

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL DIVERSITY, et al.

Plaintiffs,

v.

MITCHELL LEVERETTE, in his official capacity
as the State Director of the U.S. Bureau of Land
Management's Eastern States Office, et al.,

Defendants.

Case No. 1:20-cv-02132-DLF

**DEFENDANTS' MOTION FOR VOLUNTARY REMAND WITHOUT VACATUR
AND MEMORANDUM IN SUPPORT**

MOTION

The United States Bureau of Land Management ("BLM"), an agency of the United States Department of the Interior ("Interior"), and the federal officials named herein as defendants (collectively, "Defendants"), hereby move the Court to enter an order remanding to BLM its May 1, 2020 decision to approve extensions for Twin Metals' thirteen hard rock mineral prospecting permits for further environmental analysis under the National Environmental Policy Act (NEPA) and to conduct an "effects determination" and, if required by the outcome of the effects determination, initiate consultation under the Endangered Species Act ("ESA"). Defendants have conferred with Plaintiffs and Plaintiffs position is that Plaintiffs need to be able to review the motion before advising the Court as to Plaintiffs' position on the motion.

MEMORANDUM

This case involves a challenge to BLM’s decision to approve extensions for Twin Metals’ thirteen hard rock mineral prospecting permits. Defendants now move for a voluntary remand of that decision without vacatur, and without a ruling on the merits, so that the BLM may conduct further environmental analyses under NEPA and ESA.

I. BACKGROUND

1. Legal Background

Under NEPA, BLM is required to analyze and publicly disclose the environmental impacts of its proposed actions. *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 371 (1989). Agencies may prepare an “Environmental Assessment” (EA) when necessary to determine whether a proposed action may have a significant impact on the environment. 40 C.F.R. § 1501.3; 40 C.F.R. § 1508.9. An EA is a “concise public document . . . that serves to . . . [b]riefly provide sufficient evidence and analysis for determining whether to prepare an [EIS] or a finding of no significant impact [(FONSI)].” 40 C.F.R. § 1508.9(a)(1); *Theodore Roosevelt Conservation P’ship v. Salazar*, 616 F.3d 497, 503–04 (D.C. Cir. 2010).

ESA Section 4 directs the Secretary¹ to list endangered species and to designate critical habitat for those species. 16 U.S.C. § 1533. Once a species is listed, Section 7(a)(2) of the ESA requires each federal agency to consult with the United States Fish and Wildlife Service (“FWS”) and/or the National Marine Fisheries Service (“NMFS”) (collectively “Services”) to ensure that “any action authorized, funded, or carried out by such agency” is not likely to

¹ The Secretary referred to in the ESA includes both the Secretary of the Interior and the Secretary of Commerce. 16 U.S.C. § 1532(15). The Secretary of the Interior generally has jurisdiction over terrestrial and fresh water species, whereas the Secretary of Commerce has jurisdiction over marine species. *See* 50 C.F.R. § 402.01(b).

jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of the designated “critical habitat” of the species. 16 U.S.C. § 1536(a)(2). To “jeopardize the continued existence of” means to “engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.” 50 C.F.R. § 402.02. Consultation is required only where an action authorized, funded, or carried out by an agency “may affect” a listed species or critical habitat. 50 C.F.R. § 402.14. If the action agency determines that its action will have “no effect” on any listed species or designated critical habitat, ESA section 7 consultation is not required. *Am. Fuel & Petrochemical Mfrs. v. EPA*, 937 F.3d 559, 597 (D.C. Cir. 2019).

In formal consultation the relevant Service issues a biological opinion (“BiOp”) detailing its conclusions on how the proposed action will affect listed species, including an opinion as to whether the proposed action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat. 16 U.S.C. § 1536(b)(3)(A). If the action may result in the incidental “take” of members of the species, the Service must provide an “incidental take statement” (“ITS”) along with the BiOp. 16 U.S.C. § 1536(b)(4)(i)-(ii). The ITS specifies the impact, i.e., the amount or extent of such incidental taking, along with reasonable and prudent measures that are necessary to minimize such impact. 50 C.F.R. § 402.14(i). Any taking that is incidental to the agency action and consistent with the terms and conditions specified in the ITS is not considered a prohibited taking under the ESA. 16 U.S.C. § 1536(o)(2).

