



ROBERT LEWIS

180 IBLA 376

Decided February 25, 2011



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

ROBERT LEWIS

IBLA 2010-141

Decided February 25, 2011

Appeal from a Noncompliance Order issued by the Las Vegas, Nevada, Field Office, Bureau of Land Management, ordering cessation of all mining activity on the Louis #14 lode mining claim except for casual use unless a notice of mining or plan of operations is received and a financial guarantee is accepted. N-88275, NMC 997568.

Affirmed.

1. Mining Claims: Surface Management: Generally

BLM relies, in part, on its authority under Section 302(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732(b) (2006), and 43 C.F.R. Subpart 3809.1(a) to ensure that activities on the public lands do not cause “unnecessary or undue degradation of the public lands,” when taking action under its Abandoned Mine Land Program “to reduce environmental degradation, mitigate physical safety hazards, and reclaim abandoned mine lands.” BLM Manual, § 3720.03.

2. Mining Claims: Generally--Mining Claims: Operations Conducted under Notices

To facilitate BLM’s ability to identify and manage mining disturbances on public lands, Departmental regulations divide operations on mining claims into three categories: casual use, for which an operator need not notify BLM; notice-level operations, requiring an operator to submit a notice; and plan-level operations, requiring an operator to submit a plan of operations and obtain BLM’s approval.

3. Mining Claims: Generally--Mining Claims: Operations Conducted under Notices--Mining Claims: Plan of Operations

The opening of an abandoned mine adit, permanently secured by BLM under its Abandoned Mine Land Program, constitutes disturbance to the public lands exceeding “casual use” (*i.e.*, greater than “no or negligible disturbance”) and, as such, requires submission of a notice or plan of operations and a financial guarantee under 43 C.F.R. Subpart 3809.

APPEARANCES: Robert Lewis, Las Vegas, Nevada, *pro se*; John Steiger, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

Robert Lewis, the owner of record of the Louis #14 lode mining claim (also known as the Louie #14) (NMC997568),¹ has appealed from a Noncompliance Order (NO) issued March 23, 2010, by the Las Vegas, Nevada, Field Office, Bureau of Land Management (BLM), instructing Lewis to “cease all mining related activity on the Louie #14 lode except for casual use until the notice [filed pursuant to 43 C.F.R. § 3809.21] is processed by the BLM and a financial guarantee accepted.” BLM found that Lewis was not in compliance with 43 C.F.R. § 3809.605 because he had removed a barrier that sealed an abandoned adit on the claim without first submitting a notice or plan of operations and an acceptable financial guarantee. Lewis challenges BLM’s issuance of the NO, contesting BLM’s characterization of his mining activities as more than “casual,” and arguing that BLM is interfering with his valid mining claim. As discussed below, Lewis has failed to show error in BLM’s decision to issue the NO, and, therefore, we affirm BLM.

I. *Background*

On January 20, 1992, BLM encountered an abandoned adit in sec. 14, T. 26 S., R. 64 E., Mount Diablo Meridian, Clark County, Nevada, that extended about 60 feet underground until it became a shaft that dropped 40 feet to groundwater. Considering this hazard to be a threat to public safety, BLM identified the adit for inventory, under its Abandoned Mine Land (AML) program,² inventoried

¹ The claim is situated in sec. 14, T. 26 S., R. 64 E., Mount Diablo Meridian, Clark County, Nevada.

² *See generally*, BLM Manual, § 3720; BLM Handbook H-3720-1, *Abandoned Mine* (continued...)

it as CL-798 under that program, erected a door at the entrance of the abandoned mine, and secured the door by lock and chain. NO at 1-2.

