Accounts
Refunds

Under 43 C.F.R. § 3833.1-1 (2003), maintenance and location fees are not returnable or refundable unless the mining claim or site has been determined, as of the date the fees were submitted, to be null and void, abandoned by operation of law, or otherwise forfeited. Since the Department has no jurisdiction to determine questions regarding the right of possession between rival claimants, the ruling of a state court of competent jurisdiction that a claimant has no ownership interest in various mining claims constitutes a determination that the claimant's claims are null and void. A BLM decision denying a requested refund of the claim maintenance fees paid on the voided claims will be reversed as to the fees paid subsequent to the date of the court's ruling. BLM's decision denying the requested refund of fees paid before the date of the court's ruling will be set aside and remanded to BLM for further analysis where the record contains conflicting evidence of BLM's interpretation of and practice under the applicable regulation.

Recon Mining Company, Inc., 167 IBLA 103 (Oct. 6, 2005).

Accounts
Refunds

A BLM denial of a request for interest on a refund of claim maintenance and other fees and charges will be affirmed because, absent a statutory provision authorizing the payment of interest, no interest may be paid by the Government on such refunds.

Recon Mining Company, Inc., 167 IBLA 103 (Oct. 6, 2005).

Accretion

A BLM decision assessing fees and damages for the unauthorized use of public land will be set aside and referred for a hearing where the record contains significant unresolved factual and legal issues concerning whether the subject land was created by accretion or avulsion and who has title to the land.

Sydney Dowton, 154 IBLA 291 (Apr. 19, 2001).

Accretion

All accretions, whether resulting from natural or artificial causes and whether the water body at issue is navigable or non-navigable, belong to the upland owner.

Western Aggregates, LLC, 169 IBLA 64 (May 17, 2006).

Accretion

Land which, following survey, has accreted to land owned by the United States takes the status of the Federal land to which it has accreted. If the Federal lands were withdrawn from entry under the mining laws of the United States, any lands accreting to those Federal lands were also withdrawn.

Western Aggregates, LLC, 169 IBLA 64 (May 17, 2006).

Acquired Lands

Lands patented without a mineral reservation which are subsequently acquired by the United States by deed which is accepted by the Secretary of Agriculture for inclusion in a national forest are not subject to the location of mining claims in the absence of a legislative provision authorizing mineral entry. A decision declaring mining claims located on such acquired lands null and void ab initio is properly affirmed.

Northern Nevada Natural Mining, et al., 161 IBLA 318 (May 19, 2004).

Acquired Lands

A railroad patent passes fee simple title to public land from the United States to the grantee. After a patent has issued, questions of property rights are governed by State law. Where public land in Arizona was patented to the Santa Fe and Pacific Railroad Company and later conveyed subject to both a general mineral reservation and a reservation of "gravel and ballast" for "railroad purposes," under State law, sand, gravel, and ballast are excluded from the general mineral reservation in the deed.

Alfred Jay Schritter, 171 IBLA 123 (Feb. 21, 2007)

Acquired Lands

Where the record fails to support a finding that BLM erred in determining (1) that the owner of a mineral estate on lands acquired by the United States was removing sand, gravel, and common earthen material, and (2) that such material was not reserved under the general mineral clause of the relevant deed, Arizona law dictates a finding that the material removed was not included in appellant's mineral estate, but rather was included in the surface estate held by the United States.

Alfred Jay Schritter, 171 IBLA 123 (Feb. 21, 2007).

Act of July 26, 1866

"*Continuous Use*." "*Public Road*." Where a party seeking to continue to use an existing road running across Federally-owned lands as an access road to his privately-owned lands makes no written showing that the road was cognizable under section 8 of R.S. § 2477 and concedes that the road is not a "public road" (a fact inconsistent with the existence of an R.S. § 2477 right-of-way), the Board should not pursue the matter on his behalf and there is no valid reason to remand the matter for consideration of the existence of an R.S. § 2477 right-of-way. "Continuous use," even if established, is insufficient to qualify a road under R.S. § 2477.

John T. Alexander, 157 IBLA 1 (July 17, 2002).

Act of Mar. 1, 1893

Section 21 of the Act of March 1, 1893, 27 Stat. 507 (Caminetti Act), authorized the Secretary of the Interior to withdraw lands requested by the California Debris Commission "from sale or entry under the laws of the United States." Withdrawals made under that authority withdrew lands from sale or entry under the mining laws of the United States, including the General Mining Law of 1872. Lands included in a withdrawal remain withdrawn until the withdrawal is revoked, modified, or terminated by appropriate official action, and it is immaterial whether the purpose of the withdrawal is still being served as of the date of location.

Western Aggregates, LLC, 169 IBLA 64 (May 17, 2006).

Act of December 29, 1916

On or after October 13, 1993, mining claims cannot be located on lands patented under the Stock Raising Homestead Act, *as amended*, until a person who intends to enter such lands to explore for or locate a mining claim has first filed a notice of intent to locate with the proper BLM state office and served a copy of that notice upon the surface owners of record.

American Colloid Co. Bentonite Corp., 154 IBLA 7 (Oct. 16, 2000).

Act of December 29, 1916

Even where a mining association is formed before any mining claims have been located, nothing prevents an agent from acting on behalf of the association. There is no statutory or regulatory provision which prohibits the location of a mining claim or the doing of any acts required to complete the appropriation by an agent, and the fact that the locator acted through an agent in such matters does not invalidate the location. Thus, 43 C.F.R. § 3832.1 expressly provides that agents may make locations for qualified locators.

American Colloid Co. Bentonite Corp., 154 IBLA 7 (Oct. 16, 2000).

Act of December 29, 1916

When lands are segregated from entry under the mining laws, such a segregation attaches to the mineral estate of lands patented under the Stock Raising Homestead Act, which are included within the lands described in the segregation, and although it has no effect on mining claims covering part of that mineral estate, if those claims are forfeited by operation of law for failure to pay the maintenance fees while the segregation is still effective, the segregation automatically becomes effective, *eo instanti*, as to the mineral estate covered by those claims, thus closing it to future mineral entry for the period of the segregation. A notice of intent to locate mining claims on such mineral lands, filed while the segregation is still effective, must be rejected.

National Cement Company of California, 156 IBLA 131 (Dec. 31, 2001).

Act of July 31, 1947

When removal of mineral materials from a site on a lease issued under the Mineral Leasing Act of 1920 is not necessary in the process of extracting the mineral under lease, a materials sales contract under the Materials Act is required.

Mississippi Potash, Inc., 158 IBLA 9 (Nov. 25, 2002).

Act of August 11, 1955

The Mining Claims Rights Restoration Act of 1955, *as amended*, 30 U.S.C. §§ 621-625 (2000), which opened powersite withdrawals for entry under the mining laws, provides that the locator of a placer claim under the Act may not conduct any mining operations for 60 days after filing a notice of location pursuant to 30 U.S.C. § 623 (2000) and that, if the Department decides to hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land, the suspension of operations will continue until the hearing has been held and the Department has issued an appropriate order providing for one of the following alternatives: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator restore the surface of the claim to the condition it was in prior to mining; or (3) a general permission to engage in placer mining.

United States v. Donald E. Eno, 171 IBLA 69 (Feb. 13, 2007).

Act of August 11, 1955

To determine whether mining would substantially interfere with other uses of powersite lands within the meaning of the Mining Claims Rights Restoration Act of 1955, *as amended*, 30 U.S.C. § 621 (2000), the Department is required to engage in a weighing or balancing of the benefits of mining against the injury mining would cause to other uses of the land. Mining may be allowed where the benefits of placer mining outweigh the detriment that placer mining causes to other uses. Central to the balancing test is the concept that the competing uses must be substantial if they are to be used to prohibit placer mining. Thus, even if the Secretary determines that placer mining would substantially interfere with other uses of the land, he may still appropriately grant a general permission to engage in placer mining operations if the competing surface uses have less significance than the proposed placer mining operation. The importance of the competing uses, which must be compared and judged on whatever grounds are relevant in the individual case, need not be economically quantifiable and may include the preservation of cultural, geological, or scenic resources.

United States v. Donald E. Eno, 171 IBLA 69 (Feb. 13, 2007).

Act of December 22, 1974

Section 11 of the Act of December 22, 1974, 25 U.S.C. 640d-10 (1994), as amended by sec. 4 of Public Law 96-305, the Navajo and Hopi Indian Relocation Amendments Act of 1980, and sec. 105(b) of Public Law 98-603, the San Juan Basin Wilderness Protection Act of 1984, does not authorize the Navajo Tribe or the Office of Navajo and Hopi Indian Relocation to "de-select" lands selected by the Tribe in 1986 and "re-select" other lands in 1996.

San Juan Coal Co., 155 IBLA 389 (Nov. 6, 2001).

Administrative Appeals

Where the record demonstrates that the core issues of appellants' protest were decided against appellants in a U.S. District Court opinion which was affirmed by the Ninth Circuit Court of Appeals, and the remaining reason for appeal to this Board cannot prevail, it is appropriate to rule on the merits of the appeal and deny a request for a stay as moot.

The Wilderness Society, Great Bear Foundation, 151 IBLA 346 (Jan. 28, 2000).

Administrative Appeals

When an appeal is taken from an OSM decision, that office loses jurisdiction over the matter until jurisdiction is restored by final disposition of the appeal by the appellate body. When, subsequent to an appeal, OSM renders additional conclusions, the Board would normally remand the matter to OSM to recover jurisdiction and properly adopt and render those conclusions. However, where the record in an appeal already contains a clear statement by OSM of its conclusions on each site-specific issue, as well as full briefing by the parties, no purpose would be served by remanding the matter and the Board may exercise its de novo authority to consider whether OSM's conclusions should be adopted.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000).

Administrative Appeals

Upon receipt of an appeal, BLM is required to forward to the Board the complete, original Administrative Record, including all original documentation. A decision may be set aside and remanded when the record does not allow review of the basis upon which the decision was made or the documentation does not support the factual findings placed at issue by the appeal.

Silverado Nevada, Inc., 152 IBLA 313 (June 22, 2000).

Administrative Appeals

The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 provides that demands or orders are subject to the 33-month deadline for final decisions of administrative appeals. A "demand" is an order to pay which has a reasonable basis to conclude that the obligation in the amount of the demand is due and owing. An "order to pay" means a written order which (A) asserts a specific, definite, and quantified obligation claimed to be due, and (B) specifically identifies the obligation by lease, production month and monetary amount of such obligation claimed to be due and ordered to be paid, as well as the reason such obligation is claimed to be due, but such term does not include any other communication or action by or on behalf of the Secretary, including value determinations which do not contain mandatory or ordering language.

Marathon Oil Company, 155 IBLA 27 (May 1, 2001).

Administrative Appeals

The Board properly dismisses an appeal by a state from a decision of the Director, Minerals Management Service, granting an appeal by a lessee or its designee from an MMS order to pay royalty on production from a Federal onshore oil and gas lease, because the regulations at 43 C.F.R. § Part 4, Subpart J, which implement the time limits and rule of decision of 30 U.S.C. § 1724(h) (2000), do not provide any opportunity for states to appeal from a decision of the Director, MMS, rescinding or modifying an MMS or delegated state order under 30 C.F.R. § 290.108, and because 43 C.F.R. § 4.906(b)(3) specifically provides that, in the absence of an appeal by the lessee or its designee, the MMS Director's decision constitutes the final decision of the Department, thus depriving the Board of jurisdiction to entertain the appeal.

California State Controller, 166 IBLA 5 (May 18, 2005).

Administrative Appeals

The Board will dismiss an appeal, filed pursuant to 43 C.F.R. § 4.478(a), from an order of an administrative law judge granting or denying a petition for a stay of the effect of a BLM grazing decision when the appellant challenging the stay order fails to comply with the general appeal regulations of the Board that require an appeal from a decision of an administrative law judge to be filed within 30 days following the date of service of the decision on the appellant. In such circumstances, the Board is deprived of jurisdiction to adjudicate the appeal.

Western Watersheds Project v. Bureau of Land Management, 166 IBLA 30 (June 9, 2005).

Administrative Appeals

The party appealing has the burden of showing error in the Administrative Law Judge's decision. An appellant must show adequate reason for appeal with some particularity, and support the allegations with arguments or appropriate evidence showing error.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Administrative Appeals

When the decision of an administrative law judge declaring placer mining claims invalid was not stayed during the pendency of the appeal, there were no mining claims on which mining operations could be conducted, and thus nothing to which a mining plan of operations could pertain. In these circumstances, a BLM decision revoking the plans of operations for the invalid mining claims will be upheld. When the revocation of a plan of operations for an invalid mining claim is affirmed on appeal, an appeal of an earlier BLM decision finding that operations exceeded the scope of the approved plan of operations and requiring the submission of a new plan of operations is properly declared moot, and the appeal of that decision is properly dismissed as moot.

Pass Minerals, Inc., K. Ian Matheson, Kiminco, Inc., 168 IBLA 164 (Mar. 16, 2006).

Administrative Appeals

The requirement that there be "a decision of an officer" before an appeal can lie is essential. A *decision* either authorizes or prohibits an action affecting individuals who have interests in the public lands. When an adverse impact on a party is contingent upon some future occurrence, or where the adverse impact is merely hypothetical, it is premature for this Board to decide the matter. Where BLM has stated that it will finally decide certain issues at a future date, and identified factors that could influence its decisionmaking or moot an appeal, there is presently no decision which could be appealed.

Geo-Energy Partners-1983 Ltd., 170 IBLA 99 (Sept. 14, 2006).

Administrative Appeals

Parties to agency decisions are given the right to appeal in appropriate circumstances by regulation; failure to include an appeals paragraph in an agency decision does not alter that right.

Devon Energy, et al., 171 IBLA 43 (Jan. 24, 2007).

Administrative Appeals

A "Dear Reporter Letter" issued by MMS to numerous Federal and Indian oil and gas lessees is not an appealable "order" under 30 C.F.R. Part 290, where the letter, although occasionally cast in mandatory terms, does not "contain mandatory or ordering language" because it does not require immediate and specific action and does not address any specific leases, gas volumes, treatment costs, or additional royalties due. The letter is properly seen only as generalized guidance on how Federal and Indian lessees nationwide are expected to proceed concerning royalty due on coalbed methane. Unless and until MMS issues specific orders containing specific instructions to specific lessees governing how they must compute, report, and/or pay royalty, among other actions, no appealable order has been issued under 30 C.F.R. Part 290.

Devon Energy, et al., 171 IBLA 43 (Jan. 24, 2007).

Administrative Authority
Generally

Where BLM admits that the stated rationale of a decision appealed is incorrect and requests the Board to exercise its de novo review authority to affirm the result of BLM's decision on a different basis, the Board typically will reverse or vacate the decision and remand the case so that a new decision can be issued by BLM. No remand is necessary where the appellant did not object to BLM's request, filed a reply and surreply responding to BLM's alternative rationale in these appeals, and has fully briefed the merits of such alternative rationale in other pending appeals. Appellant is not prejudiced by granting BLM's request for de novo review, and no purpose would be served by remanding the cases. In such circumstances, the Board properly invokes its de novo review authority.

Jerry D. Grover D.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Administrative Authority
Generally

Application of the principle of administrative finality involves jurisprudential rather than jurisdictional considerations. The doctrine of administrative finality will not be invoked where to do so would result in a manifest injustice.

Betty J. (Thompson) Bonin, 151 IBLA 16 (Oct. 20, 1999).

Administrative Authority
Generally

When an appeal is taken from an OSM decision, that office loses jurisdiction over the matter until jurisdiction is restored by final disposition of the appeal by the appellate body. When, subsequent to an appeal, OSM renders additional conclusions, the Board would normally remand the matter to OSM to recover jurisdiction and properly adopt and render those conclusions. However, where the record in an appeal already contains a clear statement by OSM of its conclusions on each site-specific issue, as well as full briefing by the parties, no purpose would be served by remanding the matter and the Board may exercise its de novo authority to consider whether OSM's conclusions should be adopted.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000).