Under the ESA regulations, reinitiation of formal consultation is required: (a) if the amount or extent of the taking specified in the incidental take statement is exceeded; (b) if the

new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (c) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion, or (d) if a new species is listed or critical habitat designated that may be affected by the identified action. 50 C.F.R. § 402.16(a).

2. Factual Background

In May 2012, BLM received 29 applications for prospecting permits for hardrock minerals from Twin Metals and other companies. In September 2012, BLM signed a Record of Decision approving 28 of the 29 prospecting permit applications and issuing permits for an initial term of two years, subject to stipulations established by the Forest Service. Prior to the expiration of the original permits on September 20, 2014, Twin Metals and Duluth Metals timely applied for extensions for thirteen of the prospecting permits for an additional four-year term. In March 2015, the Forest Service stated that it had no objection to the extension of the permits and BLM completed and published its Determination of NEPA Adequacy (“Determination”) worksheet. The Determination noted no new issues and concluded the 2012 Final Environmental Impact Statement (“2012 FEIS”) was sufficient for the approval of the extensions. On May 1, 2020, BLM issued a decision to approve four-year extensions on all thirteen permits, noting that the 2012 FEIS had considered not only the effects of the original permits, but also the effects of possible extensions.

II. DISCUSSION

1. A Remand of the Thirteen Prospecting Permit Extensions is Appropriate

Courts have long recognized the propriety of voluntarily remanding a challenged agency action without judicial consideration of the merits, with or without admission of agency error.

As this Court recently explained, out of respect for the “inherent power” of administrative agencies “to reconsider their own decisions,” courts in this Circuit “commonly grant motions to remand an administrative record to allow an agency to consider new evidence” or otherwise “cure their own mistakes rather than wasting the courts’ and the parties’ resources reviewing a record that both sides acknowledge to be incorrect or incomplete.” *Vanda Pharm., Inc. v. Food & Drug Admin.*, No. CV 19-301 (JDB), 2019 WL 1198703, at *1 (D.D.C. Mar. 14, 2019) (quoting *Sierra Club v. Van Antwerp*, 560 F. Supp. 2d 21, 23 (D.D.C. 2008); *Prieto v. United States*, 655 F. Supp. 1187, 1191 (D.D.C. 1987); *Ethyl Corp. v. Browner*, 989 F.2d 522, 524 (D.C. Cir. 1993)).

Voluntary remand is appropriate so long as an agency’s concern with the challenged decision is “substantial and legitimate” rather than “frivolous or in bad faith.” *Id.* (quoting *Sierra Club*, 560 F. Supp. 2d at 23–24 (comparing *Citizens Against Pellissippi Parkway Extension, Inc. v. Mineta (Pellissippi Parkway)*, 375 F.3d 412, 417 (6th Cir. 2004), and *Lutheran Church–Mo. Synod v. FCC*, 141 F.3d 344, 349 (D.C. Cir. 1998))). Voluntary remand has been held to be warranted “(i) when new evidence becomes available after an agency’s original decision was rendered . . . or (ii) where intervening events outside of the agency’s control may affect the validity of an agency’s actions.” *Carpenters Indus. Council v. Salazar*, 734 F. Supp. 2d 126, 132 (D.D.C. 2010) (internal citations and quotation marks omitted); accord *Lewis v. Sec’y of Navy*, No. CV 10-0842 (RBW), 2014 WL 12787221, at *3 (D.D.C. Sept. 2, 2014). The deference to agency preference reflected in these decisions encourages agencies “to cure their own mistakes rather than wasting the courts’ and the parties’ resources” by continuing to litigate matters to ultimate conclusion. *Ethyl Corp.*, 989 F.2d at 524 (footnote omitted). Finally, an agency need not confess error when seeking remand. *SKF USA, Inc. v. United States*, 254 F.3d

1022, 1029 (Fed. Cir. 2001); *Ethyl Corp.*, 989 F.2d at 524; *Pellissippi Parkway*, 375 F.3d at 417.

