

INTERIOR BOARD OF LAND APPEALS

Del M. Ackels d.b.a. Gold Dust Mines

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DEL M. ACKELS d.b.a. GOLD DUST MINES

IBLA 91-211

Decided December 7, 1993

Appeal from a decision of the Alaska State Office, Bureau of Land Management, affirming notice of noncompliance, dismissing appeal in part, and requiring further adjudicative action with respect to mining claims F-55747-SM through F-55752-SM, F-25278-SM, F-59827-SM, and F-26777-SM.

Affirmed.

1. Mining Claims: Plan of Operations

A plan of operations is properly required under 43 CFR Part 3809 where BLM determines that unreclaimed surface disturbance from previous years together with proposed operations will cause a cumulative surface disturbance of more than 5 acres.

2. Mining Claims: Plan of Operations

A person who is not the owner of a claim but performs assessment work is an "operator" as defined by 43 CFR 3809.0-5(g) and is properly issued a notice of noncompliance for failure to complete the reclamation required under an approved plan of operations.

APPEARANCES: Del M. Ackels, Fairbanks, Alaska, President, Gold Dust Mines.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Del M. Ackels, President of Gold Dust Mines, has appealed from the February 20, 1991, decision of the Alaska State Office, Bureau of Land Management (BLM), affirming the issuance of a notice of noncompliance dated October 16, 1990, for failing to complete reclamation and prevent undue and unnecessary degradation with respect to certain placer mining claims. These claims are designated the T.J. Nos. 1 and 2 Above, the T.J. Nos. 3 through 7, and the T.J. Nos. 8 and 9 Above, and are assigned BLM serial numbers F-55747-SM through F-55752-SM, F-25278-SM, F-59827-SM, and F-26777-SM.

The specific reclamation requirements cited in the notice of noncompliance were established in a mining plan of operations submitted by appellant and the Hecla Mining Company, and were approved by BLM prior to allowing Hecla to explore the claims.

Background

The above claims were located between 1973 and 1977, and BLM's decision identified Ackels as the owner of the T.J. Nos. 8 and 9 Above mining claims, F-26777-SM and F-59827-SM. Dan H. Bergevin located the T.J. No. 1 Above, the T.J. Nos. 3, 4, 5, and 7, serialized as F-55747-SM, F-55749-SM, F-55750-SM, F-55751-SM, and F-25278-SM. Esther Bergevin located the T.J. No. 2 Above and the T.J. No. 6 as the owner of F-55748-SM and F-55752-SM. Despite the varied ownership of the claims, almost all of the assessment work filings during the years for these and many other nearby claims were filed on a single form by Del M. Ackels, who indicated that he was the owner and that he performed the work. Furthermore, Delmar M. and Gail E. Ackels executed a deed of trust dated November 14, 1983, for a group of claims collectively called the Del Ackels Mining Claims which included the claims involved in this appeal. The deed of trust named the Transamerica Title Insurance Company as trustee and First National Bank of Fairbanks as beneficiary. On July 30, 1984, the Ackels executed a security agreement with First National Bank of Fairbanks with these claims as collateral.

The affidavits of assessment work filed by Ackels generally described mining operations and referred to particular claims. The statement filed for 1979 refers specifically to work done on the T.J. Nos. 6 and 7. The 1980 and 1981 filings refer to the T.J. Nos. 1, 2, and 6. In 1982, appellant sluiced 200,000 cubic yards of gravel on the T.J. No. 5 and mined on the T.J. No. 8 in 1983. In 1984, he operated on the T.J. Nos. 1 and 5. He stated that mining was conducted on the T.J. No. 9 claim in 1986. He sampled by pit on the T.J. No. 3 in 1988. The 1987 affidavit of labor for this large group of claims was filed by Steven Olson who reportedly did the work and refers to D. M. Ackels as the owner. That affidavit specifically refers to the T.J. No. 5 claim which had been located by Dan H. Bergevin.

On the basis of aerial photographs, BLM calculated unreclaimed acreage on the claims in 1988. On July 11, 1989, Hank Gradney of Big G Mining, Inc., submitted a plan of operations for mining activities along Gold Dust Creek on the T.J. No. 8 and other claims but withdrew his plan based on the reclamation liability.

On March 19, 1990, Hecla Mining Company filed a copy of a State of Alaska annual placer mining application describing diamond core drilling operations on numerous mining claims asserted to be owned by Del Ackels of Gold Dust Mines including those involved in this proceeding. By letter dated March 21, 1990, BLM informed Hecla that current reclamation liability on the claim block precludes any mining activity until an adequate plan of operation addressing reclamation has been submitted and accepted. On April 24, 1990, Ackels and Carey Cossaboom of Hecla Mining signed a statement that appears to have been prepared by a BLM staff member that referred to a series of maps and 1987 photos for post-81 reclamation requirements on the Ackels claim block with the total acreage estimated at approximately 20 acres. The statement specifically said: "This reclamation will be done as a joint venture \* \* \* beginning in July & completed as the ground thaws. Anticipation is 45 days of equipment time \* \* \* and to complete by seasons end."

