

CHARLES S. STOLL

IBLA 93-264      Decided December 10, 1996

Appeal from a decision of the Arizona State Office, Bureau of Land Management, affirming issuance of a notice of noncompliance with an approved mining plan of operations, AZA 25200/3809.

Affirmed in part; reversed in part.

1. Federal Land Policy and Management Act of 1976: Surface Management--Mill sites: Generally--Mining Claims: Surface Uses

BLM may properly issue a notice of noncompliance under 43 CFR 3809.3-7 which requires a claimant to remove all structures, equipment, and other facilities and reclaim the site of operations if there has been an extended period of nonoperation and there is no apparent reason for the failure to operate.

2. Federal Land Policy and Management Act of 1976: Surface Management--Mill sites: Generally--Mining Claims: Surface Uses

Generally, those holding a direct interest in an unpatented mining claim and those conducting an active mining operation on an unpatented mining claim are jointly and severally liable for the reclamation. However, in this case, the record demonstrates that BLM had failed to properly monitor and investigate the operations of a sublessee operating an independent milling operation on a portion of a mining claim; had failed to investigate allegations of undue degradation of the public lands by the sublessee; had failed to communicate its concern to the lessee (or his representative); was aware that the lessee and his representatives were prohibited by state court order from going on the claims or taking steps to avoid degradation; and had failed to take timely action when warned by the lessee that the sublessee was conducting illegal activities in violation of BLM regulations. Under the particular circumstances of this case, it would be improper for BLM to hold the lessee liable for the illegal actions of the sublessee.

APPEARANCES: Charles S. Stoll, Oatman, Arizona, pro se.

## OPINION BY ADMINISTRATIVE JUDGE MULLEN

Charles S. Stoll has appealed a February 10, 1993, decision of the Arizona State Office, Bureau of Land Management (BLM), affirming an August 2, 1991, notice of noncompliance issued by the Acting Resource Area Manager, Kingman Resource Area. The Kingman Resource Area Acting Manager's notice of noncompliance, issued pursuant to 43 CFR Subpart 3809, cited Stoll for failure to file and receive approval of a mining plan of operations before commencing work on the White Chief Mine, and other placer mining claims held by Stoll.

Background

Stoll acquired a leasehold interest in the White Chief Mine placer claim and several adjacent claims around 1970. <sup>1/</sup> On July 16, 1985, Stoll filed a proposed mining plan of operations for the White Chief placer. In his proposed mining plan Stoll proposed to explore for and develop sources of water to be used for placer mining on the White Chief and adjacent claims owned by him. He also briefly described reclamation work he would eventually do, noting that all roads, the airstrip, trenches, etc., would be restored to approximate original contours, utilizing waste material from the mining operation when possible. BLM prepared an Environmental Assessment (EA) for the project, which was completed on August 16, 1985. The EA noted Stoll's reference to underground operation on the claims, and a future mill and cyanide recovery system, but the evaluation addressed only the development of a water source and placer mining operation (EA at 1). On August 16, 1985, BLM granted approval of Mining Plan of Operations MPO-85-K-09, conditioned upon Stoll's acceptance of stipulations, which included reclamation requirements.

On September 11, 1985, Stoll and Canyon City Milling Company (Canyon City) entered into an agreement leasing 10 acres within Stoll's unpatented mining claims to Canyon City, to be used by Canyon City as the site of a milling operation. As part consideration, Canyon City agreed to drill a water well and provide water storage facilities.

On October 23, 1985, Robert R. Graham (who had signed the lease on behalf of Canyon City) and Alton C. Bingham entered into an agreement with Stoll. In this agreement, Graham and Bingham leased several unpatented mining claims owned or leased by Stoll (with certain specified exceptions) and agreed to mine and process precious metal from the claims. This agreement allowed Graham and Bingham to assign the lease to a corporation. <sup>2/</sup>

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<sup>1/</sup> The White Chief claim is located in secs. 26 and 27, T. 19 N., R. 20 W., Gila and Salt River Meridian, near Oatman, Arizona.

<sup>2/</sup> Throughout the case file references are also made to two other companies, Nevada Grubstake and Grubstake Mining (Grubstake). It is unclear from the file how these companies are related to one another or to other parties.

