



ROBERT O'DAY

183 IBLA 30

Decided June 13, 2013



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 22203

ROBERT O'DAY

IBLA 2012-186

Decided June 13, 2013

Appeal from a letter of the Colorado State Office, Bureau of Land Management, stating that a certain unpatented mining claim complied with all Federal laws and regulations as to the recordation of that mining claim.

Appeal Dismissed.

1. Mining Claims: Generally--Mining Claims: Title

The Board has long held that it is inappropriate for BLM to engage in disputes over the right of possession of rival claimants at the request of one of the claimants. Such disputes are more appropriately resolved by an appropriate local judicial forum, not by BLM or this Board.

2. Appeals: Standing

To have standing to appeal, a person must both be a party to the case and have an adversely affected, legally cognizable interest. When a letter from BLM does not result in an adverse effect on any interest of a person, that person does not have standing to appeal the letter.

APPEARANCES: Robert O'Day, Snowflake, Arizona, *pro se*; Danielle DiMauro, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE H. BARRY HOLT

Robert O'Day has appealed from a letter dated April 19, 2012 (April 19 Letter) from the Colorado State Office, Bureau of Land Management (BLM), stating, *inter alia*, that the Oro Boro Placer Miners Association unpatented mining claim complied with all Federal laws and regulations as to the recordation of that mining claim.

On December 12, 2011, BLM received a certificate of location filed by several individuals purporting to locate the Oro Boro claim. The claim was located in the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$ , and in the NE $\frac{1}{4}$  of the SE $\frac{1}{4}$ , sec. 11, T. 11 S., R. 80 W., 6th Principal Meridian, in Lake County, Colorado.<sup>1</sup> BLM assigned serial number CMC 282392 to this claim.

On March 29, 2012, BLM received a certification of location filed by several other individuals, including appellant, purporting to locate the Two Bit Gulch Placer unpatented mining claim. This claim appears to overlap completely, and is described at the same location, as the Oro Boro claim. BLM assigned serial number CMC 283089 to the Two Bit claim.

On April 15, 2012, BLM received a letter from appellant requesting that BLM review its records regarding both claims to determine which of them was valid. BLM responded with the April 19 Letter, therein refusing to make such a determination at appellant's request and stating that the locators of the Oro Boro claim complied with applicable laws and regulations. Appellant subsequently filed the instant appeal.

Counsel for BLM has filed a motion to dismiss. BLM argues that the April 19 Letter did not constitute a final appealable decision because it did not take or prohibit any action, nor did it adjudicate the rights or obligations of either appellant or the locators of the Oro Boro claim; therefore, appellant was barred from appealing the letter. Answer at 3. Alternatively, BLM argues that appellant was not a party to the case because he did not participate in any process leading to the April 19 Letter and he is not adversely affected by the letter. *Id.* at 4.

The Board has recently described what constitutes an appealable decision:

A "decision" is generally held to take or prohibit some action that affects a person having or seeking some right, title, or interest in public lands or resources. *See, e.g., GEO-Energy Partners-1983 LTD.*, 170 IBLA 99, 119 (2006), *aff'd*, 551 F. Supp. 2d 1210 (D. Nev. 2008), *aff'd*, 613 F.3d 946 (9th Cir. 2010).

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<sup>1</sup> An amended certificate of location was filed on Apr. 18, 2012.

*Uranium Watch & Living Rivers*, 182 IBLA 311, 314 (2012). Likewise, an appeal may be taken from “a decision adjudicating the rights of the parties in a given factual context.” *Blackwood & Nichols*, 139 IBLA 227, 229 (1997). BLM claims the April 19 Letter “simply explained BLM’s practice with respect to disputes between private parties under state law.” Answer at 3.

In the instant case, BLM could have provided a mere informational response about the status of the Oro Boro claim, and such a response would not constitute an appealable final decision. See *Uranium Watch & Living Rivers*, 182 IBLA at 315. BLM also could have simply informed appellant that it had no basis to adjudicate the rights of the locators of the Oro Boro claim based on appellant’s request. See *id.* (rejecting an appeals framework in which persons could “fabricate appealable decisions merely by submitting information requests to BLM and filing an appeal whenever BLM responds”).

