No. 23-5254

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

TWIN METALS MINNESOTA LLC &
FRANCONIA MINERALS (US) LLC,
Appellants,

v.

UNITED STATES OF AMERICA, *et al.*,
Appellees,

PIRAGIS NORTHWOODS COMPANY, *et al.*,
Intervenor-Defendant-Appellees.

BRIEF OF AMICUS CURIAE RANGE ASSOCIATION OF MUNICIPALITIES AND SCHOOLS IN SUPPORT OF APPELLANTS AND REVERSAL

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CORPORATE DISCLOSURE STATEMENT

The Range Association of Municipalities and Schools is a governmental subdivision for all purposes envisioned by applicable Minnesota law, and there is no information to disclose pursuant to Fed. R. App. P. 26.1 and 29(a)(4)(A); the Association files this disclosure statement with this brief per Circuit Rule 26.1.

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CONSENT TO FILING

All parties have consented to the Range Association of Municipalities and Schools filing this brief.

IDENTITY OF THE AMICUS CURIAE, ITS INTEREST IN THE CASE, AND THE SOURCE OF ITS AUTHORITY TO FILE

The Range Association of Municipalities and Schools (RAMS or the Association) is a governmental subdivision that represents the collective interests of over 20 municipalities and 15 school districts in the Iron Range area of northeastern Minnesota. Chartered in the 1940s, the Association's core purpose is to promote the economic development, community vitality, and general welfare of its member cities, towns, and schools. This includes serving as the primary advocate on Iron Range-wide and statewide issues with unique significance to the region, and expressing unified policies concerning the powers, rights, and matters essential to the well-being of Iron Range communities.

RAMS and its members have a vital interest in the outcome of this case. The proposed Twin Metals mining project promises to bring immense economic benefits to the Iron Range in the form of thousands of high-paying direct jobs, thousands more indirect and induced jobs, millions in annual tax revenue, and the preservation of the region's mining heritage and identity. However, the district court's ruling—in which the court upheld the federal regulators' unreasonable cancellation of Twin Metals' mineral leases and rejection of its preference right lease applications

(PRLAs) and mine plan of operations (MPO)—threatens to eviscerate these benefits. The decision endangers educational opportunities, public services, and the very viability of Iron Range communities.

The Iron Range supplied the iron that won World War II. Decades later, the Twin Metals mine would offer the Association's members an opportunity to diversify into non-ferrous mining, strengthening the local economies and giving the people *in* the Iron Range the opportunity to be stewards of their lands. The people of the Iron Range—rather than so-called "interest" groups far from Minnesota—know what is best for themselves and their communities. These communities can thrive again.

Per Fed. R. App. P. 29 and Circuit Rule 29, RAMS has authority to bring to the attention of the Court relevant matter not already brought to its attention by Twin Metals; and as the leading advocate for these communities and their futures, RAMS *must* speak out to support Twin Metals and urge reversal of the district court's unreasonable decision.

FED. R. APP. P. 29(A)(4)(E) STATEMENT

No party's counsel authored the brief in whole or in part. No party or a party's counsel contributed money that was intended to fund preparing or submitting the brief. And no person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief.

ARGUMENT

I. The APA Provides Jurisdiction Over the Lease Cancellation Claims.

Under the Administrative Procedure Act (APA), all federal regulators must act reasonably and within the legal limits set by Congress. 5 U.S.C. § 706(2)(A), (C). The district court decided that this requirement does not apply to federal regulators when there is a contract involved, *see* JA318–JA320, but the district court was wrong. And the court's refusal to hold regulators accountable—to make them act lawfully and reasonably—will harm RAMS and the Iron Range communities.

The district court fundamentally misconstrued the source and nature of Twin Metals' rights in deciding it lacked jurisdiction under the APA over the lease cancellation claims. Although the court myopically viewed these claims as asserting only narrow rights "created and determined by the mineral lease contract terms," in reality they are grounded in Twin Metals' much broader statutory rights under the Mining Act of 1866, Mineral Leasing Act of 1920, and the series of specific laws authorizing mineral development in this distinct part of the Superior National Forest. JA27–30 (Compl. ¶¶ 31–37). Collectively, these laws reflect Congress's careful policy judgment to allow mining on federal lands here, on specified terms, subject to regulation. *Id*.

Twin Metals' leases were issued per this statutory and regulatory scheme. Its rights to explore for, develop and mine the valuable hard rock mineral deposits

therefore ultimately stem from these statutes, not just the lease contracts themselves. When the government abruptly cancelled the leases in 2022 based on a novel and arbitrary reinterpretation of the statutory and regulatory framework, Twin Metals properly invoked the APA to challenge that unlawful final agency action as arbitrary, capricious and contrary to law. The APA's waiver of sovereign immunity squarely applies to such challenges to final agency actions under 5 U.S.C. § 706(2).