On June 5, 1986, Bingham submitted a notice of intent on behalf of Canyon City. This notice, submitted pursuant to 43 CFR 3809.1-3, described Canyon City's plan to erect and operate a mill and refining plant to process precious metal ore. In a letter dated June 16, 1986, BLM informed Canyon City that the notice had been assigned identification number MN-86-K-24 and that it met the requirements of 43 CFR Subpart 3809.

On January 8, 1987, the State of Arizona issued a Groundwater Quality Protection Permit No. G-0019-08, naming Graham as permittee. Part II, D, of the permit, Post Closure Plan, directed the permittee to adhere to a list of procedures for closure.

Numerous letters and other documents in BLM's Canyon City and Stoll case files clearly indicate that the relationship between Stoll and the principals of Canyon City, Grubstake and their related companies quickly became acrimonious. For example, a BLM memorandum to Stoll's file, dated June 24, 1988, noted that "[t]he ongoing feud between Charlie Stoll and Bob Graham is still ongoing." In a letter dated February 28, 1989, Stoll notified Graham and Bingham that they were in default of the lease for, among other things, the failure to develop water and water storage sufficient to support a milling operation and for leasing the mill to another party without Stoll's consent. BLM received copies of these letters on March 13, 1989.

By letter dated June 21, 1989, BLM notified Canyon City that, during a June 20, 1989, on-site inspection, BLM had determined that Canyon City's operation was not in compliance with 43 CFR 3809.3-2(a) because Canyon City had not filed and gained approval of a mining plan of operations before commencing the operations then in progress. BLM explained that Stoll and Canyon City had filed Mining Notice MN-86-K-24 <sup>3/</sup> in 1986, but that the on-site compliance check revealed that the 1986 notice was not sufficient for the present operation. BLM stated that the uncontained use of calcium hyperchlorate outside the fenced area violated Federal regulations pertaining to isolating, removing, and controlling toxic materials. Canyon City was directed to cease operations until it had filed and received approval of a complete mining plan of operations. BLM noted that the proposed mining plan of operations submitted by Canyon City should include detailed plans for controlling hazardous material.

Canyon City filed another notice of intent on June 23, 1989. In this notice Canyon City stated that its planned operation would be the same as that described in the June 5, 1986, notice of intent approved by BLM on June 16, 1986. Canyon City explained that the sole purpose of the new notice was to advise BLM of a change of address. In a letter dated July 6, 1989, BLM accepted the notice of intent (NM-89-K-33) subject to stated conditions and stipulations relating to reclamation and the controlling

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<sup>3/</sup> Stoll's name appears on the mining notice as claimant, but the notice is signed by Bingham as Secretary for Canyon City.

of toxic materials. BLM advised Canyon City that any increase in surface disturbance might raise the total disturbed acreage to 5 acres, making it necessary for Canyon City to file and obtain approval of a mining plan of operations. BLM added that, if Canyon City failed to comply with the stipulations, Canyon City would be required to file a mining plan of operations and post a performance bond.

Stoll wrote a letter to BLM on July 8, 1989, seeking information and commenting on the activity in the area of his claims. He stated that certain of the claims had been leased to Grubstake, rather than Canyon City, and that he was not certain whether the two companies had filed separate mining plans of operations. He also stated that Canyon City had disturbed over 5 acres and had built its mill on the wrong claim. Stoll advised BLM that in January 1989 Canyon City had entered into agreements with Reese Houston and Associates and Lloyd's International, Inc. and that Houston had told Stoll that he had leased the entire operation, including a cyanide permit. Stoll advised BLM that he had given Graham and Bingham a notice of default on February 28, 1989, because they had subleased without his consent, and that Houston left the area in February.

Stoll also advised BLM that Canyon City might be connected with a company called Mariah International, Inc., and other companies under investigation for fraud, and that it was difficult to trace the ownership of Canyon City. He stated that, based on information that he had gathered, he believed that the Canyon City operation was also a scam, and that it should be shut down to protect innocent investors. Stoll suggested that BLM contact the State of Nevada authorities to learn more about this corporation and the fraudulent schemes. Stoll also asked BLM to require Canyon City to post bond to guarantee reclamation, noting that there had already been a cyanide spill.

