

INTERIOR BOARD OF LAND APPEALS

William H. Snavely

136 IBLA 350 (October 24, 1996)

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WILLIAM H. SNAVELY

IBLA 94! 334

Decided October 24, 1996

Appeal from a decision of the Area Manager, Ridgecrest Resource Area, California, Bureau of Land Management, providing final notice of trespass on public lands and of the initiation of proceedings to post and seize property. CACA 31200.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Surface Management! ! Mining Claims: Plan of Operations! ! Trespass: Generally

When a person is presently using and occupying public lands without color-of-right, which lands were previously the site of an unpatented mill site and mining claims, BLM properly declares that person to be in trespass on the public lands and liable for trespass damages and related administrative charges, under sec. 303(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1733(g) (1994), and 43 CFR 2920.1-2.

APPEARANCES: William H. Snavely, Lancaster, California, pro se; Elaine Marquis! Brong, Deputy State Director, Operations, California State Office, Bureau of Land Management, Sacramento, California, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

William H. Snavely has appealed from a decision of the Area Manager, Ridgecrest Resource Area, California, Bureau of Land Management (BLM), dated January 14, 1994, styled "Final Notice of Trespass/Notice to Posting and Seizure" (1994 Final Notice). Therein, the Area Manager notified Snavely that he was in trespass on approximately 15.5 acres of public land situated in the NW¹/₄ SE¹/₄ sec. 10, T. 9 N., R. 13 W., San Bernardino Meridian, Kern County, California, by virtue of the presence of a commercial milling facility and other personal property on the land without any authorization from BLM.

The Area Manager described the land at issue as consisting of two parcels—"the lands located as the Nova Millsite Claim equalling approximately 11 acres" and "the public lands immediately adjacent to the Mill Site equalling approximately 4.5 acres" (Decision at 1). The Area Manager did not further identify the relative location of the 4.5 acres to the mill site. Our review of the record indicates that the Area Manager's decision incorrectly states the acreage involved, and that the total acreage of public lands is approximately 11 acres. The Area Manager's decision is modified in that regard.

Snavely and others located the Nova Mill mill site on February 28, 1978. ^{1/} The location notice describes the site as 5 acres in sec. 10, T. 9 N., R. 13 W., commencing at the "west end of the Dono-Han #5 claim." ^{2/} A map filed with BLM on October 12, 1979, along with the location notices for recordation of the mill site, the Dono-Han #5 mining claim (CAMC-45402), and numerous other mining claims, under section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1994), shows the Dono-Han #5 mining claim adjacent to part of the east boundary of the mill site and the Dono-Han #3 mining claim (CAMC-45404) adjacent to the remainder of that boundary, as well as the north boundary of the mill site.

According to the case record, Snavely conducted a commercial enterprise and milling related operation under the name, Osage Industries, on approximately 11 acres of public land, the 5-acre mill site and the adjacent mining claims. Memorandum, dated July 22, 1992, from Linn Gum, Supervisory Geologist, to Special Agent in Charge (Gum Memorandum) at 1-2. ^{3/} In his notice of appeal/statement of reasons for appeal (SOR),

^{1/} A review of the case files submitted with this appeal indicates that this mill site was never properly recorded with BLM. The location notices for the mill site and six mining claims were all filed for recordation with BLM on Oct. 12, 1979, pursuant to section 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976 (FLPMA), 43 U.S.C. § 1744(b) (1994). All of the mining claims had been located prior to Oct. 21, 1976, so that recordation of those claims was timely. The mill site, however, was located after Oct. 21, 1976. Therefore, under section 314(b) of FLPMA, recordation of the mill site was required within 90 days of location. Failure to comply with section 314 of FLPMA rendered the mill site abandoned and void as a matter of law, notwithstanding the subsequent recordation of the site. See Todd Frederick, 93 IBLA 289, 291 (1986). ^{2/} This is consistent with 30 U.S.C. § 42 (1994), which provides that mill sites shall not exceed 5 acres.

^{3/} Following an inspection of the area on Dec. 8, 1992, by Gum and Dave Taylor, a BLM Geologist, Gum prepared a map, entitled "Diagram of Snavely's Nova Mill Site Location with Associated Equipment, Junk, Slag Piles" (Diagram), showing the location of 78 items found by Gum and Taylor during their inspection. Most of the items, which are identified in an accompanying key, are within a rectangular fenced area that, using the key provided (1 inch = 100 feet), encompasses about 5.5 acres. Within that area were

Snavelly states that he has been "at the Osage Industries Mill Site since 1975" (SOR at 2).