The district court, however, disregarded all this in erroneously holding the lease cancellation claims can proceed, if at all, only under the Tucker Act. JA318–JA322. This holding reflects a fundamental misunderstanding of Tucker Act jurisdiction. The Act is not the exclusive remedy for any case that remotely involves a government contract. Rather, as this Court made clear in *Megapulse, Inc. v. Lewis*, the proper inquiry looks to both the source of the rights asserted and whether the Tucker Act provides an adequate alternative remedy. 672 F.2d 959, 968 (D.C. Cir. 1982).

Here, Twin Metals is asserting statutory mineral rights under a constellation of federal land-management and mineral-development laws. And it is not seeking monetary compensation for a breach of contract, but a declaration of the that the federal regulators acted unreasonably and an injunction to prevent them from crippling this project that is crucial to the well-being of the Iron Range. The APA is the proper vehicle for such claims, and the lower court should hear them.

The district court's error, if allowed to stand, threatens to effectively eliminate APA jurisdiction whenever challenged agency action has any nexus to a government contract. This would improperly curtail Congress's broad waiver of sovereign immunity in the APA and frustrate its purpose of allowing aggrieved parties to hold federal regulators accountable for unlawful conduct. It would also devastate judicial economy at the Court of Federal Claims.

The communities that RAMS represents rely heavily on lawful, predictable regulation of federal mineral rights to facilitate the responsible economic development that would let these communities thrive. Allowing federal regulators to escape APA review of their unlawful or otherwise unreasonable actions through an overly expansive view of Tucker Act jurisdiction would severely undermine these communities' reliance interests, opportunities to grow, and the rule of law.

RAMS wants to see the Iron Range communities thrive and the Nation benefit from the region's diversified—that is, non-ferrous and moving to a broader array of strategic metals than just iron—mineral potential. The Court should reject the district court's misguided approach and reaffirm that the APA provides a remedy where, as here, a plaintiff asserts statutory rights and the Tucker Act alone is inadequate.

II. BLM's Blanket Denial of the Preference Right Lease Applications Violated Twin Metals' Vested Rights.

Just as communities that RAMS represents rely heavily on lawful, predictable regulation of federal mineral rights, it is understandable that Twin Metals, an

important part of the Iron Range, should be able to rely on such regulation too. Yet the district court erred in refusing to consider the federal regulators' (here, the Bureau of Land Management's) unreasonable rejection of Twin Metals' PRLAs, and resulting disenfranchisement of the Association's members in the Iron Range. The court's truncated analysis failed to grapple with the extensive, well-pleaded allegations demonstrating that Twin Metals held fully vested rights in the PRLAs that precluded their peremptory denial. This Court should send the case back to the district court for resolution of Twin Metals' claims.

As the complaint explains, PRLAs are unique property interests under federal mining law designed to encourage mineral exploration on public lands. *E.g.*, JA34 (Compl. ¶¶ 47–49), JA59 (Compl. ¶¶ 120–121). A company can obtain a PRLA by first securing a prospecting permit from the Bureau of Land Management (BLM), exploring for valuable hardrock mineral deposits, and upon discovering such deposits, applying for a non-competitive lease to mine them. 43 C.F.R. §§ 3505.10, 3507.15. Critically, once a company satisfies these requirements and the federal regulators verify the discovery of a valuable deposit, the PRLA vests as a matter of law and the federal regulators must issue the corresponding lease.

Twin Metals did everything necessary to vest its rights in the PRLAs here. It obtained prospecting permits, conducted extensive drilling and exploration at its own expense, and discovered large, high-grade deposits of copper, nickel, cobalt and

platinum group metals that would be economic to mine. JA34 (Compl. ¶¶ 47–49). Accordingly, in 2006 and 2013, Twin Metals submitted PRLAs for leases to mine the valuable deposits it had found, as the prospecting permits and regulations entitled it to do. *Id.*

BLM itself confirmed Twin Metals' vested rights in the PRLAs. In October 2018 and June 2020, after thorough review, the federal regulators issued formal determinations that Twin Metals had indeed discovered valuable deposits on the lands covered by the PRLAs. JA45–JA46 (Compl. ¶ 78). These official findings, known as "Preliminary Valuable Deposit Determinations" (PVDDs), conclusively established Twin Metals' entitlement to the preference right leases under BLM's regulations. 43 C.F.R. § 3507.15. At that point, the federal regulators had no discretion to deny the PRLAs—their sole function was to formalize Twin Metals' vested lease rights.