BLM conducted a site inspection and determined that Canyon City was using 10 acres rather than the 4 acres described in Mining Notice MN 89-K-33. On September 12, 1989, it served a notice of noncompliance on Canyon City, directing Canyon City to cease operations until it filed and gained approval of a mining plan of operations, as required by 43 CFR 3809.1-4. In a meeting held on November 1, 1989, Canyon City agreed to file a mining plan of operations and reclamation bond. BLM issued another notice of noncompliance on November 28, 1989, when Canyon City failed to file either a mining plan of operations or a reclamation bond. In this notice BLM instructed Canyon City to cease all activity, informed Canyon City that a mobile home placed upon the property was in noncompliance, and directed Canyon City to remove the mobile home. BLM stated that if Canyon City did not comply with BLM's directives within 15 days BLM would take action to ensure protection of the public lands. No action was ever taken.

On June 20, 1991, Stoll sent another letter to BLM. In this letter Stoll referred to a March 28, 1991, ML-SMAT (Mining Law - Surface Management Assistance Team) report on the White Chief Mine by Andrew Strasfogel. Stoll stated that this report indicated that he (Stoll) was responsible for all activity on the claims, and asked the Kingman Resource Area to

send copies of all correspondence to him. Stoll stated that he had not received a copy of any documents relative to the claims, noting that he had not been notified that Canyon City had applied for a permit to operate a cyanide mill. Stoll expressed his concerns regarding an indication that BLM considered him liable and at the same time refused to consult with him or advise him of bond requirements or permit approval.

In a memorandum dated July 18, 1991, the BLM realty specialist advised the Area Manager that Stoll had called to report that a Canyon City employee (Graham) had assaulted a Stoll employee (Davis) with a knife on July 12, 1991, and that Graham had been arrested. Stoll also advised BLM that he believed that Canyon City might be quitting the area and that he was concerned that Canyon City would leave him (Stoll) responsible for reclamation. On July 12, the Justice Court, Bullhead City Precinct, County of Mohave, Arizona, issued an Injunction Against Harassment to prevent Graham from further threatening Davis.

On July 19, 1991, the court issued an Order Modifying Injunction Prohibiting Harassment which reads in pertinent parts as follows:

- A. Order confirming the Injunction runs against both Plaintiffs and Defendants.
- B. The other persons or locations identified in the original Order dated July 12, 1991, are amended to read:
  1. Injunction is against the Plaintiffs harassing Defendant Graham as to:
    - (a) any area within 100 yards of Defendant Graham, his employees or customers:
    - (b) all areas of the mill site and the leased claims as follows: Jane 2 and 3; and Ethel Morgan 1 and 2.
    - (c) Defendant is to have access to the mill site and the leased claims and the right to remove his property, Exhibit 2. Exhibit 1 lists property of Plaintiff Stoll that is not to be removed.
- C. The injunction is against Defendant Graham harassing Plaintiffs as to:
  1. any area within 100 yards of Plaintiffs; and
  2. all areas of the:
    - (a) Airstrip runway;
    - (b) Airstrip hanger;

- (c) Homesite and curtile of Plaintiffs;
- (d) That portion of the road providing ingress/egress to the items above.

D. All other terms of the Order of July 12, 1991, to remain the same and in full force.

On July 29, 1991, BLM served another notice of noncompliance on Canyon City. This notice states in pertinent part:

You are in violation with 43 CFR 3809.2-2 for causing undue and unnecessary degradation of public lands. On or about July 14-15, 1991, you released from your operations an undetermined amount of solution containing cyanide from your mill which potentially threatened public safety and the environment. This action violated the Clean Water Act, (33 U.S.C. § 1311a) and Sections 104 and 107 of the Comprehensive Environmental Compensation and Liability Act (CERCLA). You also violated the provisions of the State's groundwater quality standards pursuant to A.C.R.R. Title 9, Chapter 20, Article 2 and Title 9, Chapter 21, specifically, Groundwater Quality Protection Permit Number G-0019-08. You are therefore required to mitigate the damage and pollution caused by this release according to the requirements proposed by the Arizona Department of Environmental Quality.

Our records show that you have been in a period of non-operation from June 24, 1988. Therefore, under the authority of 43 CFR 3809.3-7 you are required to remove all structures including but not limited to the crusher, conveyor system, tank towers, trailer and other ancillary facilities, the prefabricated building, concrete pads, equipment and fence and to reclaim all disturbances caused by your operations including the associated ponds. Upon removal of all structures, the area is to be graded to conform as near as practicable to the original contour prior to your entry.

