

MIKE AND SANDRA SPRUNGER

IBLA 97-140

Decided August 16, 1999

Appeal from a decision of the Utah State Office, Bureau of Land Management, explaining the circumstances surrounding the impoundment of a backhoe and justifying collection of administrative costs associated with the impoundment. UT-054-96-22.

Affirmed as modified.

1. Bureau of Land Management--Federal Property and Administrative Services Act--Personal Property: Disposition of Unattended--Personal Property: Impoundment--Trespass: Generally

The regulation at 43 C.F.R. § 8365.1-2(b), governing occupancy and use of public lands under the jurisdiction of BLM, provides that no person shall leave personal property unattended on public lands outside Alaska longer than 10 days unless otherwise authorized, and that personal property left unattended longer than 10 days without BLM's permission is subject to disposition under the Federal Property and Administrative Services Act of 1949, as amended.

2. Mining Claims: Surface Uses

Section 4(a) of the Surface Resources Act, 30 U.S.C. § 612(a) (1994), bars use of an unpatented mining claim for any purpose other than prospecting, mining, or processing operations and uses "reasonably incident thereto." The storage of a backhoe on a mining claim is not allowed when the backhoe is not being used as part of the mining operations on the claim and is therefore not reasonably incident to mining. A mining claimant is not authorized to allow another party to use the claim for storage of a backhoe that is not used as part of his mining operations.

3. Bureau of Land Management--Personal Property: Disposition of Unattended--Personal Property: Impoundment

The BLM Manual provisions specify procedures when "valuable" personal property is deemed abandoned and the owner of the property is unknown. As those procedures are reasonable and consistent with the law, the Board will affirm a BLM decision applying them when personal property is left unattended on public lands under 43 C.F.R. § 8365.1-2(b).

4. Trespass: Generally

Where a backhoe was stored on public land without authorization, BLM may collect its administrative costs in abating the unauthorized use. BLM's determination of its administrative costs in taking the backhoe and transporting it back to its offices will be affirmed where they are documented and have not been shown to be unreasonable.

APPEARANCES: Mike and Sandra Sprunger, pro sese.

#### OPINION BY ADMINISTRATIVE JUDGE HUGHES

Mike and Sandra Sprunger (d/b/a Sprunger's Minerals) (the Sprungers or Appellants) have appealed from the November 22, 1996, decision of the Utah State Office, Bureau of Land Management (BLM), explaining the circumstances surrounding the impoundment by the House Range (Utah) Resource Area Office (HRRAO), BLM, of their backhoe and justifying collection of administrative costs associated with the impoundment.

The facts of the matter (some of which are disputed by the Sprungers) were set out by BLM in its November 22, 1996, decision and BLM's case record. On May 27, 1995, while inspecting a mining operation run by Bob Thomas, a BLM employee noticed a backhoe on Federally-owned lands near Topaz Mountain in sec. 21, T. 13 S., R. 11 W., Salt Lake Meridian, administered by BLM. <sup>1/</sup> The mining operation on the mining claims was "winding

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<sup>1/</sup> The backhoe is described in the record as a Case 580 C front-end loader/backhoe, Serial No. 5357593. There are photographs of the backhoe in the record taken by BLM after it was impounded, and it appears to have been serviceable at that time. It did not show rust or other signs of neglect.

down and the associated equipment had been removed," so that "the backhoe became a conspicuous presence on public land." The BLM employee asked Thomas "if the backhoe was part of his operation and he said no. He also stated he had given someone permission to store the backhoe on his operation 2 years ago but that he had not seen them since." The BLM employee "continued to monitor the backhoe during inspections of Mr. Thomas' operation. The backhoe never appeared to have been moved during the following year." (BLM Decision at 1.)

BLM impounded the backhoe in September 1996 and transported it approximately 75 miles to its offices in Fillmore, Utah. BLM officials evidently notified Thomas at that time that the backhoe was being impounded. The record contains an undated document entitled Authorization to Remove Personal Property from Public Land describing the backhoe, signed by the HRRAO Manager. It states:

The following abandoned personal property Case 580 C front-end loader/backhoe, Serial No. 5357593, originally located on public land, T. 13 S., R. 11 W., Section 21, is currently in the possession of the United States.

