

INTERIOR BOARD OF LAND APPEALS

Richard W. and Lula B. Taylor

139 IBLA 236 (undated)

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IBLA 94-665

Decided

Appeal from a decision of the Deputy California State Director, Bureau of Land Management, to affirm Area and District Office decisions to decline approval of a proposed mining plan of operations and a proposed amendment to an existing mining plan of operations. CAMC 231043 and CAMC 164055.

Dismissed as moot in part; affirmed in part.

1. Administrative Procedure: Administrative Review–Res Judicata–Rules of Practice: Appeals–Rules of Practice: Appeals: Effect of

The doctrine of administrative finality, the administrative counterpart of the doctrine of res judicata, dictates that once a party has availed himself of the opportunity to obtain administrative review of a decision within the Department, that party is precluded from litigating the matter in subsequent proceedings except upon a showing of compelling legal or equitable reasons.

2. Rules of Practice: Appeals: Generally–Rules of Practice: Appeals: Dismissal–Rules of Practice: Appeals: Standing to Appeal

An appeal to the Board of Land Appeals will be dismissed as moot if events occurring before the issuance of the BLM decision on appeal preclude the grant of effective relief to the appellant. A BLM State Office decision affirming a BLM District Office decision that the claimant has not submitted sufficient information to allow approval of a mining plan of operations is moot if the claimant submits the required additional information, and the mining plan of operations is approved before the State Office issues its decision.

3. Federal Land Policy and Management Act of 1976: Surface Management–Mining Claims: Environment–Mining Claims: Plan of Operations–Mining Claims: Surface Uses–Wild and Scenic Rivers Act

The BLM properly required a mine operator to amend an approved mining plan of operations to conform with the requirements for occupancy and operations on land designated for potential addition to the national wild and scenic rivers system.

APPEARANCES: Richard W. Taylor and Lula B. Taylor, pro sese.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Richard W. and Lula B. Taylor (the Taylors) have appealed a decision by the Deputy State Director, California State Office, Bureau of Land Management (BLM), denying approval of a proposed plan of operations for the Triple T mining claim (CAMC 231043) and denying an amendment to an existing approved plan of operations for the KPTL #1 mining claim (CAMC 164055). 1/

The Triple T and KPTL #1 mining claims are located along the North Fork of the Merced River, in secs. 24 and 25, T. 3 S., R. 17 E., Mount Diablo Meridian, Mariposa County, California. On June 17, 1993, the Acting Area Manager, Folsom Resource Area, BLM, sent a letter to the Taylors advising them that:

On October 23, 1992, the lands within a ¼-mile of the North Fork of the Merced River were designated a Wild and Scenic River Study Area for possible inclusion in the National Wild and Scenic River System * * * [pursuant to section 2 of Pub. L. No. 102-432, 106 Stat. 2212, 2213 (codified at 16 U.S.C. § 1276(a)(99) (1994))]. Because of this law all mining claim operations exceeding the level of "casual use," as defined in Federal Regulations 43 CFR 3809.0-5(b) will require the submission of a plan of operations and a reclamation bond.

Activities that exceed casual use include the use of mechanized earth moving equipment (such as suction dredges) and occupying the public lands for more than 14 days in a 90-day period. Such activities require the approval of a plan of operations and the submission of a reclamation bond.

(Acting Folsom Resource Area Manager Letter of June 17, 1993, at 1.) 2/

1/ The decision document, dated June 10, 1994, is referred to as the State Office Decision.

2/ Approved mining plans of operations are required for "[a]reas designated for potential addition to or an actual component of the national wild and scenic rivers system * * *." 43 C.F.R. § 3809.1-4(b)(2).

The Acting Area Manager enclosed materials that "[might] help [the Taylors] prepare a plan of operations * * *" and concluded his letter by noting that "[c]onducting operations that exceed casual use without first obtaining plan approval and providing the required reclamation bond may result in civil and/or criminal penalties." (Acting Folsom Resource Area Manager Letter of June 17, 1993, at 2.)

The Taylors' 1987 plan of operations for the KPTL #1 and Golden Key #3 contemplated suction dredge operations on the Golden Key #3 claim, but did not provide for suction dredge operations on the KPTL #1. On July 14, 1993, BLM wrote to the Taylors, advising them that if they planned to operate a suction dredge on the KPTL #1 claim, they should amend their 1987 mining plan of operations to include suction dredge operations on that claim. The Taylors were also informed that, if they planned to operate a suction dredge on the Triple T claim, they would have to file a separate plan of operations and post a separate reclamation bond for that claim. The BLM also enclosed a form that was used for proposed plans of operation for suction dredge mining on the North Fork of the Merced River.

