



STEVE HUNT

187 IBLA 306

Decided April 15, 2016



United States Department of the Interior

Office of Hearings and Appeals

Interior Board of Land Appeals
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STEVE HUNT

IBLA 2014-0166

Decided April 15, 2016

Appeal from a Decision and Noncompliance Order issued by the Yuma Field Office, Bureau of Land Management finding that Appellant violated BLM's mining regulations by failing to cease operations and complete reclamation obligations, failing to reclaim disturbed areas at the earliest possible time, and failing to provide a financial guarantee.

Affirmed.

1. Mining Claims: Generally

If an operator fails to comply with BLM's regulations in 43 C.F.R. Subpart 3809, BLM may issue various types of enforcement orders, including noncompliance orders. Noncompliance orders will specify how the operator violated the regulations, what the operator must do to correct the noncompliance, and the required time to begin and complete corrective action. The regulation at 43 C.F.R. § 3809.605 enumerates several prohibited acts that may lead to an enforcement order, including causing any unnecessary or undue degradation, beginning operations before providing a financial guarantee, and failing to meet requirements applicable when a notice expires.

2. Administrative Procedure: Burden of Proof

In cases reviewing BLM's findings of noncompliance with its mining regulations, the burden of proving error in BLM's decision rests on the mining claimant. An appellant must present an adequate basis for appeal and support its allegations with evidence showing error. In the absence of a showing of error, the decision will be affirmed.

APPEARANCES: Steve Hunt, Quartzsite, Arizona, *pro se*; John L. Guadio, Esq., Office of the Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE RIECHEL

Steve Hunt (Appellant) has appealed a March 31, 2014, Decision and Noncompliance Order (Noncompliance Order) of the Yuma Field Office of the Bureau of Land Management (BLM). In the Noncompliance Order, BLM stated that Appellant violated BLM's mining regulations on the unpatented Gold Eye #2 mining claim by failing to cease operations and complete reclamation obligations, failing to reclaim disturbed areas at the earliest possible time, and failing to provide a financial guarantee. Appellant challenges each of BLM's findings. We find that Appellant has not shown error in BLM's Noncompliance Order, and therefore we affirm.

Background

Appellant has held the Gold Eye #2 gold mining claim since 2006. See Noncompliance Order at 1-2. From 2006 until 2010, Appellant was authorized to conduct operations on the claim under a notice of operations (Notice) and a financial guarantee of \$567. See Administrative Record (AR) Document (Doc.) 5 at 1; Noncompliance Order at 2.

Appellant's Notice expired on April 1, 2010. Noncompliance Order at 2. On that day, BLM received a new Notice and request for use and occupancy from Appellant. See AR Doc. 53 and 54 (Serial Register Pages). BLM did not acknowledge the Notice or request but states that they were not processed because they were incomplete. See Noncompliance Order at 2; AR Doc. 20 at 1 (letter from BLM to Mr. Hunt dated Jan. 24, 2012).

On April 6, 2011, BLM received from Appellant another Notice and a request for use and occupancy of the Gold Eye #2 claim. See AR Doc. 1. On April 19, 2011, BLM sent Appellant a letter notifying him that the Notice was incomplete and identifying information necessary for BLM to process the Notice, including Appellant's taxpayer identification number and an estimate of reclamation costs. See AR Doc. 2.

From April 2011 through January 2014, Appellant and BLM exchanged many letters. Generally, in BLM's letters, the agency identified information that was missing from Appellant's Notice. BLM consistently stated that there was no complete Notice and instructed Appellant to provide his taxpayer identification number and a new financial guarantee based on an estimate of reclamation costs. See, e.g., AR Doc. 16 at 1 (letter to Mr. Hunt from BLM dated Nov. 17, 2011); AR Doc. 2 at 1-2

(letter to Mr. Hunt from BLM dated Apr. 19, 2011). At least twice,¹ in addition to identifying the missing information, BLM estimated the amount of the required financial guarantee and instructed Appellant to pay the estimated amount, but Appellant did not do so. See AR Doc. 28 at 1 (letter to Mr. Hunt from BLM dated Nov. 22, 2013, determining that a financial guarantee of \$14,687 “is sufficient to meet all anticipated reclamation requirements”); AR Doc. 7 at 1-2 (letter to Mr. Hunt from BLM dated May 17, 2011, estimating costs of \$9,145 based on information Appellant provided and directing Appellant to pay that amount or provide an amended cost estimate).

