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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1030**

Cleveland-Cliffs Minnesota Land Development, LLC,
Relator,

vs.

Minnesota Department of Natural Resources,
Respondent,

Mesabi Metallics Company, LLC,
Respondent.

**Filed April 15, 2019
Appeal dismissed
Reilly, Judge**

Minnesota Department of Natural Resources

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Considered and decided by Reilly, Presiding Judge; Rodenberg, Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

REILLY, Judge

In this certiorari appeal, relator challenges a letter from respondent Minnesota Department of Natural Resources denying relator's request to transfer or cancel certain permits held by respondent Mesabi Metallics Company, LLC. Because the action does not present a justiciable controversy, we dismiss the appeal.

FACTS

This appeal arises out of a dispute between relator Cleveland-Cliffs Minnesota Land Development, LLC (CCMLD) and respondent Mesabi Metallics Company, LLC (Mesabi), successor-in-interest to Essar Steel Minnesota, LLC (Essar) and Minnesota Steel Industries, LLC (MSI), regarding four water-appropriation permits issued by respondent Minnesota Department of Natural Resources (the DNR).

In December 2006, MSI applied to the DNR for water-appropriation permits for the Minnesota Steel project at the former Butler Taconite site near Nashwauk. The DNR, in cooperation with the United States Army Corps of Engineers, prepared a joint state and federal environmental impact statement (EIS) for MSI's taconite mine and steel making project. The EIS was completed in August 2007. On August 22, 2007, the DNR issued four water-appropriation permits to MSI—identified as 2008-0065, 2008-0066, 2008-0067, and 2006-0433—authorizing dewatering of several mine pits and make-up water supply for mine processing.

In autumn 2008, MSI changed its name to Essar and asked the DNR to transfer the permits to Essar. Essar proposed modifying the project by increasing production and the

mining rate, while reducing the 20-year life of the mine to 15 years. The DNR completed a supplemental EIS in December 2011 to evaluate the impacts associated with the increase in capacity, construction, and operation of the modified mine plan, and issued permits identifying Essar as the permittee.

As part of its iron-ore mining and processing activities, Essar entered into a series of mineral leases in 2006 with Glacier Park Iron Ore Properties, LLC (Glacier Park), and Superior Mineral Resources, LLC (Superior).¹ See *In re Essar Steel Minnesota LLC*, 590 B.R. 109, 112-13 (Bankr. D. Del. 2018). These mineral leases are distinct from the water-appropriation permits granted by the DNR. The mineral leases remained in effect through 2016, when Glacier Park became the owner of the property and lessor under the leases. The mineral leases provided for the payment of royalties from Essar to Glacier Park, based on the amount of iron ore extracted from the property. The leases also contained a minimum production requirement which, if not satisfied, gave Glacier Park the right to terminate the mineral leases.

On July 8, 2016, Essar filed voluntary petitions for relief under chapter 11 of the bankruptcy code in the United States Bankruptcy Court for the District of Delaware.

¹ The bankruptcy court decision noted that the land at issue has been in use by the mining industry for over a century. *In re Essar Steel Minnesota LLC*, 590 B.R. at 112. “In 1906, the Lake Superior Company, Ltd., the then-owner of the property, established the Great Northern Trust and transferred its interest in the property to the trust.” *Id.* Under the terms of the trust agreement, the trust would expire 20 years following the death of the last survivor of several named individuals, and the trust would convey the property back to the Lake Superior Company, or whichever entity held the revisionary interest at that time. *Id.* “In 2006, the Great Northern Trust entered into a series of mineral leases with [Essar] as the lessee.” *Id.* “These leases remained in effect through 2016, when [Glacier Park] became the owner of the property and lessor under the [l]eases.” *Id.*

During the course of these proceedings, Essar changed its name to Mesabi through a Plan of Reorganization, and Mesabi agreed to undertake Essar's obligations. The Bankruptcy Court approved the change. In January 2017, Mesabi and Glacier Park entered into a forbearance agreement for each of the leases. The following month, Mesabi filed its initial chapter 11 plan of reorganization and filed a notice of its intention to assume the leases with Glacier Park. Glacier Park objected to the proposed plan for Mesabi to assume the leases.

On August 28, 2017, Mesabi entered into a comprehensive settlement agreement with Chippewa Capital Partners, LLC, Superior, and Glacier Park, to resolve the dispute regarding assumption of the leases. The settlement agreement provided that Mesabi's assumption of the leases was contingent on Mesabi's chapter 11 reorganization plan going into effect no later than October 31, 2017. The October 31, 2017 deadline passed before the reorganization plan became effective and, under the terms of the settlement agreement, the mineral leases automatically reverted to Glacier Park and Superior on November 1, 2017, without need for further bankruptcy proceedings or litigation. On December 9, 2017, Glacier Park executed new leases with CCMLD, conveying the mineral rights that had previously been subject to the Mesabi leases.

