

PASS MINERALS, INC.
K. IAN MATHESON
KIMINCO, INC.

IBLA 2003-78, 2004-26

Decided March 16, 2006

Consolidated appeals from an order of the Bureau of Land Management requiring a new plan of operations and from a subsequent decision revoking the mining claim plan of operations. N-72144.

Order in IBLA 2003-78 declared moot and appeal dismissed as moot; decision in IBLA 2004-26 affirmed.

1. Administrative Appeals: Generally--Administrative Review: Generally--Appeals: Generally--Appeals: Mootness--Mining Claims: Generally

When the decision of an administrative law judge declaring placer mining claims invalid was not stayed during the pendency of the appeal, there were no mining claims on which mining operations could be conducted, and thus nothing to which a mining plan of operations could pertain. In these circumstances, a BLM decision revoking the plans of operations for the invalid mining claims will be upheld. When the revocation of a plan of operations for an invalid mining claim is affirmed on appeal, an appeal of an earlier BLM decision finding that operations exceeded the scope of the approved plan of operations and requiring the submission of a new plan of operations is properly declared moot, and the appeal of that decision is properly dismissed as moot.

APPEARANCES: K. Ian Matheson, Henderson, Nevada, pro se and for corporate parties; Mark R. Chatterton, Assistant Field Manager, Non-Renewable Resources, Bureau of Land Management, Las Vegas, Nevada.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Pass Minerals Inc. (PMI), through K. Ian Matheson, president of PMI, has appealed an order and a related decision of the Las Vegas (Nevada) Field Office (LVFO), Bureau of Land Management (BLM), pertaining to PMI's operations on the Mijo 16 association placer mining claim.^{1/}

The original plan of operations (PoO) was for "mining related activities on the Mijo 16 placer mining claim" in connection with the Becki M dependent millsite (NMC 293456).^{2/} It was filed with the LVFO on August 14, 1995, and at that time was serialized as N54-95-031P. The plan was subsequently assigned serial number N-72144 as a result of the upgrading of BLM's records system. (Decision at 1.) The original PoO was approved as written by decision dated May 24, 1996, subject to numerous conditions of approval.

On October 29, 2002, BLM issued an order in which it determined that mining operations on the "Mijo 16 project" exceeded the scope of PMI's approved PoO and did not comply with the provisions of 43 CFR Subpart 3715 and 3809. The order required the submission of a new PoO. Appellants timely appealed by notice dated November 26, 2002. That appeal was docketed as IBLA 2003-78. On December 26, 2002, PMI filed its statement of reasons (SOR) and petitioned for a stay of BLM's order. The Board did not act on the stay petition, and accordingly, it was deemed denied. 43 CFR 4.21(a)(3), (b)(4).

On May 8, 2003, after lengthy contest proceedings and briefing, Administrative Law Judge Harvey C. Sweitzer declared the Mijo Nos. 16 and 17 association placer mining claims^{3/} invalid for failure to make a discovery of a valuable mineral deposit.

^{1/} The 160-acre Mijo No. 16 claim is owned by PMI. Kiminco owns the 160-acre Mijo No. 17 claim. The shareholders of PMI are Pilot Plant, Inc. (Pilot), Kiminco, and a defunct company called Pure Air. The shareholders of Kiminco are Matheson, his wife, Debra Matheson, and Pilot. The shareholders of Pilot are Debra Matheson's three children. The land encompassed by the Mijo claims was withdrawn from mineral entry on June 6, 1994, for purposes of a proposed land exchange. Prior to expiration of that withdrawal, the land was withdrawn by another segregation on July 23, 1997, which provided that it would expire in five years. Both segregations were timely noted on the Master Title Plat. It appears a proposed land exchange is still pending, so that the lands remain segregated. United States v. Pass Minerals, Inc., 168 IBLA 115, 118 n. 1 (2006).

^{2/} The Becki M dependent millsite is owned by Pilot and operated by PMI.

^{3/} The Mijo claims lie within the Alunite Mining District, in sec. 14, T. 23 S., R. 63 E.,
(continued...)

Matheson, PMI, Kiminco, and Pilot timely filed an appeal to this Board, which we docketed as IBLA 2003-268. Appellants petitioned to stay Judge Sweitzer's decision. That stay request was denied by order dated July 17, 2003, and accordingly, the decision became effective while it was pending review by this Board.

Following the denial of the stay petition in the contest decision docketed as IBLA 2003-268, BLM issued its July 25, 2003, decision to Matheson, PMI, and Kiminco, which was appealed and docketed as IBLA 2004-26. That decision revoked BLM's authorization of the PoO for the Mijo 16 and the PoO for the Mijo 17 placer mining claim as well. By letter dated August 21, 2003, Matheson requested State Director Review and an informal hearing.