You must, within thirty (30) days of receipt of this Notice of Noncompliance, begin reclamation and within ninety (90) days have completed reclamation to the satisfaction of the Authorized Officer.

Failure to comply with the requirements of this Notice of Noncompliance, within the time frame specified, may result in your being enjoined by appropriate court order from continuing such operations and being held liable for damages.

On July 31, 1991, George Cummings, attorney for Canyon City, notified BLM that Canyon City and Nevada Grubstake had terminated their leasehold interest in the claims. Cummings sought information regarding the reclamation requirements BLM might impose, explaining that Canyon City and Nevada Grubstake might need a written statement of these requirements from BLM to gain a court order allowing them on the property to undertake reclamation activities. There is nothing in the file that would indicate that BLM ever responded to this request or that it ever sought to have either Canyon City or Grubstake do any reclamation.

On August 2, 1991, BLM issued a notice of noncompliance to Stoll, stating the following reasons for issuance:

A review of your plan of operations (MPO-85-K-09) and our compliance inspections indicates that your proposed activities are in non-operating status.

Your plan states that you propose to placer mine dependent on available water supply and to develop mineralization associated with the White Chief Mine. The first phase of the plan calls for drilling water production wells. This phase has been completed and the evidence indicates that a suitable source of water has not been found. Based on this fact, your plan for placer mining is not feasible at this time. Additionally, no underground development has occurred. Therefore, pursuant to 43 CFR 3809.3-7, you are required to remove all equipment, facilities and reclaim the site of operations.

Also, your mobile home has recently been removed. However, there remains on the site a television satellite dish, the porch which was attached to the mobile home, a chain link fence, and various other improvements.

Your mining claims have numerous pieces of heavy equipment in various states of disrepair, fuel tanks, oil drums, trailers as living quarters (pink and turquoise), Wilderness camper trailer, equipment parts, tires, old gas pump, boards, ditcher, airplane with hanger, ice maker, cars, pickup trucks, red jeep and numerous miscellaneous parts.

You have allowed Nevada Grubstake, Incorporated, to operate on your claims under Notice number MN-86-K-23 and subsequently a Plan of Operations number MPO-86-K-04. Nevada Grubstake has moved in a mobile home, and constructed a carport or ramada type shelter, a camp trailer facility with utility hook-ups, and laundry and shower facilities. Nevada Grubstake is also in a period of non-operations.

Stoll was cited for releasing cyanide solution from the cyanide mill operated by Canyon City. The notice stated that this spill took place

on or about July 14 or 15, 1991. Stoll was advised that the release of cyanide solution violated the Federal and state statutes BLM had cited in the July 29, 1991, notice of noncompliance issued to Canyon City. BLM stated Canyon City had not operated the facility since June 24, 1988, and advised Stoll that, as owner of the claims, Stoll was ultimately responsible for all activities and violations of Federal and state laws and regulations on his claims, including activities conducted pursuant to lease agreements with others. BLM directed Stoll to remove "all structures and equipment on your operations and those of the lessees, namely Canyon City Milling and Nevada Grubstake," and to grade the area to conform as nearly practicable to the original contour prior to entry.

Stoll was directed to commence reclamation within 30 days from his receipt of the notice and complete the reclamation to the satisfaction of the authorized officer within 90 days. Stoll was advised that if he failed to comply with the requirements of the notice he could be enjoined from continuing operations by appropriate court order and could be held liable for damages.

Stoll appealed to the Arizona State Director pursuant to 43 CFR 3809.4. In his appeal to the State director, Stoll stated that he was actively conducting his operations and argued that he had carried out the program BLM had approved during the time a portion of his claims had been leased to Canyon City and Grubstake. He also contended that BLM's files on the claims had been altered and were incomplete.

Stoll also asserted that he had advised BLM in writing and orally that Canyon City and Grubstake were in noncompliance, but that BLM had never acted to require either company to file a mining plan of operations or post a performance bond. Stoll related that he had sought a court order to evict Canyon City and Grubstake personnel in August 1989, but that the court had refused to evict them because BLM would not file a notice of noncompliance supporting Stoll's court action.