Administrative Authority
Generally

Judgments within the powers vested in courts by the Judiciary Article of the Constitution may not lawfully be revised, overturned or refused faith and credit by another department of government.

Silverado Nevada, Inc., 152 IBLA 313 (June 22, 2000).

Administrative Authority
Generally

The Board cannot consider (a) general complaints against 20 years of implementation of a statute involving parties, facts, and evidence not in the record; (b) matters of general interest to the appellant which do not adversely affect it; or (c) challenges to acts of Congress, which are properly brought to the judicial branch.

Mack Energy Corporation, 153 IBLA 277 (Sept. 22, 2000).

Administrative Authority
Generally

The Board cannot exempt a party from the operation of the National Historic Preservation Act, and its implementing regulations, on grounds that the challenged BLM decision did not consider, correctly or at all, all issues raised by the appellant in its request for review, when the record nonetheless shows that the BLM had a reasonable

belief that the subject property contained potential eligible artifacts.

Mack Energy Corporation, 153 IBLA 277 (Sept. 22, 2000).

Administrative Authority
Generally

The Board has no jurisdiction to review a BLM decision that there will be fire rehabilitation when that decision was made within the context of a land use plan. Therefore, BLM need not consider a no-action alternative when it concludes that alternative is not in conformance with approved land use plans. However, the Board has jurisdiction to review a BLM decision implementing the rehabilitation plan.

Southern Utah Wilderness Alliance, 154 IBLA 275 (Apr. 16, 2001).

Administrative Authority
Generally

The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 provides that demands or orders are subject to the 33-month deadline for final decisions of administrative appeals. A "demand" is an order to pay which has a reasonable basis to conclude that the obligation in the amount of the demand is due and owing. An "order to pay" means a written order which (A) asserts a specific, definite, and quantified obligation claimed to be due, and (B) specifically identifies the obligation by lease, production month and monetary amount of such obligation claimed to be due and ordered to be paid, as well as the reason such obligation is claimed to be due, but such term does not include any other communication or action by or on behalf of the Secretary, including value determinations which do not contain mandatory or ordering language.

Marathon Oil Company, 155 IBLA 27 (May 1, 2001).

Administrative Authority
Generally

Where an Alaska Native filed an application for allotment in 1970, and BLM substituted a lot for a parcel she claimed in her applica- tion and thereby rejected her claim without notification to her of the reasons for the proposed rejection of her original claim, and without granting her the ability to submit written evidence or request a hearing or adjudication, BLM has improperly deprived her of a property interest in her Native allot- ment application without due process of law.

Shirley Nielsen, 158 IBLA 26 (Dec. 3, 2002).

Administrative Authority
Generally

Application of the principle of administrative finality involves jurisprudential rather than jurisdictional considerations. The doctrine of administrative finality will not be invoked where to do so would result in a manifest injustice.

Shirley Nielsen, 158 IBLA 26 (Dec. 3, 2002).

Administrative Authority
Generally

A decision rejecting an Indian Allotment application is properly affirmed where the land sought to be entered has been classified for retention in public ownership in the applicable resource management plan. The Board has no jurisdiction to review such a land-use plan or the classifications contained therein.

Jane Delorme, et al., 158 IBLA 260 (Feb. 3, 2003).

Administrative Authority
Generally

As the Board has no jurisdictional authority concerning matters covered by an action or decision of the Secretary except in the limited circumstance of determining whether the Secretary's determination was properly applied and implemented, we must uphold the processing by BLM of a mineral patent application deemed "grandfathered" by Secretarial finding from a statutory moratorium otherwise barring such processing.

Ulf T. Teigen, Mona A. Teigen (On Reconsideration), 159 IBLA 142 (May 27, 2003).

Administrative Authority
Generally

The Board does not have the delegated authority to review, reverse, reject, or amend proclamations issued by Presidents of the United States.

Richard D. Sawyer, 160 IBLA 158 (Oct. 22, 2003).

Administrative Authority
Generally

When a decision declaring unpatented oil shale claims null and void pursuant to the Energy Policy Act is reversed by this Board, the claims are restored to the claim holder *nunc pro tunc*, as if the decision had never been issued. Upon reinstatement of the oil shale claims, the obligation to maintain them as provided by the Energy Policy Act is also revived, including the obligation to pay the maintenance fees "per claim per year" for each year of the claim's existence.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Administrative Authority
Generally

Because the Energy Policy Act does not expressly provide for automatic forfeiture or conclusive abandonment of an oil shale claim for failure to comply with a mandatory requirement, the appropriate course of action is to provide a party an opportunity to comply with that Act. Where a party fails or refuses to come into compliance after receiving notice of maintenance fees that are due, BLM properly may declare such oil shale claims null and void.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Administrative Authority
Generally

A BLM instruction memorandum is not a regulation, has no legal force or effect, and is not binding on the Board or the public at large.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Administrative Authority
Generally

When a federal agency issues a directive concerning the future exercise of its discretionary power, for purposes of the APA, 5 U.S.C. § 553, its directive will either constitute a substantive rule, for which notice-and-comment procedures are required, or a general statement of policy, for which they are not.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Administrative Authority
Generally

When an agency applies a policy in a particular situation, it must be prepared to support the policy just as if the policy statement had never been issued. An agency cannot escape its responsibility to present evidence and reasoning supporting its substantive rules by announcing binding precedent in the form of a general statement of policy.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Administrative Authority
Generally

If a directive denies the decisionmaker the discretion in the area of its coverage, the statement is binding, and creates rights or obligations. For the purposes of 5 U.S.C. § 553, whether a statement is a rule with binding effect depends on whether the statement constrains the agency's discretion. Even though an agency may assert that a statement is not binding, the courts have recognized that the agency's pronouncements can, as a practical matter, have a binding effect. If an agency acts as if a document is controlling and treats the document in the same manner as it treats a regulation or published rule, or bases enforcement actions on the policies or interpretations formulated in the document, or leads private parties or other authorities to believe that they must comply with the terms of the document, the agency document is, for all practical purposes, binding.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004)

Administrative Authority
Generally

Where BLM offers an alternative rationale in addition to that stated in the decision appealed and requests the Board to exercise its *de novo* review authority to affirm the result of BLM's decision on the alternative basis, the Board typically will reverse or vacate the decision and remand the case so that a new decision can be issued by BLM. No remand is necessary where the appellant did not object to BLM's request, filed a reply and two surreplies responding to BLM's alternative rationale, and has fully briefed the merits of such alternative rationale in other appeals. Appellant is not prejudiced by granting BLM's request for *de novo* review, and no purpose would be served by remanding the cases. In such circumstances, the Board properly invokes its *de novo* review authority.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VII), 163 IBLA 310, (Nov. 2, 2004).

Administrative Authority
Generally

The authority to adjudicate the status of mining claims arises from the authority Congress vested in the Secretary of the Interior or such officer as he or she may designate to "perform all executive duties appertaining to the surveying and sale of the public lands of the United States, or in anywise respecting such public lands, and, also, such as relate to private claims of land, and the issuing of patents for all grants of land under the authority of Government." 43 U.S.C. § 2 (2000). That authority extends to Indian Reservation lands as well.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VII), 163 IBLA 310 (Nov. 2, 2004).

Administrative Authority
Generally

Lands set aside for an Indian Reservation cease to be part of the public domain, and a mining claim located on Indian lands that are not open to mineral entry is null and void *ab initio*.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VII), 163 IBLA 310 (Nov. 2, 2004).

Administrative Authority

Generally

Only the United States, acting through the Secretary of the Interior, has the authority to determine administratively what lands constitute public lands. That duty and authority necessarily includes the power to determine administratively that a mining claim is located on land not owned by the United States. The question of whether the United States has title is justiciable before the Department, and when the Department determines that the United States has no title in lands, it may properly declare mining claims located on such lands null and void *ab initio* as a matter of Federal law.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VII), 163 IBLA 310 (Nov. 2, 2004).

Administrative Authority
Generally

Where appellant's oil shale "mining claims" were located on lands that were patented to third parties without a mineral reservation to the United States, no interest appellant may have with respect thereto can be raised or pursued as a mining claim initiated and maintained under Federal mining law. Those interests in the patented portions of the claims, whatever they may be, are properly declared null and void *ab initio*, since no Federal mining claim can arise on private or State lands.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VII), 163 IBLA 310 (Nov. 2, 2004).

Administrative Authority
Generally

The Department of the Interior has no jurisdiction to adjudicate questions concerning title to land conveyed out of United States' ownership. The Department may, however, investigate to determine whether to recommend litigation to recover the land, and such investigation may be conducted in such manner as suits its own convenience.

Lillian Pitka, Heirs of Alfred Jacobs, 164 IBLA 50 (Nov. 17, 2004).

Administrative Authority
Generally

The Department of the Interior has no jurisdiction to adjudicate questions concerning title to land conveyed out of United States' ownership. The Department may, however, investigate to determine whether to recommend litigation to recover the land, and such investigation may be conducted in such manner as suits its own convenience.

Lillian Pitka, Heirs of Alfred Jacobs, 164 IBLA 50 (Nov. 17, 2004).

Administrative Authority
Generally

The *Aguilar* Stipulations define the limited administrative mechanism used to conduct investigations of Native allotment applications involving lands conveyed out of United States' ownership.

Lillian Pitka Heirs of Alfred Jacobs, 164 IBLA 50 (Nov. 17, 2004).

Administrative Authority
Generally

When BLM investigates a Native allotment application for land patented to a Native corporation and rejects the application because it was legally defective and incapable of being corrected, pursuant to *Aguilar* Stipulation No. 1, the Board has no role in that process and an appeal of BLM's decision is properly dismissed.

Lillian Pitka, Heirs of Alfred Jacobs, 164 IBLA 50 (Nov. 17, 2004).

Administrative Authority
Generally

When a party attempts to use a privileged document of another party and the privilege has not been waived, the Board may issue a protective order placing the privileged document under seal and striking references to the document in pleadings.

Wyoming Outdoor Council, et al., 169 IBLA 223 (June 28, 2006).

Administrative Authority
Generally

A standard for identifying leasable minerals and classifying public lands for possible disposal, that was later used by BLM to identify potash enclaves under a subsequently issued secretarial order is subject to challenge and review by the Interior Board of Land Appeals to determine whether BLM properly identified and periodically revised such enclaves based upon its consideration of "existing technology and economics," under and as required by the then applicable Secretarial Order, 51 FR 39425 (Oct. 28, 1986).

IMC Kalium Carlsbad, Inc., Potash Association of New Mexico; Yates Petroleum Corporation; Pogo Producing Company; Bureau of Land Management, 170 IBLA 25 (Sept. 7, 2006).

Administrative Authority
Generally

A BLM instruction memorandum is not a regulation, has no legal force or effect, and is not binding on the Board or the public at large.

Wyoming Outdoor Council, et al., 171 IBLA 153 (Mar. 29, 2007).

Administrative Authority
Generally

Where land described in a Native allotment application has been patented, the *Aguilar* Stipulated Procedures require a hearing before a BLM hearing officer, whose decision is final for the Department and not subject to appeal to the Board of Land Appeals. Where the parcel only in part describes lands conveyed out of U.S. ownership and a hearing on the entire parcel is required, Government contest procedures may properly be used. Despite the potential overlap in issues in such proceedings, the fundamental character of the proceeding with respect to the patented land is no more than investigatory. Because the *Aguilar* procedures make no provision for review by the Board of such an investigatory determination, the Board properly dismisses an appeal from the administrative law judge's determination made pursuant to the *Aguilar* Stipulated Procedures.

United States v. Heirs of Harlan L. Mahle, 171 IBLA 330 (June 29, 2007).

Administrative Authority
Generally

The Board does not exercise supervisory authority over BLM and, therefore, may modify a BLM decision only to correct an underlying error of law or fact in the context of a challenge to the merits of that BLM decision.

Southern Utah Wilderness Alliance, 172 IBLA 183 (Aug. 24, 2007).

Administrative Authority
Estoppel

Where a mining claimant submits a payment for maintenance fees that is dishonored by the bank on which it is drawn; where the claimant notifies BLM of the problem only after the statutory deadline for filing the fees; where BLM misadvises the claimant at that time that BLM may accept a replacement payment as long as the funds arrive before BLM receives notice that there was a problem with the payment; and where no replacement payment is filed until after the statutory deadline, there is no basis for estopping BLM from declaring the claims forfeited and null and void. BLM's misadvice was not in the form of a crucial misstatement in an official decision. Further, reliance on such misadvice was irrelevant, since it was not given until after the mandatory statutory deadline for making payment (when BLM was no longer authorized to accept maintenance fees) and since reliance on any misadvice may not create rights not authorized by law.

Loco Mining Company, 155 IBLA 153 (June 27, 2001).

Administrative Authority
Estoppel

A party claiming reliance upon a misrepresentation by a Department employee must be ignorant of the true facts. When a party successfully bidding at an oil and gas lease sale receives a bidder's receipt stating monies owing, the bidder cannot claim ignorance of the fact that such monies are due.

Carlyle, Inc., 164 IBLA 178 (Dec. 16, 2004).

Administrative Authority
Estoppel

Even assuming *arguendo* that appellant was informed by a BLM employee that a fence served as a public/private land boundary, such action would not estop BLM from charging him with trespass in the construction of a cabin on public land, when there is no affirmative misconduct in the nature of an erroneous statement of fact in an official written decision.

Darrell Ceciliani, 166 IBLA 316 (Aug. 31, 2005).

Administrative Authority
Estoppel

While situations may arise where the Government may be estopped because a private party, acting in reliance upon a Governmental representation, was prevented from obtaining a right which might have been obtained, the Government cannot be estopped where the effect of the estoppel is to grant someone a right which was not available in the first instance.

Darrell Ceciliani, 166 IBLA 316 (Aug. 31, 2005).

Administrative Authority
Estoppel

A necessary element of estoppel against the Federal Government in matters concerning the public lands is the existence of affirmative misconduct on the part of the Federal Government. We will not find affirmative misconduct where appellant has failed to prove that BLM has affirmatively misrepresented or concealed a material fact regarding the proper address of the BLM office for filing mining claim maintenance fee payments and, in any event, where appellant is deemed to have knowledge of the proper address by virtue of 43 C.F.R. § 1821.10(a) (2002).

F.W.A. Holdings, Inc., F. W. Aggregates, Inc., 167 IBLA 93 (Sept. 30, 2005).

Administrative Authority
Estoppel

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by the acquiescence of its officers or their neglect of duty, failure to act, or delays in the performance of their duties or laches.

Bookcliff Rattlers Motorcycle Club, 171 IBLA 6 (Dec. 20, 2006).

Administrative Authority
Laches

The Board properly rejects an appellant's assertion in defense of a trespass notice that he owns the affected public land pursuant to the State law doctrine of boundary by acquiescence. It is well established that prescriptive rights cannot be obtained against the Federal government; mere occupancy and improvements of public lands without color of title create no prescriptive or vested rights as against the United States; and adverse possession of Government property cannot affect the title of the United States, except as provided by Federal statute. Moreover, the authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by the acquiescence of its officers or their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Leo Hardy, 172 IBLA 296 (Sept. 20, 2007).

Administrative Practice

The Board of Land Appeals will deny a request, filed in 1996, for a hearing on an assertion that qualifying personal use and occupancy of a parcel of land commenced prior to July 17, 1961, where the record shows that the Native allotment applicant had initially sought the grant of the allotment based on allegations that qualifying personal use and occupancy of the land had commenced in 1966 and had submitted an affidavit and witness statements attesting to this fact, and such application was rejected by BLM in 1978 because the land had been segregated from entry and settlement as of July 17, 1961, and the allotment applicant then pursued an appeal to the Board in which she maintained that qualifying personal use and occupancy commenced in 1966, which appeal was rejected in 1979.