In the instant case, Defendants have determined that a remand is appropriate so they may conduct additional environmental analyses under NEPA and the ESA. In assessing the thirteen permit extensions at issue in this case, BLM determined that it should undertake an environmental assessment to cure deficiencies in the existing environmental analysis and determine whether the permits may have a significant impact on the environment. *Sierra Club v. Van Antwerp*, 560 F. Supp. 2d at 23 (“In making such decisions, the Circuit prefers ‘to allow agencies to cure their own mistakes rather than wasting the courts’ and the parties’ resources reviewing a record that both sides acknowledge to be incorrect or incomplete.”). Namely, BLM seeks to update its analysis to reflect new science, additional projects in the area since the last environmental analysis, and species habitat. BLM has already initiated the process of preparing a new environmental assessment. *See* Ex. 1, Declaration of Francis P. Piccoli ¶ 4 (“Piccoli Declaration”).

BLM has also determined that, under ESA Section 7, it will undertake an “effects determination” for the thirteen permit extensions at issue in this case and, if required by the outcome of that determination, initiate consultation with FWS. 16 U.S.C. § 1536(a); 50 C.F.R. § 402; 50 C.F.R. § 402.07. This will allow BLM to cure any deficiencies, provide Plaintiffs with the remedy they seek, and preserve both the parties’ and judicial resources. *See* Complaint at p.38. Subsequent to the 2012 Biological Opinion for these permits, the Northern long-eared bat, *Myotis septentrionalis*, was listed as threatened.² 80 Fed. Reg. 17,974 (Apr. 2, 2015). This is the quintessential example of an intervening event outside the agency’s control that may affect the

² Plaintiffs’ complaint alleges that reinitiation of consultation is required for the gray wolf, *Canis lupus*, but FWS recently determined that the species has recovered and it has therefore been delisted. *See* 85 Fed. Reg. 69,778, 69,895 (Nov. 3, 2020).

validity of the agency's decision and warrants a voluntary remand. *See Carpenters Indus. Council*, 734 F. Supp. 2d at 132. Indeed, the ESA requires that BLM reinitiate consultation to determine whether the newly listed Northern long-eared bat may be affected by the identified action. 50 C.F.R. § 402.16(a)(4). Additionally, a voluntary remand will allow the agency to determine what effect, if any, the thirteen permit extensions have on the threatened Canada Lynx, *Lynx Canadensis*, or its designated critical habitat within the action area. Thus, if granted voluntary remand, pursuant to ESA Section 7, BLM will conduct an "effects determination" evaluating the potential effects of extending the thirteen prospecting permits on species listed as threatened or endangered under the ESA and any designated critical habitat within the action area, and, if required, initiate consultation with FWS. *See* Ex. 1, Piccoli Decl. ¶ 6.

Because this is a clear instance where it is in the interest of judicial efficiency "to allow [the agency] to cure [its] own mistakes rather than wasting the courts' and the parties' resources reviewing a record that both sides acknowledge to be incorrect or incomplete," *Sierra Club*, 560 F. Supp. 2d at 23, we request this Court remand the decisions to the agency to conduct additional environmental analyses under NEPA and the ESA.

