



THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

JAN 26 2022

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

DECISION

Mr. Kelly Osborne, Chief Executive Officer :
Twin Metals Minnesota : Hardrock Mineral Leases, Serial
Numbers :
380 St. Peter Street, Suite 705 : MNES-01352 and MNES-01353
St. Paul, MN 55102 :

Leases Canceled

On May 15, 2019, the Assistant Secretary – Land and Minerals Management issued renewals of Twin Metals Minnesota’s hardrock mineral leases MNES-01352 and MNES-01353. However, on January 25, 2022, the Principal Deputy Solicitor for the Department of the Interior (Department) issued M-Opinion M-37072, which concluded that the lease renewals violated applicable statutes and regulations. Pursuant to 43 C.F.R. § 3514.30(b), which authorizes administrative cancellation of a lease that is issued in violation of any law or regulation, I am canceling hardrock mineral leases MNES-01352 and MNES-01353.

In 2019, Twin Metals Minnesota’s hardrock mineral leases MNES-01352 and MNES-01353 were renewed using customized terms that violate the statutes that authorize the Department to lease hardrock minerals in Minnesota, as well as a number of the Department’s regulatory provisions in 43 C.F.R. Part 3500, which implement the mineral leasing statutes. Specifically, the 2019 lease renewals of MNES-01352 and MNES-01353 violated the Department’s regulations at 43 C.F.R. § 3511.12, the regulations at 43 C.F.R. §§ 3511.15, 3511.25(b), and 3514.25(a), and the mineral leasing statutes 16 U.S.C. §§ 508b, 520, and Reorganization Plan No. 3 of 1946, § 402, 60 Stat. 1097. In addition, the Department’s issuance of the lease renewals in 2019 violated the National Environmental Policy Act (NEPA) at 42 U.S.C. §§ 4331 *et seq.*

The Department’s alteration of the standard lease renewal terms in standard lease form 3520-7 violated the Department’s regulation at 43 C.F.R. § 3511.12, which states that the Bureau of Land Management (BLM) will issue leases on a standard form. The standard form contains standard terms and allows for only certain limited customizations. The lease term on renewal in the standard form, which grants hardrock mineral lessees a “preferential right” to renew rather than a non-discretionary right to renew, is a standard term that applies to all hardrock mineral leases and, under section 3511.12, is not one of the terms that can be customized. In addition, in the 2019 lease renewals, the Department’s granting of a right to renew leases MNES-01352 and

MNES-01353 again in the future without including the preferential qualifier also violated the overall regulatory scheme set forth in the Department's 43 C.F.R. Part 3500 regulations, which provide that hardrock mineral lease renewals are decisions within the agencies' discretion to grant or deny. *See* 43 C.F.R. § 3511.15(f) (stating that hardrock leases "can be renewed for 10 years at the end of the initial term and for following 10 year periods," not that they must be renewed) (emphasis added); 43 C.F.R. § 3511.25(b) (stating that a hardrock mineral lessee must apply for a renewal of the lease or the lease expires and the lands become available for re-leasing); and 43 C.F.R. § 3514.25(a) (stating that hardrock mineral leases, like sodium, sulphur, and asphalt leases, expire on the later of either the end of the lease term or on "the date that BLM *reject[s]*" the lessee's renewal application) (emphasis added).

Moreover, the statute authorizing the Department, through BLM, "to permit the prospecting for and the development and utilization" of hardrock mineral resources on public domain lands within the national forests in Minnesota further provides 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. Despite these statutory requirements, the Assistant Secretary – Land and Minerals Management did not obtain the Secretary of Agriculture's consent before approving and issuing the 2019 renewals of leases MNES-01352 and MNES-01353. Therefore, the Department issued the lease renewals in violation of 16 U.S.C. § 508b.

Similarly, Congress provided for the disposition of mineral resources on lands acquired under the authority of the Weeks Act in 16 U.S.C. § 520, which allowed the Secretary of Agriculture "to permit the prospecting, development, and utilization" of minerals on lands acquired under that Act. In section 402 of Reorganization Plan No. 3 of 1946, 5 U.S.C. Appendix, 60 Stat. 1097, 1099–1100, Congress then transferred the jurisdiction for mineral leasing on lands acquired by the United States under the Weeks Act and a number of other statutory authorities from the Secretary of Agriculture to the Secretary of the Interior. This transfer of authority was subject to the condition that "mineral development on such lands shall be authorized by the Secretary of the Interior only when he/she 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." Reorganization Plan No. 3 of 1946, § 402. Like 16 U.S.C. § 508b, section 402 of Reorganization Plan No. 3 confers consent authority upon the Secretary of Agriculture over hardrock mineral leasing and permitting decisions on acquired lands in Minnesota. Because the Assistant Secretary – Land and Minerals Management failed to obtain the Secretary of Agriculture's consent before approving and issuing the 2019 renewals of MNES-01352 and MNES-01353, the Department also issued the lease renewals in violation of 16 U.S.C. § 520 and Reorganization Plan No. 3 of 1946, § 402.