On August 26, 2003, observing that the decision appealed had gone into effect while pending review by this Board, the State Director denied the request for an informal hearing as moot. Further noting that there are no appeal rights associated with "a State Director review acceptance decision," PMI was informed that it could appeal the LVFO decision to this Board. Appellants did so and sought a stay, which was denied on November 10, 2003.^{4/}

In light of the facts common to both cases, as a matter of administrative convenience we have *sua sponte* consolidated the appeals in IBLA 2003-78 and IBLA 2004-26.

In their SOR, appellants advance two arguments. First, they contend that revocation of the PoO for the Mijo 16 and 17 claims was premature because they intend to "pursue any adverse decision in the Federal court system." (SOR at 2.) Second, they note that they located new claims (the Mijo 16 2002 and Mijo 17 2002) over the former claims "on July 24, 2002 some 6 hours after the BLM segregation

^{3/} (...continued)

Mt. Diablo Meridian, in Clark County, Nevada. The claims were located on Dec. 16, 1983, by appellants' predecessors. PMI's Mijo 16 borders Kiminco's Mijo 17 to the north. The Becki M mill site claim overlaps the Mijo 16 and extends to the east.

^{4/} In the stay order in IBLA 2004-26, we noted "that the regulations provide at 43 CFR 3809.809(b) that '[o]nce a State Director issues a decision under this subpart, it replaces the original BLM decision, which is no longer in effect, and you may appeal only the State Director's decision.' This regulation clearly contradicts 43 CFR 3809.801(a)(2), which provides for a 'State Director's decision not to review,' the receipt of which triggers a right to appeal the underlying decision to this Board, not the State Director's decision. The State Director's decision in this case is a decision not to review." (Order dated Nov. 10, 2003, at 2 n.3.)

withdrawal expired on July 23, 2002.” Id. BLM’s December 20, 2002, action in declaring the Mijo 16 2002 claim (and the Mijo 17 2002 and Mijo 18 2002 claims as well) null and void ab initio was appealed and docketed as IBLA 2003-111. Noting that this Board had not yet determined whether the new claims were valid, appellants further argued that these new claims “form a second basis for our continuing operations.” Id.

[1] In Pass Minerals, Inc., 168 IBLA 115, the Board affirmed Judge Sweitzer’s decision finding that the Mijo 16 and Mijo 17 claims had never been supported by a discovery of a valuable mineral deposit. Because neither was stayed, the two BLM decisions at issue here went into effect and remained so while the appeals were pending before this Board. Since the Mijo 16 and 17 mining claims were declared invalid, there were no mining claims on which mining operations could be conducted, and therefore nothing to which a mining PoO could attach or pertain.^{5/} BLM accordingly committed no error in revoking the Mijo PoO’s. With the revocation of the PoO’s, the decision in IBLA 2003-78 requiring a new PoO for the Mijo 16 claim is properly declared moot without considering the merits of the appeal and, consequently, the appeal of that decision is properly dismissed as moot.

In addition, in Pilot Plant, Inc., 168 IBLA 169 (2006), we decided a related appeal in IBLA 2003-111. In Pilot Plant, Inc., we modified BLM’s decision holding the Mijo 16 2002, Mijo 17 2002, and Mijo 18 2002 claims null and void ab initio to reflect the effect of the notation rule and affirmed the decision as modified. We held that a segregation or withdrawal duly noted on the public land records remains effective until such time as the notation is removed and the land is restored to entry. Pilot Plant, Inc., 168 IBLA at 179-80. No such action to remove the notation and open the lands has occurred. See 43 CFR 2091.1(a)(5) and (7), (b). Thus, the location of the Mijo 16 2002, Mijo 17 2002, and Mijo 18 2002 claims at a time when the public lands they embraced remained segregated gave rise to no rights under the mining laws and therefore could have no effect on the decisions here appealed.^{6/}

^{5/} Thus, the obligation to reclaim the land disturbed by appellants’ mining activities was triggered. BLM’s direction to submit a reclamation plan and a reclamation schedule within 30 days of receiving BLM’s decision was therefore proper. See decision in IBLA 2004-26 at 2.

^{6/} To the extent the pendency of those appeals had any bearing on whether BLM could or should have taken action in these cases, the argument is now moot.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the order in IBLA 2003-78 is declared moot and the appeal from that order is dismissed as moot, and the decision in IBLA 2004-26 is affirmed.

T. Britt Price
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge