UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

FRANCONIA MINERALS (US) LLC; and TWIN METALS MINNESOTA LLC, Plaintiffs, v. UNITED STATES OF AMERICA; U.S. DEPARTMENT OF THE INTERIOR; SALLY JEWELL, Secretary, U.S. Department of the Interior; HILARY C. TOMPKINS, Solicitor, U.S. Department of the Interior; and BUREAU OF LAND MANAGEMENT, Defendants.	Civil Action No. _____

COMPLAINT

Plaintiffs Franconia Minerals (US) LLC ("Franconia") and Twin Metals Minnesota LLC ("Twin Metals"), for their complaint against defendants—the United States, the U.S. Department of the Interior, Sally Jewell, Hilary C. Tompkins, and the Bureau of Land Management ("BLM")—allege as follows:

INTRODUCTION AND NATURE OF THE ACTION

1. This is an action under the Quiet Title Act and the Administrative Procedure Act challenging the federal government's unlawful evisceration of plaintiffs' established property rights in minerals in the Superior National Forest in northeastern Minnesota.

2. Plaintiffs are two Minnesota mining companies. They possess valid existing mineral rights under federal law, based on the discovery of valuable minerals on federal lands. These rights are memorialized in two leases for hardrock

minerals (copper, nickel, and platinum-group metals) that were executed with the United States in 1966.

3. The leases grant the lessee the "exclusive right to mine, remove, and dispose" of all the copper, nickel, and associated minerals for a period of 20 years, with a "right in the Lessee to renew the same for successive periods" of 10 years. Ex. 1 (1966 Leases) § 1(a).

4. This right to successive renewals, which was grounded in the applicable government regulations and embodied long-standing mineral policy, was included in the leases because it was consistent with the type and nature of mineral tenure granted for valuable hardrock minerals that are discovered in unknown exploration areas. The renewal right, like the leases themselves, represented a reward for the discovery made by the lessee and the risk undertaken to make that discovery, i.e., a reward for the challenges associated with hardrock mineral development generally and challenges unique to such development in northeastern Minnesota specifically.

5. Hardrock mineral development is inherently risky, time-consuming, and expensive, requiring a substantial and long-term commitment of resources by the lessee in order for such minerals to be produced. Given this, no lessee would have undertaken the necessary investment in mineral exploration and development on the subject lands without a successive right to renew. Doing so would mean the government could unilaterally deny renewal of the leases and thereby deprive the lessee of a reasonable opportunity to recoup that investment. Absent a non-discretionary right to renew, in other words, the leases would have little if any value.

6. Over the past five decades—in reliance on their rights under governing federal law and the leases, and on continued assurances provided by federal government officials—plaintiffs (and their parent companies) have invested

approximately $400 million to explore for and then develop the vital hardrock minerals—metals of great strategic importance to the U.S. economy and national defense.

7. As a result of their investment, plaintiffs have identified and defined in the subject lands one of the largest untapped copper and nickel resources in the world, conservatively estimated at more than $40 billion of in-ground mineral value. Plaintiffs also possess adjacent state and private mineral leases, as well as additional valid existing federal mineral rights, that together total another $90 billion of in-ground mineral value. Given the interconnected nature of the mineral deposits on these various lands, denying plaintiffs' right to renew their federal mineral leases also impairs these other mineral rights.

8. The federal government, meanwhile, has assumed no financial risk for the work undertaken by plaintiffs (and their predecessors in interest) to discover and develop these minerals. It has, however, reaped significant benefits. These include substantial rents and royalties paid by the lessees under the leases. *See* Ex. 1 § 2. The benefits also include awareness and understanding of previously unknown mineral deposits on public lands.

9. Plaintiffs' predecessors in interest exercised their right to renew in 1989 and again in 2004; in each instance, BLM granted a 10-year renewal of the leases—without giving any indication that it believed it had discretion to deny renewal. *See* Ex. 2 (1989 Renewal Forms); Ex. 3 (2004 Renewal Forms).

10. When plaintiffs sought a third renewal, however—following the same process used for the two previous ones—the government changed the rules: Amid increased political pressure and intense opposition from environmental groups, defendant Hilary Tompkins issued a binding opinion concluding that BLM has discretion to deny renewal of the leases outright. *See* Ex. 4 ("Solicitor's Opinion" or "Opinion").

11. The Solicitor's Opinion is arbitrary, capricious, and contrary to law and the unambiguous terms of the leases, and the harm it inflicts on plaintiffs is drastic and far-reaching. The Opinion indefensibly changes the nature of the mineral tenure granted to plaintiffs, undermining their rights and creating a dispute over the parties' interests in the mineral estate. It also represents an unjustifiable reversal of the government's prior recognition of plaintiffs' rights—rights on which plaintiffs and their predecessors reasonably relied for decades as they invested hundreds of millions of dollars to explore and develop the underlying minerals. Finally, the Opinion makes it impossible for plaintiffs to engage in any long-term planning, investment, development, and operational decisions. It thereby effectively thwarts any development of the mineral estate—jeopardizing the jobs for generations that would come with the future mining project, and prejudicing plaintiffs' mineral rights on federal, state, and private lands contiguous to the leases.

12. Plaintiffs therefore bring this suit to quiet title to their renewable leasehold interest in the subject mineral estate (that is, the hardrock minerals in the specified lands) and to obtain a declaration that the Solicitor's Opinion is arbitrary, capricious, and contrary to law.

PARTIES

13. Plaintiff Twin Metals is a privately owned limited liability mining company, headquartered in Minnesota, that focuses on developing and operating a mining project to produce the valuable minerals underlying the lands covered by the two leases and other minerals.

14. Plaintiff Franconia is a limited liability mining company, headquartered in Minnesota, that engages in the discovery and development of base metals and platinum-group metals in the United States. Franconia is a wholly owned subsidiary of Twin Metals. Franconia is the owner by assignment of any and

all rights, titles, and interests in the two federal hardrock mineral leases at issue here, MNES-01352 and MNES-01353.

