



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Eastern States Office
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Washington, DC 20003

<http://www.es.blm.gov>

DEC 15 2016



In Reply Refer

To:

3500(930) P

MNES 01352, MNES 01353

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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DECISION

Mr. Ian Duckworth, Chief Operating Officer	:	Leasing of Hardrock Minerals
Twin Metals Minnesota	:	Serial Number MNES 01352
380 St. Peter Street, Suite 705	:	Serial Number MNES 01353
St. Paul, MN 55102	:	

Lease Renewal Application Rejected

On December 14, 2016, the United States Forest Service (U.S. Forest Service or USFS) submitted a letter to the Bureau of Land Management (BLM) stating it did not consent to renewal of Preference Right Leases MNES 01352 and MNES 01353. As a result, with the approval of the Deputy Secretary, I hereby reject the application for renewal of these leases. The reasons for my decision to reject the lease renewals are set forth below.

Background

The Department of the Interior (DOI) Bureau of Land Management (BLM) Eastern States Office completed its review of the application for renewal of Preference Right Leases MNES 01352 and MNES 01353, located within the Superior National Forest in Northern Minnesota, submitted by Twin Metals Minnesota (TMM), a subsidiary of Franconia Minerals (US) LLC, on October 21, 2012. The application for renewal was submitted timely as the leases were scheduled to expire on January 1, 2014. The USFS is the surface management agency for the lands where these two leases are located, and BLM has jurisdiction over the mineral rights.

The TMM's predecessor in interest obtained the two original preference right leases that were issued in 1966 for a primary term of 20 years. The BLM issued two renewals, with U.S. Forest Service concurrence, in 1989 and 2004. Those leases allowed for the mining of copper, nickel,

and associated minerals, but to date, TMM has not begun mineral production on either of the leases.

The leases are located on the South Kawishiwi River on Superior NF lands south of the Boundary Waters Canoe Area (BWCA) Wilderness on acquired Weeks Act lands, as well as National Forest System lands reserved from the public domain and managed by USFS. These lands are not open to the operation of the Mining Law of 1872. Rather, the Secretary of the Interior's (Secretary) authority, delegated to BLM, for mineral disposition on the acquired lands is in section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099-1100, and 16 U.S.C. § 520, which governs mineral disposition on Weeks Act lands. The Secretary's authority, delegated to BLM, for mineral disposition on reserved National Forest System lands in Minnesota is found in 16 U.S.C. § 508b. For acquired lands, these authorities provide that "mineral development on such lands shall be authorized by the Secretary only when he is advised by the Secretary of Agriculture that such development will not interfere with the primary purposes for which the land was acquired and only in accordance with such conditions as may be specified by the Secretary of Agriculture in order to protect such purposes." Section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099-1100. For public domain lands, the authorities provide that "the development and utilization of such mineral deposits shall not be permitted by the Secretary of the Interior except with the consent of the Secretary of Agriculture." 16 U.S.C. § 508b.

Since submission of the application for renewal of these Preference Right Leases, BLM has consulted with the DOI Office of the Solicitor and the Department of Agriculture, U.S. Forest Service, about this application.

In processing the application, BLM identified the need for a legal opinion to determine whether TMM has a non-discretionary right to renew the two preference right leases. The DOI Office of the Solicitor (Solicitor) examined the issue. On March 8, 2016, the Solicitor issued Memorandum Opinion 37036 (M-Opinion) (Enclosure 1) determining that the lessee does not have a non-discretionary right to a third 10-year renewal and, therefore, that BLM has discretion to decide whether to grant or deny the application. The M-Opinion also noted that, even if the original 1966 lease terms apply, the renewal provision gives BLM discretion regarding whether to renew the leases and requires renewal as a matter of right only if the lessee has already begun production, which is not the case here. Therefore, BLM has discretion to grant or deny these leases and, in accordance with the relevant statutes identified above and BLM regulations at 43 C.F.R. §§ 3503.13, 3503.20, BLM must have written consent from the surface management agency to issue any permits or leases.

U.S. Forest Service Consent Decision

On June 3, 2016, BLM issued a letter to USFS requesting a written decision on whether the Agency consents or does not consent to renewal of the leases (Enclosure 2). The USFS in turn issued a media release on June 13, 2016, announcing a 30-day period for public input. The USFS held two listening sessions: one in Duluth, Minnesota, on July 12, 2016, and a second session in Ely, Minnesota, on July 19, 2016.

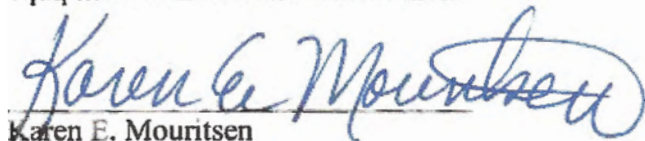
On December 14, 2016, the U.S. Forest Service issued a letter stating it did not consent to the renewal of MNES 01352 and MNES 01353 (Enclosure 3). In its decision, USFS determined that these leases were inconsistent with the Agency's affirmative duty to protect and maintain the values in the BWCA Wilderness, embodied by the directive in the 2004 Superior National Forest Plan to manage the BWCA Wilderness in such a manner that "perpetuates and protects its unique natural ecosystems, provides an enduring wilderness resource for future generations, and provides opportunities for a primitive and unconfined recreation experience." In considering this renewal application, the Agency identified grave concerns that the development of the copper sulfide-ore mining in the Rainy River Watershed, in particular the MNES 01352 and 01353 mineral leases, risks seriously impairing the ecosystem health of the wilderness area, and with it, poses unacceptable risks to the wildlife, recreational uses, tribal hunting, fishing, and usufructuary rights, and tourism industry that depend on the pristine nature of the BWCA Wilderness.

Conclusion

As stated above, in accordance with section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1097, 1099-1100, 16 U.S.C. § 520, 16 U.S.C. § 508b, and BLM regulations in 43 C.F.R. Subpart 3503, BLM must have written consent from the surface management agency before it may issue the leases on both public domain and acquired lands. In this instance, because USFS did not consent, BLM cannot grant your application for renewal of leases MNES 01352 and MNES 01353 and hereby rejects the lease renewal application.

Final Agency Action

It is my decision to reject your application to renew Twin Metals Leases MNES 01352 and MNES 01353 based on USFS's decision on December 14, 2016, not to consent. The lease expires upon receipt of this notice. 43 C.F.R. § 3514.25. We are providing you 30 days to remove equipment from the lease and remediate existing boreholes. If more time is needed, please contact the BLM Northeastern States District Manager to arrange for additional time for equipment removal *and remediation*.



Karen E. Mouritsen
State Director
Eastern States Office, BLM