Stoll contended that BLM and the State had approved Grubstake's mill operation, that Canyon City and Grubstake had caused the cyanide spill, and that BLM was negligent because it did not adequately inspect, take action regarding violations, require a bond, or follow up on Stoll's complaints. Stoll emphasized that he had sent numerous letters to BLM advising BLM of the illegal use of cyanide and of other infractions committed by Canyon City and Grubstake, but BLM did not act until after the cyanide spill, which occurred when Grubstake was attempting to remove the mill. He specifically noted that when he called BLM on July 12, 1991, to report the problems at the minesite, BLM took no action, and that when he faxed a letter to BLM describing the cyanide spill on July 15, 1991, BLM failed to take any action.

Stoll asserted that it was not he but BLM that allowed Nevada Grubstake or Canyon City to operate on his properties under MPO-86-K-04. Stoll contended that the mining plan of operations referred to in the notice of noncompliance did not relate to the property he held at the time the mining plan of operations was issued.

Stoll stated that BLM should only require cleanup of trash and refuse and that the other reclamation requirements should wait until the appeal process was exhausted. Stoll further explained that he is unable to commence any operations until Canyon City, Grubstake, and Nevada Grubstake are off the claims. He also requested a stay of BLM's decision, noting that he intended to file an amended mining plan of operations at that time.

On February 10, 1993, the Arizona State Director's Office issued a decision supporting the Acting Kingman Resource Area Manager's notice of noncompliance served upon Stoll. In response to Stoll's contention that he should not be forced to remove all equipment and facilities and reclaim his mine, the State Director's decision stated that the order to remove the equipment and facilities and to reclaim the minesite was proper because there was no indication of active mining. The State Director's decision modified the notice of noncompliance by limiting the reclamation requirement to disturbance which occurred after January 1, 1981. The contents of the notice of noncompliance was affirmed in all other respects and Stoll's request for a stay was denied. Stoll appealed to this Board.

In his statement of reasons, Stoll reiterates many of the allegations he made in his appeal to the State Office, and expands on the events surrounding Canyon City's and Grubstake's removal of mining and milling equipment. Stoll contends that BLM's July 29, 1991, notice of noncompliance directing Canyon City and Grubstake to remove all fixtures was too broad because certain of those fixtures belonged to him. He specifically notes that BLM ordered and allowed Canyon City and Grubstake to remove the pumps and pipe from two wells which belonged to him. He further states that on approximately July 19, 1991, Canyon City's and Grubstake's attorney petitioned the Arizona State Justice Court to allow them access to the mill site and leased claims and the right to remove their property. Judge Arends signed the order modifying the injunction and the machinery was removed over Stoll's objections.

Referring to the BLM decision of February 10, 1993, which states that Stoll's mining plan of operations was approved, subject to a number of stipulations on August 16, 1985, Stoll argues that there are no stipulations. He also asserts that BLM approved his original mining plan of operations which included work done prior to 1985, but is now saying that it disapproved that work.

Stoll argues that he cannot be held liable for damages caused by Canyon City and Grubstake in violation of the mining plan because he was not a party to the mining plan and was not served with the notices of noncompliance. He reasons that if the notice of violation had been filed legally on him, his machinery would not have been stolen. Stoll also states that after BLM issued its July 29, 1991 notice of noncompliance directing Canyon City and Grubstake to remove the equipment, Graham, an officer of Canyon City and Grubstake, was subsequently seen dumping 30,000 gallons of cyanide solution onto the ground so that he could remove the leach tanks. Stoll contends that when he notified BLM of the spill, BLM negligently failed to respond for 5 days.

On September 11, 1985, Stoll and Canyon City Milling Company (Canyon City) entered into an agreement leasing 10 acres within Stoll's unpatented mining claims to Canyon City, to be used by Canyon City as the site of a milling operation. As part consideration, Canyon City agreed to drill a water well and provide water storage facilities.

According to Stoll, Canyon City and Grubstake had destroyed the shaft, which would cost about \$200,000 to retimber and rebuild. Stoll claimed that this would never have happened had BLM properly policed Canyon City and Grubstake. In addition he states that the Nevada Securities Fraud Section contacted him in 1988 and in 1989 advised him of pending fraud and tax charges against Clark Bingham, a principal in Canyon City and Grubstake. He also states that the Arizona Attorney General's office also advised him of charges against Lloyd's International and Lloyd Sharp who was associated with Canyon City and Grubstake, Bingham and Graham. See Las Vegas Review-Journal, August 1, 1989, and September 12, 1989.

