



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
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In Reply Refer To:
3566 (930) P
MNES 01352, MNES 01353

MAY - 2 2018

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

DECISION

Mr. Kevin Baker : Leasing of Solid Minerals:
Vice President, Legal Affairs : MNES 01352, MNES 01353
Twin Metals Minnesota, LLC :
380 St. Peter Street, Suite 705 :
St. Paul, Minnesota 55102 :

Rescission of December 15, 2016, Lease Renewal Application Rejection
Reinstatement of Mineral Leases MNES 01352 & MNES 01353 as Issued in 2004
Reinstatement of Twin Metal’s 2012 Lease Renewal Application

On December 22, 2017, the Acting Solicitor issued an opinion (M-37049), which concluded that the original 1966 leases (MNES 01352 and MNES 01353) gave the lessee a non-discretionary right to a third renewal of the leases, subject to reasonable changes to the terms and conditions of the leases. In light of M-37049, the Bureau of Land Management (BLM) hereby rescinds its decision dated December 15, 2016, which was entitled, “Lease Renewal Application Rejected,” reinstates mineral leases MNES 01352 and MNES 01353, which were issued in 2004, and reinstates Twin Metal’s 2012 lease renewal application. The reinstated leases will remain in effect as written in 2004, until such time as the BLM acts on the application for a third lease renewal, subject to reasonable updated terms and conditions. The reasons for my decision are set forth below.

Background

In 2012, Twin Metals Minnesota (TMM) applied to renew its two existing mineral leases (MNES 01352 and MNES 01353) within the Superior National Forest in Northeastern Minnesota. The USDA Forest Service is the surface management agency for the lands where these two leases are located, and the BLM has jurisdiction over the subsurface mineral estate. The BLM previously issued renewals of the leases in 1989 and 2004 after consulting with the Forest Service.

In processing the pending application for renewal, the BLM identified the need for a legal opinion to determine whether TMM has a non-discretionary right to renew the two leases. On March 8, 2016, the Department of the Interior’s former Solicitor issued a legal opinion (M-37036), which concluded that TMM did not have a non-discretionary right to renew the leases;

rather, the government retained discretion to grant or deny the renewal application. After the issuance of M-37036, the BLM requested the Forest Service's decision on whether they would consent to the renewal of the leases for a third time. By letter dated December 14, 2016, the Chief of the Forest Service issued a non-consent determination. Given the lack of consent, the BLM rejected TMM's third renewal application in a letter dated December 15, 2016.

TMM filed suit in the U.S. District Court for the District of Minnesota and requested that the Interior Department review and reconsider the legal conclusion of M-37036. The Office of the Solicitor has since reviewed M-37036 and concluded that the initial opinion's analysis was incorrect. On December 22, 2017, the Acting Solicitor issued a new opinion entitled, "Reversal of M-37036, 'Twin Metals Minnesota Application to Renew Preference Right Leases (MNES-01352 and MNES-01353)'" (M-37049), which reverses and replaces M-37036. See enclosure. The revised M-Opinion concludes that the original 1966 leases gave the lessee a non-discretionary right to a third renewal of the leases, subject to reasonable changes to the terms and conditions of the leases at renewal.

Because the BLM's prior request for Forest Service consent was based on the legal error that the United States had discretion to decide whether to renew the leases, we informed the Forest Service that its December 2016 non-consent determination was not legally operative. The Forest Service has not objected to that conclusion.

Conclusion

It is my decision to rescind the prior BLM decision dated December 15, 2016, which was entitled, "Lease Renewal Application Rejected," to reinstate mineral leases MNES 01352 and MNES 01353, which were issued in 2004, and to reinstate the lease renewal application that Twin Metals filed in 2012. BLM will treat the reinstated leases as though the December 15, 2016, decision was never issued and the reinstated leases will remain in effect until such time as the BLM acts on the application for a third lease renewal, subject to reasonable, updated terms and conditions.

If you need additional information, please contact me at (202) 912-7701.

Sincerely,



Mitchell Leverette
Acting State Director
Eastern States

Final Decision of the Agency

I concur in the Acting State Director's decision to rescind the prior BLM decision dated December 15, 2016, which was entitled, "Lease Renewal Application Rejected," and to reinstate mineral leases MNES 01352 and MNES 01353, which were issued in 2004. My concurrence in this decision makes it a final agency action for the Department of the Interior and, in accordance with the regulations at 43 C.F.R. § 4.410(a)(3), is not subject to appeal to the Interior Board of Land Appeals under departmental regulations at 43 C.F.R. Part 4.

Concurred in by:



Joseph R. Balash
Assistant Secretary
Land and Minerals Management
U.S. Department of the Interior

Enclosure:

Solicitor Opinion M-37049 (December 22, 2017) "Reversal of M-37036..."

cc: BLM Northeastern States District Office
Regional Forester, USFS Region 9
Forest Supervisor, Superior National Forest