Prior to issuance of the decision in question, BLM issued a decision, dated December 18, 1991, declaring, *inter alia*, the Dono-Han Nos. 3 and 5 mining claims abandoned and void as of Dec. 30, 1987, absent the submission, on or before that date, of either evidence of annual assessment work or notices of intent to hold the claims for the 1987 assessment year, as required by section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1994).

Subsequent to issuance of the decision at issue, BLM issued a decision dated February 18, 1994, declaring the Nova Mill mill site abandoned and void by operation of law for failure to comply with the rental fee requirements of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, P.L. No. 102! 381, 106 Stat. 1378! 79 (1992). Therein, BLM stated: "A review of the records indicates that the rental fees were not paid on or before the deadline of August 31, 1993." ^{4/} Claims and sites are extinguished by operation of law upon the failure to comply with the rental fee requirement. Lee H. Rice & Goldie E. Rice, 128 IBLA 137, 141 (1993). Issuance of a decision by BLM merely constitutes a confirmation of the consequences of such failure. Accordingly, absent a timely, successful appeal of BLM's decisions, at the time BLM issued its decision providing the 1994 Final Notice, Snavelly had no mill sites or mining claims on the lands in question.

BLM's attempts to have Snavelly clean up the land in question and secure a plan of operations for his activities are well-documented in the record. See generally Gum Memorandum at 1-4, and attached exhibits. The record shows that BLM first sent a letter to Snavelly on April 27, 1989, notifying him that he was in violation of 43 CFR 2920.1-2(a) for operating a facility on public land without authorization, and requiring him to

fn. 3 (continued)

such items as a 20- by 5-foot L-shaped shed, an 8- by 40-foot trailer module, a 10- by 30-foot trailer, a 10- by 20-foot utility shed on a concrete pad, old truck and car batteries, a steam roller, numerous vehicles, a box car, and a 10- by 60-foot house trailer hooked up to water, power, and sewer. The remaining items are found within an adjacent area of less than 5 acres to the south and east. This corresponds to Gum's earlier memorandum in which he stated that the Osage Industries facility occupied "approximately 11 acres of public lands" (Gum Memorandum at 2). A note on the diagram states that to the south of the public land there were approximately 40 acres of private lands "covered with assorted junk."

^{4/} There is no evidence that either of these decisions was appealed to this Board. They are both final for the Department. Snavelly has no rights by virtue of any of these locations. See Robert L. Mendenhall, 127 IBLA 73, 80 (1993), appeal filed, Mendenhall v. Babbitt, No. CV! S! 93! 912 LDG! LR (D. Nev. Sept. 17, 1993).

cease all operations, remove all equipment and materials from the land, and rehabilitate the site to its original condition. Apparently, the basis for BLM's conclusion that Snavelly was operating without authorization was that he had not filed a plan of operations with BLM for his facility, as required by 43 CFR 3809.1-4. ^{5/}

In a letter dated May 15, 1989, BLM detailed an agreement that it had worked out with Snavelly at a May 3, 1989, meeting requiring Snavelly to remove from the public lands in question, within 60 days of receipt of the letter, "all equipment and materials that are not considered as hazardous materials and wastes by appropriate State and County regulatory agencies and are not reasonably incident to your mining and milling operation if it were to be operated lawfully." BLM stated that he should not conduct any operations on the land and that it would consider a proposed plan of operations only after his compliance with the agreement. Snavelly received the letter on May 17, 1989. There is no evidence in the record that he complied with that agreement before submitting to BLM, on August 21, 1989, a plan for operating a gravity flow ore crushing and concentrating mill on the mill site. BLM responded by letter dated September 21, 1989, highlighting various deficiencies in the plan and requiring further information. BLM did not mention the agreement.

On June 26, 1990, and August 23, 1990, Snavelly filed other plans. Each time BLM informed him, by letters dated July 31, 1990, and November 20, 1990, that the plans were incomplete and offered to assist him in completing the plans. There is no evidence that Snavelly sought such assistance. See Gum Memorandum at 3. Again, BLM did not mention the agreement in either response, although in the November 20, 1990, letter, BLM did state that Snavelly had "made a significant good faith effort to remove all non-mining related equipment and materials from the site * * *."

On August 7, 1991, BLM issued a "Notice of Noncompliance" charging Snavelly with operating a facility on public land without an approved plan of operations, and directing him to file a technically complete plan within 30 days of receipt of the notice. On August 23, 1991, Snavelly filed another plan of operations with BLM. BLM, in an October 8, 1991, letter, informed him that the plan was incomplete.

