

ORAL ARGUMENT WAS HELD ON JANUARY 13, 2025

No. 23-5254

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

TWIN METALS MINNESOTA LLC, et al.,
Plaintiffs-Appellants,

v.

UNITED STATES, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the District of Columbia
No. 22-cv-2506-CRC (Hon. Christopher Reid Cooper)

OPPOSED JOINT MOTION FOR ABEYANCE

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CERTIFICATE OF PARTIES, RULINGS, AND RELATED CASES**A. Parties, Intervenors, and Amici:****Plaintiffs-Appellants:**

Twin Metals Minnesota LLC

Franconia Minerals (US) LLC

Defendants-Appellees:

United States of America

U.S. Department of the Interior

Doug Burgum, Secretary of the Interior¹

Greg Zerzan, Senior Advisor to the Secretary, exercising the
delegated authority of the Solicitor of the Department of the Interior

U.S. Bureau of Land Management

Jon Raby, Nevada State Director, exercising the delegated authority of
the Director of the Bureau of Land Management

Mitchell Leverette, State Director, Eastern States, Bureau of Land
Management

¹ The successors in office of named public officials are automatically substituted as parties. *See* Fed. R. App. P. 43(c)(2).

Intervenor-Defendant Appellees:

Center for Biological Diversity

Ely Outfitting Company & Boundary Waters Guide Service

Freemans Explore, LLC

Friends of the Boundary Waters Wilderness

Hungry Jack Outfitters

Izaak Walton League of America

Northeastern Minnesotans for Wilderness

Northstar Canoe

Piragis Northwoods Company

River Point Resort and Outfitting Company

Sawbill Canoe Outfitters, Inc.

The Wilderness Society

Voyageur Outward Bound School

Wenonah Canoe, Inc.

Women's Wilderness Discovery

Amici:

American Exploration & Mining Association

Iron Range and Vicinity Building and Construction Trades Council

MiningMinnesota

Minnesota State Building and Construction Trades Council

National Mining Association

North America's Building Trades Unions

Range Association of Municipalities and Schools

B. Rulings Under Review:

The ruling at issue in this appeal is the District Court's September 6, 2023, Order granting Appellees' and Appellee-Intervenors' motions to dismiss. ECF No. 61. A Memorandum Opinion by Judge Christopher R. Cooper of the United States District Court for the District of Columbia accompanied the Order. ECF No. 62.

C. Related Cases:

None.

/s/ Rebecca Jaffe

REBECCA JAFFE

Counsel for Defendants-Appellees

Federal Defendants and Plaintiffs Twin Metals Minnesota LLC and Franconia Minerals (US) LLC (collectively, Twin Metals) respectfully move the Court to hold this case in abeyance with a status report due from Federal Defendants in 90 days. Intervenor Defendants, a coalition of environmental groups, “oppose the request and intend to file a motion in response.”

1. Plaintiff Twin Metals challenges the Department of the Interior’s decision in 2022 to cancel two mineral leases. *See United States Br. 1, 6–12, 14.* Plaintiff also challenges Interior’s decision in 2021 to deny two preference-right lease applications after the United States Forest Service applied to withdraw the relevant lands from mineral leasing, subject to valid existing rights. *See id.* at 1–2, 12–13, 14. The leases and preference-right lease applications cover lands with copper, nickel, and other critical mineral deposits in Superior National Forest in Minnesota. JA21–22, JA29, JA31.

2. This case is fully briefed and oral argument was held on January 13, 2025.

3. Following a change in administration, on January 20, 2025, President Donald J. Trump issued an Executive Order titled “Unleashing American Energy” that directed the Secretary of the Interior to “identify all agency actions that impose undue burdens on the domestic mining and processing of non-fuel minerals and undertake steps to revise or rescind such actions.” *Unleashing American Energy*,

Exec. Order. No. 14154, 90 Fed. Reg. 8353, 8358 § 9(a) (Jan. 20, 2025). Under this Executive Order, the Secretaries of the Interior and Agriculture also “shall reassess any public lands withdrawals for potential revision.” *Id.* § 9(b).

4. On February 3, 2025, Secretary of the Interior Doug Burgum issued an order to implement the *Unleashing American Energy* Executive Order and to “direct[] the removal of impediments imposed on the development and use of our Nation’s abundant energy and natural resources.” *Unleashing American Energy*, Interior Secretary’s Order No. 3418, 2025 WL 435733, at *1 § 1 (Feb. 3, 2025). The Order directs all Interior Assistant Secretaries to submit actions plans to Secretary Burgum identifying “actions to reinstate, as appropriate, all leases issued by the Bureau of Land Management for natural resource development that were cancelled” by the previous administration; “actions to review and, as appropriate, revise all undue burdens on the domestic mining and processing of nonfuel minerals”; and “actions to review, and as appropriate, revise all withdrawn public lands.” *Id.* at *4–*5 § 4(c).