Appellant generally responded to BLM’s letters with questions or complaints about BLM personnel and did not provide the information BLM identified. See, e.g., AR Doc. 26 at 1 (letter to BLM from Mr. Hunt dated Aug. 30, 2013, asking questions about BLM’s 3809 regulations and the authority for BLM to require his social security number); AR Doc. 18 (letter to BLM from Mr. Hunt dated Jan. 2, 2012, asserting that a BLM employee was harassing and misleading mining operators and should resign).

The record also includes reports from periodic BLM field inspections with photographs indicating that Appellant was occupying his mining claim and conducting operations and reclamation activity. See AR Doc. 33 at 2 (Jan. 13, 2014) (“There is still a reclamation liability[,] earthwork and facilities and Recontour benches.”); AR Doc. 31 at 2 (Dec. 17, 2013) (“RV parking bench and equipment parking benches still not reclaimed. Equipment trailers and facilities inventoried during last visit are mostly gone. Only green tool shed, backhoe, RV remain.”); AR Doc. 27 at 1 (Nov. 5, 2013) (noting two trailers, tool shed, backhoe, ATV, and trucks, among other equipment); AR Doc. 25 at 1 (July 30, 2013) (noting shed and conveyor and noting that the yards/open areas are not reclaimed); AR Doc. 23 at 1-2 (Apr. 12, 2013) (noting equipment on site but no active operation; “Mr. Hunt has cleaned up processing operation removed equipment and motorhome. Access to site blocked by berms and signage.”); AR Doc. 22 at 1 (Mar. 26, 2013) (noting active operation (“screening and processing gravels”) and equipment on site).

¹ The administrative record contains two BLM cost estimates, but Appellant submitted three estimates with his Statement of Reasons (SOR). In addition to the estimates dated April 2011 and November 2013 that appear in the record, Appellant submitted an estimate dated Mar. 28, 2014, on which Appellant wrote “Prepared by BLM.” This cost estimate was for \$11,104. Reclamation Bond Calculation Spreadsheet at 3, attached to SOR.

On February 3, 2014, BLM sent Appellant a decision informing him that he had 30 days from receipt of the letter to provide his taxpayer identification number and a reclamation cost estimate to complete the Notice Appellant filed in April 2010 or BLM would terminate the Notice. AR Doc. 35 at unpaginated (unp.) 1-2. BLM explained that, until it receives a complete Notice, BLM could not determine whether the proposed operations would result in unnecessary or undue degradation and could not determine the amount of the required financial guarantee. *Id.* at unp. 1. Appellant received this decision on February 6, 2014, but he did not respond. *See id.* (certified mail return receipt).

On March 31, 2014, BLM issued the Noncompliance Order now on appeal. Citing findings from a January 2014 inspection, the Noncompliance Order recites evidence of occupancy and surface disturbance for which Appellant does not have an acknowledged 43 C.F.R. Part 3809 Notice of Operations or 43 C.F.R. Part 3715 Use and Occupancy Concurrence. Noncompliance Order at 1. The evidence included the existence of gates, steel drums with signs mounted in them, tool sheds, and “yard art.” *Id.*

After reciting the history of correspondence between BLM and Appellant dating back to 2006, Noncompliance Order at 2, BLM declared that Appellant is in violation of the following regulations: (1) 43 C.F.R. § 3809.335(a), requiring a mining operator to cease operations and complete reclamation promptly when a notice of operations expires; (2) 43 C.F.R. § 3809.420(b)(3) (made applicable to notice-level operations through 43 C.F.R. § 3809.320), requiring the operator to reclaim disturbed areas at the earliest possible time; and (3) 43 C.F.R. § 3809.552, requiring an adequate financial guarantee that covers the estimated reclamation costs. Noncompliance Order at 3. BLM ordered Appellant to either complete all reclamation, including removal of all occupancies, or submit a complete Notice, including his taxpayer identification number and a reclamation cost estimate, and an application for use and occupancy, and provide a financial guarantee before beginning operations. *Id.*

In a letter dated April 14, 2014, Appellant responded to the Noncompliance Order, disputing some of the facts cited in the Order about events that took place between 2006 and 2011 and stating that he wished to appeal the decision to this Board. *See* AR Doc. 52 (Notice of Appeal (NOA)). Appellant filed a Statement of Reasons (SOR) for his appeal on May 5, 2014.