On July 14, 1993, the Taylors sent a letter to BLM, asserting that a BLM geologist had agreed to permit placer mining on the KPTL #1 claim in 1987 ^{3/} and asked BLM to provide "written approval which would stipulate plan authorization for occupancy, lode and placer mining on the KPTL #1 claim (CAMC 164055) and placer mining on the Golden Key #3 (CAMC 59015) claim." On July 28, 1993, the Taylors filed a proposed plan of operations for the Triple T mining claim (CAMC 231043), and an agreement, granting another person "permission * * * to Placier [sic] mine [on the Golden Key #3], providing 'casual use' is maintained and all 'necessary' reclamation is performed." ^{4/}

fn. 2 (continued)

Mining operations that use mechanized earth-moving equipment (including suction dredges) in a river designated for potential addition to the national wild and scenic rivers system exceed the casual use standard articulated at 43 C.F.R. § 3809.0-5(b). See Pierre J. Ott, 125 IBLA 250, 252 (1993); Lloyd L. Jones, 125 IBLA 94, 97-98 (1993).

^{3/} The Taylors do not assert this matter on appeal. We note, however, that "[r]eliance upon [the] information or opinion of any [Federal] officer, agent or employee * * * cannot operate to vest any right not authorized by law." 43 C.F.R. § 1810.3(c); see also M & A Mining, Inc., 130 IBLA 333, 335 (1994); Silver Buckle Mines, Inc., 84 IBLA 306, 309 (1985).

^{4/} The Taylors filed a similar use agreement granting permission to placer mine the Triple T and Golden Key #3 mines on Aug. 13, 1993. On Aug. 10, 1993, BLM informed them that this practice of allowing weekend prospectors to conduct operations without prior BLM authorization was unacceptable. (BLM Letter of Aug. 10, 1993, at 2.)

On August 10, 1993, the Bakersfield District Office, BLM, responded to the Taylors' July 14, 1993, submittals, stating, in pertinent part:

In your * * * [letter filed July 28, 1993] * * * you provided a name of a prospective operator within the Golden Key #3, but you did not provide any description of your proposed operations other than "placer mining." Your plan of proposed operations for the Triple T is more descriptive but still lacks all the elements of a plan required by Federal regulations 43 CFR 3809. Because you have elected not to use the recommended format for placer mining (suction dredging) provided for you in our letter of July 14, your plan amendment for the KPTL/Golden Key #3, and your plan for the Triple T can not be processed or approved until you provide the following additional information:

- Period of proposed operations.
- Names, addresses and phone numbers of all claim operators.
- Number of dredges and dredge intake diameters.
- Proposed placer mining activities other than suction dredging.
- Use of winches to move boulders.
- Location of camp sites, number of tents or camper trailers, number of operators using camp sites, proposed duration of stay and the number of vehicles to be parked at the camp sites.
- Proposed disposal of human wastes.
- Proposed storage of petroleum products (gallons of fuel and oil).
- A map or sketch showing the location of the claim boundaries, camp sites, dredging sites, existing and proposed access routes, placer mining sites outside of the active river channel and equipment storage sites.
- Proposed reclamation of placer mining sites located outside of the active river channel.

(Bakersfield District Office Letter of Aug. 10, 1993, at 1, 2.)

Negotiations between BLM and the Taylors regarding the amendment to the plan of operations for the KPTL #1 and Golden Key #3 and the plan of operations for the Triple T continued through the remainder of 1993 and into 1994. On March 11, 1994, the Folsom Resource Area Office, BLM, informed the Taylors that "a formal decision regarding operations on your Triple T and KPTL mining claims * * * is forthcoming." rejected a certificate of deposit submitted as a reclamation bond, and advised the Taylors that additional information was required before the plan and amendment

could be approved. ^{5/} The Bakersfield District Office, BLM, then issued a decision. ^{6/} The District Office Decision informed the Taylors that:

REGARDING CAMC-231043

Because you have not provided the information required by Federal regulations 43 CFR 3809, your plan of operations for the Triple T mining claim is incomplete. Request for plan approval is denied.

