

NOTE: This disposition is nonprecedential.



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

703-235-3750

703-235-8349 (fax)

August 17, 2016

IBLA 2016-26-1)	AZA 23709
)	
JOHN BUCHANAN)	Bond Guarantee
)	
)	Petition for Reconsideration
)	Denied

ORDER

John Buchanan has moved for reconsideration of the Board's December 30, 2015, order, in which we affirmed BLM's September 18, 2015, decision issued by the Tucson (Arizona) Field Office (TFO), Bureau of Land Management (BLM), increasing the financial guarantee he owed for his mining notice (AZA 23709).¹ The Board's Order also denied Buchanan's Petition for Stay as moot.² Under our regulations, the Board may reconsider a decision when the party seeking reconsideration demonstrates that "extraordinary circumstances"³ exist, but we will not grant a motion for reconsideration that merely restates arguments made previously.⁴ Here, Buchanan argues that the Board should reduce the bond, repeating many of his original arguments. Because Buchanan is merely restating the same arguments he made earlier on appeal and otherwise fails to demonstrate the existence of extraordinary circumstances, the Board denies reconsideration.

Standard of Review for Reconsideration

Under the Board's regulations, extraordinary circumstances that may warrant granting reconsideration include, but are not limited to: (1) error in the Board's interpretation of material facts; (2) recent judicial development; (3) change in Departmental policy; or (4) evidence that was not before the Board at the time the

¹ Order, *John Buchanan*, IBLA 2016-26 (Dec. 30, 2015) (Order).

² *Id.*

³ 43 C.F.R. § 4.403(b).

⁴ 43 C.F.R. § 4.403(b), (f)(1).

Board's decision was issued and that demonstrates error in the Board's decision.⁵ When the petitioner presents evidence that was not before the Board at the time the Board's decision was issued, it must explain why the evidence was not originally presented.⁶ The Board has also found extraordinary circumstances when the petitioner provided information that invalidated the premise upon which the Board based its decision.⁷

Buchanan's Repeated Arguments and Additional Averments Do Not Demonstrate that Any Extraordinary Circumstances Exist Warranting Reconsideration

Buchanan's petition is styled, "Motion to Reconsider Lowering Bond Amount Because BLM Presented Inaccurate Information."⁸ However, in the Petition, he does not explain what dispositive BLM information he believes is inaccurate, nor does he explain why any inaccuracies were not presented during the course of the appeal.

Buchanan asserts that he removed a truck and that an abandoned bulldozer is "almost totally removed."⁹ He also asserts that he "personally cut up with torch and removed several large pieces of metal plate and other metal objects equaling approximately 25 tons, seven truckloads."¹⁰ Similarly, he avers that "[a]ny trash was picked up and removed."¹¹ Attached to his Petition are several photographs. Two photos, identified in hand-written captions as "Scrap or Good Parts Removal" and "John B. Mining and Removing Scrap" are date-stamped "2012/09/16" and "2012/09/30," respectively. According to the dates, these photographs were taken prior to the inspections on which BLM based its 2015 decision. They do not provide evidence of extraordinary circumstances due to either "[e]rror in the Board's interpretation of material facts" or "[e]vidence that was not before the Board at the time the Board's decision was issued and that demonstrates error in the decision."¹² They do not show that the Board's interpretation of BLM's several inspections and photographs, BLM's spreadsheet entitled, Reclamation Bond Calculation Spreadsheet

⁵ 43 C.F.R. § 4.403(d).

⁶ 43 C.F.R. § 4.403(e).

⁷ *Casey E. Folks, Jr. (On Reconsideration)*, 183 IBLA 359, 365 (2013); *Art Anderson (On Reconsideration)*, 182 IBLA 27, 30 (2012); *Debra Smith (On Reconsideration)*, 180 IBLA 107, 108 (2010); *John L. Stenger (On Reconsideration)*, 171 IBLA 1, 3 (2006); *Ulf T. Teigen (On Reconsideration)*, 159 IBLA 142, 144 (2003).

⁸ Petition for Reconsideration (Petition) at 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 2.

¹² 43 C.F.R. § 4.403(d)(1), (4).

– User Input Sheet (Reclamation Spreadsheet), or Buchanan’s Plan of Operations – all identified and relied upon in our Order¹³ – was in error. In our Order we stated that “Appellant offers no evidence that he previously removed from the public lands certain items that BLM took into account when determining the cost of reclamation and the required financial guarantee.¹⁴ This remains true and the repeated assertion does not demonstrate extraordinary circumstances.

Buchanan also challenges BLM’s underlying decision with respect to the road and the 100 ft. x 100 ft. area, which he states “was already there,” just as he did previously. Again, the repeated assertions are not sufficient to support a petition for reconsideration. Moreover, the photographs of “Road Repair,” dated March 10, 2014, also predate BLM’s July 2015, decision so they do not provide evidence of extraordinary circumstances due to either “[e]rror in the Board’s interpretation of material facts,” or “[e]vidence that was not before the Board at the time the Board’s decision was issued and that demonstrates error in the decision.”¹⁵ The Board will not grant a motion for reconsideration that merely repeats arguments made in the original appeal, except in cases of demonstrable error.¹⁶ As we recently explained, “motions to reconsider are designed to permit relief in extraordinary circumstances; they are not a vehicle to revisit issues already addressed.”¹⁷

Buchanan also points to “Four OTR Tires or others,” which he explains are “spares for our big loaders,” and probably far fewer than at “most mines,” but does not provide a basis for the Board to reconsider our Order to the extent it affirms BLM’s bond increase based on the cost of removing these items.

In conclusion, the Petition principally repeats arguments Buchanan made on appeal. It also expresses disagreement with the underlying BLM decision, without showing error in the Board’s interpretation of material facts or presenting evidence that was not before the Board at the time the Board’s decision was issued and that demonstrates error in the Board’s decision.¹⁸ As such, the Petition does not satisfy the regulatory requirement to show extraordinary circumstances warranting reconsideration of our earlier Order.

¹³ Order at 3 (citing AR, Tabs 1, 3).

¹⁴ *Id.* at 5.

¹⁵ 43 C.F.R. § 4.403(d)(1), (4).

¹⁶ 43 C.F.R. § 4.403(f)(1); *see also Dona Jeanette Ong (On Reconsideration*, 166 IBLA 65, 66 (2005)).

¹⁷ *Kathleen Ness (On Reconsideration)*, 188 IBLA 63, 65 (2016).

¹⁸ 43 C.F.R. § 4.403(d)(1), (4).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, we deny the Petition for Reconsideration of the Board's Order.

_____/s/_____
Christina S. Kalavritinos
Administrative Judge

I concur:

_____/s/_____
Amy B. Sosin
Administrative Judge