“The primary goal of the [AML] program is to remediate and reduce actual or potential threats that pose physical safety risks and environmental degradation” from abandoned mine lands on or affecting public lands administered by BLM. BLM Manual, § 3720 Glossary (AML Program); *see also*, BLM Manual, § 3720.02 (Objectives); BLM Handbook, Appendix A - Glossary (Abandoned Mine). Where there is no evidence of exploration, development, mining, reclamation, maintenance, or other mining operation of hard rock mines on or affecting public lands administered by BLM after January 1, 1981, and there is nothing to indicate that the responsible miner intends to resume mining, BLM will inventory the mine as abandoned. *See* BLM Handbook, § 9.3.1 (Site Discovery). While at the site, BLM field personnel may take temporary measures, such as posting warning signs and/or fencing openings to mitigate immediate safety risks. *Id.* at § 9.3.5.1 (Interim Measures); *see* BLM Manual, § 3720.06 C.3. Assessing the circumstances, they determine what additional, permanent remedial measures may be necessary, including, “closing adits and shafts” and “filling or blocking other potentially hazardous openings.” *Id.* at § 9.3.5.2 (Permanent Measures).³ All sites must be

² (...continued)

Land Program Policy Handbook (BLM Handbook) (The BLM Handbook expands upon program policy established under the BLM Manual, § 3720). “Abandoned mines generally include a range of mining impacts, or features that may pose a threat to water quality, public safety, and/or the environment.” BLM Manual, § 3720 Glossary (Abandoned Mine). For examples of the hazards created by unsecured abandoned mines, *see Cleveland v. United States*, 546 F.Supp.2d 732 (N.D. Cal. 2008) (where an off-road vehicle plunged into an abandoned mine shaft on national forest land).

³ Instruction Memorandum (IM) No. 2010-45, dated Dec. 16, 2009, *Guidance for the Mitigation of Abandoned Mine Hazards on Active Mining Claims*, states:

If the mining claimant protests . . . BLM’s proposed mitigation actions with respect to the abandoned mine hazard, the mining claimant will become responsible for maintaining that mine opening or other hazard/working/feature in a safe and secure condition. . . . BLM will initiate efforts for the mining claimant to accept financial responsibility for site maintenance, including protection of public health and the environment. The BLM will regulate these sites as “activities exceeding casual use,” and the mining claimants will be required to comply with surface management regulations at 43 C.F.R. § 3809.10.

We note that IM 2010-45 was not in effect when BLM initiated mitigation measures by closing and securing the adit in 1992.

monitored to ensure that the remedy remains in place as long as necessary and continues to achieve the desired result. *Id.* at § 9.4.9 (Monitoring).

When inspecting abandoned mine site CL-798 in 2007, BLM discovered that the door, secured by lock and chain, had been removed by an unknown party and, on June 18, 2007, the Bureau of Reclamation (BOR), under contract with BLM, sealed the adit with a foam and rock barrier, used to close unsafe, hazardous mine shafts, at a cost of \$2,625.⁴ Mine Closure Report, dated June 18, 2007; NO at 1. BLM discovered the adit opened and unsecured on February 19, 2009, and BOR again sealed the adit with a foam and rock compound.⁵ Incident/Investigation Report, Incident #1072400079 (Incident Report), at 2; NO at 1. A year later, an inspection found that the adit had been reopened. Incident Report at 2. Undated photographs in the record show the adit as sealed with the foam compound and subsequently opened, the compound having been burned. On February 16, 2010, BOR covered the adit with dirt and, using a bulldozer, contoured the hillside and bermed an access road to make the mine site inaccessible. *Id.* Combining this work with another mine closure, BOR estimated its costs at \$1,500. *Id.*

As noted, Lewis is the owner of record of the Louis #14 lode mining claim, having located it on September 21, 2008. On October 16, 2009, Lewis filed a copy of the recorded affidavit of annual assessment work with BLM. In his affidavit, Lewis attested that, during the assessment year ending September 1, 2009, he had performed the following work on the Louis #14 mining claim: “Opening adit, road work, test pit and sampling . . . at or near adit, road [and] adit.”

