

NOTE: This disposition is nonprecedential.

EMAILED



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April 18, 2016

IBLA 2016-96	)	CACA 30377, CACA 31668
	)	
IBIS MINING CO., LLC	)	Mining Plan of Operations
	)	
	)	Decision Set Aside and Remanded;
	)	Petition for a Stay Denied as Moot

ORDER

IBIS Mining Co., LLC, appeals from, and petitions to stay the effect of, a December 2015 decision issued by the Bureau of Land Management (BLM) Ridgecrest Field Office in Ridgecrest, California. BLM required IBIS to submit a revised reclamation cost estimate and a plan of operations to cover mining activities on IBIS's mining claims serialized as CACA 30377 and CACA 31668.

Because BLM seeks to rescind its December 2015 decision, we set that decision aside and remand the matter back to the agency for further action.

IBIS conducts mining activities on his mining claims under the terms of two notices of operations. IBIS filed the notices with BLM in 1992 and 1993. IBIS's notices have not expired; the company has extended them multiple times.

In December 2015, BLM sent IBIS the decision at issue in this appeal. BLM required the company to perform two actions. First, BLM instructed IBIS to submit a revised reclamation cost estimate so that BLM could determine if IBIS's existing financial guarantee was still adequate. Second, BLM instructed IBIS to submit a plan of operations. BLM explained that under the applicable regulations, IBIS's operations do not qualify as exploration, and therefore IBIS could no longer rely on notices and must instead submit a plan of operations.

On January 5, 2016, IBIS sent BLM a Notice of Appeal (NOA) of the December 2015 decision. In its NOA, IBIS noted that BLM guidance documents for administering mining claims indicate that activities performed under notices on file with BLM on or before January 20, 2001, could continue under a notice even though current regulations would require a plan of operations for the same activity. See NOA at 1-2. In a subsequent letter, IBIS requested a stay of the December 2015 decision.

In a decision dated January 27, 2016, BLM attempted to rescind its December 2015 decision. BLM acknowledged that IBIS was the operator of record for the notices on January 20, 2001, and under 43 C.F.R. § 3809.300(a), operators of record in notices on file with BLM on January 20, 2001, could continue operations and extend the notices.

In a letter dated February 5, 2016, IBIS notified BLM that it “cannot accept” BLM’s rescission and expressed its intent to pursue its appeal to the Board. BLM forwarded IBIS’s letters and the administrative record to the Board and filed what it styled as an “Answer” to IBIS’s appeal of the agency’s decision to rescind the December 2015 decision.

IBIS timely appealed from BLM’s December 2015 decision. Once an appeal is filed, BLM loses jurisdiction over the matter subject to the appeal. *Mary Lee Dereske*, 162 IBLA 303, 308 (2004). Consequently, as soon as IBIS filed its appeal, BLM no longer had jurisdiction over the December 2015 decision, and its attempted rescission of that decision could have no effect.

Nevertheless, based on its attempt to already do so, it is apparent that BLM seeks to revisit its December 2015 decision in light of 43 C.F.R. § 3809.300(a). For that reason, any determination we were to reach on the merits of this appeal would serve merely as an advisory opinion, which the Board does not issue. *See Uintah County*, 182 IBLA 191, 197 (2012). We therefore set aside BLM’s December 2015 decision and remand the case to BLM for further action. IBIS’s petition for a stay is denied as moot.

\_\_\_\_\_/s/\_\_\_\_\_  
Silvia M. Riechel  
Administrative Judge

I concur:

\_\_\_\_\_/s/\_\_\_\_\_  
Amy B. Sosin  
Administrative Judge