Lastly, because BLM's lease renewal Environmental Assessment, which was prepared to comply with NEPA, failed to adequately evaluate the difference in environmental consequences between renewing and not renewing the leases, the Department issued the lease renewals in violation of NEPA's mandate to "study, develop, and describe appropriate alternatives to recommended courses of action" where proposals involve "unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332 (E). Because the Department did not

adequately consider the potential environmental impacts from the leasing decision, including a no renewal / no action alternative that was necessary in light of the Forest Service's denial of consent, it was improper for the Department to issue the 2019 leases.

On September 29, 2021, the Forest Service submitted an application to BLM to withdraw approximately 225,378 acres of land in the Rainy River watershed within the Superior National Forest from disposition under the mineral and geothermal leasing laws, subject to valid existing rights. The subsequent publication of a Federal Register Notice on October 21, 2021, announcing the BLM's acceptance and receipt of the Forest Service's application, initiated a 2-year segregation of these lands from disposition under the mineral and geothermal leasing laws, subject to valid existing rights. 43 C.F.R. § 2310.2(a). During the pendency of the segregation, BLM must deny "applications for use of the lands involved in a withdrawal application or a withdrawal proposal, the allowance of which is discretionary." *Id.* § 2310.2(d). Accordingly, under BLM's withdrawal regulations, the agency is prohibited from taking action now that would amount to the reissuance of MNES-01352 and MNES-01353, both of which are located on lands that are subject to the withdrawal application and are currently segregated from operation of the mineral leasing laws.

The BLM would similarly be barred from approving any new application to re-lease the lands covered by MNES-01352 and MNES-01353.

Moreover, even if the subject lands were not segregated from operation of the mineral leasing laws, the cancellation of the 2019 lease renewals would not revive any prior versions of the leases or any prior pending lease applications. As noted above, the Department's regulations at 43 C.F.R. § 3514.30(b) state that, where a lease is issued in violation of any law or regulation, in addition to administratively canceling that lease, the Department "may consider issuing an amended lease, if appropriate." The Department declines to consider issuing an amended lease in this instance because the Forest Service has now twice denied its consent for the renewals of the MNES-01352 and the MNES-01353 leases, most recently on January 24, 2022. Not only did the Forest Service deny its consent to renew the leases on December 14, 2016—a determination it has never retracted—but the Forest Service has recently confirmed, in its letter of January 24, 2022, that it does not consent to any renewal or revival of Twin Metals leases MNES-01352 and MNES-01353 in the Superior National Forest. The Department will therefore not revive Twin Metals' lease renewal application or its prior leases from 2004 and will also not undertake any additional NEPA analysis regarding the 2019 lease renewals for the same reason—without Forest Service consent, no additional administrative action toward leasing can be taken.

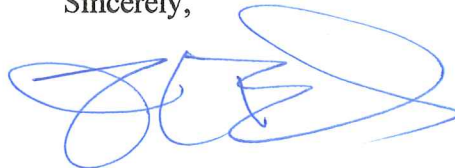
Final Agency Action

It is my decision to cancel Twin Metals hardrock mineral leases MNES-01352 and MNES-01353 for the reasons stated above. Because the Forest Service, acting on behalf of the Secretary of Agriculture, has denied consent for leasing in the area of the MNES-01352 and the MNES-01353 leases, and because the subject lands are currently segregated from the operation of the mineral leasing laws, the Department will not issue Twin Metals any amended leases, will not reinstate or reconsider Twin Metals' prior lease renewal application, and will not reinstate the prior leases issued in 2004.

Under the terms of the 2019 MNES-01352 and MNES-01353 leases, Twin Metals will have 90 days to “submit a schedule for how it will complete all reclamation work, to be approved by the lessor and the Forest Service.” 2019 lease renewals, § 9. If more time is needed to submit such a schedule, please contact the BLM Northeastern States District Manager to request an extension.

If you have any questions regarding this decision, please contact Chris Hite, BLM Eastern States Office, Branch Chief of Energy and Minerals Operations at (703) 558-7731 or chite@blm.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tommy P. Beaudreau', with a large, stylized flourish extending to the right.

Tommy P. Beaudreau