On February 18, 2010, 2 days after BOR bulldozed the dirt leading to the adit, Lewis contacted Joel Mur, a BLM 3809 compliance inspector, complaining that “the Louie #14 Mine Site was his claim and that government vehicles were seen at the site, filling in the mine shaft.” Incident Report at 2. Lewis admitted to Mur on February 18, 2010, and to John Ryfa, a BLM law enforcement ranger, on February 26, 2010, that he had removed some of the foam and rock sealing compound from the adit. NO at 2; Incident Report at 1, 2, 3, 6; Compliance Report, dated Mar. 15, 2010, at unpaginated (unp.) 5.⁶

⁴ In its Answer at 3, BLM states that “[i]n the decision under appeal, BLM is not seeking reimbursement for re-sealing the adit or otherwise requiring that Appellant take any specific action.”

⁵ The cost for this action was not separately reported as BOR was working on another mine closure in the immediate vicinity and apparently integrated the costs.

⁶ Lewis also indicated that a fire had burned out additional foam compound, without indicating who was responsible, and mentioned that fireworks had been found
(continued...)

On March 15, 2010, Mur conducted a “3809 compliance inspection” and completed a report recommending that BLM issue Lewis an NO:

The opening of any structure classified as an AML is not considered to be casual use. Operator/claimants are required by [43 C.F.R. §] 3809.21 to file a notice or plan of operations with BLM before opening an AML hazard. Operators must secure the opening to protect public health and safety and prevent unnecessary or undue degradation as is required by 43 U.S.C. § 1732(b). If an operator does not submit a notice or contact the Las Vegas Field Office, before removing an AML barrier, they are in noncompliance with 3809.605(a-d).

. . . .

There is no notice, plan of operations or financial guarantee. The operator/claimant re-opened a very dangerous threat to public health and safety and caused unnecessary and undue degradation of public land. . . . Based on the Affidavit of Annual Assessment included with this report, the claimant, Robert Lewis, states that he opened the closed AML adit as part of his annual assessment work. In an interview with BLM [Law Enforcement] Ranger, John Ryfa, that is included in the case file, Lewis states that he dug out two feet of the foam from the opening and had conducted minor improvements to the roadway.

Compliance Report, dated Mar. 15, 2010, at unpag. 1, 6.

In its March 23, 2010, NO, BLM recounted the history of the AML site and efforts to secure it. It noted appellant’s role in reopening the adit on at least one occasion, pointing to Lewis’ affidavit attesting to having opened the adit. NO at 2. It advised Lewis that “a claimant does not acquire a vested interest in a mining structure such as an AML adit by filing a claim.” *Id.* The NO further explained that a claimant who desires to enter an AML site is required to file a notice or plan of mining operations and must satisfy the requisite financial guarantees, stating that the “opening of any structure classified as an AML is not considered to be ‘casual use’” under the Department’s regulations in 43 C.F.R. Subpart 3809. *Id.* at 2. Filing a notice or plan of operations that outlines plans to use an AML structure, BLM stated, indicates a willingness to accept responsibility for the mine structure and surface degradation. *Id.* However, “[u]ntil such time that a claimant becomes the responsible party by filing a plan or notice, BLM is required by Section 302(b) of the Federal Land Policy and Management Act [of 1976 (FLPMA), 43 U.S.C. § 1732(b)

⁶ (...continued)

nearby. Incident Report at 2.

(2006) (FLPMA)] to ‘take any action necessary to prevent unnecessary or undue degradation of the [public] lands.’” *Id.* BLM informed Lewis that his reopening of the adit, after it was sealed to protect public health and safety and prevent unnecessary or undue degradation, constituted an activity greater than casual use, and that since he failed to submit a notice or plan of operations, he was in noncompliance with 43 C.F.R. § 3809.605(a)-(d). *Id.* BLM ordered Lewis to cease all mining activity on the claim, other than casual use. *Id.* at 3. Finally, BLM advised Lewis that if he desired to reopen the AML workings on the Louis #14 lode, he must: submit a notice as set forth in 43 C.F.R. § 3809.301; include the cost of backfilling the AML hazard as part of his reclamation cost estimate; include a description of how he will protect public health and safety on the Louis #14 if he opens the adit; and satisfy all State and Federal laws. *Id.* at 2-3.

