

**DECISION RECORD
and
FINDING OF NO SIGNIFICANT IMPACT**

I. Decision:

Based on the analysis and evaluation of the environmental assessment, it is my decision to authorize the issuance of a permit to Triex Minerals (US) Inc. to drill up to eight holes and draw down water resources on the following Bureau of Land Management administered lands in McCarthys Marsh on the Seward Peninsula, Alaska:

Sections 31-34, T. 6 S., R. 20 W., K.R.M. & Section 4, 18 T. 7 S., R. 20 W., K.R.M.

The mitigation measures, adopted from the environmental assessment are listed below as stipulations and are attached to the permit.

II. Rationale for the Decision:

Where Federal public lands have been selected for conveyance to the State of Alaska, the Bureau of Land Management may permit an applicant's use of those lands; provided, the State concurs in the permit, Alaska National Interest Lands Conservation Act, Section 906 (k), Pub. L. 96-487, 94 Stat. 2371, December 2, 1980. However, lands selected by the State of Alaska are "... segregated from all appropriations based upon applications or settlement and location, including locations under the mining laws," 43 CFR §2627.4(b). Thus, acts that could lead to the perfection of property interests (claims) under the Federal Land Laws, including the Federal Mining Laws, are not afforded their legal effect as a consequence of the segregative effect of a State selection, 43 CFR §§ 3830.5; 3862.1-5; and regardless of the outcome of a permitted activity such as exploration followed by discovery, *the applicant is barred from perfecting a claim to the lands under the Federal Land Laws, including the Federal Mining Laws, see United States v. Consolidated Mines & Smelting Co., 455 F. 2d 432 (9th Cir. 1971).*

Nonetheless, the State of Alaska allows for the staking of mining claims on state selected lands, Alaska Statute 38.05.27. *Under State law* the staking of a mining claim establishes a preference right *against subsequent locators under the State's mining law*. Thus, if the locator complies with the State's requirements for maintaining such a claim then *when and if* the land is conveyed to the State, the locator's preference right ought to establish senior mineral rights against another State locator's claims. Under that scheme and upon conveyance of the selection, the locator gains rights of possession and extraction to a mineral deposit.

The State's "State Mining Location Notice/Certificate" however contains the following language: "Please note that locations on land selected by, but not yet conveyed to, the State are made at the locator's own risk."

As noted above, these lands do not appear on the State's current list of lands for priority conveyance under the Alaska Statehood Act. Further, up to 25% of the lands currently selected by the State are over selections that will eventually be terminated. Thus, these lands may remain in Federal ownership after the State's entitlement is met.

The Proposed Action is in conformance with the Northwest Management Framework Plan (MFP) dated October 5, 1982, objective number 2, Lands, which allows for a non-settlement claim program of authorizing use of ... public lands for ... commercial use.

III. Finding of No Significant Impact (FONSI):

Based on the analysis of potential environmental impacts contained in the attached environmental assessment, I have determined that impacts are not expected to be significant and an environmental impact statement is not required.

IV. Prevention of unnecessary and undue degradation of the land.

The proposed action is consistent with existing national environmental policies and objectives as set forth in Section 101 (a) of the National Environmental Policy Act of 1969 (NEPA). Further and based on the analysis of potential environmental impacts contained in the attached environmental assessment, it is my determination that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and that an environmental impact statement is not required.

V. ANILCA Section 810 Compliance:

The decision will not significantly restrict subsistence uses, decrease the abundance of subsistence resources, alter the distribution of subsistence resources, or limit subsistence user access from currently existing conditions. No further analysis is necessary at this time.

VI. Adverse Energy Impact Compliance:

This action has been analyzed as required by Washington Office Instruction Memorandum 2002-053 to determine if it will cause an adverse impact on energy development. The action will not have an adverse direct or indirect impact on energy development, production or distribution. The preparation of a Statement of Adverse Energy Impact is not required.

Mike Zaidlicz
Anchorage Field Manager

October 24, 2007
Date

Attachments:

Environmental Assessment: AK-040-0-EA-031
DNR letter of 906(k) Concurrence
Stipulations

Terms and Stipulations for Land Use Permit AA-087534 Triex Minerals (US) Inc.