Betty J. (Thompson) Bonin, 151 IBLA 16 (Oct. 20, 1999).

Administrative Practice

The Office of Hearings and Appeals does not have authority to review the merits of biological opinions issued by the FWS under section 7 of the Endangered Species Act, 16 U.S.C. § 1536 (1994). BLM properly limits activity on a private inholding in a wilderness area where the limitations imposed are directed by an FWS biological opinion in order to prevent adverse impacts on wildlife.

National Wildlife Federation, et al., Erik and Tina Barnes, 151 IBLA (Nov. 24, 1999).

Administrative Practice

A former spouse has no standing to appeal from a decision rejecting a certification of exemption from the payment of rental fees filed on behalf of her husband, where her husband has not, himself, sought review of that determination.

Sandra E. Garrand, 152 IBLA 139 (Apr. 3, 2000).

Administrative Practice

Upon receipt of an appeal, BLM is required to forward to the Board the complete, original Administrative Record, including all original documentation. A decision may be set aside and remanded when the record does not allow review of the basis upon which the decision was made or the documentation does not support the factual findings placed at issue by the appeal.

Silverado Nevada, Inc., 152 IBLA 313 (June 22, 2000).

Administrative Practice

Where the Board, in a previous decision, ordered BLM to consider an applicant's "evidence that by the standards of the mining industry, a prudent person would be justified in expending labor and means to work the coal deposits on the subject land," to show commercial quantities of coal, and BLM orders submission of a final showing under its regulations, BLM's order is valid under agency regulations, notwithstanding whether the applicant avers that more drilling may support his position.

Jesse H. Knight, et al., 155 IBLA 104 (May 23, 2001).

Administrative Practice

The Board of Land Appeals will not entertain an appeal when no effective relief can be afforded an appellant. Where a challenged interim decision has been superceded by a final multiple use decision, this Board will decline to entertain the appeal with respect to the interim decision because no effective relief is available.

Von L. and Marian Sorensen v. Bureau of Land Management, 155 IBLA 207 (July 18, 2001).

Administrative Practice

Where an appellant opposes BLM's choice among alternatives in a record of decision on the basis of an environmental assessment and asks that the Board implement the appellant's choice of alternatives, the Board will not entertain the appeal when: (1) reversal would require a new NEPA process rather than implementation of appellant's choice and (2) a subsequent BLM decision has already supplanted the record of decision in question.

Von L. and Marian Sorensen v. Bureau of Land Management, 155 IBLA 207 (July 18, 2001).

Administrative Practice

A well-recognized exception to the rule of mootness is that the Board will not dismiss an appeal when an issue raised by the appeal is capable of repetition, yet evading review. A decision on appeal does not fall into this exception where the appellant did not appeal a subsequent BLM decision supplanting the decision at issue.

Von L. and Marian Sorensen v. Bureau of Land Management, 155 IBLA 207 (July 18, 2001).

Administrative Practice

The regulation at 43 C.F.R. § 4.470(b) is a codification of the doctrine of "administrative finality," the administrative counterpart of *res judicata*, which normally precludes reconsideration in a subsequent case of matters finally resolved for the Department in an earlier appeal. A precondition for the application of the doctrine is that the matter raised in the subsequent proceeding was one distinctly put in issue and directly determined in the earlier appeal, as reflected in the language of 43 C.F.R. § 4.470(b) providing that a party who fails to appeal a BLM final grazing decision be barred thereafter from challenging "the matters adjudicated in that final decision." Where a party failed to appeal a final BLM grazing decision rejecting his application for a grazing permit on the grounds that the permitted use he sought was not available (but not mentioning cancellation of his grazing preference), that party's successor-in-interest is not barred under 43 C.F.R. § 4.470(b) from appealing a subsequent final BLM decision declaring the party's grazing preference canceled for failure to comply with the notice requirements of 43 C.F.R. § 4110.2-3.

James G. Katsilometes v. Bureau of Land Management, 157 IBLA 230 (Oct. 4, 2002).

Administrative Practice

A decision of an administrative law judge dismissing a grazing appeal for lack of standing is properly set aside where the party appealing is adversely affected by a BLM final grazing decision rejecting his protest.

James G. Katsilometes v. Bureau of Land Management, 157 IBLA 230 (Oct. 4, 2002).

Administrative Practice

Section 302(b) of FLPMA, 43 U.S.C. § 1732(b) (2000), authorizes the Secretary to issue leases for various uses of the public lands. Authorized uses encompass "[a]ny use not specifically authorized by other laws or regulations and not specifically forbidden by law" and include "residential, agricultural, industrial, and commercial" uses. 43 C.F.R. § 2920.1-1. BLM has discretion to reject a proposal for use of public lands if it conflicts with BLM objectives, responsibilities, or programs for management of the public lands involved.

Nevada Pacific Consortium, 158 IBLA 108 (Dec. 31, 2002).

Administrative Practice

Where an analysis of a resource management plan (RMP) indicates that the location of a proposed well is within an area open to oil and gas leasing without special stipulations, and the RMP identifies an anticipated range of annual well approvals, the Board will not find that the projected number is a mandatory maximum which is violated by approval of a particular well.

Southern Utah Wilderness Alliance, 159 IBLA 220 (June 16, 2003).

Administrative Practice

Under the Endangered Species Act (ESA), BLM is obligated to ensure that an authorized action is not likely to jeopardize the continued existence of a threatened or endangered species or result in the destruction or adverse modification of its habitat. The Act imposes the same obligation for species that have been proposed for listing. Compliance with the ESA is also an element of complying with NEPA. In evaluating whether BLM took the requisite "hard look" at the environmental impacts of a proposed action that NEPA requires, the Board properly considers whether BLM considered the potential impacts on listed or proposed species or their habitat that the ESA mandates. However, the Board lacks jurisdiction to review the merits of a biological opinion issued by the U.S. Fish and Wildlife Service as a result of formal consultation regarding a species, which opinion serves, in part, as a basis for BLM's decisionmaking.

Wyoming Outdoor Council James M. Walsh, 159 IBLA 388 (July 25, 2003).

Administrative Practice

While situations may arise where the Government may be estopped because a private party, acting in reliance upon a Governmental representation, was prevented from obtaining a right which might have been obtained, the Government cannot be estopped where the effect of the estoppel is to grant someone a right which was not available in the first instance.

Darrell Ceciliani, 166 IBLA 316 (Aug. 31, 2005).

Administrative Practice

When the Board has previously considered and rejected the same arguments urged in the present appeal, and an appellant does not file supplemental briefing to address the impact of that earlier decision, appellant has not shown that the arguments expressly considered and rejected in the previous decision remain viable in these cases. In such circumstances, the Board properly concludes that the earlier decision is dispositive.

Wyoming Outdoor Council Wyoming Wildlife Federation, 170 IBLA 240 (Sept. 29, 2006).

Administrative Practice

"Abandonment." Abandonment of a property interest results from the failure of the holder of a right to exercise that right over an extended period, and abandonment of an interest granted by BLM may thus generally occur without BLM's knowledge. While the BLM Manual states that grazing "[r]esource improvements and treatments cannot be abandoned or removed without authorization," it provides that BLM "may require a permittee/lessee or cooperator to remove a project and rehabilitate the site," but does not require such action. Since abandonment generally occurs over a long period of time, so that BLM may not be aware that it has occurred, it may not be in a

position to issue a decision authorizing the abandonment and requiring rehabilitation in every case. Even where BLM is aware of the abandonment, it may not deem it necessary to issue a decision authorizing the abandonment and requiring rehabilitation in every case, such as where abandonment in place without rehabilitation is a satisfactory conclusion to the project. BLM's failure to notify the holder of a grazing right or interest that it has been abandoned is without significance.

Terry Jones v. Bureau of Land Management, 170 IBLA 295 (Nov. 7, 2006).

Administrative Practice

Where BLM makes use of computer spreadsheets or other documentation to accumulate data upon which a cost estimate for a special recreation permit is based, it must reveal underlying data sufficient for the applicant to ascertain the justification for BLM's conclusions; otherwise, an applicant has no basis upon which to understand and accept BLM's decision or, in the alternative, to appeal and dispute it.

Bookcliff Rattlers Motorcycle Club, 171 IBLA 6, (Dec. 20, 2006).

Administrative Procedure
Generally

Under section 518 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1268 (1994), any party charged with a civil penalty may file a petition for discretionary review of a proposed assessment of that penalty. Under 43 C.F.R. § 4.1155 OSM has the burden of going forward to establish a prima facie case that a violation of pertinent requirements occurred. That burden in a challenge to a failure to abate cessation order involves providing evidence that conditions supporting the issuance of an imminent harm cessation order existed and that those facts remained unabated, justifying the existence of a failure to abate cessation order.

Paul Funk v. Office of Surface Mining Reclamation and Enforcement, 151 IBLA 252 (Dec. 17, 1999).

Administrative Procedure
Generally

Section 302(b) of FLPMA, 43 U.S.C. § 1732(b) (2000), authorizes the Secretary to issue leases for various uses of the public lands. Authorized uses encompass "[a]ny use not specifically authorized by other laws or regulations and not specifically forbidden by law" and include "residential, agricultural, industrial, and commercial" uses. 43 C.F.R. § 2920.1-1. BLM has discretion to reject a proposal for use of public lands if it conflicts with BLM objectives, responsibilities, or programs for management of the public lands involved.

Nevada Pacific Consortium, 158 IBLA 108 (Dec. 31, 2002).

Administrative Procedure
Generally

Where the record demonstrates that the core issues of appellants' protest were decided against appellants in a U.S. District Court opinion which was affirmed by the Ninth Circuit Court of Appeals, and the remaining reason for appeal to this Board cannot prevail, it is appropriate to rule on the merits of the appeal and deny a request for a stay as moot.

The Wilderness Society, Great Bear Foundation, 151 IBLA 346 (Jan. 28, 2000).

Administrative Procedure
Generally

Where an operator requested State Director Review of a District Office letter responding to its demand for a decision on its plan of operations, and such letter offered several courses of action, including completing review of the original mining plan of operations, the State Director could have denied review as premature. However, where the State Director issues a decision which affirms that the plan of operations cannot be processed as it was submitted and allows the operator 30 days to decide to modify the plan or suggest other alternatives to the proposed plan of operations or the plan shall be deemed denied, the State Director's decision constitutes an appealable decision.

Mount Royal Joint Venture, 153 IBLA 90 (July 31, 2000).

Administrative Procedure
Generally

Where, after receiving a letter from BLM advising that it will resume processing a proposed mining plan of operations, an appellant contends that BLM in the past had deliberately delayed taking action thereon, appellant's allegations will be rejected as moot.

Mount Royal Joint Venture, 153 IBLA 90 (July 31, 2000).

Administrative Procedure
Generally

Where the State of Alaska fails to appeal a decision finding a native allotment to be legislatively approved the State may not subsequently challenge any of the predicate facts determined by BLM in its initial decision.

State of Alaska Department of Transportation & Public Facilities, 154 IBLA 57 (Nov. 21, 2000).

Administrative Procedure
Generally

Where the Board has previously held that various millsites were null and void and that decision constitutes the final determination of the matter for the Department, the

correctness of that determination is not subject to attack before the Board in a collateral proceeding arising out of BLM's actions in implementing the Board decision, absent compelling legal or equitable considerations.

Robert C. Lefaivre, 155 IBLA 137 (June 20, 2001).

Administrative Procedure
Generally

A protest against BLM's yearly issuance of permits for grazing use for cattle is properly considered as a protest under 43 C.F.R. § 4.450-2. Where such protest challenges BLM's authority to issue permits for grazing cattle under the governing resource management plan, it raises an issue that is capable of repetition and is therefore not moot, even though the time is past when BLM's action can be redressed by canceling any permit improperly issued in a particular year. Where, by confessing error in a proceeding before the Hearings Division, BLM effectively denies the protest without explanation, the matter is properly remanded to BLM for further consideration.

James G. Katsilometes v. Bureau of Land Management, 157 IBLA 230 (Oct. 4, 2002).

Administrative Procedure
Generally

As an appellate tribunal, the Board of Land Appeals does not exercise supervisory authority over BLM except in the context of deciding an appeal over which the Board has jurisdiction. The Board will decline to render advisory opinions on questions not involved in a properly-filed appeal.

Nevada Outdoor Recreation Association, 158 IBLA 207 (Jan. 22, 2003).

Administrative Procedure
Generally

While the Board is reluctant to grant a petition for reconsideration on the basis of new information submitted with the petition and unaccompanied by an explanation as to why it was not provided prior to the decision which the party seeks to have reconsidered, extraordinary circumstances arise where error exists in the premise upon which the decision to be reconsidered was grounded and, in the absence of reconsideration, the result would ignore a decision by the Secretary.

Ulf T. Teigen, Mona A. Teigen (On Reconsideration), 159 IBLA 142 (May 27, 2003).

Administrative Procedure
Generally

The party challenging an exercise of administrative discretion by BLM bears the burden of showing that the decision is not supportable on any rational basis or does not comply with the regulations or statutes.

Nikki Lippert, 160 IBLA 149 (Oct. 17, 2003).

Administrative Procedure
Generally

Where BLM admits that the stated rationale of a decision appealed is incorrect and requests the Board to exercise its de novo review authority to affirm the result of BLM's decision on a different basis, the Board typically will reverse or vacate the decision and remand the case so that a new decision can be issued by BLM. No remand is necessary where the appellant did not object to BLM's request, filed a reply and surreply responding to BLM's alternative rationale in these appeals, and has fully briefed the merits of such alternative rationale in other pending appeals. Appellant is not prejudiced by granting BLM's request for de novo review, and no purpose would be served by remanding the cases. In such circumstances, the Board properly invokes its de novo review authority.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Administrative Procedure
Generally

Where BLM offers an alternative rationale in addition to that stated in the decision appealed and requests the Board to exercise its *de novo* review authority to affirm the result of BLM's decision on the alternative basis, the Board typically will reverse or vacate the decision and remand the case so that a new decision can be issued by BLM. No remand is necessary where the appellant did not object to BLM's request, filed a reply and two surreplies responding to BLM's alternative rationale, and has fully briefed the merits of such alternative rationale in other appeals. Appellant is not prejudiced by granting BLM's request for *de novo* review, and no purpose would be served by remanding the cases. In such circumstances, the Board properly invokes its *de novo* review authority.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VII), 163 IBLA 310 (Nov. 2, 2004).
Administrative Procedure
Generally

Although there is no standard set forth in 43 C.F.R. § 4.28 for an administrative law judge to utilize in determining whether to certify an interlocutory ruling, the administrative law judge should apply the same standard set forth therein governing the granting by the Board of permission to file an interlocutory appeal, *i.e.*, whether there is a showing that the ruling complained of involves a controlling question of law and that an appeal therefrom may materially advance the final decision. When the party seeking certification makes such a showing, the administrative law judge abuses his discretion in denying the request to certify.

Western Watersheds Project v. Bureau of Land Management, 164 IBLA 300 (Jan. 24, 2005).

Administrative Procedure
Generally

When wells that were the subject of a protest of the issuance of Applications for Permit to Drill have been drilled, the appeal ordinarily will be dismissed as moot because there is no further relief that can be granted on appeal. Where the appeal raises issues which are capable of repetition and may yet evade review, the Board properly determines to adjudicate the appeal even though the relief sought by an appellant cannot be granted for the particular event.

Colorado Environmental Coalition, The Wilderness Society, 165 IBLA 221 (Apr. 8, 2005).