II. *Lewis’ Appeal and BLM’s Answer*

On April 29, 2010, Lewis filed a “follow-up” letter and later a “reply” “regarding the alteration and surface damage by BLM contractors on behalf of the BLM upon the valid mining claim Louie #14,” which BLM confirmed was intended to serve as a notice of appeal and statement of reasons for appeal (SOR). *See* Casefile N-88275: Telephone confirmation (May 19, 2010). Lewis argues that neither a notice nor plan of operations is required for what he considers casual use of this mining claim. As support, Lewis states that he “has not used any motorized equipment for work on this claim. The removal of [loose] debris such as rocks, glass and old wood by hand hardly qualifies the need for a Notice of Intent or Plan of Operation.” SOR at 1. He also claims that BLM is interfering with his “owner rights” and valid mining claim. *Id.* at 2.

In its answer, BLM initially suggests that the appeal should be dismissed because appellant had not alleged error in issuing the NO, nor shown that he was adversely affected by it.⁷ We disagree, and observe that Lewis clearly contends BLM erred in determining that his mining activities on the claim have risen above casual use, requiring him to satisfy the notice or plan of operations and financial guarantee requirements of the 3809 regulations.

Responding to appellant’s argument that, by not using mechanized equipment he had limited his actions to “casual use,” BLM explains that the Department’s definition of “casual use” at 43 C.F.R. § 3809.5 offers the use of such equipment only as *an example* of certain activities that would exceed casual use. BLM emphasizes that this rule defines “casual use” as activities ordinarily resulting in “no or negligible disturbance of the public lands or resources.” The opening and excavation of an adit,

⁷ As noted, BLM has stated that it is not seeking reimbursement for re-sealing the adit. Answer at 3.

BLM explains, does not constitute “no or negligible disturbance” and, therefore, Lewis is required to file at least a notice under 43 C.F.R. § 3809.21(a). BLM recognizes, however, that if Lewis chooses to engage in mining activities that do not include reopening the adit or involve greater than a negligible disturbance, he could pursue such casual use without filing a notice or plan of operations.

III. Discussion

A. *BLM is charged with a duty to prevent unnecessary or undue degradation of surface resources*

[1] Appellant questions whether BLM has the authority to manage the surface resources on his claim. SOR at 1. The Mining Law of 1872, *as amended*, permits location of valuable mineral deposits on the public lands of the United States. *See generally* 30 U.S.C. §§ 21-47 (2006). Lode claims may be located along veins or lodes of “rock in place bearing gold, silver . . . or other valuable deposits” and can only be validated by the discovery of a valuable mineral deposit. 30 U.S.C. §§ 22, 23 (2006); *Best v. Humboldt Placer Mining Co.*, 371 U.S. 334, 335 (1963); *Cameron v. United States*, 252 U.S. 450, 456 (1920); *Barrows v. Hickel*, 447 F.2d 80, 82 (9th Cir. 1971); *United States v. Dwyer*, 175 IBLA 100, 111 (2008). As against the United States, a mining claimant acquires no vested rights by locating a mining claim; the title to the lands subject to unpatented mining claims remains in the United States. *See Cameron v. United States*, 252 U.S. at 460; *United States v. Knoblock*, 131 IBLA 48, 78 (1994); *United States v. Mineco*, 127 IBLA 181, 191 (1993) and cases cited. Until patent has issued, the rights of the mining claimant are limited by the statutes and regulations under which those rights are acquired and maintained; thus the United States, as the title owner, may regulate mining activities on Federal lands to protect the surface resources. *See United States v. Grimaud*, 220 U.S. 506 (1911); *United States v. Hicks*, 162 IBLA 73, 82 (2004) (quoting *United States v. Mineco*, 127 IBLA at 191).