On March 1, 2018, CCMLD sent a letter to the DNR demanding that the DNR transfer or cancel the water-appropriation permits held by Mesabi. The request was "premised on CCMLD's acquisition on December 9, 2017, of certain surface and mineral interests that are affected by the four permits." On March 13, the DNR met with representatives from Mesabi to discuss the permits and CCMLD's demand letter. On April

9, the DNR administratively amended the permits by changing the name on the permits from Essar to Mesabi. The DNR then issued amended water-appropriation permits recognizing Mesabi as the permittee for each of the four permits. On May 8, the DNR sent a letter to CCMLD denying its demand to transfer or terminate the permits and explaining that:

These water appropriation permits were issued to Essar . . . and are held by its successor, Mesabi The permits are for the sole purpose of supplying the process make-up water and pit dewatering needed to reactivate the Butler Taconite mine and tailings basin and to supply a new processing facility to produce pellets and value added products. The proposed project involved preparation of an environmental impact statement and underwent extensive permit review prior to issuance of these water appropriation permits. The permits were issued through a permitting process that assessed the need for the appropriations to accomplish the project purpose.

[CCMLD] has not acquired the interests of Essar Steel/Mesabi Metallica in the bankruptcy proceeding, nor has it assumed the obligations of the Essar project. Therefore, the DNR has no legal basis to transfer these project-specific water appropriation permits to [CCMLD].

On June 4, CCMLD sent an email to the DNR requesting reconsideration of its request. Three days later, CCMLD filed a petition for writ of certiorari, challenging the May 8, 2018 letter from the DNR.

D E C I S I O N

I. Presence of a Justiciable Controversy

a. Legal Standard

Respondents challenge the court's jurisdiction to consider this certiorari appeal on the grounds that (1) CCMLD lacks standing to pursue an appeal, (2) CCMLD's claims are

moot, and (3) this court is not the proper venue in which to resolve factual disputes. “[T]he existence of a justiciable controversy is essential to our exercise of jurisdiction.” *Minnesota Sands, LLC v. Cty. of Winona*, 917 N.W.2d 775, 782 (Minn. App. 2018) (quotation omitted). Justiciability is separate and distinct from the merits of the case. *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 341 (Minn. 2011). Justiciability is a question of law that an appellate court reviews de novo. *Id.* at 337.

“Standing is a legal requirement that a party have a sufficient stake in a justiciable controversy to seek relief from a court.” *Id.* at 338 (quotation omitted). Standing is conferred upon a party who has suffered an injury-in-fact or maintains a statutory right to sue. *Nash v. Wollan*, 656 N.W.2d 585, 588 (Minn. App. 2003), *review denied* (Minn. Apr. 29, 2003). “The purpose of the standing requirement is to ensure that issues before the courts will be vigorously and adequately presented.” *State ex rel. Hatch v. Allina Health Sys.*, 679 N.W.2d 400, 404 (Minn. App. 2004) (quotations omitted). “The lack of standing bars judicial consideration of a claim.” *Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017), *review denied* (Apr. 26, 2017). Because standing is a jurisdictional issue, an appellate court evaluates decisions on standing de novo. *In re Gillette Children’s Specialty Healthcare*, 883 N.W.2d 778, 784 (Minn. 2016); *see also League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 645 n.7 (Minn. 2012) (recognizing that standing presents a jurisdictional question).

CCMLD contends that it has standing to challenge the DNR’s denial of the request to transfer or cancel the permits because CCMLD has been injuriously and adversely affected by the DNR’s letter. CCMLD argues that by refusing to transfer or cancel the

permits, the DNR is impermissibly allowing Mesabi to encumber CCMLD's property interests and trespass on CCMLD's properties.

Respondents argue that CCMLD lacks injury-in-fact standing to demand transfer or cancellation of the permits. An injury-in-fact involves harm that is "concrete and actual or imminent, not conjectural or hypothetical." *Hanson v. Woolston*, 701 N.W.2d 257, 262 (Minn. App. 2005) (quotation omitted), *review denied* (Minn. Oct. 18, 2005). To demonstrate an injury-in-fact the relator "must show a concrete and particularized invasion of a legally protected interest." *Marine Credit Union v. Detlefson-Delano*, 830 N.W.2d 859, 864 n.3 (Minn. 2013) (quotation omitted). The relator must also "point to an injury that is fairly traceable to the . . . challenged action and that is likely to be redressed by a favorable decision." *Scheffler*, 890 N.W.2d at 451.