However, BLM went further, expressly stating: “The owners of the Oro Boro Placer Miners Association placer mining claim (CMC 282392) have complied with all Federal laws and regulations as to the recordation of the mining claim.” April 19 Letter at 1. BLM does not abstractly state, for instance, that the locators filed the right forms or provided requested information. Instead, BLM goes so far as to state that the recordation of this particular mining claim complied with all Federal laws and regulations, clearly implying that the Oro Boro claim is procedurally valid.

[1] BLM has a well-established policy against responding to third party assertions that a mining claimant has failed to file documents with the local recording office. See BLM Manual 3833.74. Consistent with that policy, the Board has long held that it is inappropriate for BLM to engage in disputes over the right of possession of rival claimants at the request of one of the claimants. See, e.g., *Sandra Memmott (On Reconsideration)*, 93 IBLA 113, 114-15 (1986), and cases cited. Such disputes are properly resolved by an appropriate local judicial forum, *not* by BLM or this Board. See, e.g., *Recon Mining Co., Inc.*, 167 IBLA 103, 109 (2005). In this case, BLM’s response to appellant comes perilously close to such inappropriate engagement.

[2] But, even assuming *arguendo* that BLM’s overbroad statement in the April 19 Letter was a final, appealable decision, we conclude that appellant has not demonstrated that he has standing to appeal. To have standing to appeal, a person must both be a party to the case and have an adversely affected, legally cognizable interest. 43 C.F.R. § 4.410(a); *David Glynn*, 182 IBLA 70, 72 (2012). “The burden falls upon the appellant to make colorable allegations of an adverse effect, supported by specific facts set forth in an affidavit, declaration, or other statement of an affected individual, that are sufficient to establish a causal relationship between the approved action and the injury alleged.” *Powder River Basin Res. Council*, 180 IBLA 32, 44

(2010), and cases cited.

Here, we find that BLM's April 19 Letter did not result in an adverse effect on any interest of appellant, nor has appellant even asserted such an effect. The letter does not invalidate his Two Bit claim or restrict his access to the land.

We note that BLM's April 19 Letter asserted that BLM "cannot enforce county recordation requirements for new mining claims." April 19 Letter. Even though that is strictly true, BLM is obligated to enforce the recordation requirements of the Federal Land Policy and Management Act of 1976 (FLPMA). See 43 U.S.C. § 1744 (2006). These requirements include filing various documents with the local recording office and copies with BLM. See 43 U.S.C. § 1744(a)(1), (b) (2006). Failure to comply with those requirements is "deemed conclusively to constitute an abandonment of the mining claim" by operation of law. 43 U.S.C. § 1744(c) (2006); see *Ted Dilday*, 56 IBLA 337, 341 (1981). BLM nonetheless has a long history of addressing, on its own initiative, the question of whether a claimant has complied with those FLPMA requirements. See, e.g., *David J. Bartoli*, 147 IBLA 284, 287 (1999); *Hi-Tech Synfuels Corp., Inc.*, 144 IBLA 26, 27-28 (1998); *U.S. v. Myrtle Hix*, 136 IBLA 377, 381 (1996); *Joseph L. Frankmore*, 101 IBLA 202, 203-04 (1988); *Enfield Res.*, 101 IBLA 120, 123 (1988).

In this case, however, because appellant was not adversely affected by BLM's April 19 Letter, and because neither BLM nor the Board is the proper forum for a dispute over the right of possession as between rival claimants, we dismiss appellant's appeal.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the appeal is dismissed.

\_\_\_\_\_/s/\_\_\_\_\_  
H. Barry Holt  
Chief Administrative Judge

I concur:

\_\_\_\_\_/s/\_\_\_\_\_  
James F. Roberts  
Administrative Judge