

INTERIOR BOARD OF LAND APPEALS

Einar C. Erickson

143 IBLA 395 (April 27, 1998)

Title page added by:
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EINAR C. ERICKSON

IBLA 95-640

Decided April 27, 1998

Appeal from a decision issued by the State Director, Nevada State Office, Bureau of Land Management, affirming a Notice of Noncompliance for failure to reclaim an area disturbed by mining. N46-81-017N.

Reversed.

1. Mining Claims: Generally--Mining Claims: Plan of Operations

The Department's regulation at 43 C.F.R. § 3809.3-2 provides that a notice of noncompliance shall be served on the operator who is conducting operations covered by 43 C.F.R. § 3809.1-3 (notice) and fails to comply with the provisions of that section or properly conduct reclamation according to the standards set forth in 43 C.F.R. § 3809.1-3(d). An operator is a person conducting or proposing to conduct the operations. 43 C.F.R. § 3809.0-5(g). To properly name a party in a notice of noncompliance as a party responsible for taking such action to abate the cited act of noncompliance, there must be a showing that the named party is an operator or claimant.

2. Mining Claims: Generally--Mining Claims: Recordation of Affidavits of Assessment Work or Notice of Intention to Hold--Mining Claims; Recordation of Certificate or Notice of Location

The purpose of 43 U.S.C. § 1744 (1994) is to ensure that there is a record of continuing activity on the claim so that the Federal Government will know which mining claims on Federal lands are being maintained, and which have been abandoned, and to provide for centralized collection by Federal land managers of comprehensive and up-to-date information on the status of recorded but unpatented mining claims.

APPEARANCES: Einar C. Erickson, St. George, Utah, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Einar C. Erickson has appealed a June 26, 1995, Decision issued by the Nevada State Director, Bureau of Land Management (BLM or Bureau), affirming an August 18, 1992, Notice of Noncompliance issued by BLM's Ely District Manager for failure to reclaim an area disturbed by mining at the earliest feasible time, as required by 43 C.F.R. § 3809.1-3(d)(3).

The threshold issue in this case is whether Erickson can be considered either the operator or claimant responsible for the reclamation work. For that reason, a brief description of the documents in the case file indicating ownership or control of the claims is warranted.

On March 9, 1981, a Notice of Intent was filed by Silver West, Inc., of Las Vegas, Nevada, stating an intent to operate an open pit mine on the Carrie Ann #3 and Carrie Ann #4 claims. This notice listed Gary Stewart and Pete Gamboa as owners of the claims. A Map showing the outline of the open pit was attached to the Notice of Intent. This map had a Timberlane title block on it and indicated that it had been prepared by Einar C. Erickson, a registered professional geologist. ^{1/} On March 13, 1981, BLM sent a letter to Silver West, Inc., noting receipt of the Notice of Intent, assigning serial number NV-0446-017N to the project and stating that Silver West's Notice of Intent met "all of the requirements of the 3809 Surface Management Regulations for mining."

The case file contains no documents pertaining to the claims between March 13, 1981, and May 12, 1989, when a compliance report was prepared. ^{2/} This report identified the project as NV-0446-017N, the serial number assigned in 1981, and named Silver West, Inc. as the operator. The report described the road to the pit as being "in very good shape" and noted that "grass is growing back real good." It stated that "the pit had been left open but safe slopes etc. waste area north and south of pit." The recommended action was to "close this case as they left it clean and roads rehabed and growing out again. Roads being used by cattle & sheep men and deer hunters." The report also noted that photographs had been taken. However, these photographs are not in the file.

^{1/} The title block contains a number of inconsistencies. The printed portion of the map was dated June 1972 and shown to have been revised in February 1973. The corporate name "Silver West, Inc." had been handwritten above the printed title "Timberlane" and a handwritten date 3/1/81 had been written above the revision date. While most of the data on the map was printed, the information about the pit was handwritten. A reasonable conclusion is that some time in 1981 an unknown party added additional information on a plat prepared by Erickson in 1973.

^{2/} The report was dated May 12, 1989, but stated that the date of inspection was Nov. 9, 1989. A statement of the chronology of events listed Nov. 9, 1989, as the date of the inspection.

In an August 2, 1990, handwritten compliance inspection report, the serial number of the project was given as N46-81-017N, and the named operator was Erickson. ^{3/} In the comments section, the inspector stated that the area "has miscellaneous trash and no reclamation has taken place. Road to pit area needs to be reclaimed. More work has taken place since photographs were taken in May 1989." The report recommended an onsite meeting with Erickson.

