

INTERIOR BOARD OF LAND APPEALS

Rivers Edge Trust, Jimmy C. Chisum, Trustee

166 IBLA 297 (August 23, 2005)

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RIVERS EDGE TRUST  
JIMMY C. CHISUM, TRUSTEE

IBLA 2002-450

Decided August 23, 2005

Appeal from a determination of nonconcurrence and permanent cessation order issued by the Phoenix, Arizona, Field Office, Bureau of Land Management, ordering cessation of all occupancy present on the Halcyon mining claim, AMC 281472, and reclamation of all areas disturbed by such occupancy.

Affirmed.

1. Mining Claims: Surface Uses--Surface Resources Act: Occupancy

The Surface Resources Act, 30 U.S.C. § 612(a) (2000), bars surface use of an unpatented claim located under the mining laws for any purpose other than prospecting, mining, or processing operations and uses “reasonably incident thereto.” A mining claimant has no right to use or occupy the surface of a mining claim unless the activity constituting the reason for the use or occupancy is reasonably incident to mining-related operations.

APPEARANCES: Jimmy C. Chisum, Trustee, Rivers Edge Trust, New River, Arizona; Richard R. Greenfield, Esq., Office of the Field Solicitor, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

The Rivers Edge Trust (Trust) (Jimmy C. Chisum, Trustee) appeals from a “Determination of Nonconcurrence and Permanent Cessation Order” issued July 30, 2002, by the Phoenix, Arizona, Field Office, Bureau of Land Management (BLM), ordering cessation of all occupancy present on the Halcyon mining claim,

AMC 281472, and reclamation of all areas disturbed by such occupancy, to begin within 30 days, by removing all structures, equipment, and trash.<sup>1/</sup>

The Halcyon lode mining claim was located January 1, 1988, in the E½ of sec. 4, T. 8 N., R. 2 E., Gila and Salt River Meridian, Yavapai County, Arizona. The Trust acquired this mining claim by quitclaim deed dated May 7, 1994. BLM's records show that the statutorily mandated rental and maintenance fee requirements for maintaining a mining claim on public lands were satisfied through the 2002 assessment year.

BLM inspectors visited this claim on March 15, 2001, to discern any evidence of mining-related activity, noticed residential occupancy, and concluded that there was no mining-related activity being conducted. By letter dated December 18, 2001, BLM requested the Trust to provide a detailed, written narrative describing the occupancy and its particulars, citing some of the Department's regulations regarding surface occupancy found in 43 CFR Subpart 3715. In a reply, Chisum, representing the Trust, challenged BLM's authority and noted that some of the buildings on the claim were at least 75 years old, but did not provide the information sought by BLM. On February 13, 2002, BLM inspectors and others conducted a visual inspection of the mining claim, accompanied by Chisum. Neither evidence of mining nor the presence of operable mining equipment was observed. The inspectors did encounter a mobile home with electric, water, and sanitary sewer hookups, a stone cabin with electric, water, and sewer hookups, large drums and tanks, trailer frames, a pickup camper, and numerous items associated with residential living. The only mining-related item on the site was an old shaker with sluice, but it was overgrown with brush and obviously inoperable. An inspection report detailing and itemizing the residential occupancy was prepared for the record, supplemented with photographs. On March 6, 2002, BLM reminded Chisum of the need to submit, on behalf of the Trust, the information requested in December and informed him that BLM would make a determination of concurrence or nonconcurrence based upon the information received and the inspection report. In a letter dated April 1, 2002, Chisum provided the following details about the occupancy:

Halcyon has been regularly live[d] on, and worked since its origin in 1947, and likely its predecessor claims before that time. That living and working has been ongoing and continues, though not with the vigor it once had, until recent years when the miner[']s father got sick and died.

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<sup>1/</sup> The record does not show that appellant sought a stay of the implementation of the decision and BLM does not assert that the matter has been rendered moot because the decision was implemented.

\* \* \* \* \*

Up until the death of the father regular prospecting and exploration efforts were conducted. Continuous security is needed because of the close proximity to town and recreational users.

\* \* \* \* \*

The use of equipment and supplies is essentially as noted in [the] inspection report. To determine what the future is requires redevelopment, and as the most efficient and effective mining process and procedure can be determined the changes and needs will be added to the submittal. There is no known requirement for or ability to create an appropriate plan of operations until a market can be found for the products that we are able to extract and develop.

Permitting process for the development of a mining plan of operations has not been begun \* \* \*.