Administrative Procedure
Generally

Regulation 43 C.F.R. § 4160.1(a) provides that "[p]roposed decisions" by BLM concerning authorized grazing on the public lands "shall be served on any affected applicant, permittee or lessee, and any agent and lien holder of record by certified mail or personal delivery." Further, 43 C.F.R. § 4160.2 provides a right to protest such a proposed decision by any applicant, permittee, lessee, or other interested public either "in person or in writing to the authorized officer within 15 days after receipt of such decision."

Stephen Miller v. Bureau of Land Management, James G. Katsilometes v. Bureau of Land Management, 165 IBLA 386 (May 10, 2005).

Administrative Procedure
Generally

Delivery of a notice of certified mail to a person's last address of record does not establish the date of delivery of the document being sent by certified mail. It is only (1) when someone accepts delivery of the item by signing the certified mail return receipt card or (2) the certified mail is returned to BLM by the U.S. Postal Service as undeliverable, for whatever reason, that the "person will be deemed to have received the communication" within the meaning of 43 C.F.R. § 1810.2(b). When BLM sends a proposed grazing decision by certified mail to a person's last address of record, which is a post office box, the date the notice of certified mail is placed in the box does not establish the date of receipt for purposes of 43 C.F.R. § 4160.2.

Stephen Miller v. Bureau of Land Management, James G. Katsilometes v. Bureau of Land Management, 165 IBLA 386 *(*May 10, 2005).

Administrative Procedure
Generally

As an appellate tribunal, the Board of Land Appeals does not exercise supervisory authority over BLM except in the context of deciding an appeal over which the Board has jurisdiction. The Board will decline to render advisory opinions on questions not involved in a properly filed appeal.

Defenders of Wildlife Wyoming Outdoor Council, 169 IBLA 117 (May 31, 2006).

Administrative Procedure
Generally

A party will be deemed not to have received constructive notice under 43 C.F.R. § 1810.2(b) of a notice of noncompliance (NON) issued by BLM under 43 C.F.R. § 3715.7-1(c) where the NON was mailed to the party but not received by him, the record does not establish that it was mailed to his last address of record, and the circumstances of the non-delivery are not clear from the record. In the absence of service of the NON, the purpose of providing notice to the claimant of how it is failing or has failed to comply with 43 C.F.R. Subpart 3715 was thwarted, and the matter must proceed as though no NON was issued.

Combined Metals Reduction Co., 170 IBLA 56 (Sept. 7, 2006).

Administrative Procedure
Generally

A BLM request that the Board modify a BLM decision may be construed by the Board as a request that the decision be set aside and remanded for further action.

Southern Utah Wilderness Alliance, 172 IBLA 183 (Aug. 24, 2007).

Administrative Procedure
Adjudication

When the Government alleges that a mining claim is invalid because it was located for a common variety of decorative stone, the Government must present sufficient evidence to establish a prima facie case that the mineral deposit does not possess a unique property giving it a distinct and special value. When the Government's prima facie case has been made, the claimant has the ultimate burden of persuasion to show by a preponderance of the evidence that the mineral deposit in question is an uncommon variety, and therefore locatable. When the claimant fails to satisfy that burden, the claim is properly declared null and void.

United States v .Roland G. & Frances W. Knipe, 170 IBLA 161 (Sept. 25, 2006).

Administrative Procedure
Adjudication

On appeal from a decision of an Administrative Law Judge, the Board of Land Appeals possesses all of the powers which the Judge had in making his initial decision. Accordingly, where the record establishes that an Administrative Law Judge applied the wrong standard of proof to the detriment of an appellant, it is within the authority of the Board to review the record de novo and apply the correct legal standard without remanding the matter to the Hearings Division.

Riddle Ranches, Inc. v. Bureau of Land Management, 152 IBLA 119 (Apr. 3, 2000).

Administrative Procedure
Adjudication

Whether the Board will, in any given appeal, exercise its full de novo review authority is a matter committed to its discretion. Where the parties allege and make a preliminary showing that, subsequent to a hearing, new information has come to light which directly bears on the matter at issue, the Board will normally decline to exercise its de novo review authority and will, instead, remand the matter to the Hearings Division for a new fact-finding hearing. .

Riddle Ranches, Inc. v. Bureau of Land Management, 152 IBLA 119 (Apr. 3, 2000).

Administrative Procedure
Adjudication

It is incumbent upon BLM to ensure that its decision is supported by a rational basis and that such basis is stated in the written decision, as well as being demonstrated in the Administrative Record accompanying the decision. The recipient of a BLM decision is entitled to a reasoned and factual explanation providing a basis for understanding and accepting the decision or, alternatively, for appealing and disputing it before the Board. Where BLM approves preference right lease applications for coal leases without documenting its reasoned analysis in reaching its conclusions, BLM's decision will be set aside and remanded for further adjudication.

The Navajo Nation, et al., 152 IBLA 227 (Apr. 28, 2000).

Administrative Procedure
Adjudication

The Board of Land Appeals has authority to review information submitted on appeal to demonstrate the sufficiency of BLM's NEPA analysis and to permit that information to "cure," if necessary, an otherwise perceived deficiency in that analysis, since, when the Board ultimately acts in deciding an appeal, its decision becomes the "agency" decision for the purposes of any court review. However, such exercise of our de novo review authority is discretionary with the Board and it should be used with caution and not to mask any substantial defect which may have occurred in the NEPA analysis.

Southern Utah Wilderness Alliance, Natural Resources Defense Council, Wilderness Society, Utah Chapter of the Sierra Club, 157 IBLA 150 (Aug. 22, 2002).

Administrative Procedure
Adjudication

It is incumbent upon BLM to ensure that its decision is supported by a rational basis and that such basis is stated in the written decision, as well as being demonstrated in the Administrative Record accompanying the decision.

Mississippi Potash, Inc., 158 IBLA 9 (Nov. 25, 2002).

Administrative Procedure
Adjudication

Appellants bear the burden of demonstrating, by a preponderance of the evidence, that BLM committed a material error in its factual analysis or that the decision generally is not supported by a record showing that BLM gave due consideration to all relevant factors and acted on the basis of a rational connection between the facts found and the choice made.

El Bosque Preservation Action Committee, 160 IBLA 185 (Nov. 18, 2003).

Administrative Procedure
Adjudication

An amended version of a regulation or a Notice to Lessees may be applied to a pending matter if it would benefit the affected party and there are no public interests or third party rights which would be adversely affected. When a variance is granted regarding the method of measuring gas volume, which variance is necessarily predicated on a finding that the method met the regulatory standard, approval may be made retroactive when it would not violate the public interest or third party rights.

Conoco, Inc., 164 IBLA 237 (Jan. 6, 2005).

Administrative Procedure
Adjudication

Although the Board generally does not consider issues raised for the first time on appeal, that practice does not apply directly to grazing appeals before an administrative law judge. Issues that may be considered during those appeals are governed by the relevant regulations and the administrative law judge.

Western Watersheds Project v. Bureau of Land Management, 164 IBLA 300 (Jan. 24, 2005).

Administrative Procedure
Adjudication

Where the essence of a party's petition for reconsideration is a renewed request that the Board adjudicate in the first instance the question of whether the building stone to be sold under the Materials Act is a common or uncommon variety of stone, reconsideration is properly denied because the Board lacks the authority to grant the relief sought.

Cambrillic Natural Stone Unique Minerals, Inc. (On Reconsideration), 165 IBLA 140 (Mar. 28, 2005).

Administrative Procedure
Adjudication

Where BLM's Administrative Record does not contain a date-stamped copy verifying that BLM timely received contestees' answer to a Government contest complaint, but the record contains substantial corroborating evidence establishing that it is more probable than not that the document was received timely, the legal presumption of regularity, which would ordinarily operate to force a conclusion that the Answer was untimely, is rebutted, and the Office of Hearings and Appeals retains jurisdiction to adjudicate the contest.

United States v. Lyle I. Thompson, et al., 168 IBLA 64, (Mar. 16, 2006).

Administrative Procedure
Adjudication

An Alaska Native Veteran Allotment application is properly rejected, as a matter of law, without the necessity for a hearing, where the applicant fails to allege, in his application or anywhere in the record, that he initiated his qualifying use and occupancy under the 1906 Act before the 1968 withdrawal of the claimed lands from entry under the 1906 Act, or that his use and occupancy was as an independent citizen acting on his own behalf, potentially exclusive of others, and not as a dependent child in the company and under the supervision of a parent.

Irving P. Sheldon, 169 IBLA 276 (July 27, 2006).

Administrative Procedure
Adjudication

When the Government alleges that a mining claim is invalid because it was located for a common variety of stone, the Government must present sufficient evidence to establish a prima facie case that the deposit does not possess a unique property giving it a distinct and special value. When the Government's prima facie case has been made, the claimant bears the ultimate burden of persuasion to show by a preponderance of the evidence that the deposit in question is an uncommon variety, and therefore locatable.

United States v. Pitkin Iron Corporation, et al., 170 IBLA 352 (Nov. 29, 2006).

Administrative Procedure
Adjudication

Where land described in a Native allotment application has been patented, the *Aguilar* Stipulated Procedures require a hearing before a BLM hearing officer, whose decision is final for the Department and not subject to appeal to the Board of Land Appeals. Where the parcel only in part describes lands conveyed out of U.S. ownership and a hearing on the entire parcel is required, Government contest procedures may properly be used. Despite the potential overlap in issues in such proceedings, the fundamental character of the proceeding with respect to the patented land is no more than investigatory. Because the *Aguilar* procedures make no provision for review by the Board of such an investigatory determination, the Board properly dismisses an appeal from the administrative law judge's determination made pursuant to the *Aguilar* Stipulated Procedures.

United States v. Heirs of Harlan L. Mahle, 171 IBLA 330 (June 29, 2007).

Administrative Procedure
Adjudication
Leases and Permits

Upon denial of an application for a range improvement permit, an applicant has a statutory right to a hearing under 43 U.S.C. § 315h (2000) that must conform to the adjudication requirements of the Administrative Procedure Act, 5 U.S.C. § 554 (2000), and the record in support of BLM's decision must be developed in accordance with those procedures. An applicant seeking relief from a grazing decision reached in the exercise of BLM's administrative discretion bears the burden of showing by a preponderance of the evidence that the decision is unreasonable or improper. It is implicit in this holding that an appellant must be provided an opportunity to introduce evidence to meet this burden.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Administrative Procedure
Adjudication

When contemporaneous reports and maps prepared by Bureau of Land Management employees and subsequent affidavits by the employees are sufficient to establish facts to support a decision finding an appellant to have violated 43 C.F.R. § 8372.0-7(a) by using public lands for commercial recreation without a special recreation permit, and the appellant does not present evidence which refutes the facts, the decision will be affirmed.

Frank Robbins, d.b.a. High Island Ranch, 167 IBLA 239 (Nov. 30, 2005).

Administrative Procedure
Administrative Law Judges

Although there is no standard set forth in 43 C.F.R. § 4.28 for an administrative law judge to utilize in determining whether to certify an interlocutory ruling, the administrative law judge should apply the same standard set forth therein governing the granting by the Board of permission to file an interlocutory appeal, *i.e.*, whether there is a showing that the ruling complained of involves a controlling question of law and that an appeal therefrom may materially advance the final decision. When the party seeking certification makes such a showing, the administrative law judge abuses his discretion in denying the request to certify.

Western Watersheds Project v. Bureau of Land Management, 164 IBLA 300 (Jan. 24, 2005).

Administrative Procedure
Administrative Law Judges

Where a party disagrees with the weight given to the evidence but has not demonstrated that the Administrative Law Judge misunderstood the factual issues presented or otherwise committed a clear error in evaluating the evidence, the Board will not substitute its judgment on weighing the evidence for that of the Administrative Law Judge.

IMC Kalium Carlsbad, Inc., Potash Association of New Mexico; Yates Petroleum Corporation; Pogo Producing Company; Bureau of Land Management, 170 IBLA 25 (Sept. 7, 2006).

Administrative Procedure
Administrative Law Judges

Where the testimony of an expert is excluded and an offer of proof under 43 C.F.R. § 4.435 shows that no new facts would have been presented and that the matters on which the expert would have testified were thoroughly raised by others, the affected party has failed to establish prejudice or that the Administrative Law Judge otherwise

abused her discretion in excluding this expert's testimony.
IMC Kalium Carlsbad, Inc., Potash Association of New Mexico; Yates Petroleum Corporation; Pogo Producing Company; Bureau of Land Management, 170 IBLA 25 (Sept. 7, 2006).

Administrative Procedure
Administrative Procedure Act

A decision of this Board is an "order" under the Administrative Procedure Act and, therefore, an "adjudication"; however, it does not follow that such a decision is an adjudication under 5 U.S.C. § 554 (1994).

Tom Cox, 155 IBLA 273 (July 26, 2001).

Administrative Procedure
Administrative Procedure Act

The Alaska Native Allotment Act (formerly codified at 43 U.S.C. §§ 270-1 through 270-3 (1970)) was repealed by sec. 18(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617(a) (1994), subject to applications pending before the Department of the Interior on December 18, 1971. A Departmental memorandum issued by Assistant Secretary Jack O. Horton on October 18, 1973, which stated that Native allotment applications filed with a bureau, division, or agency of the Department on or before December 18, 1971, would be considered "pending before the Department" on December 18, 1971, was consistent with section 18(a), created no new law, rights, or duties limiting the eligibility of Native allotment applicants, and therefore is an interpretative rule and not subject to the notice and comment provisions of the APA, 5 U.S.C. § 553 (1994).

Timothy Afcan, Sr., 157 IBLA 210 (Sept. 25, 2002).

Administrative Procedure
Administrative Procedure Act

Upon denial of an application for a range improvement permit, an applicant has a statutory right to a hearing under 43 U.S.C. § 315h (2000) that must conform to the adjudication requirements of the Administrative Procedure Act, 5 U.S.C. § 554 (2000), and the record in support of BLM's decision must be developed in accordance with those procedures. An applicant seeking relief from a grazing decision reached in the exercise of BLM's administrative discretion bears the burden of showing by a preponderance of the evidence that the decision is unreasonable or improper. It is implicit in this holding that an appellant must be provided an opportunity to introduce evidence to meet this burden.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Administrative Procedure
Administrative Record

Where BLM offers an alternative rationale in addition to that stated in the decision appealed and requests the Board to exercise its *de novo* review authority to affirm the result of BLM's decision on the alternative basis, the Board typically will reverse or vacate the decision and remand the case so that a new decision can be issued by BLM. No remand is necessary where the appellant did not object to BLM's request, filed a reply and two surreplies responding to BLM's alternative rationale, and has fully briefed the merits of such alternative rationale in other appeals. Appellant is not prejudiced by granting BLM's request for *de novo* review, and no purpose would be served by remanding the cases. In such circumstances, the Board properly invokes its *de novo* review authority.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VII), 163 IBLA 310 (Nov. 2, 2004).

Administrative Procedure
Administrative Record

Where the record demonstrates that the core issues of appellants' protest were decided against appellants in a U.S. District Court opinion which was affirmed by the Ninth Circuit Court of Appeals, and the remaining reason for appeal to this Board cannot prevail, it is appropriate to rule on the merits of the appeal and deny a request for a stay as moot.

The Wilderness Society, Great Bear Foundation, 151 IBLA 346 (Jan. 28, 2000).

Administrative Procedure
Administrative Record

In reviewing a decision of the MMS, the Deputy Commissioner of Indian Affairs, Bureau of Indian Affairs, is required to review the entire record, including all evidence submitted by lessee in support of valuation for royalty purposes, without regard to whether it was reviewed below. Where it clearly appears that consideration of a second arm's-length contract would not alter MMS' analysis or conclusions, and appellant has not alleged or shown that a different result would be required if the second contract was considered, the failure to do so will be held to be harmless error.

Asarco Inc., 152 IBLA 20 (Feb. 29, 2000).

