

U.S. ENERGY CORP.

IBLA 78-480

Decided November 20, 1978

Appeal from decision of Lander Resource Area, Lander, Wyoming, Bureau of Land Management, revoking Special Land Use Permit W-19168.

Affirmed.

1. Public Lands: Special Use Permits

A special land use permit is revocable in the discretion of the authorized officer at anytime upon notice to the permittee. Such permit is properly canceled when a millsite claimant, having located a claim on the same land included in the permit, requests revocation of the permit in order to facilitate construction on tailings pond expansion necessary to meet Federal and State requirements.

APPEARANCES: Daniel P. Svilar, Esq., Boyer and Svilar, Lander, Wyoming, for appellant; John S. Kirkham, Esq., Van Cott, Bagley, Cornwall and McCarthy, Salt Lake City, Utah, for Federal-American Partners.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

U.S. Energy Corp. appeals from a decision of the Lander Resource Area, Lander, Wyoming, Bureau of Land Management, revoking Special Land Use Permit (SLUP) (W-19168) pursuant to 43 CFR 2920.3(a).

Appellant filed its application for a SLUP on April 15, 1976, for 5 acres of land located in sec. 28, T. 33 N., R. 90 W., sixth principal meridian, Wyoming. Appellant stated in the application that the "property is used for a field shop and storage of related items." A metal building 40 feet x 70 feet estimated at \$1,000 was listed as the only improvement. BLM issued the permit for the period from May 1, 1976, to April 30, 1979.

On April 29, 1978, Federal American Partners (FAP), locators of millsite claims in Wyoming's Gas Hills area, wrote to BLM concerning appellant's SLUP. FAP explained that in accordance with the requirements of their existing mill, they have located millsite claims for the purpose of expanding the existing tailings pond and for other related uses. Also appellant's SLUP, according to FAP, covers certain lands included within the FAP's millsite claims. FAP further explained that a proposed dike to impound the tailings area conflicts with the SLUP and that it is essential to the construction of the dike that the SLUP be terminated and the existing building removed.

On May 9, 1978, BLM informed U.S. Energy Corporation that its SLUP was to be revoked as of May 12, 1978, pursuant to 43 CFR 2920.3(a), and allowed it 30 days from that date to remove all improvements from the site and adhere to the stipulations of the permit. BLM noted that the permit area is presently located on FAP's millsite claims which constitute a valid adverse claim. BLM explained that the SLUP was issued subject to the rights of the mining claimants under the Mining Law of 1872 as provided for in 43 CFR 2920.6.

In its statement of reasons, appellant concedes that BLM has the authority to revoke the permit but contends that in this instance terminating the permit was arbitrary, unreasonable, without just cause, and, in effect, favored the business interest of FAP over appellant. Appellant alleges that the mere fact that FAP has located a millsite claim does not in itself constitute sufficient grounds for BLM to cancel the permit covering the same ground. Appellant feels that the State of Wyoming court system is the proper forum for adjudication of the rights of the two parties.

Next, appellant submits that there is no information that FAP's claim has been properly located in compliance with Federal and State laws and Departmental regulations. For example, appellant notes that there is no finding that the land is nonmineral or that the millsite does not exceed 5 acres as required by the regulations. Appellant points to other requirements of the millsite law and contends that there has been no showing that FAP has a valid millsite claim.

FAP, in a reply brief, refers to the permit to the effect that BLM has authority to terminate a SLUP at any time the authorized officer determines the lands should be devoted to another use. FAP also relies upon Departmental regulations to support its proposition that the rights of a holder of a SLUP are subject to the rights of a mineral claimant holding valid adverse claims whether acquired prior to or after the date of issuance of the SLUP. In addition, FAP notes that the permit itself provides that "this permit is subject to valid adverse claims heretofore and hereafter acquired."