1. General Terms

- A. Exploration or discovery of a mineral deposit on the following described lands will not vest any property rights in Triex Minerals (US) Inc. under the United States Land or Mining Laws:

Kateel River Meridian

T. 6 S., R. 20 W., Sec. 31-34,

T. 7 S., R. 20 W., Sec. 4

- B. Triex Minerals (US) Inc. (Triex) shall comply with all Federal, State, and local laws, ordinances, regulations, orders, postings, or written requirements applicable to the area or operations covered by the Land Use Permit. Triex shall ensure that all persons operating under the authorization have obtained all required Federal, State, and local licenses or registrations. Triex shall make every reasonable effort to ensure compliance with these requirements by all agents, employees and subcontractors of Triex.
- C. No value shall be assigned to or claimed for the permit, or for the occupancy or use of Federal lands or related waters granted thereupon. The permit privileges are not to be considered property on which Triex shall be entitled to earn or receive any return, income, price or compensation. The use of a permit as collateral is not recognized by the BLM.
- D. Unless expressly stated, the Land Use Permit does not create an exclusive right of use of an area by Triex. Triex shall not interfere with other valid uses of the Federal land by other users. The United States reserves the right to use any part of the area for any purpose.
- E. Triex or its representative may not assign, contract, or sublease any portion of the permit authorization or interest therein, directly or indirectly, voluntarily or involuntarily. However, contracting of equipment or services may be approved by the authorized officer in advance, if necessary to supplement Triex's operations. Such contracting should not constitute more than half the required equipment or services for exploration operations and Triex must retain operational control of exploration operations. If equipment or services are contracted, Triex shall continue to be responsible for compliance with all stipulations and conditions of the permit.
- F. Triex must assume responsibility for inspecting the permitted area for any existing or new hazardous conditions, e.g., trail and route conditions, land slides, avalanches, rocks, changing water or weather conditions, falling limbs or trees, submerged objects,

hazardous wildlife, or other hazards that present risks for which Triex assumes responsibility.

- G. In the event of default on any mortgage or other indebtedness, such as bankruptcy, creditors shall not succeed to the operating rights or privileges of Triex' Land Use Permit.
- H. Triex must present or display a copy of the Land Use Permit to an authorized officer's representative, or law enforcement personnel upon request. Triex must also display a copy of the Land Use Permit at a prominent place where the permitted activities take place.
- I. The Federal Government shall not be held responsible for protection of Triex' structures or personal property. Fire protection in the area will be consistent with the approved fire management plan. Triex shall be liable for damages to public lands resulting from its, its employees or its subcontractor's negligent use of fire.

II. Stipulations:

- A. No cutting of live vegetation (trees) is allowed and must be left in its natural state.
- B. Drill platforms will be re-cycled and re-used on subsequent drilling operations.
- C. Except when conducting sling load operations, it is recommended that helicopter guidelines and regulations set forth in US DOT Advisory Circular AC No.: 91-36D and 14 CFR 91.119 be followed during ingress and egress to the project area. Flight paths should be altered if wildlife is observed in the area (e. g. moose, caribou, etc.) to avoid harassment.
- D. Harassment of wildlife is prohibited.
- E. Strainers will be used on intakes in natural watercourses to protect fish.
- F. Drill holes will be backfilled with drill cuttings and plugged with bentonite slurry or equivalent for a minimum of 10 feet.
- G. Fuel in excess of an amount necessary for immediate operations will not be stored on Federal public lands.
- H. All equipment, supplies and personnel will be moved to work sites by helicopter.

- I. Drilling machine's need to have drip pans or pads placed under them during operations and storage to prevent oil leaks onto the ground. Having on-hand appropriate spill response kits, and employees trained in emergency spill response (HAZWOPER, etc.) will mitigate any damage to the environment caused by accidental releases of oil/fuel.
- J. Solid and sanitary waste pollution will be prevented by backhaul of all trash, worn equipment parts, and use of a properly maintained toilet facilities at the drilling sites.
- K. Removal of tundra mat in excess of sufficient amounts to accommodate the actual drilling of exploratory holes is prohibited.
- L. Every effort will be made to limit vegetation and soil disturbance to the minimal amount necessary to accomplish exploratory operations.
- M. Drill muds and cuttings left on the surface will be tested for petroleum contaminants and hazardous substances and removed from the field where warranted. If practicable and where feasible, drill muds and cuttings left in the field will be sufficiently disbursed to allow the vegetative mat to recover from operations.
- N. Drilling within 100 feet of stream beds is prohibited.
- O. No commercial use of any public cabins is permitted. No burning of trash within 100 feet of any public cabin or historic structure is permitted.
- P. Wastewater must be managed in accordance with Title 18 Alaska Administrative Code, Chapter 72, (18 AAC 72) Wastewater Disposal. Wastewater is defined as Human Waste (sewage), and Gray Water (water which has been used for personal hygiene, washing clothing or equipment, or sanitizing cooking and eating materials). If the standards for Pit Privies found at 18 AAC 72.030 cannot be met, all wastewater must be collected and transported to a state approved disposal facility. Upon closure of the campsite the Pit Privy must be completely back-filled with the surface area covered and re-graded to approximate original appearance.
- Q. Non-Hazardous Solid Waste (trash/refuse) may be burned in campfire pits. All fire pits will be lined with suitable non burnable material. All unburned/unburnable trash/refuse will be back hauled from the area and disposed in an approved waste disposal site. All fire rings/pits must be removed or destroyed after use. Trash/refuse will not be disposed of in a Pit Privy.
- R. Fuel Handling and Storage: Fuel shall be stored at least 150 feet from surface waters. Fuel and other petroleum products and hazardous materials shall be stored in containers designed to hold that product, identified with the owner's name, the contents and date of purchase (e.g. Triex Minerals, Jet A, 2007). All fuel spills will be cleaned up