5. In light of the *Unleashing American Energy* Executive Order and the *Unleashing American Energy* Secretary’s Order, agency officials at the Department of the Interior are currently reviewing the actions at issue in this litigation. Decl. of Mitchell Leverette, State Director, Eastern States, Bureau of Land Management, ¶ 6 (Feb. 18, 2025) (attached as Ex. 1). In addition, agency

officials are in the process of onboarding and familiarizing themselves with the issues presented in this case. *Id.* To provide new leadership with sufficient time to familiarize themselves with the actions at issue in this litigation, comply with the *Unleashing American Energy* Executive and Secretary's Orders, and determine what if any steps Interior will take relevant to the agency actions challenged in this case and what effect such steps may have on the pending appeal, Federal Defendants and Plaintiff Twin Metals respectfully request that the Court place this case in an abeyance, with a status report due from Federal Defendants in 90 days. *See* 90 Fed. Reg. at 8354 § 3(c)(ii) (directing that the Attorney General may request that courts "stay or otherwise delay further litigation, or seek other appropriate relief" while agencies work to comply with the *Unleashing American Energy* Executive Order).

6. Given that Interior is evaluating the actions challenged in this appeal and any decision the agency takes may materially affect the scope of live issues before the court, an abeyance will conserve judicial resources. The Court's authority to order such an abeyance is well-settled. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) ("The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.").

7. No party will be materially prejudiced by the abeyance because Plaintiff Twin Metals joins this request and, to the Federal Defendants' knowledge, there are no ongoing activities pursuant to the presently cancelled leases or denied preference right lease applications, and therefore no disturbance to environmental Intervenor Defendants' asserted interests. Leverette Decl. ¶ 7.

CONCLUSION

For the foregoing reasons, Federal Defendants and Plaintiff Twin Metals respectfully request that this appeal be held in abeyance, with a status report to be filed by Federal Defendants in 90 days.

Respectfully submitted,

/s/ Lisa S. Blatt

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February 18, 2025

CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f) this document contains 780 words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

/s/ Rebecca Jaffe

REBECCA JAFFE

Counsel for Defendants-Appellees

EXHIBIT 1

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

TWIN METALS MINNESOTA LLC, et al.,

Plaintiffs-Appellants,

v.

UNITED STATES, et al.,

Defendants-Appellees.

No. 23-5354

DECLARATION OF MITCHELL LEVERETTE

I, Mitchell Leverette, declare under 28 U.S.C. § 1746 as follows:

1. I am the State Director of the Bureau of Land Management (BLM) Eastern States. I have served with the BLM for over 38 years, and I am familiar with the agency actions at issue in this case. As the State Director of the BLM Eastern States, I am qualified to make this declaration.

2. I submit this declaration based upon my personal knowledge and information available to me in my official capacity.

3. On October 21, 2021, the Bureau of Land Management denied two preference right lease applications, MNES-57965 and MNES-50254, submitted by Twin Metals Minnesota. The Bureau denied those applications after the United States Forest Service applied to the Secretary of the Interior to withdraw the relevant lands from mineral and geothermal leasing, subject to valid existing rights.

On January 26, 2022, the Deputy Secretary of the Department of the Interior cancelled two mineral leases that had been renewed, MNES-01352 and MNES-01353, and that had been issued to Twin Metals Minnesota. Twin Metals challenged these actions in court, *Twin Metals Minnesota LLC v. United States*, No. 23-5254 (D.C. Cir.).

4. On January 20, 2025, President Donald J. Trump issued an Executive Order entitled, “Unleashing American Energy,” which directs the Secretary of the Interior to “identify all agency actions that impose undue burdens on the domestic mining and processing of non-fuel minerals and undertake steps to revise or rescind such actions.” *Unleashing American Energy*, Exec. Order. No. 14154, 90 Fed. Reg. 8353, 8358 § 9(a) (Jan. 20, 2025). Under the *Unleashing American Energy* Executive Order, the Secretaries of the Interior and Agriculture also “shall reassess any public lands withdrawals for potential revision.” *Id.* § 9(b).

5. On February 3, 2025, Secretary of the Interior Doug Burgum issued an order to implement the *Unleashing American Energy* Executive Order and to “direct[] the removal of impediments imposed on the development and use of our Nation's abundant energy and natural resources.” *Unleashing American Energy*, Interior Secretary’s Order No. 3418, 2025 WL 435733, at *1 § 1 (Feb. 3, 2025). The Order directs all Interior Assistant Secretaries to submit action plans to the Secretary identifying “actions to reinstate, as appropriate, all leases issued by the

Bureau of Land Management for natural resource development that were cancelled” by the previous administration, “actions to review and, as appropriate, revise all undue burdens on the domestic mining and processing of nonfuel minerals,” and “actions to review, and as appropriate, revise all withdrawn public lands.” *Id.* at *4–*5 § 4(c).

6. Agency officials at the Department of the Interior are currently reviewing prior actions to which the relevant orders may apply, including the lease cancellations and lease application denials at issue in this litigation. In addition, agency officials are in the process of onboarding and familiarizing themselves with the issues presented in this case. New leadership needs time to familiarize themselves with the actions at issue in this litigation, comply with the *Unleashing American Energy* Executive and Secretary’s Orders, and determine how Interior should proceed—including whether the agency will take any steps that may affect, amend, rescind, or otherwise alter the actions challenged in this litigation.

7. Because the leases and preference right lease applications at issue in this case are presently cancelled and denied, respectively, they do not presently authorize Twin Metals to conduct any ground-disturbing activities. To Interior’s awareness, no such activities are presently occurring.

8. I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 18, 2025

MITCHELL LEVERETTE  Digitally signed by MITCHELL
LEVERETTE
Date: 2025.02.18 11:50:23 -05'00'

Mitchell Leverette
State Director, Eastern States
Bureau of Land Management
United States Department of the Interior