On August 29, 1990, the District Manager sent Erickson a letter noting that BLM had recently completed field compliance checks of his exploration projects in the Ely District. The letter noted several concerns and questions regarding reclamation of these projects. The Director asked Erickson to meet with BLM staff to discuss reclamation plans for several of those projects, listing them by serial number, claim name, and location (sec., Township and Range). One of the listed projects was "N46-81-017N - Carrie Ann claims T. 16 N., R. 64 E., Sec 28 General reclamation." Nothing in the file indicates that Erickson responded to this letter.

A third compliance inspection report was dated February 6, 1991, giving the serial number as N46-81-017N, and Erickson as the operator. The inspector stated that

no additional reclamation has been done at the site over the past year. It notes that along the road is a toilet, an abandoned trailer, a car seat, several rusted barrels and a few other miscellaneous items of trash. * * * A decision needs to be made as to whether further reclamation is required and just what that would be. If nothing else the trash should be removed.

The recommended action was to "[d]etermine reclamation requirements other than trash removal. Write to Erickson as to exactly what these are and require a time commitment as to when this will occur."

A letter was written to Erickson on March 7, 1991, stating that a compliance check was made on two of his projects, one of which was identified as N46-81-017N. It noted that the Notice of Intent filed as N46-81-017N involved an open pit miner operation on the Carrie Ann claims, and that additional reclamation had to be completed before the file could be closed. The reclamation requirements were set out in some detail and Erickson was asked to advise BLM when the reclamation work was to take place in order that a field compliance examination could be scheduled.

On March 15, 1991, Erickson responded to the March 7, 1991, letter advising BLM of his belief that the Notice of Intent identified as N46-81-017N had been filed by Silver West, Inc., and that the Carrie Ann claims

^{3/} This is the first time the number N46-81-017N appears in the case file. In later correspondence, this number is identified as a serial number assigned to a Notice of Intent filed by Erickson. However, no Notice of Intent filed by Erickson is found in the case file.

were owned by Gary Stewart at the time. He stated that "[t]he present Carrie Ann claims were relocated with my brother and Lynn as nominees for Merlin Mining Company. He states that they are not part of any lease Merlin Mining Company has with anyone else, but are directly owned by Merlin Mining Company." He advised BLM of his belief that a Merlin Mining Company owned the Carrie Ann claims, and suggested that BLM contact that company.

In a conversation record dated April 11, 1991, BLM employee Bjorkland noted a conversation with Steven Birchall, of Merlin Mining Company. In that conversation, Birchall identified the owners of the Carrie Ann #3 and #4 claims as a Gary Stewart and Pete Gamboa. Birchall stated that Merlin had an operating contract with Erickson and that in the next 30 days Merlin would decide whether to pursue further operations or return the property to Erickson. Birchall stated that if Merlin decided to do more, it would do the reclamation, but that if not it would turn the responsibility back to Erickson. He noted that he could submit documents showing that Erickson was responsible for the property. Birchall requested copies of all transactions and the original Notice of Intent.

On April 18, 1991, BLM sent a letter to Merlin Mining Company, enclosing a copy of the Notice of Intent file N46-89-042N and Erickson's letter. The letter stated BLM's appreciation for the extra work Merlin had done in fencing the old mining shafts in the area and asked for Merlin's assistance and diligent efforts to restore properties under its responsibility.

In a conversation record dated December 9, 1991, BLM employee Bjorkland noted a conversation with Joan Stewart, wife of Gary Stewart. Joan Stewart stated that Gary Stewart and Pete Gamboa were the original claimants for the Carrie Ann claims. Bjorkland advised her that reclamation was still pending, and that if the operators failed to do the reclamation a notice of noncompliance would be issued to both the operator and the claimant.

On December 13, 1991, BLM wrote a letter to Merlin Mining Company asking about the status of the Carrie Ann claims. The letter noted Merlin's previous letter stating that it was considering turning the property back to Erickson. The letter also asked whether Merlin Mining Company was still in existence, as its telephone had been disconnected.

In a December 19, 1991, letter, Merlin Mining Company advised BLM that the Carrie Ann claims had been returned to Erickson in June 1991. Attached to this letter was a copy of a letter dated June 25, 1991, stating that "Merlin Mining Company also intends to return to Geologist, Inc., Einar C. Erickson claims on Exhibit 'B', according to paragraph 3(t) on the June 24, 1988, Paradise Valley Mining/Geologist, Inc. Einar C. Erickson, et al agreement." Merlin stated that the Carrie Anne claims were in one of the groups of claims listed in Exhibit "B."