Since the above abandoned personal property is deemed to be of value, authorization is given for immediate impoundment, necessary to protect the property.

BLM Property Receipt Form No. 5357593 and BLM Property Record Form UT-054-96-22, both describing the backhoe, were also completed on September 17, 1996, as part of BLM's property management regimen.

BLM also prepared an undated Initial Report of Unauthorized Use (UT-054-96-22) noting that the "abandoned property" had been discovered on September 6, 1996, when it was "observed and verified by BLM employees." BLM prepared an undated Unauthorized Use Investigation Report indicating that the owner was "unknown" and it was "unable to locate" the owner, and that the value of the backhoe was estimated at \$15,000.

On September 30, 1996, BLM authorized the publication in the Juab County Times News and the Millard County Chronicle of legal notice of the impoundment and the availability of the backhoe to be claimed by the owner. A BLM purchase requisition form in the record indicates that BLM had contracted to have the notice published four times in each paper.

The Sprungers related the subsequent history in their October 17, 1996, letter to the Secretary: "[O]n October 4, [1996,] we were going to begin our fall mining when we discovered the backhoe missing. Before calling the sheriff, we called Bob Thomas who told us that the

BLM had impounded it. We then learned that BLM had taken the backhoe on September 17th." They relate in their statement of reasons (SOR) that they

tried to get [their] backhoe on Friday afternoon, October 4, but could get no help. Sandra [Sprunger] finally reached the [BLM employee] on Saturday, 10/5. He told her, "You will have to come into my office Monday morning and negotiate with me to get your backhoe back." On Monday morning [the BLM employee] wanted also to charge us for the weekend storage. When we pointed out that we wanted to get it on Friday, he said that there was no one in the office to help us. When we said that this was not our fault, he relented on the weekend charge.

(SOR at 3-4.)

The record shows that, on October 8, 1996, Mike Sprunger signed a copy of the undated BLM document entitled Authorization to Remove Personal Property from Public Land, to which had been added the following typewritten language, apparently by BLM: "The above property has been returned to me in the condition it was in when I last observed it." The form was signed immediately below by Mike Sprunger, indicating he endorsed this statement. The following language was handwritten on the bottom of the form by Mike Sprunger: "I do not agree that our backhoe was abandoned. The backhoe was located on a mining claim." Mike Sprunger also signed below that statement.

Also on October 8, 1996, BLM prepared a Receipt and Accounting Advice form, No. 2130078, for "Impoundment Fees" to Mike Sprunger, broken down as follows:

STORAGE:	9/17-10/4 18 DAYS @ \$8.00/DAY	\$144.00
WAGES:	\$19.00/HR X 4 HRS X 2 EMPLOYEES	152.00
MILEAGE:	\$1.08/MILE X 75 MILES X 2 (ROUND TRIP)	162.00
LEGAL NOTICE:	MILLARD	100.00
LEGAL NOTICE:	JUAB	68.00
		\$626.00

The Sprungers paid these costs, including the \$144 for storage of the backhoe. See Receipt and Accounting Advice No. 2130078; Letter to Secretary dated Oct. 16, 1996, at 3.)

On October 17, 1996, the Sprungers wrote to the Secretary of the Interior asserting that their backhoe had been wrongfully impounded and asking for a refund of the money they had paid BLM. They noted that they

had purchased the backhoe even though they knew they "would use it only intermittently, four to eight weeks total per year on two or three of" their mining claims. They related that their "claims are in the Thomas Range in the remote west desert of Utah, forty to sixty miles from [their] house and too fa[r] to commute with a 20 mph backhoe." They described the following arrangement they had for storing the backhoe near their claims:

So instead of commuting or buying equipment to haul the backhoe, we bought insurance against theft and vandalism and, as double protection, parked the backhoe between digs on a year-round active mine [2/] fairly close to our claims. The mine manager (Bob Thomas \* \* \*) gave us permission, and we were told where to park to be out of the way of their operation. Therefore, after each use, we would park the backhoe in the same spot. \* \* \* This arrangement worked fine for 3½ years.