For the reasons set forth below, we determine that CCMLD lacks standing to demand termination of a competitor's lease.

b. Relator Lacks Standing to Demand Termination of Leases

CCMLD lacks standing to assert its claim. The decision in *Crookston Cattle Co. v. Minnesota Dep't of Nat. Res.*, 300 N.W.2d 769 (Minn. 1980) is instructive. In that case, the Minnesota Supreme Court considered the proper allocation of groundwater between competing users, a cattle company and the City of Crookston. *Id.* at 771-72. The appellant challenged the DNR's order granting the city a permit to pump water from a site twelve miles from the city, and denying a similar permit to appellant. *Id.* While the Minnesota Supreme Court did not address the issue of standing, it held that appellant's takings-claim failed because the permit "takes nothing" and is "permissive only." *Id.* at 774. The

decision reasoned that “[u]ntil it is clear that the City’s water use, permitted by the DNR deprives [appellant] of water it needs, such a claim is premature.” *Id.* The supreme court then concluded that the DNR’s order granting a permit to the city and denying a permit to appellant-company was not an unconstitutional taking and did not violate Minnesota’s water-appropriation law or environmental policy. *Id.* at 774-77.

CCMLD has not shown that it suffered concrete and actual or imminent harm as a result of the denial of its request to terminate the permits. CCMLD characterizes the DNR’s refusal to transfer or cancel the water permits as “lingering indignities” that “constitute encumbrances upon CCMLD’s property interests.” CCMLD argues that Mesabi’s possession of the water permits prevents CCMLD from enjoying the “full use of its interests,” negatively affects its investments, and has resulted in trespass upon its land. But CCMLD fails to support these contentions with evidence, and the record is devoid of evidence supporting these claims. As such, we must conclude that CCMLD’s bare assertions that it suffered injury are speculative in nature and thus insufficient to confer standing. *See, e.g., Lassen v. First Bank Eden Prairie*, 514 N.W.2d 831, 839 (Minn. App. 1994) (“Speculative, remote, or conjectural damages are not recoverable at law.” (citation omitted)), *review denied* (Minn. Jun. 29, 1994); *Byrd v. Indep. Sch. Dist. No. 194*, 495 N.W.2d 226, 231 (Minn. App. 1993) (explaining that standing requires more than speculation), *review denied* (Minn. Apr. 20, 1993).

Moreover, “the mere presence of ‘competitive and direct injury’ should not establish standing.” *Nat’l Credit Union Admin. v. First Nat. Bank & Tr. Co.*, 522 U.S. 479, 518, 118 S. Ct. 927, 947 (1998) (quoting *Hardin v. Kentucky Util. Co.*, 390 U.S. 1, 5-6, 88 S.

Ct. 651, 654 (1968) (“[T]he economic injury which results from lawful competition cannot, in and of itself, confer standing on the injured business to question the legality of any aspect of its competitor’s operations.”)); *see also Mankato Aglime & Rock Co. v. City of Mankato*, 434 N.W.2d 490, 493 (Minn. App. 1989) (holding that appellants lacked standing to compel a contested case hearing because they had no “protectable interest in their competitors’ debarment”). However, an exception may exist—and standing may be conferred—when a particular statutory provision “does reflect a legislative purpose to protect a competitive interest.” *Hardin*, 390 U.S. at 6, 88 S. Ct. at 654. But CCMLD has not cited any authority for the proposition that it is entitled to statutory protection from competition here, and CCMLD does not have standing to maintain an action challenging the validity of the permits issued by DNR to its competitor.

In summary, as to its request to terminate the leases, CCMLD has not demonstrated a “concrete and particularized invasion of a legally protected interest” conferring injury-in-fact standing. *Marine Credit Union*, 830 N.W.2d at 864 n.3 (quotation omitted). CCMLD also has not demonstrated that it is entitled to protection from competitive injury. *Hardin*, 390 U.S. at 6, 88 S. Ct. at 654. Because CCMLD failed to show that it has suffered an injury that is “fairly traceable” to the DNR’s letter and that is “likely to be redressed by a favorable decision,” we determine that CCMLD does not have standing to maintain this certiorari appeal. *Scheffler*, 890 N.W.2d at 451.

c. Relator’s Demand to Transfer Permits is Moot

CCMLD’s demand to transfer the water-appropriation permits is unreviewable on mootness grounds. “A case is moot if there is no justiciable controversy for a court to

decide.” *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 97 (Minn. App. 2009). “When a lawsuit presents no injury that a court can redress, the case must be dismissed for lack of justiciability.” *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 322 (Minn. App. 2007). Whether a cause of action is moot is a question of law reviewed de novo. *In re Risk Level Determination of J.V.*, 741 N.W.2d 612, 614 (Minn. App. 2007), *review denied* (Minn. Feb. 19, 2008). We will dismiss an appeal as moot only “when a decision on the merits is no longer necessary or an award of effective relief is no longer possible.” *Dean v. City of Winona*, 868 N.W.2d 1, 4 (Minn. 2015).

