

INTERIOR BOARD OF LAND APPEALS

Joseph Smith

135 IBLA 347 (May 30, 1996)

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Appeal from a decision of the Utah State Director, Bureau of Land Management, disallowing road construction on mining claims and denying request to post area to limit access. UTU 70547.

Appeal dismissed in part; decision affirmed.

1. Administrative Authority: Generally—Appeals: Jurisdiction—Board of Land Appeals—Bureau of Land Management

The Board of Land Appeals, as an appellate tribunal, does not generally make initial adjudicatory decisions on matters properly before BLM. Where an appeal raises issues not considered by BLM in the decision from which the appeal arises, it is properly dismissed.

2. Mining Claims: Surface Uses—Surface Resources Act: Management Authority

BLM properly declines to authorize the building of an access road to a mining claim where the record shows that existing access to the claim is adequate and there is no showing that the regulatory policy to limit access roads will in any way interfere with the mining or processing operations planned by the claimant.

3. Mining Claims: Surface Uses—Surface Resources Act: Management Authority

Where there is no indication that access by recreational users would impede or clash with a mining claimant's planned operations, BLM properly declines to authorize the restriction of public access to the claim area.

APPEARANCES: Joseph Smith, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE HUGHES

Joseph Smith has appealed from the March 9, 1993, decision of the Utah State Director (SD), Bureau of Land Management (BLM), affirming in

part a decision of BLM's Dixie Resource Area Manager (AM). The SD affirmed the denial of appellant's requests to construct a 100-foot road extension to mining claims and to post the area to limit access by outsiders.

On October 26, 1992, appellant filed with the Area Office a notice of intent describing his proposed mining operation on the Sandy Smith Mine Nos. 1 and 2 placer mining claims in Washington County, Utah. Appellant noted therein that there was an existing dirt road part way to each of the two claims. Appellant proposed the construction of a storage shed and the lengthening of the existing access road as mining progressed, until it reached his center of operations. Appellant also stated in his notice that he wished to live on the claims. Appellant pointed out that, since the claims were in an area much visited by campers and hikers, his residency on the claims was required to prevent theft and destruction of his equipment and improvements.

On November 20, 1992, the AM rejected appellant's proposal to live on the claims, holding that the operations as outlined in the notice did "not meet the requirements for authorizing a mining residential occupancy" set out in the BLM Manual 3893.11 C. The AM also refused to authorize a storage building or a road extension, as appellant would be using only portable hand tools and a sluice box, which could be removed during periods of nonuse, making a storage building unnecessary. Since the purpose of the road extension was to allow access to a storage and residency building, such a road extension was also ruled unnecessary.

On December 17, 1992, appellant filed an appeal of the AM's determination to the SD, under 43 CFR 3809.4, stressing his concern about BLM's refusal to authorize his residency on the claim site. Appellant renewed his request for residency, stating that he would actively mine 9 months of the year and that he would need to be on the site to protect his equipment and improvements. Further, appellant stated that there was "access to one of my claims, but not the other one." Appellant asserted that, according to a previous understanding with a BLM Area Office Geologist during a joint visit to the claim site, a "short extension of dirt-gravel road \* \* \* for access to [his] other \* \* \* claim site" had been authorized. Appellant asserted that he could do without a storage facility only if he could get full access "as first initially agreed to." Finally, appellant requested permission to post a sign stating that only mining and inspection personnel would be allowed on the claim site.

In the decision presently before us, the SD held that a decision denying "reasonable" occupancy of a mining claim must be preceded by a determination of whether the mining proposal would cause unnecessary or undue degradation. He therefore remanded this part of the decision back to the Dixie Resource AM to render, within 30 days, a determination as to whether "reasonable" occupancy would cause unnecessary or undue degradation. 1/

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1/ That action presumably also concerned appellant's request to construct storage structures on the claims.

However, the SD found that the AM had correctly rejected appellant's proposal to construct an access road and properly determined that there was existing access to the Sandy Smith Mine No. 1 claim. With respect to posting the claim site, the SD noted that under the Surface Resources Act of July 23, 1955, P.L. 167, 69 Stat. 367, 30 U.S.C. § 612(b) (1994), the general public had a right of access to public lands for recreational use, and that operators of mining claims located after July 23, 1955, may not limit access to adjacent lands or public use of the surface resources for recreation, unless such public use materially interferes with prospecting or mining activities. The SD stated that appellant's concern about theft "should be alleviated since [equipment] can be removed during periods of nonuse." The SD also concurred in the AM's denial of appellant's request for posting of signs to limit access by the general public.