2. The Court Should Maintain the Status Quo Pending Remand

Remand without vacatur is appropriate because there is "at least a serious possibility that the [agency] will be able to substantiate its decision on remand." *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 282 F. Supp. 3d 91, 97 (additional citations omitted), *subsequent determination by* 280 F. Supp. 3d 187 (D.D.C. 2017). Under the factors set out in *Allied-Signal*, courts assessing remand with or without vacatur are to consider "the seriousness of the order's deficiencies...and the disruptive consequences of an interim change that may itself be changed." *Allied-Signal, Inc. v. U.S. Nuclear Regul. Comm'n*, 988 F.2d 146, 150–51 (D.C. Cir. 1993); *see*

also *Heartland Regional Med. Ctr. v. Sebellius*, 566 F.3d 193 (D.C. Cir. 2009) (analyzing *Allied-Signal* factors). The first prong of this analysis “deals with the likelihood that a rule’s deficiencies can be redressed on remand, ‘even if the agency reaches the same result.’” *Am. Forest Res. Council v. Ashe*, 946 F. Supp. 2d 1, 44 (D.D.C. 2013); see also *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 630 (2016) (describing factor as simply the likelihood of “cure on remand”). The second *Allied-Signal* factor considers the practical impact of vacatur, including whether remand with vacatur “may have unpredictable and irreversible consequences” and whether remand without vacatur will “unduly prejudice[]” any party. *Id.* at 46; *Vanda Pharm., Inc. v. Food & Drug Admin.*, 2019 WL 1198703, at *2.

First, the decisions’ deficiencies can be redressed on remand because BLM plans, for purposes of NEPA, to undertake an EA to thoroughly study and disclose to the public the environmental impacts of its decision and, for purposes of the ESA, to conduct an “effects determination,” and, if necessary, initiate consultation with FWS. These analyses will inform and illuminate BLM’s decision on the prospecting permits and help support BLM’s final decision. BLM has wide discretion to consider new factors and change its mind based on new information. See *Code v. McHugh*, 139 F. Supp. 3d 465, 468 (D.D.C. 2015) (“Even in the absence of new evidence or intervening events, voluntary remand may be appropriate where . . . the agency ‘believes that its original decision is incorrect on the merits’” (quoting *SKF*, 254 F.3d at 1029)). With this new analysis, BLM would be able to substantiate its decision and the questions at issue in the case would likely be redressed.

Second, vacatur of BLM’s decision extending the prospecting permits would cause undue disruption to the existing permittees and possibly open BLM to another permitting process. Vacatur of BLM’s decision extending the permits would defeat Twin Metals’ exclusive rights to

prospect on the specific parcels of land that are subject to the permits by making those parcels available for other potential prospecting permit applicants, despite Twin Metals' timely application for extension. Opening the parcels to other applicants would lead to a more unpredictable and possibly irreversible process. Because Twin Metals has agreed to refrain from all surface-disturbing activities on the permitted parcels, *see* Ex. 2, Twin Metals Email, vacatur would serve no purpose other than to terminate Twin Metals' prospecting permits and make the parcels available to other applicants seeking prospecting opportunities. So, maintaining the permits under Twin Metals will preserve the status quo pending the additional analysis.

Additionally, Plaintiffs will not be harmed or prejudiced because Defendants have ensured that no surface-disturbing activities take place pending the additional environmental review. *See* Ex. 3, BLM Letter. BLM's letter directing Twin Metals to refrain from any surface disturbing activities and Twin Metals' written assurance confirm that the status quo will be maintained pending the additional review. Because no party will be prejudiced, this Court should grant a voluntary remand without vacatur and maintain the current status quo pending BLM's additional analysis.

III. CONCLUSION

For the reasons stated above, Defendants ask the Court to remand the decision approving the extension of Twin Metals' prospecting permits, without vacatur, and without making a determination on the merits of this case. This will avoid judicial resolution of issues that may well be resolved upon remand.

Respectfully submitted this 30th day of November, 2020.

PAUL E. SALAMANCA
Deputy Assistant Attorney General
Environment & Natural Resources Division

/s/ Leilani Doktor
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on November 30th, 2020, a copy of the foregoing motion and supporting memorandum was served by electronic means on all counsel of record by the Court's CM/ECF system.

/s/ Briena L. Strippoli

EXHIBIT 1

(Piccoli Declaration)

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL DIVERSITY, *et al.*

Plaintiffs,

v.