There are two septic tanks on the claim that have existed long prior to purchase in 1986 of the current claim and rights.

After reviewing the information provided, BLM concluded, in its July 30, 2002, Order, that “no element of occupancy occurring at the subject site conforms to the provisions of 43 CFR 3715.2, 3715.2-1, and 3715.” BLM stated that it did not concur with any level of occupancy found on the claim “because the occupancy is not reasonably incident, as evidenced by the results of the physical inspection, the complete lack of operable mining equipment and the statement of the trustee that no mining is occurring at the present time,” and ordered the permanent cessation of all such occupancy. BLM also ordered reclamation to begin within 30 days and be completed within 90 days.

Chisum, on behalf of the Trust, has presented a 23-page statement of reasons (SOR) in support of the appeal, asserting a divine right to occupy “the master’s land” until “He comes.” (SOR at 12, 13.) Chisum, citing constitutional and civil rights violations, asserts that both BLM and this Board lack authority and jurisdiction over this matter. With respect to the occupancy issue, Chisum argues that BLM’s actions to dislodge the Trust from the mining claim and not assist in development of the mineral extraction contradict Congressional mandates. (SOR at 22-23.) Chisum also contends that, because the heirs of the deceased “primary worker” were born on the claim, they “should have a right to stay there so long as it can not be shown that this right infringes on the rights of another in this land.” (SOR at 22.)

In its response, BLM cites the occupancy regulations at Subpart 3715 and asserts that appellant has failed to demonstrate compliance with those standards and requirements. Addressing “perceived” arguments regarding ignorance of the occupancy requirements or laches due to lack of prior enforcement of those requirements, BLM argues that those assertions have no application here in light of the circumstances. BLM opposes appellant’s contention that the Board and BLM lack jurisdiction and authority to resolve this matter because of constitutional and delegation issues. In addition, BLM poses a procedural issue, arguing that this appeal should be summarily dismissed because appellant’s SOR lacks a sufficient response on the merits. (Answer at 16-17.)

We find merit in some of the arguments advanced by appellant, sufficient to warrant further review of the appeal. However, we find, as we will discuss, that the Trust has failed to carry its burden of demonstrating error in BLM’s decision.

Congress, under the Mining Law of 1872, as amended, permits the location of mining claims encompassing valuable mineral deposits on the public lands of the United States for the purpose of prospecting and extracting valuable minerals. See generally 30 U.S.C. §§ 21-47 (2000). In addition, Congress allows a mining claimant to occupy certain public lands for “mining or milling purposes.” 30 U.S.C. § 42 (2000). Congress revisited its requirements for permitted use or occupancy of the public lands under the Mining Law in section 4(a) of the Surface Resources Act of 1955, 30 U.S.C. § 612(a) (2000).<sup>2/</sup> Therein, Congress mandated that claims located under the mining laws of the United States “shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto.” 30 U.S.C. § 612(a) (2000).

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<sup>2/</sup> Chisum relies on his mischaracterization of the mining laws and customs of the United States to support the proposition that, under the 1872 Mining Law, the Trust enjoys absolute rights to occupy the surface and dictate to BLM the terms by which it may administer use of the surface. Such reliance is misplaced. Although mining claimants on the public lands do indeed retain a possessory interest in property under the Mining Law, that interest does not take the form of an unfettered right to reside upon and occupy the public lands. Even prior to the enactment of the 1955 Surface Resources Act, exclusive possession and use of a claim site by a mining claimant was recognized by the United States only so long as it was incident to prospecting and mining. United States v. Curtis-Nevada Mines, Inc., 611 F.2d 1277, 1281, 1285 (9th Cir. 1980). Regardless, rights granted to mining claimants by Congress in the 1872 Mining Law were substantially circumscribed by Congress in the 1955 Act.

We responded to similar arguments to those made by this appellant in Precious Metals Recovery, Inc., 163 IBLA 332 (2004), where we upheld BLM's rejection of an occupancy void of mining-related operations on a mill site:

[Appellant's] accusations against BLM for violating its rights and for making impossible demands proceed from the underlying view that persons are entitled to place private property on the public lands and, having done so, obtain a right to maintain equipment there at will, subject to an amorphous standard of "stewardship." \* \* \* This is not the case. The purpose of the Surface Resources Act is to ensure that a claimant's tenure on the public lands under the Mining Law is exclusively for the mining, prospecting and processing purposes recognized by that statute. \* \* \* Any notion that the Mining Law vests a mining claimant with "placeholder" status once he or she places milling equipment on the public lands is defeated by the Surface Resources Act and BLM regulations at 43 CFR 3712 and Subpart 3715. \* \* \* Quite simply, the admitted fact that [appellant] has never found the ores which would justify its occupancy on a mill site means that it must vacate the public lands of all equipment and other materials brought onto them for that alleged purpose, not that it may keep privately owned property on the public lands indefinitely.

