

PETER BLAIR

IBLA 2002-273

Decided June 30, 2005

Appeal from a Cessation Order issued by the Ridgecrest (California) Field Office, Bureau of Land Management (BLM), requiring removal of personal property in trespass on the public lands. CACA 40339.

Affirmed.

1. Mining Claims: Surface Uses--Surface Resources Act: Occupancy

A BLM cessation order requiring the immediate removal of a building, equipment, and all other personal property from an abandoned mill site is properly affirmed when BLM previously found the occupancy to be in noncompliance with the regulations regarding use and occupancy under the mining laws, issued a notice of noncompliance providing a deadline for removal, and no progress in removing the personal property from the site had been made despite extensions of the deadline for more than a year.

APPEARANCES: Peter Blair, San Diego, California, pro se; Hector A. Villalobos, Field Manager, Ridgecrest (California) Field Office, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Peter Blair (Blair or appellant) has appealed from a Cessation Order issued by the Ridgecrest (California) Field Office, Bureau of Land Management (BLM), on February 7, 2002, instructing him to remove his personal property stored in trespass on the public lands contrary to law, citing section 303 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1733 (2000). The Cessation Order specifically referred to the unauthorized presence on the public lands of “the building,

equipment, conveyor systems, scrap and miscellaneous other property” located at a site “roughly 500 feet east of the west quarter-corner monument” of sec. 24, T. 19 S., R. 40 E., Mount Diablo Meridian, Inyo County, California. In its Cessation Order, BLM noted that in the terms of a prior Order to Remove issued on May 24, 2001, it had provided appellant until December 31, 2001, within which to remove his property. As subsequent field inspections disclosed no discernible progress in removing the personal property, the BLM decision under appeal informed Blair that any property remaining after April 1, 2002, would be subject to removal, destruction, or other disposition.

The area involved was formerly the site of several mill site claims located by California Milling Co. (CMC) on October 3, 1990, identified as CMC 1-5 (CAMC 231984 through CAMC 231988). A notice of operations informing BLM of the intent to disturb the surface of five acres or less to construct a pilot plant on mill site CAMC 231984 was submitted by CMC in June 1991 under the surface management regulations at 43 CFR Subpart 3809. A reclamation plan for the operation was subsequently approved by the Inyo County Planning Commission on October 25, 1991, subject to provision of a \$10,000 bond. According to a BLM inspection report, the CMC mill was in operation by November 1991. Ensuing BLM inspections in 1992 and 1993 reported that the mill was shut down and no longer operating. All of the millsite claims except for CMC 1 (CAMC 231984) were abandoned August 31, 1994. In June 1996, BLM was informed that CMC’s property had been acquired by Darwin Mining Technologies, L.P.^{1/} It appears that the CMC 1 millsite claim was subsequently forfeited August 31, 1996, by operation of law as a consequence of the failure to pay the annual maintenance fee by that date. 30 U.S.C. §§ 28f, 28i (2000); 43 CFR 3830.21, 3830.91(a)(3).

In a letter dated January 12, 1999, BLM noted the 1991 notice of operations was out of date in view of the subsequent events including abandonment of the mill site claims. Hence, BLM required Darwin Mining to describe its operations and detail the surface occupancy, citing the regulations in 43 CFR Subparts 3809 and 3715. The case file for this occupancy was identified in the letter by serial number CACA 40339. In a follow-up letter dated May 24, 1999, BLM required Darwin to describe its operations at the site in accordance with the regulations at 43 CFR Subpart 3809, and to submit the information required to justify occupancy under the regulations at 43 CFR Subpart 3715 or remove all structures within 90 days.