MITCHELL LEVERETTE, in his official capacity
as the State Director of the U.S. Bureau of Land
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Defendants.

Case No. 1:20-cv-02132-DLF

DECLARATION OF FRANCIS P. PICCOLI

I, Francis P. Piccoli, in accord with the requirements of 28 U.S.C. § 1746, declare:

1. I am currently employed by the United States Department of the Interior (DOI), Bureau of Land Management (BLM), as the Acting District Manager for the Northeastern States District (NSD), a component within BLM's Eastern States Office (ESO). The ESO is responsible for resource management on public lands in thirty-one states located, in whole or in part, north or east of the Mississippi River. The NSD has responsibility for twenty of these states, including Minnesota. I have held the position of Acting District Manager since August 2020. Prior to assuming duties as Acting District Manager, I served as the ESO's Deputy State Director for External Affairs, a position which I have held since June 2018 and to which I expect to return when my duties as Acting District Manager are completed.
2. In my role as Acting District Manager, I oversee the work of personnel in the NSD's Natural Resources and Minerals Divisions, who are responsible for ensuring environmental review and regulatory compliance of proposed actions and the

management of mineral prospecting actions, among other things. I am familiar with the procedures observed and actions taken by the BLM in issuing the May 1, 2020 decision challenged in the above-captioned case. That decision approved extensions of thirteen prospecting permits, originally approved and issued in 2012. The extended permits encompass thirteen parcels of land, totaling approximately 15,000 acres, located on the Superior National Forest in Minnesota.

3. I am also familiar with the plaintiffs' allegations in this case and their claims that defendant agencies violated the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA) in connection with the May 1, 2020 decision. Recognizing the legal risk and uncertainty that these claims present, BLM, in consultation with the Department of Justice, is seeking voluntary remand without vacatur to undertake NEPA and ESA analyses. It offers this declaration in support of the government's motion for voluntary remand without vacatur.
4. With respect to the NEPA claims, BLM advises that it has begun preliminary work on a new environmental assessment (EA), intended to examine impacts of activities, past and future, on the thirteen parcels at issue. BLM's actions include working to define the scope of the NEPA analysis, which may for purposes of agency efficiency include examining impacts of additional prospecting requests on the Superior National Forest that are not challenged in this case.
5. In addition, BLM and agency counsel have had discussions with personnel at the United States Forest Service and its parent agency, the U.S. Department of Agriculture, about the Forest Service's formal participation in the NEPA process as a "cooperating agency," as defined in NEPA regulations at 40 C.F.R. §§ 1508.5, 1501.6. Further, on November 20,

2020, BLM sent the Forest Service a letter noting BLM's determination that an EA is required and formally inviting the Forest Service to participate as a cooperating agency in preparation of the noted EA. *See* Attachment 1.

6. With respect to the ESA claims, BLM is the lead agency responsible for conducting an "effects determination" and, if required, for initiating consultation with the U.S. Fish and Wildlife Service (FWS) under ESA section 7. 16 U.S.C. § 1536(a); 50 C.F.R. § 402; 50 C.F.R. § 402.07 (designation of lead agency). BLM will promptly conduct an "effects determination" upon the Court's granting of the motion for voluntary remand. If appropriate, BLM will initiate consultation with FWS promptly thereafter. The consultation process, if required, will evaluate the potential effects of extending thirteen prospecting permits on species listed as threatened or endangered under the ESA (collectively "listed species"), and any designated critical habitat, within the action area.

7. BLM has already taken affirmative steps. For example, on August 19, 2020, BLM Northeastern State District Office Resource Team staff members met with FWS ESA biologists to discuss application of the 4(d) rule to the Northern Long-Eared Bat and general questions about approaches to consultation regarding species identified in the project area. On October 6, 2020, BLM and FWS met again, along with DOI Solicitor's Office, to discuss the process and information needed for initiating consultation, if ultimately required.