Section 302(b) of FLPMA and 43 C.F.R. Subpart 3809 provide that mining activities under the mining laws must not result in “unnecessary or undue degradation of the public lands.” *Mineral Policy Center v. Norton*, 292 F. Supp. 2d 30, 33, 41-46 (D.D.C. 2003); *Austin Shepherd*, 178 IBLA 224, 232 (2009); *Cat Mountain Corp.*, 148 IBLA 249, 252 (1999); 66 Fed. Reg. 54834, 54841 (Oct. 30, 2001); 43 C.F.R. § 3809.5. BLM relies, in part, on its authority under FLPMA to ensure that activities on the public lands do not cause “unnecessary or undue degradation of the public lands,” when taking action under its AML program “to reduce environmental degradation, mitigate physical safety hazards, and reclaim abandoned mine lands.” BLM Manual, § 3720.03; *see also*, BLM Handbook, § 1.8.

Mining claimants also have a responsibility to protect the public lands. The regulations provide that any person “intending to develop mineral resources on the public lands must prevent unnecessary or undue degradation of the land and reclaim disturbed areas.” 43 C.F.R. § 3809.1(a). Accordingly, Subpart 3809 “establishes procedures and standards to ensure that operators and mining claimants meet this responsibility.” *Id.*

B. *BLM’s classification of mining activities*

[2] To facilitate BLM’s ability to identify and manage mining disturbances on public lands, Departmental regulations divide operations on mining claims into three categories: casual use; notice-level operations, and plan-level operations. 43 C.F.R. § 3809.10; *LKA International, Inc.*, 175 IBLA 225, 230-31 (2008); *Leber Mining Co.*, 131 IBLA 275, 277 (1994). Mining activities resulting in only negligible disturbance of Federal lands are identified as “casual use” operations. 43 C.F.R. § 3809.5. These activities require no notification to or approval by BLM. 43 C.F.R. § 3809.10(a); *Joe Gutierrez*, 174 IBLA 207, 221 (2008) (“The import of the definition of ‘casual use’ in 43 C.F.R. § 3809.5, together with the provisions of sections 3809.11(a) and 3809.21(a), is that a miner need not notify BLM or obtain its approval of casual use operations.”).⁸

Notice-level operations consist of “exploration causing surface disturbance of 5 acres or less of public lands on which reclamation has not been completed.” 43 C.F.R. § 3809.21(a). BLM does not issue a decision approving notice-level mining operations. Instead, upon receipt of a notice, BLM must review it within 15 calendar days to determine if, in accordance with 43 C.F.R. § 3809.301, it is complete. In addition, a mandatory financial guarantee must be submitted. 43 C.F.R. § 3809.312(c). Operations may begin under the notice no sooner than 15 calendar days after receipt of the complete notice, unless BLM acts thereon. 43 C.F.R. § 3809.312(a). If BLM determines that a notice is not complete, it will either inform the person filing the notice of the additional information that must be filed or it may take action described in 43 C.F.R. § 3809.313.

Mining activities that cause a cumulative surface disturbance of more than 5 acres in any calendar year are identified as “plan-level” operations, and are allowed only after BLM has reviewed and approved the plan and mandatory financial guarantee. 43 C.F.R. § 3809.11; 43 C.F.R. § 3809.412; *see also* 43 C.F.R. § 3809.411 (environmental review and consultation required).

⁸ Nevertheless, disturbances created under casual use activities must be reclaimed and therefore such operations are subject to monitoring to ensure that unnecessary or undue degradation does not occur. 43 C.F.R. § 3809.10(a).

C. *Lewis' activities exceeded casual use*

BLM apprised Lewis of its determination that, under the regulations at 43 C.F.R. Subpart 3809, “[t]he opening of any structure classified as an AML is not considered to be casual use.” NO at 2; *see* IM 2010-45. Lewis counters that the mining activities he engaged in on the Louis #14 claim constitute only “casual use” operations, alleging that no, or negligible, surface disturbance occurred.