15. Defendant United States owns the real property covered by the leases.

16. Defendant U.S. Department of the Interior is responsible for the management of certain federal lands and natural resources, including the subject lands.

17. Defendant Sally Jewell is the Secretary of the Interior and is sued in her official capacity. The Secretary has the authority to permit prospecting, development, and use of mineral resources in the subject lands.

18. Defendant Hilary Tompkins is the Solicitor of the Department of the Interior and is sued in her official capacity. The Solicitor is the chief legal officer of the Department of the Interior, *see* Department of the Interior, *Department Manual*, Part 209, § 3.1 (1992), and is authorized to "issue final legal interpretations, in the form of M-Opinions … on all matters within the jurisdiction of the Department," *id.* § 3.2(A)(11). Such opinions are "binding … on all other Departmental offices and officials and … may be overruled or modified only by the Solicitor, Deputy Secretary, or the Secretary." *Id.* On March 8, 2016, Tompkins issued the Solicitor's Opinion at issue in this case.

19. Defendant BLM is an administrative agency within the U.S. Department of the Interior. It has been delegated authority by the Secretary of the Interior to administer the prospecting for and development and utilization of minerals on certain federal lands and, in particular, is responsible for approving applications for the grant and renewal of mineral-related leases on federally owned land.

JURISDICTION AND VENUE

20. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1346(f), and 1361.

21. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1402(d) because the property that is the subject of this action is located in Minnesota.

22. Plaintiffs' Quiet Title Act claim is timely under 28 U.S.C. § 2409a because it is brought within 12 years of the date that plaintiffs knew or should have known that the United States disputes Franconia's right, title, or interest in the lands at issue.

23. Plaintiffs' Administrative Procedure Act claims are timely under 28 U.S.C. § 2401(a) because they are brought within six years of defendants' actions repudiating plaintiffs' successive non-discretionary right to renewal of the leases.

LEGAL BACKGROUND

24. This case involves a mineral estate in lands within the Superior National Forest in northeastern Minnesota. The lands encompassed by the two relevant leases include public-domain land as well as land acquired by the United States under the Weeks Act, 36 Stat. 961 (1911) (codified at 16 U.S.C. §§ 515 *et seq.*).

A. General Mining Law

25. The process of prospecting for and developing federal mineral deposits—especially hardrock mineral deposits—is risky, time-consuming, and expensive. It requires long-term planning and investment and presents a high likelihood of failure.

26. Recognizing these inherent difficulties, as well as the national interest in hardrock-mineral development, Congress created incentives for private exploration of unknown geologic deposits, by rewarding the discovery of valuable mineral deposits.

27. In particular, in 1872 Congress enacted the General Mining Law, which provides the foundation for the private acquisition of hardrock minerals on public-domain lands. *See* 17 Stat. 91 (1872) (codified at 30 U.S.C. §§ 22 *et seq.*). The purposes of this law included encouraging development of U.S. resources and

facilitating the transfer of public minerals to private parties. Hence, declaring that "all valuable mineral deposits in lands belonging to the United States … [are] free and open to exploration and purchase," *id.*, the General Mining Law encourages citizens to "enter and explore the public domain, and search for minerals," *Andrus v. Shell Oil Co.*, 446 U.S. 657, 658 (1980).

28. Under the law, "'[d]iscovery' of a mineral deposit … gives an individual the right of exclusive possession of the land for mining purposes" and the right "to extract and sell minerals" lying beneath the surface. *United States v. Locke*, 471 U.S. 84, 86 (1985). Additionally, "[f]or a nominal sum, and after certain statutory conditions are fulfilled, an individual may patent the claim, thereby purchasing from the Federal Government the land and minerals and obtaining ultimate title to them." *Id.*

B. Mineral Leasing Act Of 1920 And Mineral Leasing Act For Acquired Lands Of 1947

29. Nearly half a century after passage of the General Mining Law, Congress enacted comprehensive mineral leasing legislation to encourage "private mining and marketing while preserving federal ownership of the mineral lands." *Natural Resources Def. Council v. Berklund*, 609 F.2d 553, 555 (D.C. Cir. 1979) (per curiam).

30. In that legislation—the Mineral Leasing Act of 1920, Pub. L. No. 66-146, 41 Stat. 437 (codified at 30 U.S.C. §§ 181 *et seq.*)—Congress withdrew certain non-hardrock minerals ("oil shale and several other minerals") from the open-access regime of the General Mining Law, providing "that thereafter [they] would be subject to disposition only through leases." *Andrus*, 446 U.S. at 659.

31. Because the Mineral Leasing Act authorized leasing of identified non-hardrock minerals only on public-domain lands, Congress subsequently enacted the Mineral Leasing Act for Acquired Lands, authorizing leasing of the same minerals

on acquired lands. *See* Pub. L. No. 80-382, 61 Stat. 913 (1947) (codified at 30 U.S.C. §§ 351 *et seq*.).

32. Consistent with the long-standing mineral policies embodied in the General Mining Law, these later statutes continued to recognize the critical importance of mineral development to the United States, and the corresponding need to reward prospectors for undertaking the risk of exploring for unknown mineral deposits.

33. In particular, Congress—using "unequivocal and clear" statutory language—established that a prospecting permittee who makes a valuable discovery "'shall be entitled to a lease'" for the minerals. *Berklund*, 609 F.2d at 557 (quoting 30 U.S.C. § 201(b) (1970)). That pellucid language deprived the Secretary of the Interior of discretion to deny a lease once a valuable discovery occurs. *Id.* Put simply: "[T]he applicant who satisfies the condition is *entitled to a lease*." *Id.* (emphasis added).