(Letter to Secretary at 1.) The Sprungers also raised specific objections to BLM's impoundment, most of which have been restated in their SOR. These will be discussed below.

On November 22, 1996, the Utah State Office issued the letter decision under appeal herein. The Acting State Director (ASD) ruled as follows:

[T]he mine manager of the operation that gave you permission to store your backhoe on their operations is not the owner of the land. The land is public administered by [BLM]. While the mining operation was active, the backhoe did not look out of place. However, when the mining operation was winding down and the associated equipment had been removed, the backhoe became a conspicuous presence on public land. The backhoe first became obvious during a field inspection of Mr. Thomas' operation on May 27, 1995. The Resource Area specialist asked Mr. Thomas if the backhoe was part of his operation and he

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2/ The Sprungers indicate in their SOR that the mine was associated with the Topaz Calcium Nos. 7 and 8 mining claims. BLM records show that the Topaz Calcium Nos. 7 and 8 placer mining claims (UMC 343280 and UMC 343281) were located on Feb. 25, 1991, but were "closed" on its records on Aug. 31, 1994. (SOR Ex. 5.) These claims, however, were relocated on June 17, 1996 (SOR Exs. E7-3 and E7-4), and filed with BLM, which assigned the relocated claims serial numbers UMC 360363 and UMC 360364. (SOR Ex. 5.)

The Sprungers have also provided copies of notices of location for the Topaz Valley Limestone Nos. 1 and 2 placer mining claims, an earlier relocation of the Topaz Calcium Nos. 7 and 8 claims on Apr. 25, 1995. Those claims do not appear on BLM's geographic index.

said no. He also stated that he had given someone permission to store the backhoe on his operation 2 years ago but that he had not seen them since. The Resource Area specialist continued to monitor the backhoe during inspections of Mr. Thomas' operation. The backhoe never appeared to have been moved during the following year. Your use of the backhoe was not detected by the Mine Manager or BLM.

(Letter Decision at 1.)

The ASD noted that the Resource Area Office had "followed proper procedures to try and locate the owner(s)" of the backhoe, and that "[l]egal notices were published in the Millard County Chronicle and the Time News Juab newspapers to find the rightful owners of the backhoe." He conceded that "a warning was not placed on the backhoe," but noted that, "under policy this is left to the discretion of the authorized officer based on the value of the personal property." He stated that the "Resource Area personnel determined that the backhoe did not need to be posted since it was of high value and it had not been moved for a year." The ASD cited the provisions of the BLM Handbook entitled Realty Trespass Abatement (H-9232-1), but did not quote them.

The ASD also noted that there "were no mining claims on the site from August 31, 1994, to June 17, 1996," and that "there were no mining notices or plans of operation in this vicinity which were using this backhoe." He also stressed that the "Mine Manager did not remember the name of the individual he had given permission to nor had he seen [the Sprungers] for 2 years."

The ASD set out the "impoundment costs" stated above, noting that "[t]hese are actual costs incurred with the removal of [the Sprungers'] personal property from public land for which compensation is determined." However, we agreed to "waive the storage cost of \$144.00 since the backhoe was physically stored on property under BLM jurisdiction," and that this amount would be refunded to them under separate cover. <sup>3/</sup>

The Sprungers appealed. In their SOR, they take issue with BLM's conclusion that the backhoe was parked on mining claims that were winding down and dropped. They claim that the "mine always appeared operational with associated equipment whenever we went out to use or check on our backhoe." They have filed copies of State of Utah Annual Report of Mining Operations forms showing that there was activity at the Topaz Valley

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<sup>3/</sup> Nothing in the record indicates that this was done, but Appellants have not asserted that it was not.

Limestone mine (operated by Robert B. Thomas) in the area covered by the Topaz Calcium Nos. 7 and 8 mining claim (SW<sup>1</sup>/<sub>4</sub> of sec. 21) from January 1993 through December 1995. (SOR Ex. E.) They assert that these reports of activity cast doubt on BLM's conclusion that there was no production equipment at the site. They state that "there was always equipment at the site," and that, "[even at present and when we discovered our backhoe missing on October 4, 1996, other equipment at the site consisted of a crane, front-end loader and bulldozer." (SOR at 2.)