CCMLD’s challenge to the DNR’s refusal to transfer the permits is moot because the DNR reviewed the four challenged permits and modified them to ensure that no water-appropriation points sat on land owned by CCMLD. Following receipt of CCMLD’s letter demanding transfer or cancellation of the permits, the DNR personnel met with representatives of Mesabi to discuss the issues presented. After that meeting, the DNR modified the permits to address the concerns raised by CCMLD and took the following actions:

- Permit 2006-0433 originally permitted the appropriation of water from Pit 1 and Pit 2 from the following points of taking: Pump 1: SW1/4, NE1/4, Section 1, Township 56 North, Range 23 West and Pump 2: NW1/4, SW1/4, Section 1, Township 56 North, Range 23 West. Following the March 13 meeting, Mesabi agreed to move the point of taking for Pump 1 to a location on land to which it had present control, and the DNR amended Permit 2006-0433 to change the name of the permittee from Essar to Mesabi. The DNR also moved the point of taking for Pump 1 within the DNR Permitting and Reporting System to a location adjacent to Pump 2 on property under Mesabi’s control.

Pump 2 is currently located on Mesabi-controlled land and did not need to be moved.

- Permit 2008-0065 originally permitted the appropriation of water from Draper Annex Pit: SE1/4 of SW1/4, Section 10, Township 56 North, Range 23 West and Pit 6: SE1/4, Section 10, Township 56 North, Range 23 West. Mesabi agreed to move the point of taking from the Draper Annex Pit from its then-current location to a location on land to which it had present control, and the DNR amended the permit to change the name of the permittee from Essar to Mesabi and change the authorized location of the Draper Annex Pit point of taking to a location within the SWSE of Section 10, Township 56 North, Range 23 West.
- Permit 2008-0066 originally permitted the appropriation of water from Ann Pit: NE1/4 of NW1/4, Section 1, Township 56 North, Range 23 West. Mesabi held a fee-interest in the land around the Ann Pit, and land records confirmed that Mesabi had a valid property interest in the land where the point of taking is located. While DNR amended the permit to change the name of the permittee from Essar to Mesabi, it found no cause to otherwise modify the location of the Ann Pit on land in which Mesabi had a confirmed interest.
- Permit 2008-0067 originally permitted the appropriation of water from Pit 5: N1/2 Section 11, and SE1/4 Section 2, Township 56 North, Range 23 West and Sullivan Pit: S1/2 of SW1/4 Section 2, Township 56 North, Range 23 West. Mesabi agreed to move the points of taking to locations on which it had present control, and the DNR amended the permit to change the name from Essar to Mesabi and to move the point of taking for Pit 5 and the Sullivan Pit to property currently under Mesabi's control.

As a result of the DNR's actions, the water-appropriation points of taking are now located on lands in which Mesabi holds a legal interest. These modifications effectively resolved the concerns raised by CCMLD and extinguished any claims of direct injury to CCMLD. "When an event occurs which makes a decision on the merits unnecessary, an

appeal is moot.” *Mattson v. Mattson*, 903 N.W.2d 233, 242 (Minn. App. 2017), *review denied* (Dec. 27, 2017); *see also Citizens for Rule of Law v. Senate Comm. on Rules & Admin.*, 770 N.W.2d 169, 175 (Minn. App. 2009) (“[T]he doctrine requires a comparison between the relief demanded and the circumstances of the case at the time of decision in order to determine whether there is a live controversy that can be resolved.” (quotation omitted)), *review denied* (Minn. Oct. 20, 2009).

The record demonstrates that the points-of-taking for the water-appropriation pits are not located on lands under CCMLD’s control. As such, CCMLD’s basis to demand transfer of the permits is not present. We therefore determine that the appeal is moot and must be dismissed because this court is “unable to grant effectual relief.” *Chaney v. Minneapolis Cmty. Dev. Agency*, 641 N.W.2d 328, 332 (Minn. App. 2002) (quotation omitted), *review denied* (Minn. May 28, 2002).²

Appeal dismissed.

² CCMLD also argues that (1) the DNR’s transfer of the water-appropriation permits to Mesabi was unlawful, and (2) the DNR should have concluded that the permits had been automatically terminated by operation of law. We will not consider arguments on appeal that were not raised to the decision-maker. *See, e.g., Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988) (declining to consider matters not argued to and considered by the district court); *In re A.D.*, 883 N.W.2d 251, 261 (Minn. 2016) (applying *Thiele* in a certiorari appeal).