Yet just a year later, BLM abruptly reversed course and rejected the PRLAs based solely on its conclusion that a subsequent "segregation" of the lands from mineral entry rendered the applications "discretionary" and thus subject to denial. JA234 (Compl., Ex. J at 1). This rationale cannot be squared with the vested nature of Twin Metals' rights, as conclusively established by the PVDDs. Those rights attached before any segregation and could not be extinguished by it.

Instead, the court concluded that the complaint did not state a claim because

BLM had discretion to deny Twin Metals' pending PRLAs. The court found that 16 U.S.C. § 508b, which governs mineral leasing in this part of the Superior National Forest, lacks the "entitlement" language in other mineral leasing statutes that would require federal regulators to grant a lease upon discovery of a valuable deposit. The court decided that this statutory framework and the corresponding regulations gave BLM discretion to deny the PRLAs once the segregation occurred. However, this analysis did not carefully consider Twin Metals' well-pleaded allegations that would show its vested rights in the PRLAs that should have precluded denial.

Further, the court's analysis would render PRLAs illusory. It would mean a company could invest years and tens of millions of dollars in exploration, secure an official BLM determination of a valuable discovery, and still have its vested lease rights revoked by a subsequent, arbitrary order. This would frustrate the entire purpose of PRLAs to incentivize mineral exploration by providing secure tenure upon discovery.

Twin Metals held vested rights in the PRLAs that precluded BLM's blanket denial based on the segregation order. In holding otherwise, the district court misconstrued the PRLA framework and the federal regulators' own findings confirming Twin Metals' entitlement to the leases. This error warrants reversal and reinstatement of Twin Metals' second claim. To hold otherwise would gravely undermine the security of vested rights in federal mineral interests.

The complaint plausibly and in detail alleges that Twin Metals earned vested rights to preference right leases by discovering valuable mineral deposits, as conclusively verified by BLM. The district court erred in disregarding those allegations based on a misreading of the segregation rule. This Court should reverse and ensure that the government keeps its promise to companies that successfully explore for and discover valuable public minerals. Any other result would erode the very foundation of the PRLA system and the mining rights it secures.

III. The Mine Plan of Operations Claim Was Improperly Dismissed and Plausibly Alleged Arbitrary and Capricious Agency Action.

The district court erred in dismissing Twin Metals' claim challenging BLM's arbitrary rejection of its proposed mine plan of operations (MPO). The complaint adequately stated a claim, but the court's perfunctory analysis failed to engage with the well-pleaded allegations.

As an initial matter, the court did not fully consider that the MPO covered significant acreage under Twin Metals' existing hard rock mineral leases, in addition to the PRLA lands. JA32 (Compl. ¶ 41). Even if the PRLAs were validly rejected (they were not), that would not necessarily authorize BLM to deny the entire MPO, insofar as it encompassed valid existing leases. The court did not address this critical issue or examine whether rejection of the PRLAs alone justified denial of the whole MPO. *See* JA326–328. This issue warrants merits analysis to determine if BLM's rejection of the complete MPO was arbitrary and capricious.

The complaint also plausibly alleged that BLM's summary rejection of Twin Metals' revised MPO, submitted in November 2021 to exclude the PRLA lands, was arbitrary and capricious under the agency's own regulations. Those regulations require BLM to "promptly approve the plans or indicate what additional information is necessary to conform to the provisions of the established requirements." 43 C.F.R. § 3592.1(a). This imposes a mandatory duty to provide feedback and allow supplementation. It does not permit peremptory rejection as "incomplete" with no explanation of deficiencies or chance to cure them.

Yet that is exactly what BLM did. The revised MPO simply removed PRLA acreage while keeping the substance of the plan intact. JA50 (Compl. ¶ 90). The federal regulators had already deemed the initial MPO complete and ready for environmental review. JA45 (Compl. ¶¶ 76–77). But it refused to even consider the November 2021 submission as a modification, insisting it was an entirely new plan. JA50 (Compl. ¶ 90).

This was arbitrary and capricious in multiple respects. It reflected a failure to consider important aspects of the problem, namely that the revisions were ministerial and BLM had already accepted the MPO as complete. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). It amounted to "an unexplained inconsistency in agency policy" given the federal regulators' prior acceptance of the MPO. *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222

(2016). It rested on a "clear error of judgment" that geographic revisions made it a new plan. *State Farm*, 463 U.S. at 43. And it violated BLM's own regulations requiring dialogue with applicants, not curt dismissal at the first opportunity. 43 C.F.R. § 3592.1(a). An agency's "depart[ure] from established precedent without a reasoned explanation" is "arbitrary and capricious." *ANR Pipeline Co. v. FERC*, 71 F.3d 897, 901 (D.C. Cir. 1995).