immediately, taking precedence over all other matters, except the health and safety of personnel. Spills will be cleaned up utilizing absorbent pads or other Alaska State DEC approved methods. Fuel storage in excess of 55 gallons and/or fuel storage containers that are situated where a spill may reach a water body or watercourse requires secondary containment. Secondary containment is defined as a diked, impermeable impoundment capable of containing 110 percent of the volume of the largest independent container. As soon as possible, but not later than 24 hours, notice of any such discharge as defined in Alaska Statute Title 18, Chapter 75, Article 2, will be given to: The Authorized Officer at 1-800-478-1263. Such other Federal and State officials as are required by law to be given such notice including Alaska Department of Environmental Conservation at (907) 478-9300.

- S. All operations shall be conducted in such a manner as to avoid damage or disturbance to any prehistoric or historic sites or modern camp sites. The Archaeological Resource Protection Act prohibits the excavation, removal, damage, or disturbance of any archaeological resource located on public lands. Violation of this law could result in the imposition of both civil and criminal penalties of the violator. Should any historic or prehistoric site be located during the course of operations under this permit, the applicant shall immediately notify the BLM authorized officer.
- T. All trash and debris shall be cleaned and removed from public lands by the end of calendar year 2007.
- U. Gas or propane stoves for cooking are strongly recommended. Fires are often impractical. Tree growth in the Arctic is very slow; a spruce tree only inches in diameter may be hundreds of years old. In some areas wood is scarce or nonexistent. A gas or propane stove is also good for emergencies since it is easy to light. Keep the drill sites clean. Avoid food spills and other animal attractants. Proper food storage is required. Bears that become accustomed to human food and products present a hazard to people traveling in the backcountry and often have to be destroyed.
- V. Alaska's rivers and lakes contain *Giardia lamblia*, or other intestinal parasites. It is recommended that you drink only boiled, filtered or chemically treated water. To protect the water quality, bathe and wash dishes at least 100 feet from sources of drinking water and use biodegradable soaps. Go at least 200 yards from the water to use the restroom.
- W. Firearms may be discharged in defense of life and property but do not take the place of proper precautions in bear country.
- X. Drill site reclamation will be bonded through the Alaska Mining Bonding pool. The bond shall not be released until the sites have been inspected and found satisfactory in 2008.
- Y. Triex will provide the Bureau of Land Management with the GPS coordinates for each

drill site and each water draw down site within the area of planned operations. The coordinates will be provided in the WGS84 datum.

Excerpts: Title 18 Alaska Administrative Code, Chapter 72
and
Title 18 Alaska Administrative Code, Chapter 75

18 AAC 72.030. PIT PRIVIES. A person may install a pit privy if the pit privy meets the separation distance requirements in 18 AAC 72.020(b), (c), and (i). A person may not dispose of graywater in a pit privy. (Eff.4/1/99, Register 149)

18 AAC 72.020. SEPARATION DISTANCES

(b) The minimum separation distance between the mean annual high water level of a lake, river, stream, spring, or slough, or the mean higher high water level of coastal waters, and a lift station, holding tank, septic tank, soil absorption system, seepage pit, pit privy, or other wastewater collection, treatment, or disposal system is 100 feet, measured horizontally.