Administrative Procedure
Administrative Record

Upon receipt of an appeal, BLM is required to forward to the Board the complete, original Administrative Record, including all original documentation. A decision may be set aside and remanded when the record does not allow review of the basis upon which the decision was made or the documentation does not support the factual findings placed at issue by the appeal.

Silverado Nevada, Inc., 152 IBLA 313, (June 22, 2000).

Administrative Procedure
Administrative Record

Subject to Secretarial review, a decision by the Interior Board of Land Appeals is final for the Department. If the Board's decision is appealed to Federal court, the Board must be able to certify that the record it submits to the court is the complete record that it reviewed and upon which its decision was based.

Silverado Nevada, Inc., 152 IBLA 313 (June 22, 2000).

Administrative Procedure
Administrative Record

A BLM decision increasing rental rate above the schedule rent because the appraised rent exceeds the schedule rent by more than a factor of five will be vacated and the case remanded for reappraisal where the appraisal fails to establish sufficient familiarity with the communication site being appraised and the communication uses thereon.

Kitchens Productions, Inc., 152 IBLA 336 (June 23, 2000).

Administrative Procedure
Administrative Record

Where an appraisal determined fair market rental value based on analysis of Los Angeles Basin Data and comparable telecommunication site leases but did not disclose any of the particulars of such data, thereby precluding independent verification of the lease data, effective challenge as to the accuracy of the data and appraisal, and meaningful review by the Board, a BLM decision increasing rental based on an appraisal is properly vacated and remanded for reappraisal.

Kitchens Productions, Inc., 152 IBLA 336 (June 23, 2000).

Administrative Procedure
Administrative Record

It is incumbent upon BLM to ensure that its decision is supported by a rational basis, and that such basis is stated in the written decision and is demonstrated in the Administrative Record accompanying the decision. The recipient of the decision is entitled to a reasoned and factual explanation providing a basis for understanding and accepting the decision or, alternatively, for appealing and disputing it before the Board.

Kitchens Productions, Inc., 152 IBLA 336 (June 23, 2000).

Administrative Procedure
Administrative Record

Pursuant to 43 C.F.R. § 8372.3, approval of an application and subsequent issuance of a special recreation permit is discretionary with the authorized officer. To withstand administrative review, however, an exercise of discretionary authority must have a rational basis and be supported by facts of record demonstrating that an action is not arbitrary, capricious, or an abuse of discretion. Thus, decisions imposing sanctions for violation of permit terms, waiving permit terms, or excusing noncompliance will be upheld, unless it is shown that the decision was arbitrary, capricious, or based upon a mistake of fact or law.

Judy K. Stewart d.b.a. Western Wilderness Outdoor Adventure, 153 IBLA 245 (Sept. 5, 2000).

Administrative Procedure
Administrative Record

Where appellant neither acknowledges the evidence nor directly responds to it, and fails to submit any evidence to support its version of relevant events, appellant has not demonstrated that the decision is arbitrary, capricious, or based on a mistake of fact or law. In such a case, BLM has discharged its burden of demonstrating by a preponderance of credible evidence that appellant violated applicable Conditions and Standard Stipulations of its special recreation permit. A decision denying an application for an SRP will be affirmed where the decision to do so is supported by facts of record and there are no compelling reasons for modifying or reversing it, and in those cases where the basis for the decision is clear from the record and unrefuted by appellant, we will not substitute our judgment for that of the BLM official exercising his or her discretion.

Judy K. Stewart d.b.a. Western Wilderness Outdoor Adventure, 153 IBLA 245 (Sept. 5, 2000).

Administrative Procedure
Administrative Record

It is incumbent upon BLM to ensure that its decision is supported by a rational basis and that such basis is stated in the written decision, as well as being demonstrated in the Administrative Record accompanying the decision. A BLM decision claiming trespass damages for the unauthorized use of 3 acres of public lands will be set aside and the case remanded where neither the decision nor the case record provide any support for a finding that the trespass encompassed 3 acres.

Parkway Retail Centre, LLC, 154 IBLA 246 (Apr. 4, 2001).

Administrative Procedure
Administrative Record

BLM may not rely on an appraisal for determining expected rent in accordance with 43 C.F.R. § 2801.1-2(d)(7)(iv), when that appraisal fails to disclose any information regarding the comparable data utilized, thereby precluding independent verification of the lease data, effective challenge as to the accuracy of the data and appraisal, and meaningful review by the Board.

KHWY, Inc., 155 IBLA 6 (Apr. 30, 2001).

Administrative Procedure
Administrative Record

In challenging a BLM decision increasing rental pursuant to 43 C.F.R. § 2801.1-2(d)(7)(iv) for a communication site right-of-way, an appellant bears the burden of demonstrating by a preponderance of the evidence that BLM's appraisal methodology was erroneous, that BLM used inappropriate data or erred in its calculations, or that the annual rental arrived at by BLM deviated from the fair market value of the right-of-way. Where BLM issues a decision setting a communications site rental pursuant to 43 C.F.R. § 2803.1-2(d)(7)(iv), it must ensure that its decision is supported by a rational basis and that such basis is reflected in the administrative record accompanying the decision.

Lone Pine Television, Inc., 158 IBLA 86 (Dec. 26, 2002).

Administrative Procedure
Administrative Record

A BLM decision increasing rent above the schedule rate based upon an appraisal pursuant to 43 C.F.R. § 2801.1-2(d)(7)(iv) will be reversed when that appraisal fails to establish sufficient familiarity with the communication site being appraised and the communication uses thereon or to disclose information regarding the comparable data utilized, thereby precluding independent verification of the lease data, effective challenge as to the accuracy of the data and appraisal, and meaningful review by the Board.

Lone Pine Television, Inc., 158 IBLA 86 (Dec. 26, 2002).

Administrative Procedure
Administrative Record

Where BLM admits that the stated rationale of a decision appealed is incorrect and requests the Board to exercise its de novo review authority to affirm the result of BLM's decision on a different basis, the Board typically will reverse or vacate the decision and remand the case so that a new decision can be issued by BLM. No remand is necessary where the appellant did not object to BLM's request, filed a reply and surreply responding to BLM's alternative rationale in these appeals, and has fully briefed the merits of such alternative rationale in other pending appeals. Appellant is not prejudiced by granting BLM's request for de novo review, and no purpose would be served by remanding the cases. In such circumstances, the Board properly invokes its de novo review authority.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Administrative Procedure
Administrative Record

Departmental regulation 43 C.F.R. § 4.22(b) requires that a copy of each document filed in a proceeding before the Office of Hearings and Appeals be served by the filing party on the other party or parties in the case, and that regulation, together with 43 C.F.R. § 4.27(b), prohibit written communications concerning the merits of a proceeding between any party to the proceeding, including BLM, and the Board, unless a copy of the written communication is served on all other parties to the case.

Center for Native Ecosystems, 161 IBLA 135 (Apr. 9, 2004).

Administrative Procedure
Administrative Record

Under 43 C.F.R. § 4.411, a proceeding before the Board is initiated by the filing of a notice of appeal in the office of the agency official who made the decision being appealed. Before the notice of appeal is filed, there is no proceeding before the Board, and the service obligations of 43 C.F.R. § 4.22(b) and 4.27(b) do not apply. The Administrative Record relating to a decision appealed to the Board is created before the Board proceeding is initiated. As a result, it is not "filed" in the Board proceeding.

Center for Native Ecosystems, 161 IBLA 135 (Apr. 9, 2004).

Administrative Procedure
Administrative Record

BLM is not required to serve an appellant with the Administrative Record that was in existence before the appellant initiated a proceeding before the Board. That Administrative Record consists of public records, of which the Board is entitled to take official notice under 43 C.F.R. § 4.24(b), and those records are also open to inspection by the public. Where BLM has provided an appellant an opportunity to inspect an Administrative Record, a motion to compel service will be denied.

Center for Native Ecosystems, 161 IBLA 135 (Apr. 9, 2004).

Administrative Procedure
Administrative Record

It is incumbent upon MMS to ensure that its decision is supported by a rational basis which is explained in the decision and substantiated by the Administrative Record in the case file. A decision which fails to meet this basic requirement is properly set aside and remanded.

Samedan Oil Corp., Aera Energy LLC, 163 IBLA 63 (Sept. 7, 2004).

Administrative Procedure
Administrative Record

BLM must ensure that a decision increasing rental for a communication site right-of-way is supported by a rational basis, set forth in the written decision and demonstrated in the Administrative Record accompanying the decision. Although BLM may, pursuant to its policy for implementing 43 C.F.R. § 2803.1-2(d)(2)(i), assess a higher rental schedule rate for a communication site right-of-way based upon a modification combining two or more Ranally Metro Areas published in the "Rand McNally Commercial Atlas and Marketing Guide," it is nonetheless incumbent upon BLM to develop an Administrative Record that provides a rational basis for doing so.

Citicasters Co, 166 IBLA 111 (June 24, 2005).

Administrative Procedure

Administrative Record

When an appellant attaches a copy of a communication between BLM and its attorney to a pleading filed in a pending case before the Board and BLM asserts that the document is privileged material protected from disclosure by the attorney-client communication or attorney work-product privileges, the Board will adjudicate the claim of privilege to determine if it has been properly asserted.

Wyoming Outdoor Council, et al., 169 IBLA 223 (June 28, 2006).

Administrative Procedure
Administrative Record

In determining whether the attorney work-product privilege has been waived by an inadvertent disclosure, the Board will examine all the circumstances surrounding the disclosure, including: (1) the reasonableness of precautions taken to prevent disclosure; (2) the amount of time taken to remedy the error; (3) the scope of discovery; (4) the extent of the disclosure; and (5) the overriding issue of fairness.

Wyoming Outdoor Council, et al., 169 IBLA 223 (June 28, 2006).

Administrative Procedure
Administrative Review

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 administrative proceedings except upon a showing of compelling legal or equitable reasons.

Douglas E. Noland, 156 IBLA 35 (2001).

Administrative Procedure
Administrative Review

A BLM decision to allow limited and reasonable vehicle use consistent with the prewilderness grazing use in a recently designated wilderness area will be upheld on appeal absent a showing of compelling reasons for modification or reversal. Relevant factors for consideration of whether to continue the motorized vehicle authorization include the availability of other alternatives and the reasonableness of the authorized use.

National Wildlife Federation, et al., Erik and Tina Barnes, 151 IBLA 104 (Nov. 24, 1999).

Administrative Procedure
Administrative Review

The Office of Hearings and Appeals does not have authority to review the merits of biological opinions issued by the FWS under section 7 of the Endangered Species Act, 16 U.S.C. § 1536 (1994). BLM properly limits activity on a private inholding in a wilderness area where the limitations imposed are directed by an FWS biological opinion in order to prevent adverse impacts on wildlife.

National Wildlife Federation, et al., Erik and Tina Barnes, 151 IBLA 104 (Nov. 24, 1999).

Administrative Procedure
Administrative Review

The Secretary is required to provide such access to non-Federally owned land surrounded by public lands which have been designated as wilderness lands as is adequate to secure to the owner of the inholding the reasonable use and enjoyment thereof, in conformance with reasonable rules and regulations applicable to access across public lands.

Erik and Tina Barnes, National Wildlife Federation, et al., 151 IBLA 128 (Nov. 30, 1999).

Administrative Procedure
Administrative Review

An appellant that has not been provided the opportunity to comment on the FEIS prior to approval by BLM and the Forest Service of separate mining plans of operations for their respective lands (because of the failure to issue the FEIS 30 days prior to the issuance of the ROD), but who comments as soon as the FEIS is made available and within 30 days of issuance, is a "party to a case" within the meaning of 43 C.F.R. § 4.410(a) for purposes of appeal. An appellant who is a party to the case and who can show that he could be adversely affected by the agency decisionmaking will have standing to appeal.

Newmont Mining Corp., 151 IBLA 190 (Dec. 6, 1999).

Administrative Procedure
Administrative Review

In reviewing a decision of the MMS, the Deputy Commissioner of Indian Affairs, Bureau of Indian Affairs, is required to review the entire record, including all evidence submitted by lessee in support of valuation for royalty purposes, without regard to whether it was reviewed below. Where it clearly appears that consideration of a second arm's-length contract would not alter MMS' analysis or conclusions, and appellant has not alleged or shown that a different result would be required if the second contract was considered, the failure to do so will be held to be harmless error.

Asarco Inc., 152 IBLA 20 (Feb. 29, 2000).

Administrative Procedure
Administrative Review

A BLM decision to allow limited and reasonable commercial aircraft use of an airstrip on public land will be upheld on appeal absent a showing of compelling reasons for modification or reversal. Relevant factors for consideration of whether to authorize the expansion and use include the availability of other alternatives and the reasonableness of the authorized use.

Southern Utah Wilderness Alliance, 152 IBLA 216 (Apr. 28, 2000).

Administrative Procedure
Administrative Review

When an administrative law judge has erred in determining that the Government failed to present a prima facie case in support of the charges in a mining claim contest and both parties have presented their cases at the hearing on the complaint, the Board may exercise its de novo review authority and proceed to review all the evidence to decide whether the contestee overcame the Government's prima facie case by a preponderance of the evidence.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Administrative Procedure
Administrative Review

Where an operator requested State Director Review of a District Office letter responding to its demand for a decision on its plan of operations, and such letter offered several courses of action, including completing review of the original mining plan of operations, the State Director could have denied review as premature. However, where the State Director issues a decision which affirms that the plan of operations cannot be processed as it was submitted and allows the operator 30 days to decide to modify the plan or suggest other alternatives to the proposed plan of operations or the plan shall be deemed denied, the State Director's decision constitutes an appealable decision.

Mount Royal Joint Venture, 153 IBLA 90 (July 31, 2000).

Administrative Procedure
Administrative Review

Where, after receiving a letter from BLM advising that it will resume processing a proposed mining plan of operations, an appellant contends that BLM in the past had deliberately delayed taking action thereon, appellant's allegations will be rejected as moot.

Mount Royal Joint Venture, 153 IBLA 90 (July 31, 2000).

Administrative Procedure
Administrative Review

Pursuant to 43 C.F.R. § 8372.3, approval of an application and subsequent issuance of a special recreation permit is discretionary with the authorized officer. To withstand administrative review, however, an exercise of discretionary authority must have a rational basis and be supported by facts of record demonstrating that an action is not arbitrary, capricious, or an abuse of discretion. Thus, decisions imposing sanctions for violation of permit terms, waiving permit terms, or excusing noncompliance will be upheld, unless it is shown that the decision was arbitrary, capricious, or based upon a mistake of fact or law.

Judy K. Stewart d.b.a. Western Wilderness Outdoor Adventure, 153 IBLA 245 (Sept. 5, 2000).

Administrative Procedure
Administrative Review

Where appellant neither acknowledges the evidence nor directly responds to it, and fails to submit any evidence to support its version of relevant events, appellant has not demonstrated that the decision is arbitrary, capricious, or based on a mistake of fact or law. In such a case, BLM has discharged its burden of demonstrating by a preponderance of credible evidence that appellant violated applicable Conditions and Standard Stipulations of its special recreation permit. A decision denying an application for an SRP will be affirmed where the decision to do so is supported by facts of record and there are no compelling reasons for modifying or reversing it, and in those cases where the basis for the decision is clear from the record and unrefuted by appellant, we will not substitute our judgment for that of the BLM official exercising his or her discretion.

Judy K. Stewart d.b.a. Western Wilderness Outdoor Adventure, 153 IBLA 245 (Sept. 5, 2000).

Administrative Procedure
Administrative Review

The Board cannot consider (a) general complaints against 20 years of implementation of a statute involving parties, facts, and evidence not in the record; (b) matters of general interest to the appellant which do not adversely affect it; or (c) challenges to acts of Congress, which are properly brought to the judicial branch.