Appellant asserts on appeal that during the on-site inspection on November 5, 1992, Larry Gore, Dixie Resource Area Geologist, advised him that he saw no "trouble or difficulty" in extending the existing dirt road to the Sandy Smith Mine No. 1 claim. Appellant also asserts that Gore told him to stake the road so that environmental and feasibility studies could be performed. Appellant states that he then staked the road.

Appellant also argues that he should be allowed to post signs to keep the general public away from his claims. Appellant asserts that he would have to share parking and access space with other vehicles, and that the members of the general public would leave trash on the site.

Appellant again argues, citing various reasons, that he should be allowed to reside on the claim site.

[1] We turn first to appellant's argument regarding residency on the claim site. As we have noted, the SD remanded this portion of the decision back to the Dixie Resource Area Office for another determination on the residency question. Accordingly, this issue is not before us in this appeal.

Appellant also contends in effect that assessment work should be deferred. In a June 2, 1993, order, the Board noted that a request for deferment of assessment work is properly filed with BLM, from whose adverse ruling on such a request an appeal would lie with this Board. Accordingly the Board dismissed this portion of the appeal.

Where an appeal raises issues not considered by BLM in the decision from which the appeal arises, it must be dismissed. The Board of Land Appeals, as an appellate tribunal, does not generally make initial adjudicatory decisions on matters properly before the agency, in this case BLM. State of Alaska, 85 IBLA 170 (1985); Edgar W. White, 85 IBLA 161 (1985).

[2] With respect to access, the case file contains notes memorializing the November 5, 1992, on-site meeting between appellant and the BLM geologist. The notes, apparently authored by the geologist, describe the

course of a 1,000-foot road to the Sandy Smith Mine No. 1 claim. The road would be spread with gravel obtained from the mining operation. Also in the case file is a memorandum by a BLM wildlife biologist who visited the site on November 13 and 18, 1992. This memorandum states in part:

Construction of access road would have a negative impact to vegetation and wildlife habitat in this area. Vegetation would be scraped off and stream terrace overflow channels would be changed. This road would also provide access to off-highway vehicles which would increase human and wildlife interaction and conflicts.

The surface management regulations provide that the authorized officer may require the operator to use existing roads where public policy would favor limiting the number of access routes. 43 CFR 3809.3-3. BLM held that access sufficient for appellant's operations already existed.

It appears from those notes that the announced purpose of the on-site meeting was not to approve appellant's plans, but "to discuss his proposed operation and pin down exactly where he wants to work." The fact that appellant may have gained the impression from the on-site meeting that road construction might be authorized did not bar BLM, after considering all relevant factors, from declining to authorize road construction. Appellant does not claim that he is being denied access or that existing access to the site is inadequate. As the Board has observed in rights-of-way cases, the easiest or highest degree of access is not a matter of right. See J. E. Lepetich, 129 IBLA 255, 260 (1994); Dwane Thompson, 88 IBLA 31 (1985).

[3] Concerning BLM's decision not to allow posting of signs or other measures to restrict access to the general public, the Act of July 23, 1955, provided for "multiple use of the surface of the same tracts of the public lands and for other purposes." 43 CFR 3710.0-3. Section 4(b) of the Surface Resources Act, 30 U.S.C. § 612(b) (1994) provides that:

[R]ights under any mining claim hereafter located \* \* \* shall be subject \* \* \* to the right of the United States to manage and dispose of the vegetative surface resources thereof \* \* \*. Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land.

Under 43 CFR 3712.1(b), no locator may "block access to or egress from adjacent public land," including recreational areas.

There is no evidence that public access will impede or clash with appellant's planned operation. Accordingly, BLM was within its authority in declining to allow that request.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed in part, and the decision appealed from is affirmed.

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David L. Hughes  
Administrative Judge

I concur.

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Gail M. Frazier  
Administrative Judge