In February 2000, Blair contacted BLM, stating that the conveyance to Darwin Mining was flawed and provided documentation purporting to show that “the mining

^{1/} A reclamation bond for the milling operation in the amount of \$10,000 was filed with Inyo County by Darwin Mining.

property” had been acquired by him.^{2/} Blair also stated that he had no intention of operating the milling equipment in any mineral-related operation and was not acting as an operator for any known claimant. (Feb. 14, 2000, Letter from Blair at ¶ 3.) In response, BLM sent a letter dated February 24, 2000, to Darwin Mining (with a copy to Blair) explaining that Blair had advised BLM that he is the owner of the property on the former millsite. Explaining that BLM is not in a position to adjudicate ownership of the personal property and that this is a private matter to be worked out by the parties, BLM pointed out that Darwin Mining is the party responsible for compliance with the surface management regulations at 43 CFR Subpart 3809.

On November 9, 2000, BLM issued a letter to appellant and to Darwin Mining finding that no ore was being processed, milling operations had ended, and there was no expectation that milling operations will be resumed. Concluding that the mill was in a period of non-operation, BLM indicated that unless written permission was obtained from BLM within 90 days of receipt of the letter, the site must be reclaimed by that time, citing the regulations at 43 CFR 3809.3-7 (2000) and 43 CFR 3715.5-1. Hence, BLM indicated that in the absence of written authorization or reclamation of the site within 90 days, the building and equipment on the site would become the property of the United States, citing 43 CFR 3715.5-2. Stating that it was under no obligation to extend the 90-day period for reclamation, BLM advised appellant that it would “give consideration to a limited, short-term extension” if it would benefit management of the public lands. In its letter, BLM advised appellant and Darwin Mining of the right to appeal its finding that the mill was not operating and not expected to resume operation.

Blair and Darwin Mining joined in a response to BLM, received on December 8, 2000. They did not dispute that the site does not involve an active milling operation, declaring that Blair “has, and is, attempting to recover, document, and remove all equipment, from the previous operations.” (Dec. 8, Letter, at ¶ 1.) They estimated that “a period of 1-1.5 years will be required to cost effectively remove all equipment from the site.” (Dec. 8, Letter, at ¶ 2.) By notice dated April 12, 2001, BLM granted Blair’s request for an extension of time to remove property from the site:

You are allowed until December 2001 to remove this property, and ordered to have this accomplished by December 31, 2001. Workmen

^{2/} CMC apparently defaulted in a debt with the Furry Family Trust, wherein it had listed the mining property as collateral. The property was offered for sale in 1996. An unexecuted copy of a Milling Rights Purchase Agreement filed with BLM on June 20, 1996, indicated that the plant, conveyors, and other equipment was being conveyed to Darwin Mining.

may occasionally camp on the site during periods when work is actually in progress. Provided that you work diligently at removing the former CMC property during this time, no trespass action will be taken until January 2002.

In response to the BLM notice, Blair asked for additional time indicating that “there may be problems with completing this work by the end of 2002.” (Apr. 16, 2001, Letter at ¶ 2.)

Subsequently, BLM issued its May 24, 2001, letter specifically ordering appellant to remove his property from the public lands by December 31, 2001. Noting that the site was not in compliance with the Departmental regulations for use and occupancy under the mining laws, 43 CFR 3715.2, BLM ordered removal of the personal property and reclamation of the site under the authority of 43 CFR 3715.4-3. As for a specific deadline, BLM stated:

December 31, 2001, is a reasonable time for completing this work. Please note that among other things, your letter of December 20, 2000 referred to “the site remediation plan presently in effect.” * * * In the Notice submitted to this office, [CMC] estimated that the site could be reclaimed within 90 days of the end of operations * * *. The Decision from the County of Inyo stipulated that the site must be reclaimed within 3 months of the end of operations. Please note that in your letter of 14 February 2000 you estimated that about four months would be needed to remove all personal property. Several times that number of months have since passed. In November of 2000 you were informed that all property should be removed within 90 days, unless written permission is otherwise granted. The BLM has granted that permission, and given you until the end of the year.

(BLM Letter dated May 24, 2001.)