34. The Department of the Interior, through decades of uniform practice, agreed. As the D.C. Circuit explained in 1979, "[t]he Department … , through the 58 years of administration of these provisions, has consistently interpreted § 201(b) … as denying [the Secretary] discretion to reject a preference right lease once a permit has issued and coal in commercial quantities has been found." *Berklund*, 609 F.2d at 555 n.5. The term "preference right lease," as the D.C. Circuit explained in the same case, has "been construed by [the Department of the Interior] consistently for nearly 60 years to mean an *automatic entitlement* of a prospecting permittee who establishes the presence of commercial quantities of coal in the area covered by the permit." *Id.* at 557-558 (emphasis added).

C. Mineral Development In Minnesota

35. The acquisition of federal hardrock minerals by private parties in the Superior National Forest is not governed by the General Mining Law or the other

statutes discussed above. It is instead regulated under three laws enacted in the early and mid-1900s, as well as the Secretary's implementing regulations. Those governing statutes and regulations, however, preserve the defining feature of the laws discussed above, namely rewarding prospectors for the discovery of a valuable mineral deposit by granting a property interest in the mineral estate.

1. Public-Domain Lands

36. One year after enacting the General Mining Law, Congress excepted from it all mineral lands in Minnesota (and Michigan and Wisconsin). *See* 17 Stat. 465 (1873) (codified at 30 U.S.C. § 48); S. Rep. No. 81-1778, at 1 (1950).

37. In 1950, however, Congress authorized hardrock mineral exploration and development on public-domain land in the Superior National Forest. Specifically, it authorized the Secretary of the Interior, with the consent of the Secretary of Agriculture, to "permit the prospecting for and the development and utilization of … mineral resources" in the Forest, to the extent not already statutorily authorized. Pub. L. No. 81-594, 64 Stat. 311 (1950) (codified at 16 U.S.C. § 508b).

38. According to the accompanying Senate report, the 1950 Act was intended not just to "permit" such mining, but to encourage it as a "highly desirable" activity. S. Rep. No. 81-1778, at 2. That policy continues to be reflected in the current Superior National Forest Land and Resource Management Plan, which expressly designates "[e]xploration and development of mineral and mineral material resources" as a "desired condition" in the Forest.

39. Congress enacted the 1950 Act against the backdrop of the executive branch's failure to honor and protect mining companies' legitimate reliance interests, resulting in severe economic consequences for those companies. *See* S. Rep. No. 81-1778, at 2; H.R. Rep. No. 81-795, at 2 (1949). Indeed, according to the Senate report it was Congress's dissatisfaction with "investment losses resulting

from cancellation of mining permits in the Minnesota forests" that spurred passage of the law. S. Rep. No. 81-1778, at 2. In particular, the accompanying House report stated, companies that "have made investments for the mining and removal of mineral substances from the described lands should be given the privilege of renewing or retaining their permits or leases." H.R. Rep. No. 81-792, at 2.

2. Acquired Lands

40. As noted, this case involves not only federal public-domain land but also land acquired by the federal government under the Weeks Act, which authorizes the Secretary of Agriculture to identify and purchase certain lands "as in his judgment may be necessary to the regulation of the flow of navigable streams or for the production of timber." 15 U.S.C. § 515.

41. Congress authorized hardrock mining on such land by a statute enacted in 1917 and amended in 1946. *See* Pub. Law No. 64-390, 39 Stat. 1150 (1917) (codified at 16 U.S.C. § 520), *amended by* Reorganization Plan No. 3 § 402, 60 Stat. 1099 (1946).

42. As amended, this statute authorizes the Secretary of the Interior "to permit the prospecting, development, and utilization of mineral resources of the land acquired under … the Weeks law," 39 Stat. 1150, provided that the Secretary "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," 60 Stat. 1099.

3. The Boundary Waters Canoe Area Wilderness

43. In 1964, Congress enacted the Wilderness Act, "establish[ing] a National Wilderness Preservation System to be composed of federally owned areas designated by Congress as 'wilderness areas.'" Pub. L. No. 88-577 § 2(a), 78 Stat. 890 (1964). The Wilderness Act represented a compromise between preservation

and mining interests: While Congress imposed restrictions on mineral development in wilderness areas, it authorized continued prospecting for minerals if such activity was "carried on in a manner compatible with the preservation of the wilderness environment"; protected pre-existing mineral rights; and established a 20-year grace period for the exploration of minerals and the conveyance of mineral tenure upon the occurrence of a valuable discovery. *Id.* § 4(d)(2), (3), 78 Stat. at 894-895.

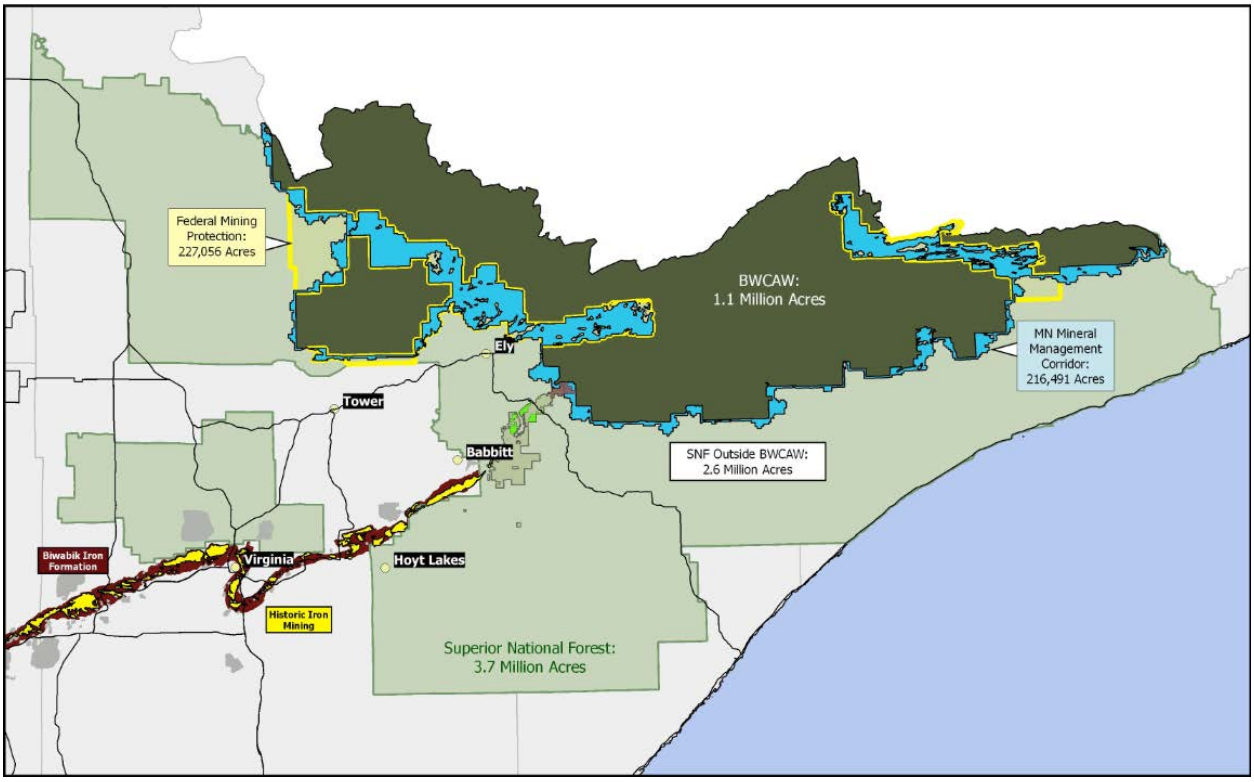
44. The Boundary Waters Canoe Area became part of the National Wilderness Preservation System established by the Wilderness Act. Pub. L. No. 88-577 § 4(d)(5), 78 Stat. at 895.