8. As the lead agency for ESA section 7 consultation, BLM will include the Forest Service in the consultation process as a cooperating agency to ensure that the analysis of the effects of the proposed action encompasses the issues identified by the U.S. Forest Service in light of its consent role in the prospecting permits and its expertise relative to

the environmental baseline and the potential effects of the proposed action on the Superior National Forest.

9. Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on November 30, 2020, in Stafford, Virginia.

FRANCIS PICCOLI  Digitally signed by FRANCIS
PICCOLI
Date: 2020.11.30 15:09:08 -05'00'

Francis P. Piccoli
Acting District Manager
Bureau of Land Management



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Eastern States

5275 Leesburg Pike

Falls Church, VA 22041

<http://www.blm.gov/eastern-states>



In Reply Refer To:

3500 (930) sdm

November 20, 2020

Gina Owens

Regional Forester, Eastern Region

626 E Wisconsin Ave,

Milwaukee, WI 53202

Re: Prospecting permits extension decision on May 1, 2020, for Twin Metals Minnesota

Dear Ms. Owens,

In accordance with the National Environmental Policy Act of 1970 (NEPA) and other environmental laws, the Bureau of Land Management (BLM) has determined that an Environmental Analysis (EA) is required for the prospecting permits extension decided on May 1, 2020.

The BLM will serve as a lead agency and invite the Forest Service (FS) to be a cooperating agency. The two agencies will need to develop a timeline, and the BLM intends to initiate the project soon. The minimum scope of the EA will be the thirteen prospecting permits' extension for Twin Metals Minnesota, in response to pending litigation that identified shortcomings in the 2012 Federal Hardrock Prospecting Permits Environmental Impact Statements (EIS). The BLM and FS will determine the scope of the EA, which may include currently pending prospecting permits.

Please let us know by December 20, 2020, if you agree with the BLM to participate as a cooperating agency, and if you have any concerns with this process. We look forward to working with you through this project. Please feel free to contact Lindy Nelson, Assistant District Manager-Resources, at 414- or lnelson@blm.gov, if you have questions about the project or our partnership.

Sincerely,

**ANTHONY
BOBO**

Anthony D. Bobo, Jr
Deputy State Director
Division of Natural Resources

Digitally signed by
ANTHONY BOBO

Date: 2020.11.20 11:03:26
-05'00'



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Eastern States

20 M Street, SE Suite 950

Washington, DC 20003

<http://www.blm.gov/eastern-states>



In Reply Refer To:
3505(930) DAS

Mr. Kelly Osborne
Twin Metals Minnesota, LLC
380 St. Peter Street, Suite 705
St. Paul, MN 55102

: Voluntary Remand
: Surface Disturbing Activities
: MNES054387, MNES054050, MNES054194
: MNES054195, MNES054196, MNES053731
: MNES055301, MNES055302, MNES055305
: MNES053868, MNES054037, MNES055203
: MNES055206

Dear Mr. Osborne:

Please be advised that the Bureau of Land Management (BLM) is seeking a voluntary remand of Center for Biological Diversity et al. v. Bernhardt et al., No. 20-cv-2132 (D.D.C.), where Plaintiffs challenge BLM's May 1, 2020 decision to extend the above-referenced prospecting permits. In order to obtain consent to this voluntary remand, the parties have agreed that no surface-disturbing activities will take place on the prospecting permits, pending (i) the Court's order on the motion for voluntary remand; (ii) BLM's additional environmental review under NEPA and the ESA of its decision to extend the thirteen prospecting permits; and (iii) BLM's issuance of a new decision on Twin Metals' extension request. Examples of surface-disturbing activities include clearing brush and trees and constructing temporary roads and well pads.

As such, Twin Metals is directed to refrain from conducting any surface-disturbing activities on these thirteen prospecting permits until notified otherwise by the BLM. This order does not apply to sealing boreholes and associated tasks as required by Minnesota statute and rules. Also, Twin Metals and its partners are relieved, until further notification, of any obligation alluded to in the May 1, 2020 decision, to complete sufficient prospecting activities within 12 months of the effective date of the permit extension.