On December 14, 1992, the Acting Area Manager, Ridgecrest Resource Area, issued a "Notice of Trespass/Notice to Remove" (1992 Notice) to Snavelly. Therein, he stated that Snavelly was in violation of certain

^{5/} That regulation provides that "[a]n approved plan of operations is required prior to commencing: (a) Operations which exceed the disturbance level (5 acres) described in §3809.1-3 of this title." The consequences of failing to file and obtain BLM's approval of a required plan of operations is governed by 43 CFR 3809.3! 2(a).

statutes and numerous Departmental regulations, including section 303(g) of FLPMA, 43 U.S.C. § 1733(g) (1994), and its implementing regulation, 43 CFR 2920.1! 2. The Acting Area Manager also stated that the United States, through BLM, "has instituted formal trespass proceedings," pursuant to 43 CFR 2920.1-2. (1992 Notice at 2). Those "formal trespass proceedings" consisted of a "Trespass Notice" (Form 9230! 1 (July 1988)) issued on the same date, charging Snavelly with violating various laws by operating a commercial enterprise on public lands without authorization. Therein, the Acting Area Manager ordered him to stop the violations immediately, and to appear at the BLM office, within 10 days from receipt, to "effect a settlement for trespass damages."

The Acting Area Manager stated that the formal action was being pursued because of Snavelly's failure to comply with BLM's August 7, 1991, "Order to Vacate," an apparent reference to the Notice of Noncompliance. (1992 Notice at 2). No final deadline for action was set out. The Acting Area Manager also stated that Snavelly was liable to the United States, under 43 CFR 2920.1! 2, for various charges, which "are currently being calculated and will be sent to you in a separate document." Id. at 3.

By letter dated December 18, 1992, Snavelly informed BLM that he was ceasing operation of the mill site and removing all equipment not connected with the operation of that site, scrap materials, and slag from the "Government lands." The Area Manager responded to Snavelly by letter dated January 14, 1993, stating: "In order to actively initiate clean up of the Nova Millsite, you must provide us with a complete inventory of everything located on the site. You also need to identify what equipment you believe you will need in order to operate a primary ore mill." He also informed Snavelly that Gum and Curt Gunn, a BLM Hazardous Materials Specialist, would meet with him on February 19, 1993, to "discuss your action plan, initiate the clean up process, and present a schedule for clean up activities." Id.

Snavelly notified BLM, by phone, on February 8, 1993, that he "was removing the non-milling related items to his private land" and "had removed over 100 items so far" (Conversation Record, dated Feb. 8, 1993). BLM received an inventory from Snavelly on February 16, 1993, which listed 32 items, 9 of which were deemed by him to be necessary for the future operation of a gravity flow ore crushing and concentration mill.

On March 11, 1993, Taylor and Gunn met with Snavelly. According to BLM, Snavelly agreed to remove all remaining nonmilling related equipment, material, and supplies by June 15, 1993, and all slag by July 15, 1993 (Conversation Record, dated March 11, 1993).

BLM thereafter inspected the subject land on June 16, and again on July 16, 1993. BLM found that "some equipment" had been removed, but some of the nonmilling related equipment, material, supplies, and slag remained. See Conversation Record, dated June 16, 1993.

Relying on those inspections, the Area Manager, on July 21, 1993, issued a "Final Notice of Trespass/Notice to Remove" (1993 Final Notice) to Snavely, charging him with "Knowing and Willful Trespass" for failure to comply with the "Order to Vacate dated August 7, 1991, Notice of Trespass/ Notice to Remove dated December 14, 1992, and the agreement of March 11, 1993, to remove all non-milling related equipment, material, supplies, and slag" from the land.

BLM sent that notice certified mail, return receipt requested, to Snavely's last address of record with BLM. Following two attempted deliveries, the U.S. Post Office returned it to BLM marked "Unclaimed." BLM received it on August 12, 1993. Under 43 CFR 1810.2(b), the notice is considered constructively received by Snavely on that date, despite the lack of actual receipt. See Fidelity Trust Building, Inc., 129 IBLA 57, 60! 61 (1994). Nevertheless, BLM took no action on that notice.

Gunn inspected the subject land on October 15, 1993, in order "to determine how much equipment and material was still on site." He found that there had been "a significant amount removed. While I was there, Jim McMurray (a friend of Snavely) showed up. * * * [He] said they were moving items out but did not know when all would be gone" (Conversation Record, dated Oct. 18, 1993).