45. In 1978, twelve years after the leases at issue here were executed, Congress reaffirmed its support for mining in the Superior National Forest when it passed the Boundary Water Canoe Area Wilderness Act. *See* Pub. L. No. 95-495, 92 Stat. 1649 (1978). Superseding the 1964 designation of the Boundary Waters Canoe Area, this act designated the 1.1-million-acre Boundary Waters Canoe Area Wilderness, an area located along the northern border of the 3.7-million-acre Forest. *See* Pub. L. No. 95-495, 92 Stat. 1649 (1978). The product of intense public debate, that designation reflected a compromise that balanced preservation interests with the need for access to important mineral resources—and respect for vested mineral rights—in the Forest.

46. Although Congress prohibited mineral development in the wilderness, it expressly permitted mining in 2.4 million acres of the Superior National Forest—including the subject lands here. *See* Pub. L. No. 95-495 § 11(b)(1), 92 Stat. at 1655-1656. To ensure that mineral development would not harm the wilderness, Congress established as a buffer zone a 220,000-acre "Mining Protection Area"

bordering the wilderness. *See id.* §§ 9-10, 92 Stat. at 1655. The subject lands are located outside the buffer zone.[1]

47. The following map depicts the Boundary Water Canoe Area Wilderness, the Mining Protection Area, and the Superior National Forest boundary.



4. Relevant Regulations

48. The Secretary of the Interior, under the authority of both the 1950 Act and the 1917 Act as amended in 1946, promulgated regulations governing hardrock-mineral development in public-domain and acquired lands in the Superior National Forest. *See generally* 43 C.F.R. Pt. 3220 (1966); *id.* §§ 3325.0-3 to 3325.3 (1966).

49. In accordance with the long-standing mineral law and policy discussed above, these regulations created incentives for exploration, including rewards for

[1] Subsequent to the execution of the leases, Minnesota created a Mineral Management Corridor bordering the wilderness area (depicted in blue on the above map). State law prohibits surface mining—but not underground mining—within the Corridor. A portion of the surface of MNES 1353 is located within the Corridor.

discovery. In particular, the regulations established that the discovery of a valuable mineral deposit entitled a prospector to a renewable leasehold interest in the mineral estate. 43 C.F.R. § 3221.4(a), (f) (1966). Although both the method by which prospectors acquired an interest in the minerals and the type of mineral tenure that was granted (a leasehold) differed from what was provided under the General Mining Law (a patent), the central feature of both was the same: an entitlement right to the mineral estate upon the discovery of a valuable mineral deposit. The purpose behind this right is to give prospectors an incentive to incur the expense and risk required to identify the valuable deposit, and to reward them for doing so by providing an opportunity to benefit from any discovery.

50. More specifically, the Secretary's regulations required a prospector to submit an application for a prospecting permit to the Secretary of the Interior. *See* 43 C.F.R. § 3221.2 (1966). If a permit was granted, the permittee had the "exclusive right to prospect on and explore the described lands to determine the existence of, or workability of, the mineral deposits therein." *Id.* § 3221.2(a) (1966).

51. The regulations further provided that if the holder of a prospecting permit discovered a valuable mineral deposit, the permittee was entitled to a "[r]eward for discovery." 43 C.F.R. § 3221.4 (1966). In particular, the permittee was entitled to a lease for the mineral deposit, with a non-discretionary right of renewal:

> Upon discovery of any valuable deposit of minerals the permittee *shall be entitled* to a preference right lease for the mineral in any or all of the lands in the permit[.]
>
> The lease will be issued for a period not exceeding 20 years …. The lessee *will be granted a right of renewal* for successive periods, not exceeding 10 years each, under such reasonable terms and conditions as the Secretary of the Interior may prescribe[.]

Id. § 3221.4(a), (f) (emphasis added).

FACTS

A. Franconia's Predecessors In Interest Received Prospecting Permits And Made Valuable Mineral Discoveries

52. Shortly after Congress enacted the 1950 Act, Franconia's predecessor in interest, the International Nickel Company, Inc. ("INCO"), applied for prospecting permits to explore for hardrock minerals in the Superior National Forest.

53. The Secretary of the Interior, through his designee BLM, granted INCO's applications, after obtaining the consent of the United States Forest Service, on behalf of the Secretary of Agriculture, as the Act of 1950 required.