Legal Framework

The Mining Law of 1872 permits location of valuable mineral deposits on the public lands of the United States. *See* 30 U.S.C. §§ 22, 35 (2012). Until a patent issues, however, title to the land remains in the United States, and the rights of the

mining claimant are limited by the statutes and regulations under which those rights are acquired and maintained. *Cameron v. United States*, 252 U.S. 450, 460 (1920); *Robert Lewis*, 180 IBLA 376, 382 (2011); *United States v. Mineco*, 127 IBLA 181, 191 (1993). Under the applicable statutes and regulations, the United States, as the title owner, may regulate mining activities on Federal lands to protect the surface resources. *Robert Lewis*, 180 IBLA at 382; *United States v. Hicks*, 162 IBLA 73, 82 (2004); *United States v. Mineco*, 127 IBLA at 191.

Under section 302(b) of the Federal Land Policy and Management Act, the Secretary of the Interior is directed to take any action necessary to prevent unnecessary or undue degradation of the public lands. 43 U.S.C. § 1732(b) (2012). This direction is specifically applicable to activities authorized by the Mining Law of 1872. *Id.* BLM implemented this direction in its regulations at 43 C.F.R Subpart 3809, which establish procedures and standards to ensure that operators and mining claimants prevent unnecessary or undue degradation of the land and reclaim disturbed areas. 43 C.F.R. § 3809.1(a). *See also* 43 C.F.R. § 3809.5 (definition of unnecessary or undue degradation).

To facilitate BLM's ability to identify and manage surface disturbances from mining activities on public lands, BLM's regulations divide operations on mining claims into three categories: casual use, notice-level operations, and plan-level operations. 43 C.F.R. § 3809.10; *Robert Lewis*, 180 IBLA at 383. In this case, Appellant intended to conduct notice-level operations, which consisted of "exploration causing surface disturbance of 5 acres or less of public lands on which reclamation has not been completed." 43 C.F.R. § 3809.21(a).

BLM does not issue a decision approving notice-level mining operations. *See* 43 C.F.R. § 3809.312(a) ("This subpart does not require BLM to approve your notice or inform you that your notice is complete."). Instead, upon receipt of a notice, BLM will review it within 15 calendar days to determine if it is complete. 43 C.F.R. § 3809.311(a). A notice is complete if it contains the information specified in 43 C.F.R. § 3809.301(b), which includes operator information (including the taxpayer identification number of the operator) and a reclamation cost estimate. 43 C.F.R. § 3809.301(b)(1) and (4). If BLM determines that a notice is incomplete, it then will inform the operator in writing of the additional information required. 43 C.F.R. § 3809.311(b). BLM will review the additional information within 15 calendar days, and if it is still not complete, BLM will repeat the process until it is complete or until BLM determines that the operator may not conduct operations because of the operator's inability to prevent unnecessary or undue degradation. 43 C.F.R. § 3809.311(c).

After an operator submits a notice, the operator must wait 15 calendar days after the appropriate BLM office receives the notice before beginning operations to allow BLM to review the notice and determine if any of the actions set forth in 43 C.F.R. § 3809.313 are necessary (for example, BLM may notify the operator that it needs more time to review the notice, that the operator must modify the notice to prevent unnecessary or undue degradation, or that the operator and BLM must consult about access routes). 43 C.F.R. §§ 3809.312(a), 3809.313. BLM regulations also require that, before beginning operations, the operator must provide BLM a financial guarantee that covers estimated reclamation costs. 43 C.F.R. §§ 3809.312(c), 3809.503(c), 3809.552(a). BLM will periodically review the estimated cost of reclamation and require increased coverage, if necessary. 43 C.F.R. § 3809.552(b).

While a notice is in effect, operators must comply with performance standards, including the requirement that, “[a]t the earliest feasible time,” the operator will reclaim the area disturbed. 43 C.F.R. § 3809.420(b)(3)(i) (made applicable to notice-level operations through 43 C.F.R. § 3809.320). Notices of operation remain in effect for two years, unless they are extended under 43 C.F.R. § 3809.333 or operations and reclamation end earlier. 43 C.F.R. § 3809.332. When a notice expires, the operator must cease operations and complete reclamation promptly. 43 C.F.R. § 3809.335(a).

[1] If an operator fails to comply with BLM’s regulations in 43 C.F.R. Subpart 3809, BLM may issue various types of enforcement orders, including noncompliance orders. 43 C.F.R. § 3809.601(a). Noncompliance orders will specify how the operator violated the regulations, what the operator must do to correct the noncompliance, and the required time to begin and complete corrective action. 43 C.F.R. § 3809.601(c). The regulation at 43 C.F.R. § 3809.605 enumerates several prohibited acts that may lead to an enforcement order, including causing any unnecessary or undue degradation, beginning operations before providing a financial guarantee, and failing to meet requirements applicable when a notice expires. 43 C.F.R. § 3809.605(a), (d), and (e).