If you have questions, please feel free to contact Derek Strohl, Assistant District Manager-Minerals, at 414-297-4416 or dstrohl@blm.gov.

Regards,

Anthony D. Bobo, Jr
Deputy State Director
Eastern States Office

Cc: Constance Cummins – USFS Forest Supervisor, Superior National Forest

EXHIBIT 3

(Twin Metals' Email Receipt)

Strippoli, Briena (ENRD)

From: Chris Anderson <canderson@twin-metals.com>
Sent: Wednesday, November 25, 2020 4:47 PM
To: SCarman@blm.gov; ccummins@fs.fed.us; Derek Strohl (BLM); a1bobo@blm.gov; fpiccoli@blm.gov; shawn.olson@usda.gov
Cc: Kelly Osborne; Julie Padilla; Dean DeBeltz; Erik Carlson; Raya Treiser (WH)
Subject: RE: Surface Disturbing Activities on Prospecting Permits

Good afternoon everyone:

On behalf of Twin Metals Minnesota – I acknowledge receipt of your correspondence to Mr. Osborne on November 25 regarding surface disturbing activities.

As discussed on our call on November 13, Twin Metals does not have any current or pending authorizations for future exploratory drilling on the 13 prospecting permits listed here for your reference:

MNES054387	MNES054050	MNES054194
MNES054195	MNES054196	MNES053731
MNES055301	MNES055302	MNES055305
MNES053868	MNES054037	MNES055203
MNES055206		

The only anticipated future surface activities on these permits are activities related to the sealing of existing boreholes, as required by the Minnesota Department of Health. Pursuant to BLM's November 25 letter to Mr. Osborne, Twin Metals will not engage in any proposals for future exploratory drilling under the permits pending BLM's completion of additional environmental analysis, and on the understanding that any due diligence obligations to begin exploratory activities under the permits have been suspended for the duration of the agency's analysis, as outlined in BLM's November 25 letter.

Please let us know if you need any further information.

CDA



Christopher D. Anderson | Director of Legal Affairs
Twin Metals Minnesota | 400 Miner's Drive, P.O. Box 329 | Ely, MN 55731
Cell: +1 218-235-0575
canderson@twin-metals.com | www.twin-metals.com

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Begin forwarded message:

From: "Carman, Stephanie M" <SCarman@blm.gov>
Date: November 25, 2020 at 8:40:23 AM CST
To: Kelly Osborne <KOsborne@twin-metals.com>
Cc: "Cummins, Constance -FS" <ccummins@fs.fed.us>, "Derek Strohl (BLM)" <dstrohl@blm.gov>, "Bobo

Jr, Anthony" <a1bobo@blm.gov>, Julie Padilla <jpadilla@twin-metals.com>, Dean DeBeltz <ddebeltz@twin-metals.com>, Erik Carlson <ecarlson@twin-metals.com>, "Piccoli, Francis P" <fpiccoli@blm.gov>, "Olson, Shawn A -FS" <shawn.olson@usda.gov>

Subject: Surface Disturbing Activities on Prospecting Permits

Mr. Osborne - Please see the attached letter regarding surface disturbing activities on thirteen prospecting permits in the Superior National Forest. If you have any questions, please let us know.

Thank you,
Stephanie

Stephanie Carman

Associate District Manager
Bureau of Land Management
Northeastern States District
scarman@blm.gov
office: (414) 297-4450
cell: (414) 391-9721

UNITED STATES DISTRICT COURT
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**[PROPOSED] ORDER GRANTING
DEFENDANTS' MOTION FOR
VOLUNTARY REMAND
WITHOUT VACATUR**

Honorable Dabney L. Friedrich

Upon consideration of Defendants' Motion for Voluntary Remand without Vacatur, it is hereby **ORDERED** that Defendants' Motion is **GRANTED**.

IT IS SO ORDERED.

DATE: _____

HON. DABNEY L. FRIEDRICH
United States District Judge

Counsel to be notified: All counsel of record via ECF.