In a January 6, 1992, memorandum to the file, BLM employee Dan Netcher reported a conversation he had with Gary Stewart on the third of that month. Stewart had come to BLM's office to discuss reclamation needs for the Silver West operation on his old claims. Stewart advised BLM that he had abandoned the claims years before. Stewart was advised that, because he was claimant during the time of the Silver West operations, he was ultimately responsible for the reclamation. Stewart stated that he had leased the claims to Erickson, that Erickson owned Silver West, and that he considered Erickson to be the operator.

On January 9, 1992, BLM sent a letter to Erickson noting the communications with Merlin Mining Company regarding the Carrie Ann reclamation requirements. This letter states that

[i]f Merlin Mining Company had pursued operations on [the Carrie Ann] claims, they would have completed the required reclamation. No mining operations were pursued, however, and Merlin Mining Company returned these claims to you as indicated in a June 21, 1991, letter. According to Merlin Mining Company and the original claimants, you are the responsible party for the reclamation of these claims.

On January 31, 1992, Erickson responded to the January 9, 1992, letter. Erickson stated that Merlin Mining Company had the claims staked at their expense and for their account in 1989. Erickson further stated that he never owned those claims and never leased them to Merlin Mining Company. Erickson then suggested that BLM verify his statement by examining copies of the notices of location and notices of intent to hold on file in the BLM State Office. Erickson stated that he was not the party responsible for reclamation of the claims.

In a conversation record dated February 2, 1992, BLM employee Bjorkland noted a conversation with Gary Stewart, in which Stewart stated that he had leased the Carrie Ann claims to Erickson who had formed Silver West, Inc. On February 10, 1992, BLM called Stewart and requested a copy of the lease between Stewart and Erickson. It is presumed that the copy of that lease in the case file was sent to BLM in response to that request.

The Bureau then commenced research of Nevada State records to ascertain the status and officers of Silver West, Inc., including an archival search of State records regarding that corporation. According to BLM the Secretary of State was unable to furnish information regarding the corporate status or officers in 1981.

On March 2, BLM wrote to Erickson stating that there was "a lot of misunderstanding regarding their reclamation responsibilities of the Carrie Ann claims BLM no. N46-81-017N." The original Notice of Intent was submitted by Silver West, Inc. in March 1981. The Bureau further noted that the only names on the Notice of Intent were the claimants and Silver West. The Bureau stated that the reclamation requirements had not been met, and that

Silver West and the claimants were responsible for the reclamation. The Bureau noted that, pursuant to the terms of the lease between the claimants and Erickson, he (Erickson) was responsible for the reclamation. The Bureau stated that any history of the claims subsequent to approval of the 1981 Notice of Intent was irrelevant and directed Erickson to reclaim the property by June 1992.

On March 23, 1992, Erickson responded to BLM's March 2, 1992, letter. Erickson stated that he was not the claimant or the operator of the Carrie Ann claims. Referring to the lease BLM sent to Erickson, he stated that the lease preceded the time that Silver West took over the claims, and when Silver West took over the claims the lease was null and void. According to Erickson, Stewart and Gamboa staked the claims some time before the 1970's. Erickson first leased the claims from Stewart and Gamboa some time between 1970 and 1972, and assigned the contract to a company he referred to as Cascade. This lease was subsequently terminated and the claims were returned to Stewart and Gamboa. He then obtained another lease from Stewart and Gamboa, but cancelled that lease in 1977. In 1980, he again leased the claims and assigned that lease to Silver West, Inc. He stated that after Silver West, Inc. dropped the project, Stewart and Gamboa dropped the claims and he restacked them for Merlin Mining Company, using his name as nominee for Merlin. He stated that it was never his or Merlin's intent that he owned the claims, and that as far as he knew, Merlin subsequently filed proofs of labor for their own account in 1990 and 1991. He concluded by noting that BLM could identify the owner and operator of the Carrie Ann claims by examining the mining claim recordation documents filed with BLM's State Office, and that would depend upon who filed the last proof of labor after 1982.

On July 23, 1992, BLM sent a notice to the President of Silver West, Inc. at the address listed in filings with the State of Nevada. In this notice, BLM advised him that Silver West had submitted a Notice of Intent for operations on the Carrie Ann claims, that all land disturbance after 1981 must be reclaimed, and that Einar Erickson was shown to be involved in a mining lease and purchase agreement during the 1980-81 period. The President of Silver West responded on July 31, 1992, stating that the corporation he managed was not in existence in 1981, and that the reference to Silver West must have been to a previous use of that corporate name by others.