When the property was not removed from the public lands by the deadline of December 31, 2001, BLM issued the February 27, 2002, Cessation Order which is the subject of this appeal. In the Cessation Order, BLM noted that there had been no mineral-related operations at this site for several years and that the related mill site claim was deemed abandoned and void in 1996. Recognizing that appellant has stated his intent is not to conduct milling operations on the site, BLM held that “the continued presence of this property on the public lands is *not* authorized by the Mining Law of 1872” and further stated that “the continued presence of this property on public lands is a trespass against the United States.” (Cessation Order at 1.) Reciting that “recent field inspections show no discernible progress in removing this

property,” BLM stated that the last authority for this occupancy expired on December 31, 2001, citing the regulation at 43 CFR 3715.5-1. Further, BLM held that any property remaining on the public lands on April 1, 2002, becomes the property of the United States and is subject to removal or other disposition by BLM, citing 43 CFR 3715.5-2. Id. at 2.

In a notice of appeal dated April 6, 2002, appellant challenges the Cessation Order on the ground that the time for removal of the property previously granted did not include the full 18 months requested. Blair also indicates it has not yet “been determined that disposition of the assets can be accomplished.” (Notice of Appeal, at ¶ 1.) Blair further indicated that he has been negotiating the sale of the property at issue, indicating a hope that the Department will forego action while such sale is pending. He adds: “Hopefully, we can conclude a transaction * * * so we can dispose of all assets and clean the property as per the site mitigation plan.” Id. at ¶ 4.

The Mining Law of 1872, as amended, permits location of valuable mineral deposits on available public lands of the United States. See generally 30 U.S.C. §§ 21-47 (2000). In addition, a mining claimant may occupy certain public lands for “mining or milling purposes.” 30 U.S.C. § 42 (2000). Occupancy of the surface of the public lands for mining purposes is governed in part by more recent legislation and implementing regulations. Thus, Section 4(a) of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 612(a) (2000), provides that mining claims located under the mining laws of the United States “shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto.” In 1996, the Department promulgated implementing regulations codified at 43 CFR Subpart 3715 to address the unlawful use and occupancy of unpatented public lands under the mining laws for non-mining purposes. 61 FR 37116 (July 16, 1996). Consistent with the Mining Law of 1872 and the Surface Resources Act, these regulations set forth restrictions on the use and occupancy of public lands open to the operation of the mining laws.

Under these regulations, occupancy is defined to include full or part time residence on the public lands or the construction, maintenance, or presence of structures used for such purposes. 43 CFR 3715.0-5. The term residence or structures also includes buildings and storage of equipment or supplies. Id.; Marietta Corporation, 164 IBLA 360, 362 (2005); Thomas Smigel, 156 IBLA 320, 323 (2002). A claimant must consult with BLM prior to commencing occupancy. 43 CFR 3715.3. The consultation will result in an adjudication of the proposed occupancy and a decision expressing the concurrence or non-concurrence of BLM. 43 CFR 3715.3-4. In the absence of BLM concurrence, occupancy must not be initiated. 43 CFR 3715.3-6. With respect to occupancy for milling purposes which predates the promulgation of the regulations at Subpart 3715, all existing occupancies must meet

the regulatory requirements by August 18, 1997. 43 CFR 3715.4(a). When compliance is not established, BLM will issue a notice of noncompliance and may order cessation of the existing occupancy and reclamation of the public lands. Id.

The activities justifying a claimant's occupancy of a mill site in the form of the placement of structures and property, must (a) be reasonably incident to the milling operations; (b) constitute substantially regular work; (c) be reasonably calculated to lead to the extraction and beneficiation of minerals; (d) involve observable on-the-ground activity that BLM may verify; and (e) use appropriate equipment that is presently operable. 43 CFR 3715.2. In connection with mill sites, the rules define "reasonably incident" as "processing operations and uses reasonably incident thereto." 43 CFR 3715.0-5; Marietta Corporation, 164 IBLA at 362. In the case before us, the milling operation was a pilot project which only operated for a brief time in 1991 and ceased operation by 1992 with no apparent intent to resume operations. The mill sites associated with the operation were abandoned in 1994 and 1996. Indeed, appellant indicated in February 2000 that he has no intention of resuming milling operations. We have held that the Surface Resources Act and BLM regulations at 43 CFR 3712 and Subpart 3715 preclude any assertion that the Mining Law vests a mining claimant with "placeholder" status once he or she places milling equipment on the public lands. Precious Metals Recovery, Inc., 163 IBLA 332, 340-41 (2004). Accordingly, the record clearly supports the BLM finding that occupancy was in noncompliance.^{3/}