54. INCO made significant investments to explore for mineral deposits in the subject lands. As a result of those investments and exploration efforts, INCO discovered valuable deposits of copper, nickel, and other strategic minerals. Under the governing regulations discussed above, that discovery entitled INCO to an exclusive, renewable leasehold interest in the mineral estate.

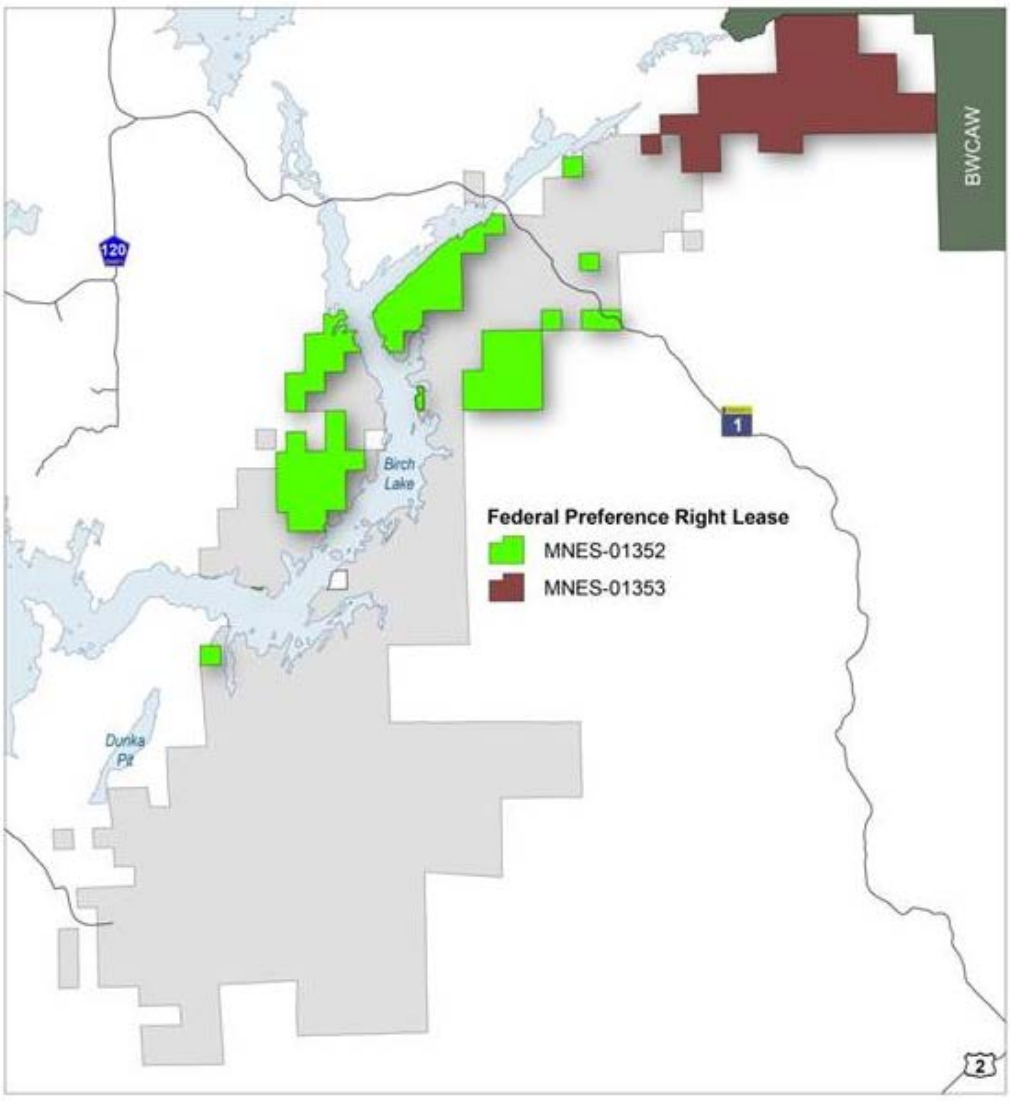
B. 1966 Leases

55. In 1956, INCO sought to memorialize its mineral rights, applying for a lease from the United States that would grant it the exclusive right to dispose of the copper, nickel, and associated minerals in the subject lands. INCO's application gave rise to a decade of what BLM later labeled "intensive negotiations" over the lease terms and conditions. Ex. 5 (BLM Memo re Recommendation for Lease Renewals) at 1 (Oct. 14, 1988).

56. In particular, INCO rejected the inclusion in the leases of any minimum production requirement, in light of the expected time and difficulty involved in developing the minerals. In lieu of a production requirement, the parties inserted several production incentives into the leases.

57. On June 14, 1966, INCO and the United States memorialized their agreement, executing leases MNES-01352 and MNES-01353. *See generally* Ex. 1.

58. The 1966 Leases, which are attached to and incorporated by reference into this complaint, contain a legal description of the lands that they cover. Ex. 1 § 1(a) (MNES-01352); Ex. 1 § 1(a) (MNES-01353).[2] The following map (which is an enlargement of the center of the previous map) shows the location of the leases.



[2] With the exception of the described lands, leases MNES-01352 and MNES-01353 are identical.

59. Consistent with the governing regulations, the first section of the leases recites not only the lessee's exclusive right to mine on the subject lands, but also the non-discretionary right to renew the leases. Specifically, section 1, entitled "Rights of Lessee," provides that the lessee has:

> the exclusive right to mine, remove, and dispose of all the copper and/or nickel minerals and associated minerals and, with the exception of oil, gas, oil shale, coal, phosphate, potassium, sodium, or sulphur, any other minerals in, upon, or under the described lands … for a period of twenty (20) years with a right in the Lessee to renew the same for successive periods of ten (10) years each in accordance with regulation 43 CFR § 3221.4(f) and the provisions of this lease.