Noting that the State Office modified the notice of noncompliance to call for rehabilitation of surface disturbances that occurred after 1981, Stoll contends that the only disturbance that took place after 1981 was authorized by BLM and done by Canyon City and Grubstake with BLM authorization, and that BLM refused to make them clean it up.

[1] The Secretary of the Interior, as manager of the public lands, is mandated by law to "take any action necessary to prevent unnecessary or undue degradation of the lands." Federal Land Policy and Management Act of 1976 (FLPMA), section 302(b), 43 U.S.C. § 1732(b) (1994); see Red Thunder, Inc., 129 IBLA 219, 236 (1994); B.K. Lowndes, 113 IBLA 321, 325 (1990); Draco Mines, Inc., 75 IBLA 278 (1983). This requirement was expressly recognized in section 302(b) of FLPMA as applicable to the Department's administration of the Mining Law of 1872. The surface management regulations of 43 CFR Subpart 3809 were promulgated to prevent unnecessary and undue degradation of lands by mining claimants. Differential Energy, Inc., 99 IBLA 225 (1987).

Stoll asserts that he intends to continue his placer mining operation, and that he has filed an amended mining plan describing further operations he intends to undertake. By letter dated August 26, 1991, BLM advised Stoll that he must correct the deficiencies noted in the August 2, 1991, notice of noncompliance to gain approval of the mining plan amendment. We find it reasonable and proper for BLM to condition approval of a subsequent mining plan upon compliance with the stipulations contained in an earlier one.

Under 43 CFR 3809.3-7, an operator of a mine or related facility located on an unpatented mining claim or mill site, who has not operated the facility for an extended period of time, may be directed to either gain written permission from the authorized officer to maintain the unused structures, equipment, and other facilities, or to remove all structures, equipment and other facilities and reclaim the site of the operations.

The case file contains a memorandum written by BLM geologist Clyde Murray memorializing his observations during the July 23, 1991, inspection of the White Chief Mine, Canyon City, and Nevada Grubstake operations. Murray noted that, for Stoll's operation:

Charlie Stoll's trailer house is gone. And according to Charlie, his ex-wife took it. The trailer site still has the satellite dish, wood porch and other debris. Stoll also has equipment, and junk scattered around the White Chief mine area. No activity was evident related to his [mining plan] for placer mining and his proposed underground operation at the White Chief shaft.

Near the White Chief Mine is a pink house trailer, a turquoise trailer and a smaller trailer. It is unknown how many people are living here.

It is clearly evident that noncompliance is occurring at all three operations. Occupancy, equipment storage, trash, undue and unnecessary degradation and extended periods of non operation.

Using these statements as a basis for the decision, when BLM issued its notice of noncompliance it directed Stoll to remove all structures, equipment, and other facilities and reclaim the site of the operations and to grade the area to conform as nearly practicable to the original contour prior to entry. The burden of proof is on an appellant to show error in the decision appealed from, and if the appellant fails to do so, the decision will be affirmed. B.K. Lowndes, supra at 325; Differential Energy, Inc., supra at 235. Stoll alleges an intent to continue operations. Under the circumstances outlined above, we agree with Stoll. The evidence indicates that Canyon City and Grubstake did develop a water supply as a part of the operations they conducted, as questionable as they might be. Stoll was denied use of the water; he had attempted to cancel the lease; and he was actively seeking to have Canyon City and Grubstake barred from the land to protect his property and personnel. Canyon City and Grubstake continued to occupy the property after Stoll gave notice of termination in 1989 and continued to occupy the property until shortly after BLM directed them to remove their equipment and machinery in July 1991. According to Stoll, the machinery removed at the direction of BLM included well equipment placed on the property to develop the water pursuant to Stoll's mining plan. The notice of noncompliance giving rise to this appeal was not served on Stoll until early August 1991.

Stoll has filed an amended mining plan, which BLM will not approve until Stoll has complied with the directives stated in the notice of noncompliance. This refusal is reasonable and proper, but reasons for a lack of activity on a claim must be considered when determining whether a lack of mining activity indicates an abandonment of operations or justifies broad scale reclamation.