Mack Energy Corporation, 153 IBLA 277 (Sept. 22, 2000).

Administrative Procedure
Administrative Review

A BLM decision under 43 C.F.R. § 8341.2 to close certain public lands to off-road vehicle use in order to prevent adverse impacts on wildlife and threatened species habitat will not be disturbed on appeal when it is supported by facts of record, absent a showing of compelling reasons for modification or reversal.

Daniel T. Cooper, 154 IBLA 81 (Dec. 13, 2000).

Administrative Procedure
Administrative Review

To have standing to appeal a decision to the Board of Land Appeals, under 43 C.F.R. § 4.410, a party must both be adversely affected by the decision and be a "party to the case" by having participated in BLM decision-making leading to the decision sought to be reviewed.

Legal and Safety Employer Research Inc., et al., 154 IBLA 167 (Feb. 28, 2001).

Administrative Procedure
Administrative Review

It is incumbent upon BLM to ensure that its decision is supported by a rational basis and that such basis is stated in the written decision, as well as being demonstrated in the Administrative Record accompanying the decision. A BLM decision claiming trespass damages for the unauthorized use of 3 acres of public lands will be set aside and the case remanded where neither the decision nor the case record provide any support for a finding that the trespass encompassed 3 acres.

Parkway Retail Centre, LLC, 154 IBLA 246 (Apr. 4, 2001).

Administrative Procedure
Administrative Review

The Board of Land Appeals will not entertain an appeal when no effective relief can be afforded an appellant. Where a challenged interim decision has been superceded by a final multiple use decision, this Board will decline to entertain the appeal with respect to the interim decision because no effective relief is available.

Von L. and Marian Sorensen v. Bureau of Land Management, 155 IBLA 207 (July 18, 2001).

Administrative Procedure
Administrative Review

Where an appellant opposes BLM's choice among alternatives in a record of decision on the basis of an environmental assessment and asks that the Board implement the appellant's choice of alternatives, the Board will not entertain the appeal when: (1) reversal would require a new NEPA process rather than implementation of appellant's choice and (2) a subsequent BLM decision has already supplanted the record of decision in question.

Von L. and Marian Sorensen v. Bureau of Land Management, 155 IBLA 207 (July 18, 2001).

Administrative Procedure
Administrative Review

A well-recognized exception to the rule of mootness is that the Board will not dismiss an appeal when an issue raised by the appeal is capable of repetition, yet evading review. A decision on appeal does not fall into this exception where the appellant did not appeal a subsequent BLM decision supplanting the decision at issue.

Von L. and Marian Sorensen v. Bureau of Land Management, 155 IBLA 207 (July 18, 2001).

Administrative Procedure
Administrative Review

The Board of Land Appeals has authority to review information submitted on appeal to demonstrate the sufficiency of BLM's NEPA analysis and to permit that information to "cure," if necessary, an otherwise perceived deficiency in that analysis, since, when the Board ultimately acts in deciding an appeal, its decision becomes the "agency" decision for the purposes of any court review. However, such exercise of our de novo review authority is discretionary with the Board and it should be used with caution and not to mask any substantial defect which may have occurred in the NEPA analysis.

Southern Utah Wilderness Alliance, Natural Resources Defense Council, Wilderness Society, Utah Chapter of the Sierra Club, 157 IBLA 150 (Aug. 22, 2002).

Administrative Procedure
Administrative Review

Upon the filing of an appeal, it is incumbent upon BLM to forward the complete, original case file to the Board within the time frame and manner provided by *BLM Manual* 1841.15A

Terrence Timmins, 158 IBLA 318 (Mar. 26, 2003).

Administrative Procedure
Administrative Review

Under the Endangered Species Act (ESA), BLM is obligated to ensure that an authorized action is not likely to jeopardize the continued existence of a threatened or endangered species or result in the destruction or adverse modification of its habitat. The Act imposes the same obligation for species that have been proposed for listing. Compliance with the ESA is also an element of complying with NEPA. In evaluating whether BLM took the requisite "hard look" at the environmental impacts of a proposed action that NEPA requires, the Board properly considers whether BLM considered the potential impacts on listed or proposed species or their habitat that the ESA mandates. However, the Board lacks jurisdiction to review the merits of a biological opinion issued by the U.S. Fish and Wildlife Service as a result of formal consultation regarding a species, which opinion serves, in part, as a basis for BLM's decisionmaking.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

Administrative Procedure

Administrative Review

In a mining contest, the Government establishes a prima facie case when a mineral examiner testifies that he has examined a claim and found mineral values insufficient to support a finding of discovery. In proper circumstances the Government may establish a prima facie case even though its witnesses were not physically present on the mining claims. The Government's prima facie case is not defeated by a claimant's assertion that the mineral examiner did not physically visit the claim, when the claimant fails to submit evidence that a site visit would have affected the outcome of a mineral report which was based on evidence derived from sampling during a field examination of the claims in question by another mineral examiner.
United States of America v. Barbara Winkley, 160 IBLA 126 (Oct. 15, 2003).

Administrative Procedure
Administrative Review

Appellants bear the burden of demonstrating, by a preponderance of the evidence, that BLM committed a material error in its factual analysis or that the decision generally is not supported by a record showing that BLM gave due consideration to all relevant factors and acted on the basis of a rational connection between the facts found and the choice made.

El Bosque Preservation Action Committee, 160 IBLA 185 (Nov. 18, 2003).

Administrative Procedure
Administrative Review

Where BLM admits that the stated rationale of a decision appealed is incorrect and requests the Board to exercise its de novo review authority to affirm the result of BLM's decision on a different basis, the Board typically will reverse or vacate the decision and remand the case so that a new decision can be issued by BLM. No remand is necessary where the appellant did not object to BLM's request, filed a reply and surreply responding to BLM's alternative rationale in these appeals, and has fully briefed the merits of such alternative rationale in other pending appeals. Appellant is not prejudiced by granting BLM's request for de novo review, and no purpose would be served by remanding the cases. In such circumstances, the Board properly invokes its de novo review authority.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Administrative Procedure
Administrative Review

After a hearing considering a mining claim contest complaint, the Board may review the decision of the administrative law judge to determine whether it is consistent with law and whether conclusions regarding the evidence are consistent with the facts of record. If not, the Board may exercise its de novo review authority to review and consider the evidence of record and issue a decision consistent with applicable law.

United States v. E. K. Lehmann & Associates of Montana, Inc., et al., 161 IBLA 40 (Mar. 16, 2004).

Administrative Procedure
Administrative Review

In a mining contest, the Government establishes a prima facie case when a mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery. The determination of whether or not the Government has presented a prima facie case is to be made solely on the evidence adduced during the Government's case-in-chief. When the Government presents a prima facie case, the burden shifts to the contestee to rebut that case by a preponderance of the evidence. Where the issue is the validity of a mining claim, and not a patent, a contestee must preponderate on the matters placed at issue by the Government's case.

United States v. E. K. Lehmann & Associates of Montana, Inc., et al., 161 IBLA 40 (Mar. 16, 2004).

Administrative Procedure
Administrative Review

Jurisdiction of the Board to consider an appeal is governed by Departmental appeal regulations at 43 C.F.R. Part 4. The failure to file an appeal within 30 days of receipt of a decision reserving a public access easement under section 17(b) of the Alaska Native Claims Settlement Act requires dismissal of an appeal of that decision. Once a party has had an opportunity to challenge such a decision, further consideration of the issue in a subsequent appeal is barred by administrative finality.

Seldovia Native Association, 161 IBLA 279 (May 12, 2004).

Administrative Procedure
Administrative Review

Where BLM offers an alternative rationale in addition to that stated in the decision appealed and requests the Board to exercise its *de novo* review authority to affirm the result of BLM's decision on the alternative basis, the Board typically will reverse or vacate the decision and remand the case so that a new decision can be issued by BLM. No remand is necessary where the appellant did not object to BLM's request, filed a reply and two surreplies responding to BLM's alternative rationale, and has fully briefed the merits of such alternative rationale in other appeals. Appellant is not prejudiced by granting BLM's request for *de novo* review, and no purpose would be served by remanding the cases. In such circumstances, the Board properly invokes its *de novo* review authority.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VII), 163 IBLA 310 (Nov. 2, 2004).

Administrative Procedure
Administrative Review

Officials of BLM exercise their discretionary authority when adjudicating applications for special recreation permits. When a rational basis for the decision is established in the record, the Board will not ordinarily substitute its judgment for that of the BLM officials delegated the authority to exercise that discretion, and the decision is ordinarily affirmed.

Pronto Pics, Inc. 165 IBLA 90 (Mar. 15, 2005).

Administrative Procedure
Administrative Review

When wells that were the subject of a protest of the issuance of Applications for Permit to Drill have been drilled, the appeal ordinarily will be dismissed as moot because there is no further relief that can be granted on appeal. Where the appeal raises issues which are capable of repetition and may yet evade review, the Board properly determines to adjudicate the appeal even though the relief sought by an appellant cannot be granted for the particular event.

Colorado Environmental Coalition the Wilderness Society, 165 IBLA 221 (Apr. 8, 2005).

Administrative Procedure
Administrative Review

The Board has no jurisdiction to review Bureau of Land Management policies outlined in a letter setting forth stated future plans with respect to applications it might receive for use of a particular site, in the absence of an actual application pending before the agency upon which an appealable decision is rendered.

Rock Crawlers Association of America, 167 IBLA 232 (Nov. 23, 2005).

Administrative Procedure
Administrative Review

In reviewing an administrative law judge's decision in a mining contest, we review the record developed before the judge. Post-hearing evidence will be reviewed by this Board only to determine whether another hearing is appropriate.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Administrative Procedure
Administrative Review

To warrant another hearing, a mining claimant whose claims have been declared invalid for lack of discovery must demonstrate that the evidence proffered on appeal could result in a changed outcome, that is, that the claims are supported by a discovery of a valuable mineral deposit. .

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc.. K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Administrative Procedure
Administrative Review

An appellant carries the burden of showing error in the decision being appealed, failing in which, the decision will be affirmed. Further, an appellant must show adequate reason for appeal with some particularity, and support the allegations with arguments or appropriate evidence showing error.

Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 183 (Mar. 16, 2006).

Administrative Procedure
Administrative Review

No error is demonstrated by a decision to go forward with a mineral trespass action following a mining contest in which the underlying mining claim was declared invalid. Nothing legally, factually, or procedurally compels BLM to postpone action on the trespass charge until all pending or potential appellate review is concluded. The trespass charge does not depend on the validity of the underlying mining claim, because the essence of the charge is disposal of common variety mineral material without BLM's authorization to do so.

Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 183 (Mar. 16, 2006).

Administrative Procedure
Administrative Review

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.

Mack Wiehl (Heir of Alfred M. Wiehl), 169 IBLA 25 (May 3, 2006).

Administrative Procedure
Administrative Review

Where a party disagrees with the weight given to the evidence but has not demonstrated that the Administrative Law Judge misunderstood the factual issues presented or otherwise committed a clear error in evaluating the evidence, the Board will not substitute its judgment on weighing the evidence for that of the Administrative Law Judge.

IMC Kalium Carlsbad, Inc., Potash Association of New Mexico; Yates Petroleum Corporation; Pogo Producing Company; Bureau of Land Management, 170 IBLA 25 (Sept. 7, 2006).

Administrative Procedure
Administrative Review

The Secretarial Order requires that potash enclaves be identified based on existing economics, but since the record fails to demonstrate how (if at all) royalties and royalty rate reductions were considered by BLM in identifying potash enclaves, BLM must determine on remand whether and, if so, how best to consider royalties and royalty

reductions in its enclave decisionmaking under the Secretarial Order.

IMC Kalium Carlsbad, Inc., Potash Association of New Mexico; Yates Petroleum Corporation; Pogo Producing Company; Bureau of Land Management, 170 IBLA 25 (Sept. 7, 2006).

Administrative Procedure
Administrative Review

Applications for permits to drill may be denied pursuant to the oil and gas lease stipulations of the Secretarial Order if BLM determines that contamination from oil and gas drilling will occur, that such contamination cannot be prevented, and that this contamination will interfere with potash mining, result in undue potash waste, or constitute a hazard to potash mining.

IMC Kalium Carlsbad, Inc., Potash Association of New Mexico; Yates Petroleum Corporation; Pogo Producing Company; Bureau of Land Management, 170 IBLA 25, (Sept. 7, 2006).

Administrative Procedure
Administrative Review

The requirement that there be "a decision of an officer" before an appeal can lie is essential. A *decision* either authorizes or prohibits an action affecting individuals who have interests in the public lands. When an adverse impact on a party is contingent upon some future occurrence, or where the adverse impact is merely hypothetical, it is premature for this Board to decide the matter. Where BLM has stated that it will finally decide certain issues at a future date, and identified factors that could influence its decisionmaking or moot an appeal, there is presently no decision which could be appealed.

Geo-Energy Partners-1983 Ltd., 170 IBLA 99 (Sept. 14, 2006).

Administrative Procedure
Administrative Review

After a hearing considering a mining claim contest complaint, the Board may review the decision of the Administrative Law Judge to determine whether it is consistent with law and whether conclusions regarding the evidence are consistent with the facts of record. If the Board concludes that the Judge improperly dismissed the contest for the Government's failure to present a prima facie case, and the parties have submitted their entire cases at a hearing, the Board may exercise its de novo review authority to consider the evidence of record and issue a decision consistent with applicable law.

United States v. Pitkin Iron Corporation, et al., 170 IBLA 352 (Nov. 29, 2006).

Administrative Procedure

Administrative Review

Parties to agency decisions are given the right to appeal in appropriate circumstances by regulation; failure to include an appeals paragraph in an agency decision does not alter that right.

Devon Energy, et al., 171 IBLA 43 (Jan. 24, 2007).

Administrative Procedure
Administrative Review

A "Dear Reporter Letter" issued by MMS to numerous Federal and Indian oil and gas lessees is not an appealable "order" under 30 C.F.R. Part 290, where the letter, although occasionally cast in mandatory terms, does not "contain mandatory or ordering language" because it does not require immediate and specific action and does not address any specific leases, gas volumes, treatment costs, or additional royalties due. The letter is properly seen only as generalized guidance on how Federal and Indian lessees nationwide are expected to proceed concerning royalty due on coalbed methane. Unless and until MMS issues specific orders containing specific instructions to specific lessees governing how they must compute, report, and/or pay royalty, among other actions, no appealable order has been issued under 30 C.F.R. Part 290.

Devon Energy, et al., 171 IBLA 43 (Jan. 24, 2007).

Administrative Procedure
Administrative Review

As a general rule, the Board of Land Appeals has authority to review decisions by BLM relating to the use and disposition of the public lands. *See* 43 C.F.R. § 4.1(b)(3), 4.410(a). However, the Board does not have jurisdiction to review appeals of decisions to approve or amend a resource management plan, which is designed to guide and control future management actions.

Friends of Living Oregon Waters et al., 171 IBLA 271 (May 21, 2007).

Administrative Procedure
Administrative Review

Whether the Board of Land Appeals exercises jurisdiction over a BLM action as an implementation decision depends upon the effect of that action. If it is in the nature of a direction to BLM's employees, so that an action would be required to produce an adverse effect, the Board does not have jurisdiction. Thus, a BLM decision adopting a management plan providing for guidance and direction regarding recreation activities along a wild and scenic river is not within the jurisdiction of the Board of Land Appeals because it does not implement those actions.

Friends of Living Oregon Waters et al., 171 IBLA 271 (May 21, 2007).

Administrative Procedure

Administrative Review

When, during the pendency of an appeal, the arguments raised by an appellant have been addressed in other Board decisions, or by Federal courts, whether or not the appellant was a party thereto, or in other Board adjudication to which it was a party, and the appellant fails to show that those arguments remain viable, the Board may dispose of such arguments in summary fashion.