60. Section 2 of the leases then sets forth comprehensive terms, ranging from rental rates and royalties to the payment of taxes and non-discrimination provisions. Consistent with the parties' negotiations, section 2(c) creates incentives for production, requiring INCO to pay minimum royalties that were significantly higher than normal. These high royalties ensured—as BLM later confirmed—that INCO retained a financial incentive for development. *See* Ex. 5 at 1 ("Th[e] high minimum royalty payment … is intended to serve as the 'production incentive' or 'diligent development' provision in the leases[.]"). Pursuant to this provision, INCO and its successors have paid significant royalties and rent to the government over the past 50 years.

61. Section 5 of the leases, entitled "Renewal Terms," authorizes BLM to "reasonably readjust" lease terms during "each successive renewal," except as otherwise provided. As BLM later confirmed, however, neither section 5 nor any other provision of the 1966 Leases establishes "a production requirement." Ex. 5 at 1.

62. Section 5 instead creates a second production incentive, providing that if the lessee begins producing within the initial 20-year term of the leases, then

BLM's ability to readjust terms and conditions during the first three renewals would be limited. Specifically, if the lessee began production during the initial 20-year term, then upon renewal of the leases BLM could only adjust the royalty provisions by specified amounts and could not adjust other terms and conditions at all. *See* Ex. 1 § 5. By contrast, if the lessee did not begin production before the initial term ended, then BLM would have the ability to make reasonable adjustments not only to royalty rates but also to other terms and conditions, such as stipulations for the protection of the surface land. *Id.*

63. Section 14 of the leases contains a third production incentive: It further limits BLM's ability, upon certain actions by the lessee, to readjust royalties during both the second half of the primary lease term and the first, second, and third 10-year renewal periods. In particular, this section provides that if the lessee "sunk a shaft for underground exploration or development or … otherwise commenced commercial development of the premises leased under [either] lease … within five years," then the royalty rates in sections 2 and 5 of the leases would be reduced as specified. Ex. 1 § 14. One year after the leases were executed, INCO sunk an 1100-foot shaft, at a cost of at least $1 million, for exploration and development on lease MNES-01352.

C. 1989 Renewal

64. In 1986, INCO timely applied for a 10-year renewal of the 1966 Leases. Three years later, BLM used standard-form documents to renew the leases—stating that the renewal was "under the existing terms and conditions of the original leases." Ex. 6 (BLM Decision) at 1 (Apr. 25, 1989).

65. The 1966 Leases were attached in full to the standard forms, with certain provisions of the leases cited. *See* Ex. 2 § 14 (referring to the "attached original lease agreement").

66. Underscoring that the renewal continued *all* of the terms and conditions of the 1966 Leases, BLM, during the process leading up to renewal, withdrew an earlier decision that would have altered those terms and conditions, including by imposing a production requirement and reducing the minimum royalty payment. *See* Ex. 7 (BLM Letter) at 1 (July 9, 1986); Ex. 8 (BLM Vacatur Decision) (Nov. 7, 1988).

67. In withdrawing its earlier decision, BLM explained that the "lease forms submitted for signature [would have] alter[ed] the terms and conditions of the original leases." Ex. 8 at 1. In place of those forms, BLM sent short standard lease forms, together with full copies of the 1966 Leases, explicitly stating that the renewal was "under the existing terms and conditions of the original leases." Ex. 5 at 1.

68. The forms were executed, and the leases thereby renewed, on July 1, 1989. Ex. 2.

D. 2004 Renewal

69. In 1988, American Copper and Nickel Company purchased the leases from INCO. The United States approved the sale effective January 1, 1991.

70. In 1999, American Copper timely applied for a second 10-year renewal of the leases.

71. BLM renewed the leases in January 2004, using the identical forms the parties had executed in 1989 (and again attaching the 1966 Leases in full). *See generally* Ex. 3.

72. Unlike in 1989—when BLM engaged in lengthy internal deliberations regarding the terms and conditions of lease renewal—there was no significant discussion in 2004 about renewal terms, either within the government or between the parties. This is consistent with the parties having a shared understanding that

BLM did not have discretion to deny the renewal, and that the Forest Service did not have discretion to deny consent to the renewal.

E. 2012 Renewal Application

73. In March 2004, Beaver Bay Joint Venture purchased the leases from American Copper. The United States approved the sale effective April 1, 2005.

74. In July 2010, Beaver Bay Joint Venture converted to a corporation, called Beaver Bay, Inc., which became the owner of the leases. The United States approved the assignment effective February 1, 2013.

75. In October 2012, Beaver Bay and its joint venture partner, Franconia, applied for a third 10-year renewal of the leases. *See* Ex. 9 (2012 Renewal Application).

76. In August 2013, Beaver Bay assigned the leases to Franconia in its capacity as the operator of the joint venture between the two companies. The United States approved the assignment effective April 1, 2014.

77. The project to mine pursuant to the leases—which by then was operated by Twin Metals, Franconia's parent company—attracted the attention of certain environmental organizations opposed to mining in northeastern Minnesota. Those organizations put intense pressure on officials at the Department of the Interior, BLM, and the Forest Service to deny the renewal application, arguing that BLM had the authority to do so.

78. Under this pressure from those environmental organizations, BLM asked defendant Hilary Tompkins for an opinion "whether it has the discretion to grant or deny Twin Metals Minnesota's pending application for renewal." Ex. 4 at 1.[3]

[3] The Solicitor's Opinion refers to Twin Metals rather than Franconia, the actual lease owner.

F. Solicitor's Opinion

79. On March 8, 2016, Tompkins issued her Opinion concluding that "Twin Metals Minnesota does not have a non-discretionary right to renewal, but rather the BLM has discretion to grant or deny the pending renewal application." Ex. 4 at 1.

80. The Solicitor's Opinion constitutes the final legal determination of the Department of the Interior and is binding on BLM (and all other departmental offices). Department of the Interior, *Department Manual*, Part 209, § 3.1 (1992).