I. Except as otherwise provided in this section, the minimum separation distance between the source of the drinking water for a private water system and a

(1) domestic wastewater treatment works, onsite disposal system, pit privy, sewer manhole and lift station, or sewer cleanout is 100 feet, measured from the nearest edge of the treatment works, disposal system, pit privy, manhole, lift station, or cleanout to the private drinking water source;

(2) community sewer line, holding tank, sanitary landfill, industrial discharge line, or other potential source of contamination, such as domestic animal or agricultural waste, is 75 feet, measured from the nearest edge of the community sewer line, holding tank, sanitary landfill, industrial discharge line, or other potential source of contamination to the private drinking water source; or

(3) private sewer line, petroleum lines and storage tanks, or drinking water treatment wastes, such as backwash water from filters and water softeners and reject water from reverse osmosis units, is 25 feet; the minimum separation distance for petroleum storage tanks does not apply to

(A) tanks that contain propane; or

(B) above-ground storage tanks or drums that, in the aggregate, have a storage capacity of less than 500 gallons of petroleum products, and that store only petroleum products necessary for the operation and maintenance of pumps, power generation systems, or heating systems associated with a potable water well or other potable water source; for purposes of this subparagraph, "petroleum products" refers to fuel and lubricants.

(i) A person may not install a pit privy in an area subject to flooding. The vertical separation

between the lowest point of a pit privy and the water table, measured during the season of the year with maximum water table elevation, must be at least four feet.

18 AAC 75.300. DISCHARGE OR RELEASE NOTIFICATION; REPORTING REQUIREMENTS.

(a) Subject to (b) of this section, a person in charge of a facility or operation shall notify the department by telephone, and immediately afterwards send the department a written notice by facsimile, hand delivery, or first class mail, informing the department about a discharge or release of a hazardous substance at or from the facility or operation as follows:

- (1) as soon as the person has knowledge of a
 - (A) discharge or release of a hazardous substance other than oil;
 - (B) discharge or release of oil to water; or
 - (C) discharge or release, including a cumulative discharge or release, of oil in excess of 55 gallons solely to land outside an impermeable secondary containment area or structure; and

- (2) within 48 hours after the person has knowledge of a discharge or release, including a cumulative discharge, of oil solely to land
 - (A) in excess of 10 gallons, but 55 gallons or less; or
 - (B) in excess of 55 gallons, if the discharge or release is the result of the escape or release of oil from its original storage tank, pipeline, or other immediate container into an impermeable secondary containment area or structure.

(b) A person in charge of a facility or operation shall maintain, and provide to the department monthly, a written record of each discharge or release, including a cumulative discharge or release, of one gallon to 10 gallons of oil solely to land.

(c) If a person in charge of a facility or operation has entered into an agreement with the department, as provided under AS 46.03.755(b) or AS 46.09.010(b), for the periodic reporting of a discharge or release of a hazardous substance, the terms of the agreement replace the applicable requirements of this section for the hazardous substance.

(d) After receiving notice of a discharge or release under (a) of this section, and until containment and cleanup are completed, the department will require interim reports as the department considers necessary to ascertain any threat to human health, safety, or welfare, or to the environment.

(e) Unless the department determines that a written report is not needed for the department to ascertain any threat to human health, safety, or welfare, or to the environment, a written report must be submitted to the department within 15 days after containment and cleanup are completed or, if no cleanup occurs, within 15 days after the discharge or release. The report must be submitted to the department's Anchorage, Fairbanks, or Juneau office, whichever is

nearest to the location of the discharge, unless the department specifies otherwise. The report must contain the information specified in (f) of this section.

(f) A report, record, or notification required by this section must contain, as applicable,

- (1) the date and time of the discharge or release;
- (2) the location of the discharge or release;
- (3) the name of the facility or operation;
- (4) the name, mailing address, and telephone number of
 - (A) each responsible person; and
 - (B) the owner and the operator of the facility or operation;
- (5) the type and amount of each hazardous substance discharged or released;
- (6) factors that caused or contributed to the discharge or release;
- (7) a description of any environmental effects of the discharge or release, or the containment and cleanup, to the extent those effects can be identified;
- (8) a description of the containment or cleanup action taken;
- (9) the estimated amount of
 - (A) hazardous substance cleaned up; and
 - (B) hazardous waste generated;
- (10) the date and method of disposal or treatment of the hazardous substance, contaminated equipment, contaminated materials, contaminated soil, and contaminated water;
- (11) a description of actions being taken to prevent another discharge or release; and
- (12) other information that the department requires to fully assess the cause and impact of the discharge or release, including any sampling reports and a description and estimate of any remaining contamination.