The regulations do not provide exclusive lists of activities that do and do not constitute casual use, but rather provide the following examples in the definition of “casual use” found in 43 C.F.R. § 3809.5:

Casual use means activities ordinarily resulting in no or negligible disturbance of the public lands or resources. For example –

(1) Casual use generally includes the collection of geochemical, rock, soil, or mineral specimens using hand tools; hand panning; or non-motorized sluicing. It may include use of small portable suction dredges[,] . . . metal detectors, gold spears and other battery-operated devices Operators may use motorized vehicles for casual use activities

(2) Casual use does not include use of mechanized earth-moving equipment, truck-mounted drilling equipment, motorized vehicles in areas when designated as closed . . . , chemicals, or explosives. It also does not include “occupancy” or operations in areas where the cumulative effects of the activities result in more than negligible disturbance.

Lewis does not explicitly dispute that his opening of the AML adit was more than “casual use,” as BLM determined. Rather, he omits reference to his opening the adit, and avoids addressing the basis for BLM’s NO. Lewis describes his mining activities as the “removal of debris such as rocks, glass, and old wood by hand” (SOR at 1), which he describes as “casual use” operations that cause no or negligible surface disturbance and do not require substantial reclamation. He declines to mention opening the abandoned and secured AML structure.

The record, however, is clear. In his October 2009 affidavit of assessment work, Lewis attested to having performed mining activities that included “opening the adit, road work, test pit and sampling,” consistent with assertions he made on separate occasions to two BLM employees. Lewis offers no evidence that contradicts BLM’s factual finding that he opened the adit, identified as AML site CL-798, on the Louis #14 mining claim. Although Lewis claims his activities were limited to “casual use,” a mining claimant may not avoid the rules to file a notice or plan of operations “merely by characterizing any activities in which he might be engaged as ‘casual

use.” *Lloyd L. Jones*, 125 IBLA 94, 97-98 (1993). The burden is upon the person conducting mining operations on the public lands to demonstrate, as a matter of fact, that his or her activities actually amount to casual use and therefore require no notice or plan of operations. *Id.* (citing *Pierre J. Ott*, 122 IBLA 371, 374 (1992)). Lewis offers no evidence that contradicts BLM’s finding that he opened the adit, identified as AML site CL-798, on the Louis #14 mining claim. He has failed to show an error of fact in BLM’s decision to issue the NO.

[3] Lewis also fails to show that BLM erred as a matter of law in issuing the NO. BLM is required to take appropriate steps to preclude unnecessary or undue degradation of the public lands. *See LKA International, Inc.*, 175 IBLA at 235. As discussed, BLM officially inventories and remediates abandoned mine structures in order to “[p]rotect public safety and reduce liabilities by eliminating or reducing risks posed by abandoned mines,” and to “[r]educ[e] environmental degradation caused by abandoned mines. BLM Handbook, § 1.3 (2), (3); *see also*, BLM Handbook at Appendix A - Glossary (AML Program). It has established and implements policies and procedures to ensure that the sites are safely maintained. BLM permits mining claimants or operators, upon filing a notice or plan of operations and financial guarantee, to take responsibility for AML mitigation and reclamation. *See* IM No. 2010-45. BLM’s mandate and concerns about unnecessary or undue degradation fully support its requiring mining claimants/operators to notify BLM of their intent to disturb an AML site that has been closed and commit to its reclamation by filing a notice or plan of operations and a financial guarantee. The opening of an abandoned mine adit, permanently secured by BLM under its AML Program, constitutes disturbance to the public lands exceeding “casual use” (*i.e.*, greater than “no or negligible disturbance”) and, as such, requires submission of a notice or plan of operations and a financial guarantee under 43 C.F.R. Subpart 3809.

CL-798 was an abandoned mine adit, extending about 60 feet underground and dropping 40 feet to groundwater. Following established procedures, pursuant to FLPMA’s mandate to prevent unnecessary or undue degradation of the public lands, BLM determined it was a potential threat that posed public health and safety risks and risks of environmental degradation, inventoried it as an AML site, and closed the adit to permanently remediate the risk. We agree with BLM that Lewis opened that AML structure on at least one occasion. The NO apprised Lewis that, under the regulations at 43 Subpart 3809, “[t]he opening of any structure classified as an AML is not considered to be casual use” (NO at 2), and concluded that Lewis’ actions in opening the sealed AML site amount to more than “no or negligible disturbances,” and, therefore, exceeded the limits identified under the regulatory definition of “casual use.” Lewis has not shown error in BLM’s determination.