A fourth compliance report was written on August 10, 1992. This report lists the serial number as N46-81-97N and the operator as Silver West. The comments stated that "[t]his was the required annual compliance exam." The compliance report noted that extensive photo documentation was taken. ^{4/} Trash and debris remained on site. One open drill hole was located just above the pit. It was reported that natural vegetation continued to increase on the waste dump piles and roads, and the road above

^{4/} Again, the case file contains no photographs.

the pit was still in place. The report noted that a Notice of Noncompliance was being issued to Erickson and the claimants.

The District Director then issued the August 18, 1992, Notice of Noncompliance. That notice stated that letters were being sent to all parties who may have been involved in the operations, conducted on the Carrie Ann #3 and #4 claims during the period from 1981 through 1983. The Director stated that correspondence had been ongoing for the prior 2 years in an attempt to bring the site in compliance with the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1994), and the surface management regulations in 43 C.F.R. § 3809. He then noted that none of the parties was willing to admit responsibility.

The Notice of Noncompliance was sent to Erickson on August 18, 1992. The Decision stated that the operator is responsible for the reclamation work, and the claim owners are ultimately responsible for the land. It further stated that, if the operator does not fulfill the reclamation obligations, the operator and the claim owners would be sent a notice of noncompliance. The Decision stated that the Notice of Noncompliance was being sent to Erickson because Erickson was the lessee in a mining lease and purchase agreement which "associates you with the Carrie Ann claims during the 1980-1981 time period when the notice work was carried out. The determination of legality of this document can be decided by legal offices that specialize in such matters." (Aug. 18, 1992, Decision at 1.) The agreement named the claimants as lessors and Erickson, doing business as Timberlane, as lessee, and named the Carrie Ann #1 through #9 as the leased property.

Erickson responded to the August 18, 1992, Decision stating that he had not reclaimed the disturbance in the Carrie Ann #3 and #4 claims because he was not responsible for that disturbance. He then stated that the Notice of Intent approved by BLM in 1981 was issued by Silver West and that he was never an officer or stockholder of that company and was never involved in any way with that company except for a short time as a consulting geologist in 1981. After naming the President of Silver West at the time, he stated that Silver West was operating pursuant to an agreement between Silver West and the claimants, and that the work for Silver West was being done under the direction of Stewart, who supervised the activity into 1982, long after he had ceased his consulting activities with Silver West. He stated his belief that Stewart and Gamboa filed proofs of labor in 1981 and 1982, showing that the work had been performed by Silver West. He stated he did not know when Silver West and the claimants ceased their contractual relationship.

Erickson noted that he did locate claims in the area of the Carrie Ann claims in 1989, but he did so as the agent for Merlin Mining, Inc. He noted his previous willingness to provide documentation of his agency relationship and that Merlin would be responsible for the property after that date. He concluded by noting that the Decision stated that the

operator and claim owners were responsible for the reclamation, but that he was neither the operator nor the claimant in 1981, when the Notice of Intent BLM was relying upon was filed and approved.

On June 26, 1995, the BLM Nevada State Office issued its Decision. The State Director explained that she had reviewed the file, including the Notice of Noncompliance Decision the District Office had issued to Erickson, Stewart, and Gamboa for failure to reclaim the Carrie Ann #3 and #4 claims. Noting that Stewart and Gamboa had not appealed, she stated that Erickson disputed his role as an operator and disputed the authenticity of the lease that Stewart had sent to BLM. As an additional basis for finding Erickson the operator, the State Director explained that "the mining claimants and subsequent lessee, Merlin Mining Company, attest to Mr. Erickson as the operator of the Carrie Ann #3 and #4 mining claims." (Decision at 1.) She then concluded that, because Erickson offered no proof or documentation to counter the lease agreement submitted by Stewart, and in the absence of contravening proof that the lease agreement was false, Erickson was responsible for the disturbance and reclamation. She then affirmed the Notice of Noncompliance Decision.

[1] There is no question that during the entire time in question Erickson was taking an active interest in the operations on the Carrie Ann #3 and Carrie Ann #4 claims. The question is whether his interest was sufficient to place him in the position of an operator or claimant required to undertake reclamation of those claims. The Department's regulation at 43 C.F.R. § 3809.3-2 provides that a notice of noncompliance shall be served on the operator who is "conducting operations covered by 3809.1-3 (notice) of this title and fails to comply with the provisions of that section or properly conduct reclamation according to the standards set forth in 3809.1-3(d) of this title." An operator is defined as "a person conducting or proposing to conduct the operations." 43 C.F.R. § 3809.0-5(g).