[2] In cases reviewing BLM’s findings of noncompliance with its mining regulations, this Board has stated that the burden of proving error in BLM’s decision rests on the mining claimant; in the absence of a showing of error, the decision will be affirmed. *See, e.g., Robert W. Gately*, 160 IBLA 192, 209 (2003); *American Stone, Inc.*, 153 IBLA 77, 81 (2000); *David J. Flaker*, 147 IBLA 161, 164 (1999). An appellant must present an adequate basis for appeal and support its allegations with evidence showing error. *Howard J. Hunt*, 80 IBLA 396, 397 (1984).

Analysis

Appellant challenges BLM's three findings of noncompliance. We discuss each below.

1. *Requirement to Cease Operations and Complete Reclamation Obligations*

BLM found that Appellant failed to cease operations and complete reclamation promptly when his notice of operations expired. This action is required by 43 C.F.R. § 3809.335(a), and failure to comply is a prohibited act under 43 C.F.R. § 3809.605(e).

Appellant's previous Notice expired on April 1, 2010. *See* Noncompliance Order at 2; AR Doc. 11 at 1 (letter to Mr. Hunt from BLM dated Sept. 16, 2011) ("There is no active Notice on file."). At this point, Appellant needed to cease operations and complete reclamation activities. *See* 43 C.F.R. § 3809.335(a). Appellant could resume operations if he submitted a new, complete Notice and provided an adequate financial guarantee. 43 C.F.R. § 3809.312(a), (c). While Appellant submitted a new Notice on April 1, 2010, it is undisputed that BLM did not acknowledge it. *See* SOR at 1; NOA at 1.

The following year, Appellant submitted another Notice, which BLM received in April 2011. AR Doc. 1. Within 15 days, BLM wrote Appellant notifying him that the Notice was incomplete. AR Doc. 2.² At that point, if not before, Appellant was aware that he was required to cease operations because he had not submitted a complete Notice. BLM reinforced this point repeatedly in the years leading up to the Noncompliance Order. *See, e.g.*, AR Doc. 35 at 2 (Feb. 3, 2014) ("Until we receive this information your Notice cannot be processed and the proposed exploration activity is not to take place.") (emphasis in original); AR Doc. 20 at 3 (Jan. 24, 2012) ("Until we receive the information requested in our previous letters . . . , your Notice and Occupancy requests cannot be processed and no further exploration activity is authorized."); AR Doc. 11 at 1 (Sept. 16, 2011) ("There is no active Notice on file; your previous notice submittal is incomplete and additional information is required. You may not continue operations.").

² In this letter dated April 19, 2011, BLM wrote that it received the Notice on Apr. 5, 2011. The BLM date stamp on the Notice, however, reads Apr. 6, 2011, and that is the date reflected on the Serial Register Page for AZA 035641. Regardless, BLM responded to the Notice within 15 days of either Apr. 5 or 6, 2011, as required by BLM's regulations. 43 C.F.R. § 3809.311(a).

Despite these notifications, the record indicates that Appellant did not stop operations. *See* AR Doc. 22 at 1 (inspection form dated Mar. 26, 2013, noting that the operation is active, and the type of operation is screening and processing gravels). Furthermore, as of the date of the Noncompliance Order, reclamation was not complete. Although BLM acknowledges that Appellant performed some reclamation activity over the years, *see* AR Doc. 33 (inspection report dated Jan. 13, 2014, noting that several disturbances had been reclaimed), the Noncompliance Order lists additional reclamation activities that remain to be performed years after operations should have ceased. Noncompliance Order at 1 (listing painted rocks and cement blocks, cable gates, tool sheds, yard art, and a metal sink, among other things). Moreover, Appellant does not dispute that at least some of the remaining reclamation BLM identified in its Noncompliance Order is incomplete; instead, Appellant simply states that he has an existing bond that covers it. *See* SOR attachment entitled “Notice of Appeal for Noncompliance Order” dated Apr. 27, 2014 (SOR Attachment).

Appellant states that he has made every attempt to resolve this matter and asserts that “[t]he Yuma Field Office has not sent me any letters or request as to what will satisfy the BLM on reclamation nor have they sent me an updated complete inventory list with pictures and a cost calculation.” *Id.* The administrative record, however, contains numerous letters between BLM and Appellant documenting BLM’s efforts to identify necessary reclamation and the steps necessary for Appellant to move forward with his planned exploration activities. *See, e.g.*, AR Doc. 28 at 1-2 (Nov. 22, 2013) (explaining and enclosing a BLM reclamation cost estimate); AR Doc. 16 at 2 (Nov. 17, 2011) (listing equipment and other items that must be removed until the Notice is complete); AR Doc. 7 at 1-2 (May 17, 2011) (explaining and enclosing a BLM reclamation cost estimate).