D. *A Noncompliance Order was proper in light of these facts*

Lewis' failure to file a notice or to secure an approved plan of operations prior to engaging in his activities, resulted in the following prohibited acts, identified in the regulations at 43 C.F.R. § 3809.605: "(a) Causing any unnecessary or undue degradation; (b) Beginning any operations, other than casual use, before you file a notice as required by § 3809.21 or receive an approved plan of operations as required by § 3809.412"; and "(d) Beginning operations prior to providing a financial guarantee that meets the requirements of this subpart." Accordingly, BLM took proper action under 43 C.F.R. § 3809.601(a) when it issued the NO instructing Lewis to cease all mining activity on the Louis #14 claim except for casual use, and to submit a notice or plan of operations and financial guarantee should he desire to reopen and utilize the AML workings as part of his mining activities on the claim. *Charles S. Stoll*, 137 IBLA 116, 128 (1996) ("A failure to comply with any applicable regulation would support issuance of a notice of noncompliance"). Where a party engaging in mining activities on public lands fails to comply with the regulations at Subpart 3809, BLM may properly issue a non-compliance order. 43 C.F.R. §§ 3809.601, 3809.605. BLM's issuance of the NO was proper.

E. *BLM's management of surface resources did not interfere with the mining claimant's rights*

Finally, Lewis contends that BLM has improperly interfered with his rights to and enjoyment of the Louis #14 claim. We have established that Lewis failed to file a notice or plan of operations under Subpart 3809, and therefore was authorized to undertake no more than casual use of the claim. Lewis has not shown that BLM's issuance of the NO interfered with his right to casual use of this claim.⁹ Moreover, as BLM stated in the NO, the order did not foreclose Lewis' ability to engage in more than casual use on the Louis #14 in the future, including his possible use of the adit. However, as BLM made clear, Lewis first must satisfy BLM that he has met the

⁹ Under the Surface Resources Act, 30 U.S.C. § 612(b) (2006), any mining claim located after July 23, 1953, is subject to the right of the United States to manage the surface resources. In *United States v. Curtis-Nevada Mines, Inc.*, 611 F. 2d 1277, 1286 (9th Cir. 1980), the court held that the general public has a right of free access to land on which are located unpatented mining claims for recreational use of the surface resources to the extent such uses do not interfere with mining activities. Requiring prior approval of operations in order to securely maintain an AML site, in furtherance of the goals of the AML program to protect public safety and avoid environmental degradation, does not unreasonably interfere with mining activities. See *United States v. Doremus*, 888 F.2d. 630, 634-35 (9th Cir. 1989), *cert. denied*, 498 U.S. 1046 (1991); *United States v. Ganoë*, --- F.Supp.2d ----, 2010 WL 5394765 (E.D.Cal., Dec. 21, 2010).

Subpart 3809 requirements before he might be permitted to reopen and use the adit. This will include submitting a notice or plan of operations that describes how he will protect public health and safety on the Louis #14 if he opens the adit, and a reclamation cost estimate and financial guarantee that cover the costs of properly securing the AML hazard.

Appellant has failed to carry his burden of showing error in BLM's issuance of the NO.¹⁰ See *Great Basin Mine Watch*, 159 IBLA 324, 347-48 (2003); *William J. Schweiss*, 139 IBLA 10, 12 (1997).

Therefore, 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.

_____/s/_____
Christina S. Kalavritinos
Administrative Judge

I concur:

_____/s/_____
James K. Jackson
Administrative Judge

¹⁰ To the extent appellant has raised other arguments not explicitly addressed here, they have been considered and rejected as contrary to the facts or law or as immaterial to the resolution of this appeal.