Appellants also dispute BLM's conclusion that their backhoe had not been moved prior to its impoundment. They show that they used it on their claims from May 17 through 24, 1996, and again "for two days in August" on a State leasehold. (SOR at 2.)

Appellants explain that Bob Thomas, the mine manager, had never actually seen them, but that they had called him to "make arrangements," presumably for storing the backhoe, and "on occasion" apparently to report and discuss problems. They explain that they saw only "subordinate workers" at the mine site.

Appellants assert that it would have been an "easy matter" for BLM to identify the backhoe as belonging to them. They object to the fact that BLM offered no prior notice that it would impound the backhoe and that "no effort was made before the impoundment to find" them. They specifically complain that "[no notice was posted on the backhoe to give" them a chance to avoid the impoundment. (SOR at 2.)

Appellants also complain that BLM's impoundment costs "are greatly exaggerated." <sup>4/</sup> They claim that the cost of hauling the backhoe 75 miles to BLM's facilities should be no more than \$150 using the "hauling rate in the private sector" of "\$2.00 per loaded mile."

[1] The regulation at 43 C.F.R. § 8365.1-2(b), governing "occupancy and use" of Federal lands, provides as follows:

On all public lands, no person shall \* \* \* [l]eave personal property unattended longer than 10 days (12 months in Alaska), \* \* \* unless otherwise authorized. Personal property left unattended longer than 10 days (12 months in Alaska), without

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<sup>4/</sup> Appellants objected to the assessment of the costs of publication in local newspapers of the legal notice of impoundment, and BLM has conceded that these costs were, in fact, too high. By letter dated Mar. 25, 1997, the Area Manager, HRRAO, agreed to refund an overpayment in the amount of \$115.90 to Appellants. (Memorandum from HRRAO to Board, dated Apr. 16, 1997, Attachment 2.)

permission of the authorized officer, is subject to disposition under the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484(m)). [5/]

This regulation applies "to use and occupancy of all public lands under the jurisdiction of" BLM. 43 C.F.R. § 8365.1.

[2] Appellants argue that they are exempt from this regulation, in that their backhoe was parked on a mining claim. The rule governing storage of equipment and other personal property on mining claims is established. Section 4(a) of the Surface Resources Act, 30 U.S.C. § 612(a) (1994), bars use of an unpatented mining claim for any purpose other than prospecting, mining, or processing operations and uses "reasonably incident thereto." United States v. Lee Jesse Peterson, 125 IBLA 72, 82-84 (1993). The storage of equipment on the claims is not allowed when not reasonably incident to mining; for example, the storage of dump trucks on a claim cannot be held to be reasonably incident to a mining operation, where the trucks were not being used as part of the operation. Id. at 84. From this it follows that, as BLM held, Bob Thomas lacked authority to authorize Appellants to use his unpatented mining claim for storage of mining equipment that was not being used on the claim. 6/ There is no evidence that he used Appellants' backhoe at all. The record (including Appellants' description of events) shows, to the contrary, that their backhoe was simply being stored on Thomas' mining claim.

There is no dispute that Appellants' backhoe was stored unattended for more than 10 days on public land without authorization from BLM. 7/ Bob Thomas lacked authority to grant permission to store the backhoe on

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5/ There is an exception that is inapplicable here, allowing pitching tents, parking trailers, erecting shelters, or placing camping equipment at designated places in developed camping and picnicking areas. 43 C.F.R. § 8365-2.3(b).

The provisions of 40 U.S.C. § 484(m) (1994) authorize the Administrator of the General Services Administration to take possession of abandoned and other unclaimed property on premises owned by the United States to determine when title thereto vested in the United States, and "to utilize, transfer or otherwise dispose of such property."

6/ We do not imply that it would have been enough for Thomas merely to have used Appellants' backhoe. Rather, such use would have to be "reasonably incident" to the operation. For example, if Thomas already had a serviceable backhoe, his use of Appellants' backhoe would not legitimize his storing the latter on his claim.

7/ It is accordingly irrelevant that BLM may have been mistaken in believing the backhoe had been unattended for a longer period.

his mining claim, as storing the backhoe was not "reasonably incident" to his mining activity there. Accordingly, BLM properly determined it to be subject to impoundment and disposition under 43 C.F.R. § 8365.1-2(b).

