, however, it is the intent of the Legislature that designated lands remain subject to the provisions of this section and the Constitution of Maine, Article IX, Section 23 until such time as the designation is repealed or limited by a 2/3 vote of the Legislature."

Under 12 M.S.R.A 598 Definitions, 5. Substantially Altered., " Substantially Altered, in the use of designated lands, means changed so as to significantly alter physical characteristics in a way that frustrates the essential purposes for which the land is held by the state", also prescribed in the definition, "The essential purposes of public reserved and nonreserved lands are the protection, management and improvement of these properties for the multiple use objectives established in section 1847. "

12 M.R.S.A. 1847 Management of Public Reserved Lands states in part under 1. Purpose. "the public reserved lands be managed under the principles of multiple use to produce a sustained yield of products and services"... Metallic mining does not meet this requirement as mining is by its nature an extractive use, a single time activity which forever alters the physical characteristics of the land in a way that frustrates the essential purposes for which the land is held by the state for conservation and recreational purposes.

As metallic mining of public reserved lands qualifies as a substantially altered use, 12 M.R.S.A. 549 must have been passed by the legislature by 2/3 of the members elected to each house to meet the requirements of Maine's Constitution Article IX Section 23. In April of 2015, clerks at the Maine Legislative Law Library did an exhaustive review of the legislative history of 12 M.R.S.A 549 to determine if the statute had been passed by 2/3 of the members elected to each house. Nowhere in the legislative history was any reference found for either the need for the statute to be passed by a 2/3 vote or if in fact the statute was passed by a 2/3 vote. As such, the passage of 12 M.R.S.A. 549 does not pass constitutional muster and must be nullified.

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