FAP points out that the appeal challenges the ownership of the lands by the United States and its rights to terminate a SLUP and

not the validity of FAP's mining claims. FAP submits that the validity of claims owned by FAP covering the lands included within the SLUP is neither relevant nor material to this appeal. Finally, FAP alleges that the facts as stated by the appellant are clearly not supported by other evidence available to the Board and do not support appellant's position.

Subsequently, FAP filed a petition with the Board explaining that the State of Wyoming Department of Environmental Quality (DEQ) and the Nuclear Regulatory Commission (NRC) of the United States Government have determined that it is in the public interest to require FAP to fence an area around its existing tailings pond. ^{1/} FAP says that it is the determination of these agencies that the area must be maintained as a restricted area in the interest of public health. Further, FAP says that it is under an obligation imposed by existing mill license and reclamation permit to enforce the requirements of DEQ and NRC. FAP says that access to the SLUP must be restricted if not precluded if such security is to be maintained. FAP sent a letter to appellant specifying certain terms and conditions of occupancy imposed by the agencies pending this appeal.

Special land use permits have traditionally been issued to authorize uses of the public lands not specifically provided for by existing law. 43 CFR 2920.0-2. Section 302(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C.A. § 1732(b) (Supp. 1978) authorizes the Secretary to regulate the use of public lands "through easements, permits, leases, licenses, published rules, or other instruments" as he deems appropriate. According to Organic Act Directive No. 76-15 (December 14, 1976), special land use permit authority under 43 CFR 2920 is no longer applicable. Instead, until regulations are issued, the procedures formerly applicable to special land use permits will be used for temporary use permits (TUP's). Such TUP's may be granted under section 302(b) of FLPMA for land uses not associated with rights-of-way. See Arnold E. Hedell, 37 IBLA 22, 23 (1978); Baja Motor Sports, 32 IBLA 142, n.1 (1977).

The regulation at 43 CFR 2920.3(a) states: "A special land-use permit is revocable in the discretion of the authorized officer at any time upon notice to the permittee." The terms of the permit itself so notify the permittee. Thus, paragraph one of the second page of the permit form reads as follows:

1. This permit is issued for the period specified below. It is revocable for any breach of conditions hereof or at the discretion of the authorized officer of the Bureau of Land Management, at any time upon notice, if in his judgment the lands should be devoted

^{1/} FAP has filed an affidavit as evidence of the position of the agencies.

to another use. This permit is subject to valid adverse claims heretofore or hereafter acquired.

[1] In the instant case, the authorized officer in his discretion determined that the permit issued to appellant should be terminated and gave the required notice. He determined that the lands should be devoted to another use, and it appears the claimant will put the lands to the use contemplated. There is no evidence that he acted unreasonably or arbitrarily. As such decision lies within his discretion, it is immaterial whether FAP's millsite claim was valid or not. In these circumstances, we agree with the decision below. We note that there is discussion in the appellant's statement of reasons regarding the requirement of seeding the land embraced by the permit. Due to the fact that this land will be used by FAP as a tailings pond, BLM in its discretion may weigh this fact in considering whether the seeding requirement may be waived.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

I concur.

Edward W. Stuebing
Administrative Judge

ADMINISTRATIVE JUDGE THOMPSON CONCURRING IN THE RESULT:

Appellant contends, in effect, that there must be a validity determination of the millsite claim before his special use permit may be revoked. It is not essential, however, that the millsite claim meet all the requirements of validity at this time in order for the authorized officer to revoke the permit. We need not decide if the adverse claim is "valid." Neither the regulations nor the terms of the permit require a validity determination of the adverse claim. Instead, they authorize the BLM officer in his discretion to revoke the permit if in his judgment the lands should be devoted to another use. It is sufficient in the exercise of this discretion that it appear the claimant will put the lands to the use contemplated and indicated. This discretionary judgment was exercised properly here. The submissions of the millsite claimant in response to the appeal add support to the determination. Thus, the revocation of the permit rests upon an exercise of discretion and not upon any determination that the millsite claim is a valid adverse claim.

Joan B. Thompson
Administrative Judge