The district court did not meaningfully address any of this. It asserted BLM satisfied its obligations by "direct[ing]" Twin Metals to resubmit "relevant" materials, JA326, but those statements came in the same letter categorically rejecting the MPO. Such token "consideration" cannot immunize an unreasonable dismissal.

Twin Metals plausibly alleged that the federal regulators acted unlawfully or otherwise unreasonably in numerous respects in rejecting the revised MPO. The district court improperly brushed those detailed allegations aside. The claims should go ahead to the merits, where Twin Metals can definitively establish that BLM's peremptory, illogical, and inconsistent dismissal violated the APA and the agency's own regulations. The court's contrary holding was mistaken and warrants reversal. The people of the Iron Range deserve better than unlawful, unreasonable, and un*checked* federal regulatory actors.

IV. The District Court's Errors Threaten Devastating Consequences for the People, Students, Schools, and Communities of the Iron Range.

The legal errors discussed above are compounded by the profound real-world

consequences of the district court's decision for the people, communities, and schools of the Iron Range. The court did not appreciate the full scope of these harms, which underscores the need for reversal.

The proposed Twin Metals mine is a once-in-a-generation opportunity to revitalize the economy of this proud mining region for the long term. The construction phase alone would create thousands of high-paying union jobs. Once operational, the mine would employ hundreds of skilled workers and support an additional thousands of indirect and induced jobs across the region. These are the kinds of family-sustaining jobs, with generous benefits, which built the middle class on the Iron Range. They would enable a new generation of residents to build their lives and raise their families in the place they call home.

The Twin Metals mine would be an absolute game-changer for the cities, townships, and school districts RAMS represents. The economic activity from the construction and operation of the mine would generate tens of millions of dollars in annual tax revenue for local governments. This would provide a critical lifeline for cash-strapped municipalities to invest in long-deferred maintenance of roads, bridges, and water infrastructures. It would let them hire teachers and police officers, pave roads, replace lead pipes, and spur redevelopment. School districts could reduce class sizes, expand curriculums, and upgrade technologies. In short, it would enhance quality of life across the board and position the region for a brighter future.

Yet the district court barely acknowledged these myriad benefits of the Twin Metals mine. It gave short shrift to these compelling public interests in allowing the established leasing system to function as Congress intended and instead deferred entirely to alleged federal-regulatory interests in having unchecked authority to cancel leases at any time. The court failed to address the reliance interests of local governments, businesses, workers and other stakeholders who have been counting on the Twin Metals project—and the specific federal mineral laws and regulations governing it—to deliver these benefits to their communities.

The district court's decision, if not reversed, would be devastating for the Iron Range. It would pull the rug out from under the cities, townships, and school districts that have spent years working with Twin Metals on the project, participating in the review process, and making investment and hiring decisions based on its progress. It would gut the economic future of the region and the livelihoods of thousands of families, erasing the opportunity for shared prosperity the mine represents. The Range would lose population, businesses would close, schools would cut programs, and municipal services would be slashed. People would have no choice but to move away to find work, tearing the social fabric of close-knit communities.

Worst of all, this devastation would occur not due to any deficiency in the Twin Metals mine or failure to comply with rigorous state and federal environmental laws, but because of the arbitrary change in federal policy triggered by political

pressure from outside interests who want to place this mineral-rich area off-limits regardless of the science. If that outcome is allowed to stand, it would amount to a betrayal of northeastern Minnesota, a place that has proudly done the hard work powering and building America for generations but too often has been left behind economically. The Range deserves the chance to realize a prosperous future rooted in lawful, responsible mining under a stable leasing system. The district court's short-sighted decision would foreclose that.

The district court also failed to consider the critical role the Twin Metals mine would play in supporting the transition to renewable energy. The copper, nickel, cobalt, and other non-ferrous metals the mine would produce are essential for renewable energy technologies like wind turbines, solar panels, and electric-vehicle batteries. Demand for these metals is projected to skyrocket in coming decades as the world shifts to a future less reliant on carbon.