81. The Opinion is fatally flawed on both the facts and the law, and it has caused plaintiffs, and will continue to cause them, immediate harm. It rejects Franconia's renewable leasehold interest in the mineral estate and disregards the valuable discovery made by its predecessor in interest. It also vitiates plaintiffs' investments in the mining project to date—approximately $400 million in acquisition, exploration, technical development, and other activities—and inhibits them from engaging in any long-term planning, investment, development, and operational decisions.

G. Subsequent Events

82. On March 8, 2016—the same day that Tompkins issued her Opinion—BLM sent Twin Metals a letter stating that the Opinion was "binding on … BLM," and that BLM therefore "will consider [the application for renewal] using the same criteria it would apply in deciding whether to grant the initial leases." BLM Letter 1 (Mar. 8, 2016). BLM further stated that it intended to ask the Forest Service "whether it consents to renewing the leases." *Id.*

83. On June 13, 2016, the Forest Service issued a press release announcing a "30-day period for public input" on the lease renewals, during which it planned to hold a "listening session." Forest Service Press Release (July 13, 2016). The release stated that the Forest Service was "considering withholding consent for

lease renewal" based on certain purported environmental "concerns," *id.*—notwithstanding the fact that no site-specific mining project has been proposed.

84. In response, Twin Metals asked the Forest Service for the opportunity to address the public at the so-called listening session, explaining that its rights are directly affected by the government's actions, and thus that it is differently situated than any other stakeholder or member of the public. Twin Metals Ltr. 1 (July 6, 2016).

85. The Forest Service denied Twin Metals' request, stating without elaboration that while it "underst[oo]d" the request, it would "not be appropriate for [Twin Metals] to address the audiences." Forest Service Ltr. (July 21, 2016).

86. By this point, Twin Metals had already sent letters to defendants Jewell and Tompkins explaining the flaws in the Solicitor's Opinion and requesting that it be withdrawn. As of the filing of this complaint, the Opinion has not been withdrawn.

COUNT I: QUIET TITLE ACT

87. The allegations in paragraphs 1 through 86 above are realleged as if fully set forth herein.

88. The Quiet Title Act provides that the United States is subject to suit to quiet title to real property in which the United States claims an interest. 28 U.S.C. § 2409a.

89. The United States claims fee simple ownership of the property that is the subject of leases MNES-01352 and MNES-01353.

90. By operation of federal law, Franconia has the successive right to a renewable lease in the mineral estate of the relevant lands as a result of its predecessor in interest's discovery on those lands of a valuable mineral deposit. Specifically, Franconia is "entitled to a preference right lease for the mineral in any or all of the lands in [its predecessor in interest's prospecting] permit[s]" and "a

right of renewal [of the leases] for successive periods, not exceeding 10 years each, under such reasonable terms and conditions as the Secretary of the Interior may prescribe." 43 C.F.R. § 3221.4(a), (f) (1966).

91. Franconia also has a renewable leasehold interest in the relevant mineral estate as the assignee and holder of the 1966 Leases. That leasehold interest gives Franconia "the exclusive right to mine, remove, and dispose of all the copper and/or nickel minerals and associated minerals and, with the exception of oil, gas, oil shale, coal, phosphate, potassium, sodium, or sulphur, any other minerals in, upon, or under" the lands described in those leases, "together with the right to construct and maintain thereon such structures and other facilities as may be necessary or convenient for the mining, preparation, and removal of said minerals." Ex. 1 § 1(a).

92. Franconia and its predecessors in interest have held the 1966 Leases continually for 50 years and have timely filed all applications for renewal. The first two applications were granted on the same terms and conditions as in the 1966 Leases. Accordingly, Franconia has a right to renew those leases, as well as a continued exclusive right to mine, remove, and dispose of the specified minerals in the land described by the leases.

93. The United States disputes Franconia's renewable leasehold interest in the relevant mineral estate, via the conclusion of the Solicitor's Opinion that BLM has discretion to deny the pending renewal application. That interpretation of the applicable regulations and construction of the leases, which constitutes the definitive legal position of the Department of the Interior, has created an actual and concrete controversy between Franconia and the United States about their relative interests in the mineral estate.

94. Accordingly, Franconia is entitled under 28 U.S.C. § 2409a to an adjudication of that dispute and a declaration of its leasehold interest in the mineral estate covered by the 1966 Leases.