Thereafter, the Area Manager issued the 1994 Final Notice. ^{6/} That notice is virtually identical to the 1993 Final Notice. He again charged Snavely with "Knowing and Willful Trespass" for failing comply to remove

^{6/} In addition to asserting that Snavely was in violation of section 303(g) of FLPMA, 43 U.S.C. § 1733(g) (1994), and 43 CFR 2920.1-2, BLM also stated that Snavely was in violation of "The Unlawful Occupancy and Inclosures of Public Lands Act," as amended, 43 U.S.C. §§ 1061! 1066 (1994). The record indicates that at the time BLM issued its 1994 Final Notice, Snavely had erected and was maintaining an "inclosure" on part of the lands in question contrary to section 1 of that act, 43 U.S.C. § 1061 (1994). See fenced area as depicted on the Diagram, note 2, supra. BLM further charged Snavely with violating the following regulations: "Title 43 CFR 8365 Rules of Conduct, Title 43 CFR 8365.1-1 Sanitation, Title 43 CFR 8365.1-4(a)(2) Creating a hazard or nuisance, Title 43 CFR 8365.1-4(a)(6) Knowingly giving false or fraudulent report, Title 43 CFR 8365.1-5(a)(2) Willful defacement or destruction of natural resources, Title 43 CFR 8365.1-7 State and local laws, Title 43 CFR 9230 Trespass, Title 43 CFR 9239.0-9 Sale, lease, permit, or license to trespassers, Title 43 CFR 9239.2-1(a) Unlawful enclosure of public lands, Title 43 CFR 9239.2-5 Settlement and free passage over public lands not to be obstructed, and Title 43 CFR 9239.7-1 Right of Way, Public land." It is unnecessary for us to review whether appellant was in violation of each of the cited regulations.

all nonmilling related equipment, material, supplies, and slag from the subject land, as previously directed. Id. at 2. He set no deadline for removal; however, he iterated that BLM was "initiating proceedings to post and seize all equipment, material and supplies," and that "the existence of this property upon said lands constitutes unlawful trespass." Id. (emphasis in original). He also again stated that Snavelly was liable for the same charges noted in BLM's 1992 Notice, but again did not specify any amounts or deadline for payment.

On appeal, Snavelly does not dispute the fact that, as of January 14, 1994, he still had not removed all nonmilling related equipment, material, supplies, and slag from the subject land. Although he asserts that a "misunderstanding existed" regarding when removal of the slag was to begin and be completed, the record shows that BLM afforded Snavelly adequate notice that slag removal was to be complete by July 15, 1993.

Snavelly asserts that BLM was "biased when it came time to consider if any mitigating circumstances existed, or why a Notice of Trespass should not be submitted" (SOR at 2). He states that he

would like to enter a reasonable time frame and agreement in which I would correct any of the violations in the BLM Trespass order. I am requesting a reasonable time to remove the slag material and receive an approved plan of operation from BLM, concerning the process[ing] of primary ores.

Id.

This case does not present any issue regarding whether BLM, under 43 CFR 2920.1! 2, properly assessed trespass damages and related administrative charges against Snavelly for occupying public lands without authorization, since BLM has yet to assess any such charges. Rather, it raises only the issue of whether BLM properly determined him to be in trespass on the public lands. We conclude that it did.

[1] Section 303(g) of FLPMA provides that: "The use, occupancy, or development of any portion of the public lands contrary to any regulation of the Secretary [of the Interior] * * * is unlawful and prohibited." 43 U.S.C. § 1733(g) (1994). Implementing regulations provide that "[a]ny use, occupancy, or development of the public lands, * * * without authorization under the procedures in § 2920.1! 1 of this title, shall be considered a trespass." 43 CFR 2920.1! 2(a). Anyone determined to be in trespass by the authorized officer is entitled to notice of that fact and is liable to the United States for various costs and expenses, as listed in the regulations. 43 CFR 2920.1-2(a) and (b).

The applicability of section 303(g) of FLPMA and 43 CFR 2920.1! 2 hinges on whether the use, occupancy, or development was without authorization "under the procedures in § 2920.1! 1." 43 CFR 2920.1! 2(a).

According to 43 CFR 2920.1-1, "[a]ny use not specifically authorized under other laws or regulations and not specifically forbidden by law may be authorized under this part." Here, appellant's use and occupancy in connection with milling and related operations was not authorized under the general mining laws because at the time BLM issued its 1994 Final Notice, there were, as explained above, no mill sites or mining claims on the lands at issue. The continued presence of any equipment, material, supplies, or slag on that land, without authorization under 43 CFR 2920.1! 1, constituted a trespass, and subjected appellant to trespass liability, under section 303(g) of FLPMA, 43 U.S.C. § 1733(g) (1994), and 43 CFR 2920.1! 2. There is no evidence in the record that appellant had any authorization under 43 CFR Part 2920 to occupy the land in question at the time of issuance of the 1994 Final Notice. Therefore, we must affirm the January 1994 decision of the Area Manager providing appellant with the 1994 Final Notice. However, as noted above, that decision is also modified to the extent it described the acreage involved to be approximately 15.5 acres. The present record shows the acreage to be approximately 11 acres.

Accordingly, 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 as modified.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur.

James L. Burski
Administrative Judge