By letter dated May 23, 1990, BLM notified Hecla that review of its plan was complete and referred to the 1989 site examination identifying the locations requiring reclamation in excess of 20 acres that would be reclaimed during the 1990 season as a joint venture between Hecla and Ackels. By letter dated June 13, 1990, Hecla objected to BLM's decision and sought to clarify its relationship with Ackels. Hecla asked BLM to vacate its decision so that the problem could be resolved informally without filing an appeal. In that letter, Hecla stated that it would not agree to engage in any joint venture or other enterprise with Del Ackels to reclaim land previously disturbed by Ackels or someone other than Hecla. On June 29, 1990, BLM again notified Hecla of the completion of its review, amending its prior description of proposed action as requiring reclamation by Del Ackels by August 31, 1990.

A note to the file from Susan M. Will states that she examined the site on September 18, 1990, and found that Hecla had pulled out and completed their work, and had satisfied all of their reclamation obligations. She also noted that Ackels had not completed the reclamation required of him. On October 16, 1990, the notice of noncompliance was issued to Del M. Ackels as operator and Dan H. Bergevin and Del M. Ackels as claimants.

In a letter filed November 14, 1990, Ackels responded that neither he nor Bergevin had either been partners, co-owners, or co-locators of any properties. He states that after Bergevin's claim block was mined out by him he continued to the required assessment work on that block so that he would not be required to perform assessments separately on his own claims above and below this group.

By letter dated December 11, 1990, the State Office acknowledged Ackels' response as an appeal, and cited numerous instances reflected in the case records in which Ackels had held himself out as owner of the claims. BLM sought clarification of the ownership from appellant.

In a letter dated January 16, 1991, appellant referred to disputes with the Bergevins concerning priority of ownership with the claims, particularly with Jerry Bergevin, the son of Dan and Esther, who later filed for bankruptcy and left the state, resulting in the seizure of the Bergevin's equipment. Appellant stated that he and Dan Bergevin had made a verbal agreement allowing appellant to mine the same area again and give Bergevin a 5 percent royalty. On February 20, 1991, BLM issued the decision from which this appeal is taken, no longer relying on appellant's ownership status as the basis for its decision.

#### Reasons for Appeal

In his notice of appeal dated March 18, 1991, appellant argues that substantial reclamation was already performed on his claim blocks, asserting that reclamation was previously performed in 1986 at a standard that exceeds BLM's current standards. He also asserts that 43 CFR 3809.1-5(c)(5) was fully complied with, and that BLM's failure to comply with its own guidelines has caused him economic harm. Appellant states that he did not locate or mine all the areas described in the noncompliance notice

and that he had reclaimed some of Bergevin's block in 1986 at his own expense. He asserts that his claim block has been left in far better condition than surrounding claim blocks that were recognized as acceptable.

### Discussion

[1] The statutory and regulatory authority under which BLM imposed its reclamation requirements was previously set forth in Differential Energy Inc., 99 IBLA 225, 229 (1987):

In managing the public lands the Secretary of the Interior 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), § 302(b), 43 U.S.C. § 1732(b) (1982); see Draco Mines Inc., 75 IBLA 238 (1983). This provision was expressly recognized in sec. 302(b) of FLPMA as affecting the rights of claimants under the Mining Law of 1872. The surface management regulations of 43 CFR Subpart 3809 were promulgated pursuant to this authority.

In that decision, we held that a plan of operations is properly required under 43 CFR 3809.1-4 where BLM determines that unreclaimed surface disturbance from previous years together with proposed operations will cause a cumulative surface disturbance of more than 5 acres. Id. at 235. We also held that the burden of proof on an appellant is to show error in the decision appealed from, and in the absence of such a showing the decision will be affirmed. Id.

Ackels bases his appeal primarily on the fact that he is not the owner of most of the claims at issue here, and although he contends that he has reclaimed his claims in accordance with regulatory requirements, he disclaims responsibility for the reclamation BLM has required. Although BLM issued its notice of noncompliance on the basis of its belief that appellant owned the claims, the State Office's decision dismissed that part of Ackels' appeal concerning ownership of the claims, and based his liability for reclamation on Ackels' status as an operator who had performed assessment work on the claims. Departmental regulation 43 CFR 3809.3-2(a) provides in part that "[t]he operator shall also be responsible to reclaim operations conducted without an approved plan of operations or prior to the filing of a required notice." Subsection (b) of that regulation provides that a failure to reclaim areas disturbed by operations is a violation of the regulations.

[2] Ackels correctly points out that no matter how the assessment form was filled out, the act of doing the work does not establish him as the owner of the claim. However, an operator who is not the owner of a claim is properly issued a notice of noncompliance for failure to complete the reclamation required under an approved plan of operations. Under 43 CFR 3809.0-5(g), an operator is defined as "a person conducting or proposing to conduct operations," and under 43 CFR 3809.0-5(f), "operations" is defined as including the performance of assessment work. The records appellant filed with the Department clearly establish that he acted as operator of

the claims during the 10 years prior to the issuance of BLM's decision. We therefore find that BLM's issuance of the notice of noncompliance to appellant was proper.

The only remaining issue before us is whether appellant completed the reclamation work required under the plan of operations he signed. We find that BLM's determination that the work was not completed is supported by the record, and that appellant has failed to show the determination was in error.

Conclusion

Based on our review of the record in this case, we conclude BLM properly established responsibility for reclamation of existing operations as a condition for approval of further operations, and correctly determined that as an operator, appellant was required to perform the reclamation work he agreed to undertake. We also conclude that because appellant failed to complete the required reclamation, BLM properly affirmed the notice of noncompliance. To the extent appellant has raised arguments not specifically addressed herein, they have been considered and rejected.

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.

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John H. Kelly  
Administrative Judge

I concur:

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Will A. Irwin  
Administrative Judge