163 IBLA at 340-41.

[1] Congress, pursuant to 43 U.S.C. § 1201 (2000), delegated to the Department of the Interior administrative authority to regulate the surface use and occupancy of mining claims located under the Mining Law. In 1996, the Department adopted the regulations at 43 CFR Subpart 3715 to implement the relevant statutory provisions, thereby setting forth

restrictions on the use and occupancy of public lands administered by BLM open to the operation of the mining laws, limiting such use and occupancy to those involving prospecting or exploration, mining, or processing operations and reasonably incidental uses. They also establish procedures for beginning occupancy, standards for reasonably incidental use or occupancy, prohibited acts, and procedures for inspection and enforcement, and for managing existing uses and occupancies. 61 FR 37116 (July 16, 1996). Additionally, the regulations clarify that unauthorized uses and occupancies on public lands are illegal uses that ipso facto constitute unnecessary or undue degradation of public lands which the Secretary of the Interior is

mandated by law to take any action necessary to prevent. 61 FR 37117-18 (July 16, 1996); see 43 U.S.C. § 1732(b) (2000).<sup>3/</sup>

Wilbur L. Hulse, 153 IBLA 362, 367 (2000). Subpart 3715 provides mining claimants guidance in determining which uses or occupancies are “reasonably incident” within the meaning of 30 U.S.C. § 612(a) (2000). The current record shows that BLM has acted well within that authority in all of its dealings with the Trust.

An “occupancy” of public lands under the mining laws, governed by 43 CFR Subpart 3715, includes “full or part-time residence on the public lands,” and also “the construction, presence, or maintenance of temporary or permanent structures.” 43 CFR 3715.0-5; see Terry Hankins, 162 IBLA 198, 213 (2004). To justify an occupancy, including the placement of buildings and personal property on a mining claim or mill site, a claimant must show that its activities meet the following standards: (a) be reasonably incident;<sup>4/</sup> (b) constitute substantially regular work; (c) be reasonably calculated to lead to the extraction and beneficiation of minerals; (d) involve observable on-the-ground activity that BLM may verify; and (e) use appropriate and operable equipment. 43 CFR 3715.2.<sup>5/</sup> All five of those requirements must be met for occupancy to be permissible. The claimant bears the burden of proving his occupancy is in compliance with those standards. Thomas E. Swenson, 156 IBLA 299, 310 (2002).

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<sup>3/</sup> Congress dictated in section 302(b) of the Federal Land Policy and Management Act of 1976 (FLPMA) that “the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the land.” 43 U.S.C. § 1732(b) (2000).

<sup>4/</sup> “Reasonably incident” is a shortened version of the statutory standard found at 30 U.S.C. § 612 (2000), “prospecting, mining, or processing operations and uses reasonably incident thereto.” 43 CFR 3715.0-5. “It includes those actions or expenditures of labor and resources by a person of ordinary prudence to prospect, explore, define, develop, mine, or beneficiate a valuable mineral deposit, using methods, structures, and equipment appropriate to the geological terrain, mineral deposit, and stage of development and reasonably related activities.” Id.

<sup>5/</sup> This regulation adopts a “plain English” approach by asking “**What activities do I have to be engaged in to allow me to occupy the public lands?**” The response is: “In order to occupy the public lands under the mining laws for more than 14 calendar days in any 90-day period within a 25-mile radius of the initially occupied site, you must be engaged in certain activities.” The five standards were then listed.