Contrary to Stoll's present opinion, approval of mining plan MPO 85 K-09 was subject to stipulations. Stipulation 6 specifically required that when mining related activities cease,

all buildings and structures not considered historical, trailers, sheds, equipment, trash, and debris shall be removed from Federal land. Reclamation of any new work and previous impacts will be conducted to BLM specifications. Generally all impacted areas and roadways will be contoured approximating topography and scarified to promote revegetation.

[2] In its notice of noncompliance BLM stated that Stoll was liable for unnecessary or undue degradation of public lands under 43 CFR 3809.2-2 resulting from Canyon City's milling operations. BLM specifically refers to degradation caused by the apparently intentional release of cyanide solution on about July 14 or 15, 1991. BLM also found Stoll responsible for violations of the Groundwater Quality Protection Permit and directed him to mitigate damage and pollution caused by the released cyanide pursuant to Part II, D, of the permit. <sup>4/</sup> Stoll contends that he should not be responsible for this reclamation.

We must consider whether Stoll can be held responsible for the reclamation. Canyon City and Grubstake commenced their operations under authority granted in the 1985 lease from Stoll. On June 5, 1986, Canyon City filed its notice of intent. On June 16, 1986, BLM notified Canyon City that it had received its proposed mining notice and found it in compliance with 43 CFR Subpart 3809 pertaining to disturbed areas and undue and unnecessary disturbance. The applicable regulation, 43 CFR 3809.1-3, provides in pertinent part:

(a) All operators on project areas whose operations, including access across Federal lands to the project area, cause a cumulative surface disturbance of 5 acres or less during any calendar year shall notify the authorized officer in the District office of the Bureau of Land Management having jurisdiction over the land in which the claim(s) or project area is located. Prior to conducting additional operations under a subsequent notice covering substantially the same ground, the operator shall have completed reclamation of operations which were conducted under any previous notice. Notification of such activities, by the operator, shall be made at least 15 calendar days before commencing operations under this subpart by a written notice or letter.

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<sup>4/</sup> The Arizona Department of Health Services issued the Groundwater Quality Protection Permit to Graham as permittee. Part II, D, of the permit, Post Closure Plan, directs the permittee to adhere to a list of procedures for closure. Therefore Graham, not Stoll, is responsible for violations of the standards of that permit and for carrying out mitigation measures at closure.

Under 43 CFR 3809.1-3(b), authorized officer approval is not required. See also 45 FR 78904 (Nov. 26, 1980) ("The notice is not subject to approval"). <sup>5/</sup> Therefore, to the extent the operations were described in the June 5, 1986, notice of intent, it cannot be said that BLM "authorized" Canyon City's surface disturbances. However, this is not to say that BLM has no authority to enforce the regulations. 43 CFR 3809.3-2(d) states:

A notice of noncompliance shall specify in what respects the operator is failing or has failed to comply with the requirements of applicable regulations, and shall specify the actions which are in violation of the regulations and the actions which shall be taken to correct the noncompliance and the time, not to exceed 30 days, within which corrective action shall be started.

A failure to comply with any applicable regulation would support issuance of a notice of noncompliance. See Bruce W. Crawford, 86 IBLA 350, 387, 92 I.D. 208, 228 (1985). BLM did in fact advise Canyon City that it was in violation of the regulations.

Stoll sent BLM copies of letters written to Canyon City and Grubstake directing them to quit the area on March 13, 1989. He then wrote to BLM on July 8, 1989, advising BLM that he had given Graham and Bingham a notice of

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<sup>5/</sup> In Southwest Resource Council, 96 IBLA 105, 119-20, 94 I.D. 56, 64 (1987), the Board noted that although BLM neither approves or disapproves a notice if the operator qualifies under 43 CFR 3809.1-3(b), it may consult with the mining claimant over aspects of his activities. However, the Board stated, under the then current regulatory scheme, BLM may not bar his planned activities, absent a showing that unnecessary or undue degradation will occur, or a showing that a plan of operations is required.