[3] Turning to the procedure followed by BLM in impounding the backhoe, we review the BLM Manual provisions cited in the decision under appeal, which specify procedures BLM employees must take when "valuable personal property" is "abandoned" on the public lands and the owner of the property is "unknown":

- a. If valuable personal property is readily removable (i.e. subject to theft), get approval to remove \* \* \*. If removed to a Bureau facility for safekeeping or allowed to remain on the public lands, proceed as follows.
- b. Photograph the item(s) for identification and valuation purposes.
- c. Post the Legal Notice \* \* \* on the property (if appropriate) and photograph. Also post copies of the Legal Notice in one or more local county courthouses, post offices, local Bureau office, or other public places as appropriate. Document the posting in the case file.
- d. Publish the Legal Notice in a local newspaper having general circulation in the vicinity.
- e. Maintain the posting concurrently with the publication and removal period specified in the Legal Notice.
- f. If the legal notice evokes no response and other attempts to locate the owner are unsuccessful, complete affidavit of diligent search \* \* \* and place in case file. Take possession and dispose of \* \* \* .

(BLM Manual H-9232-1 Chapter VI B.5. (Rel. 9-300 Aug. 14, 1989).) Thus, BLM employees are specifically directed to "remove" abandoned, valuable personal property to a BLM facility for safekeeping if it "is readily removable." § (BLM Manual H-9232-1 Chapter VI B.5.a. (Rel. 9-300 Aug. 14, 1989).)

§/ We are aware that 43 C.F.R. § 8365.1-2(b) does not expressly state that personal property left unattended longer than 10 days automatically becomes "abandoned" at the end of that time. Nevertheless, by invoking the terms of 40 U.S.C. § 484(m) (1994) (governing disposition of "abandoned and other unclaimed property"), that regulation effectively provides (as stated in

The BLM Manual also guides BLM employees as follows regarding "posting" personal property prior to impoundment: "Personal property items may not lend themselves to posting and where valuable items are involved immediate impoundment may be necessary to protect the property." (BLM Manual H-9232-1 Chapter VI Paragraph B. (Rel. 9-300 Aug. 14, 1989).)

The BLM Manual is not promulgated with the same procedural protections associated with Departmental regulations, and we are therefore not bound to follow it. Nevertheless, where BLM adopts agency-wide procedures in its Manual that are reasonable and consistent with the law, the Board will not hesitate to follow those procedures and uphold their enforcement. Star Lake Railroad Co., 121 IBLA 197, 211, 98 I.D. 398, 406 (1991); Beard Oil Co., 105 IBLA 285 (1988). We regard these provisions as reasonable and consistent with the provision of 43 C.F.R. § 8365.1-2(b) and the Federal Property and Administrative Services Act of 1949 (FPASA), as amended, 40 U.S.C. § 484(m) (1994).

The backhoe was personal property that had been "unattended" on public lands for more than 10 days, which, under the regulations, was sufficient to render it subject to treatment under FPASA. It was valuable, as shown by the photograph in the record: BLM estimated its value at \$15,000 in its Unauthorized Use Investigation Report. BLM had no way of determining who owned it, as it was not "stenciled" with their name, and Bob Thomas, when asked by BLM employees, could not remember who owned it. Thus, the cited provisions clearly applied here.

Reviewing those procedures, we note BLM followed all of them. Although item c. could be read as requiring BLM to post notice of the impoundment at the site from which the property was removed following the impoundment (which BLM did not do), this provision allows some flexibility by allowing posting in "other public places as appropriate." BLM provided Appellants notice by informing Bob Thomas that it was impounding the backhoe. That was effective, since he was able to inform them what had happened to their backhoe when they found it missing. Appellants were able to

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fn. 8 (continued)

the BLM Manual) that valuable personal property left unattended longer than 10 days may be impounded for safekeeping and may, upon "expiration of [a] removal period specified in \* \* \* appropriate notices, \* \* \* be considered abandoned for purposes of possession by the United States." (BLM Manual H-9232-1 Chapter VI.F. (Rel. 9-300 Aug. 14, 1989).) It is apparent that title to the backhoe did not pass to the United States in this case, and therefore it never was "abandoned," in the strict legal sense. Nevertheless, the backhoe may be described as "abandoned" in the more general sense of the word, since it was left unattended.

ascertain what had happened prior to disposal of the backhoe, so that BLM's failure to post notice of impoundment at the site did not result in their loss of ownership of the backhoe.