But not all sources of these metals are created equal from an environmental and human rights perspective. Twin Metals has committed to the highest labor and environmental standards, going above and beyond what regulations require. As a U.S. company operating under our nation's strict laws, Twin Metals would adhere to labor protections like minimum wage, overtime pay, collective bargaining rights, workplace safety rules, and bans on child and slave labor. Its workers would have access to health insurance, paid leave and other basic benefits. And its domestic

supply chain would support American manufacturing jobs and reduce vulnerability to trade disruptions and geopolitical conflicts.

On top of that, the Association's members are the true stewards of the Iron Range. *They* live near the proposed project, and *they* will police Twin Metals' compliance with labor and environmental standards.

By contrast, many of the alternative sources of these critical minerals are in countries with abysmal records of environmental protection and human rights. Much of the world's cobalt, a key battery metal, is currently mined in the Democratic Republic of Congo, often by child labor in dangerous conditions. Massive mine waste spills have poisoned rivers and farmland. Similarly, rare earth processing, important for wind turbines, is dominated by China, which has caused severe water and soil pollution. Nickel mining in Indonesia and the Philippines has ravaged carbon-absorbing rainforests and indigenous lands.

Opponents of the Twin Metals mine—obstructionists—who profess to care about the environment and human rights appear blind to these disturbing realities. They operate from the privileged assumption that we can have all the raw materials needed for the energy transition without any domestic mining impacts. In doing so, they are exporting the environmental and social costs of mineral extraction to communities in the developing world who lack the resources and institutions to manage them responsibly.

Keeping needed mineral resources in the ground in Minnesota will not reduce the global demand for them. It will simply shift production to places with fewer safeguards. Minnesota's world-class environmental regulations and the high standards companies like Twin Metals have pledged to uphold are a key part of the solution, not the problem. RAMS and its members reject the mine-opponents' desires to "export" their *consciences*. This project belongs in the Iron Range, where it can be constructed and operated cleanly.

The district court completely ignored these points in its analysis. It did not acknowledge the exemplary measures Twin Metals has taken to protect the environment and community, nor the staggering demand for critical minerals the energy transition will create. It also disregarded the grim conditions and negative global impacts of exporting mining to less regulated jurisdictions. These factors weigh strongly in favor of allowing the Twin Metals project to be judged on its merits under the established review process Congress put in place for exactly this situation.

Blocking the Twin Metals mine on specious legal grounds, as the district court did, is tantamount to judicially greenwashing the harms of mining in countries with minimal oversight. RAMS and its members embrace the responsibility that comes with the Twin Metals project and are eager to supply the raw materials for a better future—but they need a predictable regulatory framework to do so.

The district court's ruling throws that framework into chaos, with devastating consequences for the Iron Range and the clean energy transition. It would deprive the region of a generational opportunity for revitalization through a model mine, while empowering foreign producers who routinely violate human rights.

This Court should reject such a damaging result. It should reverse the judgment below and restore the predictable, transparent, and science-based mineral leasing framework for the area. The workers, families, students, schools, and communities RAMS represents are eager partners in responsible economic development. But they cannot plan or sustain a viable region without consistent application of duly enacted laws and regulations governing mineral development on federal lands.

The district court's decision undermines that consistency and breaks faith with the people of the Iron Range. This Court must intervene to uphold the true intent of Congress, honor these reliance interests, and give the Iron Range a fair chance to build the 21st-century economy northeastern Minnesota needs and deserves through a great project in the Twin Metals mine. Twin Metals should be able to try its claims that the federal regulators acted unlawfully and unreasonably.

CONCLUSION

The district court's dismissal of Twin Metals' claims was legally erroneous and would have severe consequences for the Iron Range if affirmed. This Court

should reverse the judgment and restore Twin Metals' right to pursue its proposed mine through the lawful leasing system Congress established for the area. The people of the Iron Range deserve nothing less.

Respectfully submitted,

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June 17, 2024

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because the brief contains 4,025 words, excluding those parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5)(A) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared with a proportionally spaced typeface using Microsoft Word Times New Roman 14-point font.

/s/ Ivan L. London
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June 17, 2024

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CERTIFICATE OF ELECTRONIC FILING

In accordance with this Court's CM/ECF User's Manual and Local Rules, I hereby certify that the foregoing has been scanned for viruses with Sentinel One, updated June 17, 2024, and is free of viruses according to that program.

In addition, I certify that all required privacy redactions have been made and the electronic version of this document is an exact copy of the written document to be filed with the Clerk.

/s/ Ivan L. London
Ivan L. London

June 17, 2024

Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I certify that on June 17, 2024, I filed a copy of the foregoing Brief of Amicus Curiae with the Clerk of the United States Court of Appeals for the District of Columbia Circuit through the Court's CM/ECF system, which serves copies on all attorneys of record.

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June 17, 2024

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