Also, we note that the purpose of requiring a notice as explained in the preface to the final regulations was to give the authorized officer and his/her staff an opportunity to evaluate the proposed operations to determine whether a particular location contains some special resource value that could be avoided by the operations. If special values are discovered, the authorized officer could bring that to the attention of the operator and discuss possible alternatives with the aim of avoiding resource use conflicts. This is an area where cooperation between BLM and the mining industry will lead to protection of Federal lands from those mining operations that might otherwise inadvertently cause damage to those lands. The location of a route of access is an example of the type of matters that might be discussed during the 15-day period. The authorized officer might have information as to special resource values in an area the route access is to cross. If a slight change in the route of access would preserve the special value, the authorized officer and the mining operator could reach an agreement to make such a change. 45 FR 78905-78906.

default on February 28, 1989. This information placed BLM on notice that Canyon City and Grubstake were no longer on the property under color of a legitimate lease agreement. In effect, BLM was placed on notice that their activity may be in trespass upon the mining claims. On June 21, 1989, BLM notified Canyon City that it had disturbed in excess of 10 acres and was required to file a mining plan and performance bond prior to carrying on any further operations. In the same notice, BLM informed Canyon City that it was in violation of Federal regulations on isolating, removing, and controlling toxic materials. Stoll was not served. <sup>6/</sup>

BLM did nothing until September 12, 1989, when it notified Canyon City that as a result of a site inspection, it had determined that 10 acres rather than 4 acres described in its mining notice were being used. Under 43 CFR 3809.1-4 an approved mining plan of operations is required prior to commencing operations which exceed the disturbance level (5 acres) described in 43 CFR 3809.1-3. See Differential Energy, Inc., 99 IBLA 225 (1987). When Canyon City failed to comply with that notice, BLM issued another notice on November 28, 1989. It is clear that BLM had inspected the site, met with Canyon City and was well aware that Canyon City was in

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<sup>6/</sup> B.K. Lowndes, supra, also involved a notice of noncompliance under 43 CFR Subpart 3809. The Board affirmed the Colorado State Director's determination that it was reasonable and proper to issue the notice of noncompliance to all involved parties. In that case, Grasslake Minerals and Mining, Inc. (GMM), filed notices of location for various mill site claims. GMM filed a notice of intention for a mining plan and was granted a mining reclamation permit by the State of Colorado Mined Land Reclamation Division (CMLRD). The permit listed GMM as both the operator and holder of possessory interests for milling purposes.

GMM entered into a contract of sale with Colorado Gold U.S.A., Inc. (CGU) for the purchase of assets of GMM, including the interests in the mill sites. CMLRD approved the transfer of the State permit of CGU as the recognized operator, responsible for complying with the permit. Although GMM undertook this detailed arrangement to transfer its assets and charge the operator of the mill site, no official notification of this transfer was transmitted to BLM. In an attempt to get the site completely reclaimed a notice of noncompliance was sent to all parties involved with the mill sites including GMM, CGU and parties of record affiliated with these companies. The parties affiliated with both GMM and CGU appealed, disclaiming responsibility. The Board affirmed the State Director's determination that the notice of noncompliance was properly sent to all parties.

In Lowndes, it was reasonable to issue the notice to all parties. GMM, having failed to notify BLM of the transfer of assets to CGU, remained claimant of record and operator under the notice of intention. CGU was operator under the CMLRD permit.

violation of the regulations. BLM did not enforce its notices of noncompliance or take any action to stop Canyon City's operations. Canyon City never submitted a mining plan or posted a performance bond.

The Board has held that it is reasonable and proper for BLM to issue a notice of noncompliance to all involved parties. See B.K. Lowndes, supra. In the present case, however, BLM was aware of Canyon City's activities from the outset in 1986 when it filed its mining notice. Stoll informed BLM on numerous occasions of Canyon City's transgressions, of the notice that he was terminating the leases, and that he had obtained a court order to bar Canyon City from the premises. The state court order was lifted to allow Canyon City to go on the property and remove machinery and equipment to comply with a notice of noncompliance issued by BLM, and Stoll was enjoined by the same court from interfering with that activity. Had he attempted to stop Canyon City employees from dumping the solutions he would have been in contempt of court. The case file supports Stoll's contention that Stoll had promptly informed BLM of this violation. We know of nothing more that Stoll could have done to prevent Canyon City from doing damage. Stoll should be required to do reclamation of any land disturbed by him, but should not be held responsible for Canyon City's violations, which occurred after March 13, 1989.

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, in part, and reversed, in part.

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R. W. Mullen  
Administrative Judge

I concur.

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James L. Byrnes  
Chief Administrative Judge