The file contains two documents indicating the existence of an operator. The first is the March 9, 1981, Notice of Intent filed by Silver West, Inc., stating its intent to operate an open pit mine on the Carrie Ann #3 and Carrie Ann #4 claims. During the period between May 1989 and August 1992, BLM undertook extensive research attempting to find some connection between Erickson and Silver West that could establish Erickson as the operator. However, the only evidence in the file providing any connection between Erickson and Silver West is his statement that in 1981 he had done some consulting work for Silver West. This does not establish Erickson as the operator. The second document is the statement by Merlin Mining Company that it was ceasing its operations and returning listed claim groups to Erickson. There is nothing connecting Erickson to either of these companies as a shareholder or control person. The Notice of Noncompliance and State Office Decision affirming the issuance of the Notice of Noncompliance both make much of a lease and purchase agreement entered into between Erickson and the claim owners in 1980 or 1981. However, there is nothing in the file that would indicate that this agreement

was in existence on March 9, 1981, or that this agreement either established Erickson as the operator or a party who controlled the actions of Silver West. After reviewing the facts of this case, we find that Erickson is not required to comply with the terms of the Notice of Noncompliance. See Riverside Group, Inc., 142 IBLA 261, 266 (1998).

Additional facts in this case provide sufficient cause to reverse the Decision. In BLM's March 13, 1981, letter to Silver West, it noted receipt of the Notice of Intent, and assigned serial number NV-0446-017N to the project. The May 12, 1989, compliance report was the next document in the file, chronologically, following BLM's March 13, 1981, letter. There is no evidence of BLM's having inspected the operation in the period between 1981 and 1989, but it is clear from the work contemplated and the work done on the claims, it would not have taken 8 years to complete the project.

In the May 12, 1989, compliance report, the project was identified as NV-0446-017N (the serial number assigned in 1981), and the inspector recommended that the case be closed. The next compliance inspection report written on August 2, 1990, lists the serial number of the project as N46-81-017N, which is not the serial number issued to Silver West, and there is no evidence in the case file regarding to whom or when this serial number was issued or why. More important, we find no evidence of any attempt on the part of BLM to identify who owned and who may have been the operator when operations were carried out on the Carrie Ann #3 and Carrie Ann #4 claims in the period 1989 through 1992. During the 15-month period between May 1989, and August 1990, the second report states that "[m]ore work has taken place since photographs were taken in May 1989." (Aug. 2, 1990, Inspection Report.)

In spite of repeated suggestions by Erickson that the identity of the operator could be ascertained by examining BLM's mining claim recordation records for that period, there is nothing in the case file that indicates that BLM examined those files or that Erickson was somehow identified on documents filed pursuant to 43 U.S.C. § 1744 (1994), as either the owner or operator of the claims.

[2] The purpose of 43 U.S.C. § 1744 (1994), is to ensure that there is a record of continuing activity on the claim so that the Federal Government will know which mining claims on Federal lands are being maintained and which have been abandoned. Myron S. Kenyon, 73 IBLA 10 (1983); Mineral Investigation and Development, 71 IBLA 398 (1983); see also, Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Western Mining Council, 643 F.2d 618 (9th Cir. 1981). We noted in Alamin Mining Corp., 90 IBLA 179 (1986), that

[p]rior to its enactment, "Federal land managers [had no] easy way of discovering which Federal lands [were] subject to either valid or invalid mining claim locations." S. Rep. No. 583, 94th Cong. 1st Sess. 65 (1975). The purpose of the recordation

requirements is "to advise the Federal land managing agency, as proprietor, of the existence of mining claims." Id. As noted in United States v. Locke, 105 S. Ct. 1785 (1985), the purpose of the provision is to "rid federal lands of stale mining claims and to provide for centralized collection by federal land managers of comprehensive and up-to-date information on the status of recorded but unpatented mining claims." Id. at 1798.

Id. at 180.

The only conclusion we can draw from the total absence of any reference to mining claim recordation documents is that Erickson's name did not appear on any of them. There is no evidence in the case file that sufficiently ties Erickson to the Carrie Ann #3 or Carrie Ann #4 claims as either the owner or the operator of those claims to legally require him to undertake the reclamation activities that BLM directed him to complete.

Therefore, 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 reversed.

R.W. Mullen
Administrative Judge

I concur.

James P. Terry
Administrative Judge