The question remains whether BLM should have posted prior notice on the backhoe that it was going to be impounded. As noted above, the BLM Manual observes that, "where valuable items are involved immediate impoundment may be necessary to protect the property." Plainly, BLM should not adopt a policy of posting apparently abandoned property with notice that it will be impounded where doing so would simply highlight the availability of the property to potential thieves. As noted above, Appellants contributed to BLM's failure to provide advance notice of the impoundment by failing to mark (stencil) the backhoe with information indicating that they owned it, and also by failing to make sure that Thomas, who could not even remember who owned the backhoe, knew their identity. BLM had no way of ascertaining who the owner of the backhoe was. <sup>9/</sup>

Appellants contest BLM's conclusion that the backhoe was obviously not being used and was exposed to theft. However, they do not present affidavits or offers of proof successfully rebutting BLM's finding that the backhoe had been left in a position that made it a potential target for theft. The record shows that BLM employees were at the site at least as often as Appellants, and we can find no basis to impugn the credibility of the reports that the backhoe was exposed and vulnerable to theft.

As BLM followed reasonable procedures in impounding the backhoe, we find no basis to disturb that action.

[4] The only issue remaining is whether BLM properly assessed Appellants for its costs in impounding the backhoe. We have considered the question of assessment for administrative costs in the context of trespass actions, ruling that a decision ordering recoupment of such costs will be affirmed where they are itemized in the record. Mike McCall, 138 IBLA 283, 287 (1997); Michael and Karen Rodgers, 137 IBLA 131, 135 (1996). This was, technically, a trespass situation (although BLM has not described it as such or assessed any charges for unauthorized use), since (as discussed above) the backhoe was stored on public land without authorization. In these circumstances, BLM could properly collect its administrative costs in abating the unauthorized use. See 43 C.F.R. § 2920.1-2(a)(1); BLM Manual H-9232-1 Chapter VII.E. BLM's administrative costs in taking the backhoe and transporting it back to its office are documented and have not been

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<sup>9/</sup> We reject Appellants' suggestion that BLM was remiss in not calling around to local active mining operations to determine the owner of the backhoe prior to impoundment.

shown to be unreasonable. Although Appellants may have been able to find a person willing to transport the backhoe for less, we deem it prudent for BLM to dispatch two employees for that job. Appellants have not disputed the accuracy of the labor or mileage rates charged by BLM for hauling the backhoe.

BLM originally improperly charged a fee for storage of the backhoe at its facilities. However, the ASD waived that fee, thus mooted the issue of its correctness. <sup>10/</sup> BLM also initially failed to take into account that it would be canceling publication of legal notice of the impoundment in local newspapers following the return of the backhoe to Appellants, thus reducing its costs. When notified of these facts by Appellants during the pendency of this appeal, BLM promptly refunded the overcharge (see n.3, above). BLM technically lacked authority to take this action while the matter was on appeal to this Board, and it is therefore necessary for us to ratify it. BLM's decision is modified to the extent that it charged Appellants this amount. In all other respects, BLM's decision is affirmed. To the extent not specifically addressed herein, Appellants' arguments have been considered and rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed as modified.

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David L. Hughes  
Administrative Judge

I concur:

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C. Randall Grant, Jr.  
Administrative Judge

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<sup>10/</sup> BLM's action recognized that operation costs (including the costs of using BLM's equipment or facilities) should not be assessed unless they are incurred by BLM as a consequence of the trespass or unless BLM had actually incurred them to resolve the specific trespass. See BLM Manual H-9232-1 Chapter VII.E.2. (Rel. 9-300 Aug. 14, 1989). Parking the backhoe at a storage area at BLM's facilities did not entail such expenses, as the storage area was not apparently secured specifically to store the backhoe.