Wyoming Outdoor Council, Biodiversity Conservation Alliance, 172 IBLA 289 (Sept. 20, 2007).

Administrative Procedure
Burden of Proof

When, at the conclusion of the Government's case-in-chief, the contestee moves to dismiss, the administrative law judge does not err in taking the motion under advisement when the contestee is not forced to choose between presenting its case or standing on the motion. If the contestee voluntarily presents its case while the motion to dismiss is pending, the evidence tendered by contestee may properly be considered, not for curing possible deficiencies in the Government's prima facie case, but for the purpose of determining whether this evidence, in the context of all the other evidence of record, will establish the validity or invalidity of its claim.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Administrative Procedure
Burden of Proof

The determination of whether or not the Government has presented a prima facie case of invalidity in the contest of a mining claim is made solely on the basis of the evidence introduced in the Government's case-in-chief, which includes testimony elicited in cross-examination. If, upon the completion of the Government's presentation, the evidence is such that, were it to remain unrebutted, a finding of invalidity would properly issue, a prima facie case has been presented and the burden devolves on the claimant to overcome this showing by a preponderance of the evidence.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Administrative Procedure
Burden of Proof

When BLM imposes a condition of approval to an operator's request to plug and abandon a well, in order to protect a fresh water zone from contamination by gas or saline water from deeper formations, and the operator asserts that such a condition is unnecessary, the operator must show by a preponderance of the evidence that the condition is excessive in order to prevail.

Grynberg Petroleum Co., 152 IBLA 300 (June 8, 2000).

Administrative Procedure
Burden of Proof

When, on the basis of differing interpretations of the same geological data, the operator of an oil and gas well and BLM disagree on the proper procedure to be used in plugging and abandoning an oil and gas well, the Secretary is entitled to rely on the reasoned opinions and conclusions of his technical experts in the field, absent a showing by a preponderance of the evidence that such opinions are erroneous.

Grynberg Petroleum Co., 152 IBLA 300 (June 8, 2000).

Administrative Procedure
Burden of Proof

The burden of proof is on the appellant to present evidence to support its contentions regarding costs of a project, when it presents arguments regarding costs to the Board. It is not unreasonable to impose testing and survey stipulations on an approval of an Application for Permit to Drill. In the absence of standards to determine whether the costs of a cultural resources stipulation for testing and survey are excessive, evidence to support the costs, evidence describing the value or cost to the appellant of the drilling project, or findings from the testing and surveying required by the stipulation, the Board has no basis upon which to make findings regarding the nature of the alleged costs or whether they exceed reasonableness.

Mack Energy Corporation, 153 IBLA 277 (Sept. 22, 2000).

Administrative Procedure
Burden of Proof

When the Government challenges the validity of a mining claim, it has the burden of establishing a prima facie case that the claim is invalid. Once a prima facie case has been established, the burden shifts to the contestee to overcome that case by a preponderance of evidence. At the end of the Government's case a claimant may move the presiding administrative law judge to dismiss the contest for failure to present a prima facie case. However, if evidence and testimony is presented by the contestee, the Administrative Law Judge may consider both the Government's evidence and that presented by the claimant. Even where the Government has failed to present a prima facie case, evidence tendered by a contestee may be considered for the purpose of determining whether this evidence, considered with all other evidence of record, affirmatively establishes that the claims are invalid.

United States v. Kent Bush, 157 IBLA 359 (Oct. 31, 2002).

Administrative Procedure
Burden of Proof

The party challenging an exercise of administrative discretion by BLM bears the burden of showing that the decision is not supportable on any rational basis or does not comply with the regulations or statutes.

Nikki Lippert, 160 IBLA 149 (Oct. 17, 2003).

Administrative Procedure

Burden of Proof

An appellant must affirmatively point out error in the decision from which it directly appeals. It is not enough for an appellant to support its appeal by reiterating comments made to and considered with responses by BLM in its final decision without explaining error in that response.

Edward C. Faulkner, 164 IBLA 204 (Dec. 21, 2004).

Administrative Procedure
Burden of Proof

MMS properly assesses a civil penalty when a lessee does not have the records required by 30 C.F.R. § 250.804(b) to show that safety-system devices have been inspected and tested at specified intervals.
Blue Dolphin Exploration Company, 166 IBLA 131 (July 8, 2005).

Administrative Procedure
Burden of Proof

In a mining contest, the Government establishes a prima facie case when a mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Administrative Procedure
Burden of Proof

Uncontradicted evidence of absence of production from a mining claim over a period of years is sufficient, without more, to establish a prima facie case of invalidity of the claim.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Administrative Procedure
Burden of Proof

If the Government meets its burden of proving a prima facie case that a mining claim does not contain a discovery of a valuable mineral deposit, the ultimate burden rests with the claimant to establish by a preponderance of the evidence that a discovery exists as to those matters placed in issue by the Government. A claimant does not meet this burden if its showing of the extent, continuity, and grade of mineralization is premised on reviewing aerial photographs. A discovery cannot be predicated upon (1) an exposure of isolated bits of mineral on the surface of the claim, not connected with ore leading to substantial values, (2) mere surface indications of mineral within the limits of the claim, or (3) inferences from geological facts relating to the claim. There must be actual evidence that high values persist for a sufficient distance along the vein that there may be said to be a continuous mineralization, the quantity of which can be reasonably determined by standard geologic means.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Administrative Procedure
Burden of Proof

When the Government contests a Native allotment application, it bears the burden of going forward with evidence sufficient to establish a prima facie case that the Native allotment applicant did not satisfy the use and occupancy requirements of the Act of May 17, 1906, *as amended*, 43 U.S.C. §§ 270-1 through 270-3 (1970), whereupon the ultimate burden of persuasion rests with the applicant to overcome that case by a preponderance of the evidence. In determining whether the Government has established a prima facie case, an administrative law judge may properly consider the evidence offered by the Government in its case-in-chief together with the evidence presented by a Native village corporation, which, claiming an interest in the land at issue adverse to the applicant, had properly been allowed to intervene in support of the Government's position as a full party in the proceeding.

United States v. Heirs of Pat P. Pestrikoff, 167 IBLA 361 (Feb. 2, 2006).

Administrative Procedure
Burden of Proof

An administrative law judge properly denies a Native allotment application when he correctly concludes that the evidence presented by the Government and the intervenor at a hearing into the validity of the application, considered together, established a prima facie case that the applicant had not satisfied the use and occupancy requirements of the Native Allotment Act, where the applicant, with full knowledge of the potential consequences of the decision, declines to offer any evidence rebutting that case before the close of the hearing record.

United States v. Heirs of Pat P. Pestrikoff, 167 IBLA 361 (Feb. 2, 2006).

Administrative Procedure
Burden of Proof

In reviewing an administrative law judge's decision in a mining contest, we review the record developed before the judge. Post-hearing evidence will be reviewed by this Board only to determine whether another hearing is appropriate.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Administrative Procedure

Burden of Proof

To warrant another hearing, a mining claimant whose claims have been declared invalid for lack of discovery must demonstrate that the evidence proffered on appeal could result in a changed outcome, that is, that the claims are supported by a discovery of a valuable mineral deposit.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Administrative Procedure
Burden of Proof

An appellant carries the burden of showing error in the decision being appealed, failing in which, the decision will be affirmed. Further, an appellant must show adequate reason for appeal with some particularity, and support the allegations with arguments or appropriate evidence showing error.

Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 183 (Mar. 16, 2006).

Administrative Procedure
Burden of Proof

No error is demonstrated by a decision to go forward with a mineral trespass action following a mining contest in which the underlying mining claim was declared invalid. Nothing legally, factually, or procedurally compels BLM to postpone action on the trespass charge until all pending or potential appellate review is concluded. The trespass charge does not depend on the validity of the underlying mining claim, because the essence of the charge is disposal of common variety mineral material without BLM's authorization to do so.

Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 183 (Mar. 16, 2006).

Administrative Procedure
Burden of Proof

An appellant bears the burden of showing error in a BLM decision requiring cessation of operations that would remove mineral materials owned by the United States from the public lands.

Alfred Jay Schritter, 171 IBLA 123 (Feb. 21, 2007).

Administrative Procedure
Burden of Proof

An appellant's argument that an administrative law judge improperly allocated the burden of proof in a hearing on the record of a proposed civil penalty under section 109 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1719 (2000), provides no basis for reversing the judge's decision where the evidence is not in equipoise and BLM preponderated on every material issue.

Grynberg Petroleum Co. v. Bureau of Land Management, 172 IBLA 167 (Aug. 23, 2007).

Administrative Procedure
Burden of Proof

A claimant may overcome the presumption of non-marketability arising from the fact that no production took place on mining claims over a period of years by proving that he could have extracted and sold the mineral at a profit during subsequent periods but for the unavailability of the claims by virtue of a withdrawal. Where the claimant presents only speculative and conjectural evidence suggesting that the claimant could have sold the mineral by postulating that mining costs are "infinitesimally small" or non-material, and hypothesizing a milling operation for which there is no market, the claimant has not overcome the presumption of non marketability or the Government's prima facie case.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Administrative Procedure
Burden of Proof

FOGRMA places the burden on the operator to justify a longer abatement period by informing BLM in a timely manner of circumstances that would prevent timely abatement of a violation identified in a Notice of Incidents of Noncompliance. Where an operator did not request a longer abatement period, in a hearing on the record of a proposed civil penalty, he cannot carry his burden of showing, by a preponderance of the evidence, that the abatement period was inadequate.

Grynberg Petroleum Co. v. Bureau of Land Management, 172 IBLA 167 (Aug. 23, 2007).

Administrative Procedure
Collateral Estoppel

Adjudication of a royalty rate reduction application is not barred by the principal of collateral estoppel, insofar as it concerns a royalty rate reduction application for a time period separate and distinct from an application that was the subject of earlier administrative and judicial litigation between the same parties concerning the same lease.

Union Oil Company of California, 158 IBLA 265 (Feb. 21, 2003).

Administrative Procedure
Decisions

When an appeal is taken from an OSM decision, that office loses jurisdiction over the matter until jurisdiction is restored by final disposition of the appeal by the appellate

body. When, subsequent to an appeal, OSM renders additional conclusions, the Board would normally remand the matter to OSM to recover jurisdiction and properly adopt and render those conclusions. However, where the record in an appeal already contains a clear statement by OSM of its conclusions on each site-specific issue, as well as full briefing by the parties, no purpose would be served by remanding the matter and the Board may exercise its de novo authority to consider whether OSM's conclusions should be adopted.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000).

Administrative Procedure
Decisions

It is incumbent upon BLM to ensure that its decision is supported by a rational basis and that such basis is stated in the written decision, as well as being demonstrated in the Administrative Record accompanying the decision. A BLM decision claiming trespass damages for the unauthorized use of 3 acres of public lands will be set aside and the case remanded where neither the decision nor the case record provide any support for a finding that the trespass encompassed 3 acres.

Parkway Retail Centre, LLC, 154 IBLA 246 (Apr. 4, 2001).

Administrative Procedure
Decisions

Where the Board of Land Appeals has affirmed a determination that various millsites are null and void, BLM correctly takes action to enforce that decision by ordering the cessation of any occupancy of those millsites, absent a decision or order of a Federal court to the contrary.

Robert C. Lefaivre, 155 IBLA 137 (June 20, 2001).

Administrative Procedure
Decisions

When no stay of BLM's decisions voiding unpatented oil shale mining claims pursuant to the Energy Policy Act was sought or granted, they were effective as of the close of the appeal period, and in accordance with the decisions, those mining claims were void and ceased to exist. In that circumstance, payment of yearly claim fees while the appeals were pending before this Board would be directly contrary to, and inconsistent with, the voidance decisions.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Administrative Procedure
Decisions

When a decision declaring unpatented oil shale claims null and void pursuant to the Energy Policy Act is reversed by this Board, the claims are restored to the claim holder *nunc pro tunc*, as if the decision had never been issued. Upon reinstatement of the oil shale claims, the obligation to maintain them as provided by the Energy Policy Act is also revived, including the obligation to pay the maintenance fees "per claim per year" for each year of the claim's existence.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Administrative Procedure
Decisions

Because the Energy Policy Act does not expressly provide for automatic forfeiture or conclusive abandonment of an oil shale claim for failure to comply with a mandatory requirement, the appropriate course of action is to provide a party an opportunity to comply with that Act. Where a party fails or refuses to come into compliance after receiving notice of maintenance fees that are due, BLM properly may declare such oil shale claims null and void.

Jerry D. Grover d.b.a. *Kingston Rust Development (Grover III)*, 160 IBLA 234 (Dec. 22, 2003).

Administrative Procedure
Decisions

Section 504(g) of the Federal Land Policy and Management Act of 1976, *as amended* (FLPMA), 43 U.S.C. § 1764(g) (2000), and section 28(*l*) of the Mineral Leasing Act, *as amended* (MLA), 30 U.S.C. § 185(*l*) (2000), require a right-of-way applicant to reimburse the United States for the reasonable administrative and other costs incurred in processing the application and in related inspection and monitoring of the right-of-way. BLM regulations for FLPMA and MLA rights-of-way establish cost recovery categories based upon the expenditure of government resources in processing the applications. BLM decisions determining that applications for an access road right-of-way issued pursuant to FLPMA, and for an oil and gas pipeline right-of-way issued under the MLA, covering exactly the same ground, both fall under cost recovery Category III will be set aside and remanded where (1) BLM's decisions do not explain how BLM determined that two field examinations were required for each application, and (2) the supplementary record provided by BLM documenting the performed field examinations does not establish what examinations actually took place for each right-of-way application and/or were necessary to verify the data available in the BLM office or furnished by the applicant.

Yates Petroleum Corp., 163 IBLA 300 (Oct. 29, 2004).

Administrative Procedure
Decisions

A standard for identifying leasable minerals and classifying public lands for possible disposal, that was later used by BLM to identify potash enclaves under a subsequently issued secretarial order is subject to challenge and review by the Interior Board of Land Appeals to determine whether BLM properly identified and periodically revised such enclaves based upon its consideration of "existing technology and economics," under and as required by the then applicable Secretarial Order, 51 FR 39425 (Oct. 28, 1986).

IMC Kalium Carlsbad, Inc., Potash Association of New Mexico; Yates Petroleum Corporation; Pogo Producing Company; Bureau of Land Management, 170 IBLA 25 (Sept. 7, 2006).

Administrative Procedure
Decisions

Since a potash enclave under the Secretarial Order must be identified based on potash ore that is mineable under existing economics and "known to exist," whereas a "life-of-the-mine reserve" (LMR) under state law does not consider economics and is based only on the "reasonable belief" of a potash lessee, BLM abrogates its duties under the Secretarial Order to consider economics and resources known to exist by relying exclusively upon LMR determinations to identify a potash enclave.

IMC Kalium Carlsbad, Inc., Potash Association of New Mexico; Yates Petroleum Corporation; Pogo Producing Company; Bureau of Land Management, 170 IBLA 25 (Sept. 7, 2006).

Administrative Procedure
Decisions

Since BLM must identify and periodically revise a potash enclave based on currently available data in consideration of "existing technology and economics," it must review and periodically evaluate current technology and economics in order to identify potash enclaves properly and in the manner prescribed by the Secretarial Order.

IMC Kalium Carlsbad, Inc., Potash Association of New Mexico; Yates Petroleum Corporation; Pogo Producing Company; Bureau of Land Management, 170 IBLA 25 (Sept. 7, 2006).

Administrative Procedure
Decisions

The Secretarial Order requires that potash enclaves be identified based on existing economics, but since the record fails to demonstrate how (if at all) royalties and royalty rate reductions were considered by BLM in identifying potash enclaves, BLM must determine on remand whether and, if so, how best to consider royalties and royalty reductions in its enclave decisionmaking under the Secretarial Order.