REGARDING CAMC-164055

Because you have not provided the information required by Federal regulations 43 CFR 3809, your proposed amendment to your plan of operations for the KPTL mining claim is incomplete. Request for plan amendment approval is denied.

(District Office Decision at 1.)

The District Office Decision also informed the Taylors of their right to appeal to the California State Director, BLM. The Taylors appealed to the California State Office on April 7, 1994.

On April 2, 1994, the Taylors prepared a new proposed plan of operations for the Triple T (CAMC 231043), and submitted it to the Bakersfield District Office. On May 24, 1994, the Bakersfield District Office accepted the Taylors' \$500 reclamation bond, approved a mining plan of operations for suction dredge operations on the Triple T claim and authorized the Taylors to proceed pursuant to that plan. It also advised the Taylors that only authorized operators identified in the plan of operations could conduct operations exceeding casual use on the claim, and only one vehicle per authorized operator identified in the plan of operations could be parked overnight on the claim.

On June 10, 1994, the Deputy State Director, Mineral Resources, California State Office, BLM, issued the State Office Decision, affirming the Area Office Decision and the District Office Decision. On June 23, 1994, the Taylors appealed the State Office Decision, and it is this appeal that is now before us.

^{5/} The decision document, dated Mar. 11, 1994, is referred to as the Area Office Decision. The Taylors appealed the Area Office Decision to this Board. By Order dated Apr. 20, 1994, that appeal, styled IBLA 94-389, was dismissed as premature, "[i]nasmuch as there has been no decision by the State Director, BLM, which is adverse to appellants." The matter was referred to the California State Director. On May 13, 1994, the Taylors petitioned for reconsideration of the Board's Apr. 20, 1994, Order. Reconsideration was denied by Order dated May 27, 1994.

^{6/} The decision document, dated Mar. 15, 1994, is referred to as the District Office Decision.

On appeal, the Taylors assert that BLM had not informed them of the nature of the information it sought or the regulating authorities for the information necessary for approval of the plan of operations for the Triple T, and the amendment to the existing plan of operations for the KPTL #1. We find the Taylors' assertion to be contradicted by the record and observe that on a number of occasions BLM described the information to be included in an application for amendment to the plan of operations for the KPTL #1 claim and an application for a plan of operations for the Triple T claim. ^{7/}

[1] The Taylors' Statement of Reasons on Appeal (SOR) addresses several issues not related to the subject matter of this appeal, but which are found in several appeals previously filed and adjudicated by this Board. For example, they ask that the Board:

Review the remaining issues from appeals 89-497, 90-223, 91-423, 93-233 & any remaining issues after appeal 94-253. The BOARD has chosen thus far to only address a few of the issues and as a result the once easily correctable problems have now mushroomed to a complexity that can only be resolved by addressing each issue in consecutive order.

(SOR at 2.)

The Taylors do not specify issues in the cases they cite that have not been addressed by the Board, nor do they give reasons for requesting reconsideration. We reject the Taylors' request that we address unspecified issues that arose in cases that have been resolved by prior Board decisions or orders. As a general rule, the principle of administrative finality, the administrative counterpart of the doctrine of *res judicata*, precludes reconsideration of matters resolved finally for the Department in an earlier appeal. *Mary Sanford*, 129 IBLA 293, 298 (1994). The doctrine of administrative finality dictates that once a party has availed himself of the opportunity to obtain administrative review of a decision within the Department, the party is precluded from litigating the matter in subsequent proceedings except upon a showing of compelling legal or equitable reasons. *Gifford H. Allen*, 131 IBLA 195, 202 (1994).

The Taylors allude to what they consider to be the complex consequences of decisions affecting the multiple appeals that they have filed.

^{7/} See, e.g., Acting Folsom Resource Area Manager Letter of June 17, 1993; Acting Multi-Resource Staff Chief (Folsom Resource Area) Letter of July 14, 1993, and enclosures, including 1993 North Fork Merced River Plan of Operations; Multi-Resource Staff Chief (Folsom Resource Area) Letter of Aug. 10, 1993, outlining specific factors to be addressed in plan of operations; Acting Multi-Resource Staff Chief Letter of Dec. 7, 1993, citing enclosed regulations at 43 C.F.R. §§ 3809.0-3, 3809.1-4(b)(2), and 3809.1-5(c); 3809.2-2.