Examining the record for evidence of compliance with the statutory and regulatory requirements of 30 U.S.C. § 612(a) (2000) and 43 CFR Subpart 3715, we find that appellant's occupancy of the Halcyon lode mining claim is not reasonably incident to mining. Chisum admits that there are no present mining operations on the claim to which residential and casual occupancy would apply. It cannot be said that appellant's use of the site "constitute[s] substantially regular work" (43 CFR 3715.2(b)) or that it "involve[s] observable on-the-ground activity that BLM may verify" (43 CFR 3715.2(d)). Appellant has done nothing of note, for example, by way of submitting a plan of operation or notice, to suggest that extraction or beneficiation of minerals will commence any time soon (43 CFR 3715.2(c); see, e.g., 43 CFR 3809.10, 3809.11, 3809.21). The inspection did not disclose any equipment used in prospecting or mining (43 CFR 3715.2(e)). The overwhelming evidence that, for a long period of time, there has been of no discernible mining activity justifies BLM's conclusion here. See David E. Pierce, 153 IBLA 348, 358 (2000). We find that, since there is no mining activity at this site to which such occupancy could be "reasonably incident," BLM properly determined that any occupancy of the Halcyon lode mining claim under the mineral entry is statutorily prohibited.

Based on this lack of mining-related activity, BLM issued its determination of nonconcurrency. Under the Subpart 3715 regulations, a claimant must not begin occupancy (43 CFR 3715.3-1, 3715.3-6) until it has consulted with BLM (43 CFR 3715.3), provided detailed information about the proposed occupancy (43 CFR 3715.3-2), and received a written determination of concurrence or nonconcurrency that "the proposed occupancy or use will conform to the provisions of §§ 3715.2, 3715.2-1, and 3715.5" (43 CFR 3715.3-3, 3715.3-4). By Chisum's account, all or most of the occupancy at issue preexisted the promulgation of the Subpart 3715 regulations in 1996. Such existing occupancy was addressed in 43 CFR 3715.4, as follows:

**What if I have an existing use or occupancy?**

(a) By August 18, 1997, all existing uses and occupancies must meet the applicable requirements of this subpart. If not, BLM will either issue you a notice of noncompliance or order any existing use or occupancy failing to meet the requirements of this subpart to suspend or cease under Sec. 3715.7-1. BLM will also order you to reclaim the land under 43 CFR part 3800, subpart 3802 or 3809 to BLM's satisfaction within a specified, reasonable time, unless otherwise expressly authorized.

(b) If you are occupying the public lands under the mining laws on August 15, 1996, you may continue your occupancy for one year

after that date, without being subject to the procedures this subpart imposes, if:

(1) You notify BLM by October 15, 1996 of the existence of the occupancy using a format specified by BLM; \* \* \*

BLM made a determination that the Trust's existing occupancy did not conform with the 3715 regulations based on the information contained in Chisum's letter dated April 1, 2002. As a result of its determination of nonconcurrency, BLM applied 43 CFR 3715.4-3, which provides:

**What if BLM does not concur in my existing use or occupancy?**

If BLM determines that all or any part of your existing use or occupancy is not reasonably incident:

(a) BLM may order a suspension or cessation of all or part of the use or occupancy under Sec. 3715.7-1;

(b) BLM may order the land to be reclaimed to its satisfaction and specify a reasonable time for completion of reclamation under 43 CFR part 3800; and

(c) BLM may order you to apply within 30 days after the date of notice from BLM for appropriate authorization under the regulations in 43 CFR Group 2900.

BLM applied subsections (a) and (b), ordering cessation and reclamation. Under subsection 3715.7-1(b)(2), a proper cessation order must describe, in relevant part, the ways in which the use or occupancy is not reasonably incident, the time by which use or occupancy must cease, and the length of the cessation (whether temporary or permanent).

Those details were all set out by BLM in its order. Accordingly, BLM's order to cease occupancy is a reasonable implementation of the regulations. Chisum's occupancy is contrary to the public interest and, left unabated, risks trespass charges. Appellant has presented no legal basis under which such occupancy may continue in the absence of the requisite mining-related activity. <sup>6/</sup>

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<sup>6/</sup> Chisum mentions in the SOR that there are occupants who were born on this claim and asserts that they should be accorded "natural rights of inheritance." However, there is nothing in the 1872 Mining Law, the 1955 Surface Resources Act, or any other Federal statute which permits such non-mining, residential occupancy of the public lands.

To the extent Chisum argues that the actions taken by BLM violate his rights under the U.S. Constitution, it is sufficient to note only that the Board, as a quasi-judicial body within the Department of the Interior, has no authority to adjudicate whether constitutional rights have been violated, or to afford any relief therefrom. United States v. Mack, 159 IBLA 83, 96 n.10 (2003).

Any other arguments asserted and not addressed herein were considered and found to be without merit.

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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Christina S. Kalavritinos  
Administrative Judge

I concur:

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James F. Roberts  
Administrative Judge