We conclude that Appellant did not cease operations and complete his reclamation obligations, and Appellant has not met his burden to show error in BLM’s finding of noncompliance with 43 C.F.R. § 3809.335(a).

2. Requirement to Reclaim Disturbed Areas at the Earliest Possible Time

BLM found that Appellant failed to reclaim disturbed areas at the earliest possible time. This obligation is required by 43 C.F.R. § 3809.420(b)(3), and failure to comply with this requirement is a prohibited act under 43 C.F.R. § 3809.605(a).

As explained with respect to the violation of 43 C.F.R. § 3809.335(a), the record documents BLM’s repeated efforts to identify reclamation that Appellant is required to perform. Some of the conditions listed in BLM’s Noncompliance Order that need to be reclaimed were photographed during multiple BLM inspections from April 2013 through January 2014. *See* Noncompliance Order at 1; *see also* photographs attached

to AR Doc. 33 (inspection report dated Jan. 13, 2014); AR Doc. 31 (inspection report dated Dec. 17, 2013); AR Doc. 27 (inspection report dated Nov. 5, 2013); and AR Doc. 23 (inspection form dated Apr. 12, 2013). Also, as noted earlier, Appellant does not dispute that at least some of the remaining reclamation BLM identified in its Noncompliance Order is incomplete.

Based on the record, we find that Appellant did not reclaim disturbed areas of his mining claim at the earliest possible time. Appellant therefore has not met his burden to show error in BLM's finding of noncompliance with 43 C.F.R. § 3809.420(b)(3).

3. Requirement to Provide an Adequate Financial Guarantee

BLM found that Appellant failed to provide an adequate financial guarantee that covers the estimated reclamation costs. This obligation is required by 43 C.F.R. § 3809.552, and failure to comply with this requirement is a prohibited act under 43 C.F.R. § 3809.605(d).

The record contains several years of documentation of Appellant's failure to provide a new financial guarantee, culminating in the Noncompliance Order, in which BLM lists seven instances of "occupancies and surface disturbance" for which Appellant does not have an "acknowledged 43 CFR 3809 Notice or 43 CFR 3715 Use and Occupancy Concurrence." Noncompliance Order at 1. Appellant responds that "[t]here is a posted and accepted bond and accepted bond letter in place" for six of those items. SOR Attachment.

The "posted and accepted bond" Appellant references is a \$567 bond that Appellant submitted in 2008 under an expired Notice. *See* AR Doc. 5. BLM's regulations state that "BLM will periodically review the estimated cost of reclamation . . . and require increased coverage, if necessary." 43 C.F.R. § 3809.552(b). In accordance with these regulations, BLM reviewed the cost to reclaim Appellant's mining claim and repeatedly directed Appellant to submit a new estimate of reclamation costs. BLM also proposed its own cost estimates and invited Appellant to review and modify them. *See, e.g.*, AR Doc. 20 at 2 (letter to Mr. Hunt from BLM dated Jan. 24, 2012) ("If you have any questions on how our example amount of \$9,145 was calculated, we would be glad to go through the process in our office.").

Appellant categorizes the letter estimating reclamation costs over \$9,000 as "harassment." SOR at 2; NOA at 1. Appellant observes that each cost estimate BLM made is different, and two of them assign costs to reclaim abandoned mine shafts even though Appellant did not excavate or use them. SOR at 2. Appellant asserts that "Bond Calculations are uncalled for by making claim holders responsible for things

they did not do or do not want to take responsibility for previous miners['] excavations.” NOA at 2.

As BLM repeatedly advised Appellant, if he disagrees with BLM’s cost estimate, he may provide his own. It is Appellant’s obligation under BLM regulations to provide an estimate of reclamation costs, and Appellant may not begin operations until he submits a bond to cover those costs. 43 C.F.R. §§ 3809.301(b), 3809.312(c). Because Appellant has not provided an adequate financial guarantee that covers the estimated reclamation costs, we conclude that Appellant has not shown error in BLM’s finding of noncompliance with 43 C.F.R. § 3809.552.

Conclusion

After considering all of Appellant’s arguments and reviewing the record, we find that Appellant has not shown error in BLM’s Noncompliance Order. Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, we affirm BLM’s decision.

_____/s/
Silvia M. Riechel
Administrative Judge

I concur:

_____/s/
Amy B. Sosin
Administrative Judge