^{3/} Appellant does not challenge the BLM finding that his occupancy was not in compliance with the surface management regulations at Subpart 3715. This finding was made implicitly in the BLM letter of Nov. 9, 2000, and again, expressly, in the Order to Remove Property from the Public Lands dated May 24, 2001. Under the doctrine of administrative finality--the administrative counterpart of the doctrine of res judicata--when a party has had an opportunity to obtain review within the Department and no appeal was taken, or an appeal was taken and the case was considered on review, the decision may not be reconsidered in later proceedings except upon a showing of compelling legal or equitable reasons, such as violations of basic rights of the parties or the need to prevent an injustice. Helit v. Goldfields Mining Corp., 113 IBLA 299, 308-09, 97 I.D. 109, 114 (1990); Lloyd D. Hayes, 108 IBLA 189, 192-93 (1989); Turner Brothers, Inc. v. OSM, 102 IBLA 111, 120 (1988).

In his appeal of the Cessation Order, Blair asserts that Crystal Pure, Inc.,^{4/} “has not assumed full responsibility of the assets and will not do so until it has been determined that the disposition of the assets can be accomplished.” (Notice of Appeal at 1.) Further, Blair complains that he had originally requested a year and a half for this cleanup operation. Id.

[1] With respect to occupancies in existence at the time the regulations at Subpart 3715 were promulgated, the relevant regulation provides that such occupancy must meet the regulatory requirements by August 18, 1997. 43 CFR 3715.4(a). When BLM subsequently finds the occupancy to be in noncompliance as it did in the present case, it may first issue a notice of noncompliance as it did in the November 9, 2000, letter and the subsequent Order to Remove Property from the Public Lands dated May 24, 2001. Id.; 43 CFR 3715.7-1(c). Enforcement options available to BLM include a cessation order requiring permanent cessation of the occupancy upon the failure to timely comply with a notice of noncompliance. 43 CFR 3715.7-1(b). Generally, all structures, buildings, equipment, materials, and other personal property must be removed from the public lands within 90 days unless BLM provides written authorization. 43 CFR 3715.5-1. In this case, BLM granted appellant’s request for an extension of time to remove the property, ultimately allowing a period substantially in excess of a year (until April 1, 2002) from the date of the letter of November 9, 2000, notifying Blair and Darwin Mining of the necessity of reclaiming the land within 90 days under 43 CFR 3715.5-1. Considering that milling operations ceased on this site by 1992 and that appellant expressed the intent not to undertake any further operations, we find that the deadline set by BLM is fully sustained by the record. See Marietta Corporation, 164 IBLA at 373-74; Precious Metals Recovery, Inc., 163 IBLA at 340. Accordingly, we find that the BLM Cessation Order is properly affirmed.

Appellant indicates in his appeal that Crystal Pure “has not assumed full responsibility” for the property. As noted by BLM, the decision under appeal was issued to Blair who has asserted to BLM that he is the owner of the property stored on this site. The Board has held that a party claiming title to the personal property on a mill site and exercising dominion over that property is properly held liable for removal of that property and costs of removal by BLM if that becomes necessary because the owner fails to reclaim the public land in a timely manner as required by regulation at 43 CFR 3715.5-2. Marietta Corporation, 164 IBLA at 376.

^{4/} appears from the notes of the BLM inspection report dated Dec. 1, 2000, that Crystal Pure, Inc., is an entity used by Blair in an effort to sell the property located on the former millsite. There is no indication in the record that BLM has been dealing with Crystal Pure regarding this property.

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.

C. Randall Grant, Jr.
Administrative Judge

I concur:

James F. Roberts
Administrative Judge