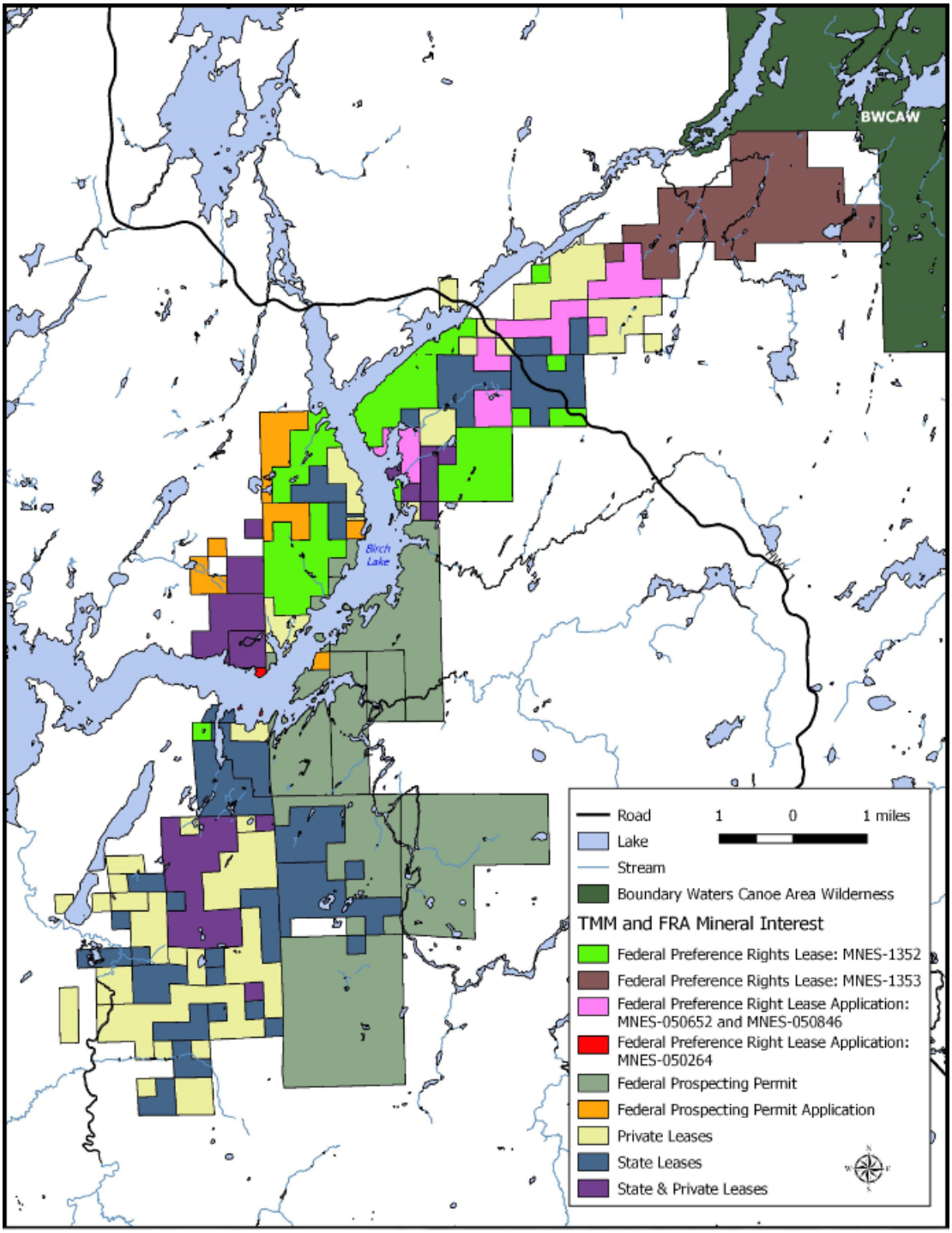
COUNT II: ADMINISTRATIVE PROCEDURE ACT

(Violation of 5 U.S.C. § 706(2)(A) because federal law entitles plaintiffs to a non-discretionary right of renewal)

95. The allegations in paragraphs 1 through 94 above are realleged as if fully set forth herein.

96. The Administrative Procedure Act provides that a "person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. § 702. The Solicitor's Opinion constitutes final agency action under 5 U.S.C. § 704 because it represents the final and binding position of the Department of the Interior. The Opinion also alters plaintiffs' legal rights, converting a right to renew the 1966 Leases into a right merely to request a renewal, at the government's discretion.

97. The Opinion has had and will have a direct and immediate effect on plaintiffs' businesses, by impeding their ability to make long-term investments in mineral development at the lease sites. It will further harm plaintiffs by putting at risk the enormous resources they have invested on the subject lands, and foreclosing the opportunity to develop the tens of billions of dollars worth of strategic minerals underlying the subject lands. And it will, as noted, prejudice plaintiffs' mineral rights on federal, state, and private lands contiguous to the leases (which are illustrated on the following map).



98. The Solicitor's Opinion is contrary to law because it denies plaintiffs the renewable leases to which they are entitled under federal law, including by, among other things, disregarding the renewal right in section 1, altering the language of section 5, and misconstruing the contractual and regulatory term

"preference right lease." Accordingly, it should be set aside under 5 U.S.C. § 706(2)(A).

COUNT III: ADMINISTRATIVE PROCEDURE ACT

(Violation of 5 U.S.C. § 706(2)(A) because the leases entitle plaintiffs to a non-discretionary right of renewal)

99. The allegations in paragraphs 1 through 98 above are realleged as if fully set forth herein.

100. The Solicitor's Opinion is arbitrary, capricious, or otherwise not in accordance with law because it gives an erroneous construction to the negotiated terms of the 1966 Leases and the subsequent renewals by declaring that BLM has discretion to deny Franconia's pending application for renewal.

101. The leases unambiguously vest plaintiffs with a non-discretionary right to renew—which reflects the right to which plaintiffs are entitled under federal law by virtue of their predecessor's discovery of a valuable mineral deposit.

102. To the extent the leases and renewals are ambiguous, the Solicitor's Opinion is arbitrary, capricious, or otherwise not in accordance with law because the Solicitor failed to consider evidence that confirms that the parties intended the 1966 Leases to establish a non-discretionary right to renewal.

103. The Solicitor's Opinion is also arbitrary, capricious, or otherwise not in accordance with law because it constitutes an unexplained change in the position of the Department of the Interior. Plaintiffs relied on defendants' prior interpretation of the leases—which affirmed plaintiffs' non-discretionary right to renew—and incurred significant costs based on that reliance.

104. Because the Solicitor's Opinion interprets the leases and renewals in a manner that is arbitrary, capricious, or otherwise contrary to law, it should be set aside under 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court enter judgment in their favor and award the following relief:

A. A declaration that (1) Franconia has a leasehold interest in the mineral estate on the land described by the 1966 Leases, with a non-discretionary right to renew such leases, and (2) BLM is required to grant Franconia's pending renewal application and any subsequent applications for renewal of the 1966 Leases that Franconia or its assignees properly files, subject only to reasonable adjustments to the terms and conditions of those leases, as permitted by section 5 of those leases;

B. An order (1) holding unlawful and setting aside the Solicitor's Opinion, and (2) directing BLM to grant Franconia's pending application for renewal of the 1966 Leases, with only reasonable adjustments to the terms and conditions of the 1966 Leases as permitted by section 5 of those leases;

C. Plaintiffs' costs and expenses incurred in this litigation to the extent permitted by law; and

D. Any other relief, legal or equitable, that this Court deems just and proper.

Dated: September 12, 2016

s/ Steven J. Wells

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