We understand their concern, but note that the Board does not retain jurisdiction over appeals after a decision is issued. The doctrine of administrative finality precludes appellants from relitigating matters previously decided. It also bars the Board from revisiting matters it has previously adjudicated without a showing of compelling legal or equitable reasons. It is therefore beyond our jurisdiction to accede to the Taylors' request that we review and adjudicate unspecified issues that were or could have been addressed in prior appeals to this Board. Keith Rush, 125 IBLA 346, 351 (1993).

[2] In their SOR the Taylors assert that when they submitted the information required by 43 C.F.R. § 3809, and the Bakersfield District Office approved their mining plan of operations for the Triple T claim on May 24, 1994, the State Office Decision was rendered moot as to that claim. Under 43 C.F.R. § 4.410, a party must be "adversely affected" by a BLM decision to be entitled to appeal to this Board. An appeal is moot if a party cannot show that he or she is adversely affected by BLM's decision, and there is no relief which the Board can afford.

When it issued the State Office Decision, the California State Office examined the status of the Taylors' submissions as they existed on March 15, 1994. However, after the Taylors appealed the District Office Decision to the California State Office, they submitted the information necessary for BLM to consider their proposed plan of operations for the Triple T claim, and on May 24, 1994, the Bakersfield District Office approved the Taylors' plan of operations for that claim. Therefore, the Taylors had received approval of their plan of operations for the Triple T claim 17 days before the State Office Decision affirming the denial of that plan was issued. The Taylors' appeal of the State Office Decision affirming the decision to not issue a plan of operations for the Triple T claim is moot. We can afford them no effective relief. See, e.g., The Hopi Tribe v. Office of Surface Mining Reclamation and Enforcement, 109 IBLA 374, 381 (1989); The Sierra Club, 104 IBLA 17, 18-19 (1988).

[3] In managing the public lands, the Secretary of the Interior is authorized 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) (1994); see Draco Mines Inc., 75 IBLA 238 (1983). This provision was expressly recognized in section 302(b) of FLPMA as affecting the rights of claimants under the Mining Law of 1872. The surface management regulations of 43 C.F.R. Subpart 3809 were promulgated pursuant to this authority.

The issue now before us is whether BLM properly required the Taylors to submit an amendment to their mining plan of operations to provide for suction dredging on the KPTL #1 claim. 8/ Under the regulations at

8/ In a letter dated Apr. 11, 1994, the Taylors informed BLM that "[b]ecause the KPTL claim (CAMC 164055) is under a BOARD ordered STAY,

43 C.F.R. § 3809.1-4(2), mining plans of operation are required for all operations (except casual use) in areas designated for potential addition to, or an actual component of the national wild and scenic rivers system. Departmental regulation 43 C.F.R. § 3809.0-5(b) defines casual use as those activities that result in only negligible disturbance to Federal lands and resources. Activities involving the use of mechanical earth-moving equipment are not considered casual use under the regulation, and when the area to be mined has been designated for addition to or an actual component of the national wild and scenic rivers system, suction dredge mining is not considered to be casual use. In Pierre J. Ott, 125 IBLA 250, 253 (1993), this Board noted that "[s]uction dredges capable of removing by mechanized means large quantities of earth from the surface of the Federal lands (albeit from the bed of a river) are 'mechanized earth moving equipment.'"

The Taylors were advised that if they wished to carry out suction dredging operations on the KPTL #1 claim, they must amend their existing plan of operations, pursuant to regulations found at 43 C.F.R. §§ 3809.1-4(b)(2), 3809.1-5, and 3809.1-7. They did not submit the information required by the regulations and were informed by the District Office that their application to amend their plan of operations for the KPTL #1 mining claim was incomplete, that BLM could not approve their amendment as submitted, and that they were not authorized to carry out suction dredging operations on the KPTL #1 claim. We find nothing in the record before us that shows BLM was not correct in making this determination. The State Office properly affirmed the District Office Decision, and we affirm the State Office Decision, as to the KPTL #1 claim (CAMC 164055).

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 decision appealed from is dismissed as moot as to the Triple T claim (CAMC 231043) and affirmed as to the KPTL #1 claim (CAMC 164055).

R.W. Mullen
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge

fn. 8 (continued)

we will not pursue the plan amendment to the approved plan of operations at this time." (Letter to Rick Cooper, Folsom Resource Area, BLM, at 1.) However, the Taylors did not withdraw their appeal of the State Office Decision.