IMC Kalium Carlsbad, Inc., Potash Association of New Mexico; Yates Petroleum Corporation; Pogo Producing Company; Bureau of Land Management, 170 IBLA 25 (Sept. 7, 2006).

Administrative Procedure

Decisions

When establishing and locating a drilling island ("consistent with present directional drilling capabilities") under the Secretarial Order's enclave policy, BLM must consider whether reasonably available direction drilling technologies and techniques can reach the intended target, but it need not consider drilling economics or the economic feasibility of directionally drilling a particular well from a specific location in the Potash Area.

Imc Kalium Carlsbad, Inc., Potash Association of New Mexico; Yates Petroleum Corporation; Pogo Producing Company; Bureau of Land Management, 170 IBLA 25 (Sept. 7, 2006)

Administrative Procedure
Decisions

Applications for permits to drill may be denied pursuant to the oil and gas lease stipulations of the Secretarial Order if BLM determines that contamination from oil and gas drilling will occur, that such contamination cannot be prevented, and that this contamination will interfere with potash mining, result in undue potash waste, or constitute a hazard to potash mining.

IMC Kalium Carlsbad, Inc., Potash Association of New Mexico; Yates Petroleum Corporation; Pogo Producing Company; Bureau of Land Management, 170 IBLA 25 (Sept. 7, 2006).

Administrative Procedure
Hearings

A BLM decision assessing fees and damages for the unauthorized use of public land will be set aside and referred for a hearing where the record contains significant unresolved factual and legal issues concerning whether the subject land was created by accretion or avulsion and who has title to the land.

Sydney Dowton, 154 IBLA 291 (Apr. 19, 2001).

Administrative Procedure
Hearings

Departmental regulations do not guarantee every recipient of an adverse BLM decision the right to a hearing. The language of 43 U.S.C. § 1732(c) (1994), allowing for revocation or suspension of a special recreation use permit after "notice and hearing," does not require a formal hearing before an administrative law judge; a special recreation permittee's hearing rights under that section are satisfied when the permittee is given notice of BLM's adverse decision and afforded the right to appeal to the Interior Board of Land Appeals. Although a hearing may be ordered when a question of fact is presented that cannot be resolved on the basis of a written case record, as supplemented by documents or affidavits submitted on appeal, the burden of proof lies with the party requesting the hearing to show adequate evidence or offer of proof to raise adequate doubt that a hearing should be ordered.

Obsidian Services Inc, 155 IBLA 239 (July 19, 2001).

Administrative Procedure
Hearings

The Board will not affirm an indirect cost assessment associated with prosecution of a trespass action by BLM where BLM has not itemized and justified the basis for the assessment in the Administrative Record.

Caughman Lumber, Inc., 157 IBLA 192 (Sept. 19, 2002).

Administrative Procedure
Hearings

The regulation at 43 C.F.R. § 4.470(b) is a codification of the doctrine of "administrative finality," the administrative counterpart of *res judicata*, which normally precludes reconsideration in a subsequent case of matters finally resolved for the Department in an earlier appeal. A precondition for the application of the doctrine is that the matter raised in the subsequent proceeding was one distinctly put in issue and directly determined in the earlier appeal, as reflected in the language of 43 C.F.R. § 4.470(b) providing that a party who fails to appeal a BLM final grazing decision be barred thereafter from challenging "the matters adjudicated in that final decision." Where a party failed to appeal a final BLM grazing decision rejecting his application for a grazing permit on the grounds that the permitted use he sought was not available (but not mentioning cancellation of his grazing preference), that party's successor-in-interest is not barred under 43 C.F.R. § 4.470(b) from appealing a subsequent final BLM decision declaring the party's grazing preference canceled for failure to comply with the notice requirements of 43 C.F.R. § 4110.2-3.

James G. Katsilometes v. Bureau of Land Management, 157 IBLA 230 (Oct. 4, 2002).

Administrative Procedure
Hearings

A decision of an administrative law judge dismissing a grazing appeal for lack of standing is properly set aside where the party appealing is adversely affected by a BLM final grazing decision rejecting his protest.

James G. Katsilometes v. Bureau of Land Management, 157 IBLA 230 (Oct. 4, 2002).

Administrative Procedure
Hearings

When the record before the Board on appeal discloses the existence of material issues of fact unresolved by the record, the decision is properly set aside and the case referred to an administrative law judge for an evidentiary hearing.

Samedan Oil Corp., Aera Energy LLC, 163 IBLA 63 (Sept. 7, 2004).

Administrative Procedure
Hearings

When the record before the Board on appeal discloses the existence of material issues of fact unresolved by the record, the decision is properly set aside and the case referred to an administrative law judge for an evidentiary hearing.

Mark Patrick Heath, 163 IBLA 381 (Nov. 10, 2004).

Administrative Procedure
Hearings

Although the Board has discretionary authority to order a hearing before an administrative law judge, it normally will order a hearing when an appellant presents an issue of material fact requiring resolution through the introduction of testimony and other evidence not readily obtainable through ordinary appeals procedures. Where an appellant seeks to elicit testimony which could not be probative of whether lands constituted the "smallest practicable tract . . . enclosing land actually used in connection with the administration of [a] Federal installation," within the meaning of ANCSA section 3(e), the Board will not order a hearing to determine whether the lands were public lands withdrawn for Native village selection under ANCSA section 11(a)(1). 43 U.S.C. §§ 1602(e) and 1610(a)(1) (2000).

Kawerak, Inc. 165 IBLA 94 (Mar. 18, 2005).

Administrative Procedure
Hearings

Although there is no right to a hearing before an administrative law judge on a protest against a survey, a BLM decision dismissing a protest against a survey of an island will be set aside and referred for a hearing where the record discloses significant unresolved factual issues as to whether the island was actually in existence at the time of the admission to the Union of the state within which the island is situated.

State of South Dakota, 166 IBLA 210 (July 27, 2005).

Administrative Procedure
Hearings

Where the testimony of an expert is excluded and an offer of proof under 43 C.F.R. § 4.435 shows that no new facts would have been presented and that the matters on which the expert would have testified were thoroughly raised by others, the affected party has failed to establish prejudice or that the Administrative Law Judge otherwise abused her discretion in excluding this expert's testimony.
IMC Kalium Carlsbad, Inc., Potash Association of New Mexico; Yates Petroleum Corporation; Pogo Producing Company; Bureau of Land Management, 170 IBLA 25 (Sept. 7, 2006).

Administrative Procedure
Hearings

An Administrative Law Judge has no authority to invalidate an otherwise valid BLM grazing trespass decision based on proof of improper motive on the part of a BLM official or employee involved in the development or issuance of the decision.

Frank Robbins and High Island Ranch v. Bureau of Land Management, 170 IBLA 219 (Sept. 26, 2006).

Administrative Procedure
Hearings

Evidence may be introduced to establish or challenge the credibility of testifying witnesses, but such evidence should be considered only in the context of testimony relevant to the facts at issue in the hearing.

Frank Robbins and High Island Ranch v. Bureau of Land Management, 170 IBLA 219 (Sept. 26, 2006).

Administrative Procedure
Judicial Review

Subject to Secretarial review, a decision by the Interior Board of Land Appeals is final for the Department. If the Board's decision is appealed to Federal court, the Board must be able to certify that the record it submits to the court is the complete record that it reviewed and upon which its decision was based.

Silverado Nevada, Inc., 152 IBLA 313 (June 22, 2000).

Administrative Procedure
Rulemaking

When a federal agency issues a directive concerning the future exercise of its discretionary power, for purposes of the APA, 5 U.S.C. § 553, its directive will either constitute a substantive rule, for which notice-and-comment procedures are required, or a general statement of policy, for which they are not.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Administrative Procedure
Rulemaking

When an agency applies a policy in a particular situation, it must be prepared to support the policy just as if the policy statement had never been issued. An agency cannot escape its responsibility to present evidence and reasoning supporting its substantive rules by announcing binding precedent in the form of a general statement of policy.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Administrative Procedure
Rulemaking

If a directive denies the decisionmaker the discretion in the area of its coverage, the statement is binding, and creates rights or obligations. For the purposes of 5 U.S.C. § 553, whether a statement is a rule with binding effect depends on whether the statement constrains the agency's discretion. Even though an agency may assert that a statement is not binding, the courts have recognized that the agency's pronouncements can, as a practical matter, have a binding effect. If an agency acts as if a document is controlling and treats the document in the same manner as it treats a regulation or published rule, or bases enforcement actions on the policies or interpretations formulated in the document, or leads private parties or other authorities to believe that they must comply with the terms of the document, the agency document is, for all practical purposes, binding.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Administrative Procedure
Standing

A motion to dismiss an appeal of the record of decision approving a coal bed methane project for lack of standing based on the assertion that the appellant is not adversely affected because the decision does not approve any on-the-ground operations will be denied when the decision approves a massive development on public lands with on-the-ground consequences.

William E. Love, 151 IBLA 309 (Jan. 13, 2000).

Administrative Procedure
Standing

The Board cannot consider (a) general complaints against 20 years of implementation of a statute involving parties, facts, and evidence not in the record; (b) matters of general interest to the appellant which do not adversely affect it; or (c) challenges to acts of Congress, which are properly brought to the judicial branch.

Mack Energy Corporation, 153 IBLA 277 (Sept. 22, 2000).

Administrative Procedure
Standing

A motion by BLM to dismiss an appeal of a natural gas development project by an overriding royalty interest holder in Federal oil and gas leases will be denied when the holder demonstrates that he is a party to the case and that design features of the approved project may preclude natural gas well development on tracts in which he holds an interest and potentially reduce overriding royalties received.

Fred E. Payne, Randy D. Leader, 159 IBLA 69 (May 20, 2003).

Administrative Procedure
Standing

In order to become a "party to a case" involving BLM's consideration of a land exchange pursuant to section 206 of FLPMA, a third party must file a timely protest of the proposed exchange as provided in 43 C.F.R. § 2201.7-1(b) following BLM's issuance of a notice of its decision. Where a party fails to do so, its appeal from a subsequent

BLM decision denying timely-filed protests by other parties and proceeding with the exchange is properly dismissed for lack of standing under 43 C.F.R. § 4.410(a), as it was not a party to the case.

Committee for Idaho's High Desert, 159 IBLA 370 (July 16, 2003).

Administrative Procedure
Standing

Under 43 C.F.R. § 4.410(a), in order to have standing to appeal a BLM decision dismissing a protest to the offering of multiple parcels at a competitive oil and gas lease sale, the appellant must be a party to the case and be adversely affected by the dismissal decision. Dismissal of the protest establishes that the appellant is a party to the case; however, the appellant may appeal the dismissal only as to those parcels for which it can establish that it is adversely affected.

Center for Native Ecosystems Forest Guardians, 163 IBLA 86 (Sept. 7, 2004).

Administrative Procedure
Standing

The regulations at 43 C.F.R. § 4.410(d) provide that "[a] party to a case is adversely affected, as set forth in paragraph (a) of this section, when that party has a legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest." While use of the land in question may constitute such a legally cognizable interest, a legally cognizable interest must exist as of the time of issuance of the decision being appealed in order to have standing to appeal under 43 C.F.R. § 4.410(a). Thus, when an appellant asserts use of the land in question in support of its standing to appeal, the asserted use must have taken place on or before the date of issuance of the decision being appealed.

Center for Native Ecosystems Forest Guardians, 163 IBLA 86 (Sept. 7, 2004).

Administrative Procedure
Standing

Board of Land Appeals regulations at 43 C.F.R. § 4.410(a) require that the appellant be a party to the case and be adversely affected by a decision. Where the appellant fails to identify specific facts giving rise to a conclusion of adverse effect, the appeal will be dismissed for lack of standing. The appellant fails to show standing to appeal a decision regarding the placement of excess horses removed from and no longer located on the public lands, by alleging impacts to its members' interest in seeing horses remain on the public lands.

The Fund for Animals, Inc., 163 IBLA 172 (Sept. 24, 2004).

Administrative Procedure
Standing

Any person whose interest is adversely affected by a final BLM grazing decision may appeal that decision. It is not necessary that the person protest the proposed grazing decision in order to be entitled to appeal the final decision.

Western Watersheds Project v. Bureau of Land Management, 164 IBLA 300 (Jan. 24, 2005).

Administrative Procedure
Standing

The "party to a case" requirement for standing to appeal to the Board under 43 C.F.R. § 4.410(a) does not apply directly to grazing appeals to an administrative law judge under 43 C.F.R. § 4.470. However, any person entitled to appeal to an administrative law judge under 43 C.F.R. § 4.470 would, in fact, be a party to a case under 43 C.F.R. § 4.410 with respect to an appeal to the Board from the administrative law judge's decision, because that person would have participated in the process leading to the administrative law judge's decision under appeal.

Western Watersheds Project v. Bureau of Land Management, 164 IBLA 300 (Jan. 24, 2005).

Administrative Procedure
Standing

In order to have a right to appeal a BLM decision, a person or organization must be a "party to a case" and must be "adversely affected" by the decision. 43 C.F.R. § 4.410 (a). A party may show adverse effect through evidence of use of the lands in question. A party may also show it is adversely affected by setting forth a legally cognizable interest, in resources or in other land, affected by a decision and showing how the decision has caused or is substantially likely to cause injury to those interests. 43 C.F.R. § 4.410(d).

The Coalition of Concerned National Park Retirees, et al. 165 IBLA 79 (Mar. 14, 2005).

Administrative Procedure
Standing

A party who claims a property interest in land affected by a BLM decision approving for conveyance land that has been selected by a Native village corporation and who has participated in administrative proceedings leading to that decision has a right of appeal to the Board under 43 C.F.R. § 4.410(b) (2002).

Kawerak, Inc., 165 IBLA 94 (Mar. 18, 2005).

Administrative Procedure
Standing

Where petitioner's mining claim was located for the same building stone which is to be disposed of as a common variety mineral material pursuant to a sales contract issued under the Materials Act, *as amended*, 30 U.S.C. §§ 601-604 (2000), and the sale tract is within petitioner's mining claim, petitioner is a party to the case and

adversely affected by BLM's decision, and therefore has standing to appeal the material sale.

Cambrillic Natural Stone Unique Minerals, Inc. (On Reconsideration), 165 IBLA 140 (Mar. 28, 2005).

Administrative Procedure
Standing

Under 43 C.F.R. § 3185.1, a party may request State Director Review in accordance with 43 C.F.R. § 3165.3(b), if it is adversely affected by a decision, order, or instruction issued under the unit agreement regulations. A person who has received, in accordance with provisions of the unit agreement, notice of the expansion of a unit and has filed objections to that expansion, may request State Director Review of a BLM decision approving expansion, if that person is adversely affected by the decision.

Three Forks Ranch, Inc., 171 IBLA 323 (June 28, 2007).

Administrative Procedure
Standing

An appellant must establish that he will, or is substantially likely to, suffer injury or harm to a legally cognizable interest in order to be adversely affected by a BLM decision. The interest need not be an economic or a property interest and, generally, it is sufficient that an organization show that its members use the public land in question. Stipulations and mitigation measures added to a permit may serve to minimize environmental impacts or prevent significant environmental impacts from occurring, but do not mean that the action approved will have no effect on the land, waters, or wildlife of the area and, therefore, do not preclude an appellant from being adversely affected by a decision to issue a permit to undertake the action.

Missouri Coalition for the Environment Heartwood, 172 IBLA 226 (Sept. 5, 2007).

Administrative Procedure
Standing

Standing to appeal to the Board under the appeal regulations at 43 C.F.R. § 4.410 requires that a party to the case be adversely affected by a decision of the authorized officer. When any adverse impact is contingent upon some future authorization which is uncertain, an appeal is properly dismissed as premature.

Seldovia Native Association, 161 IBLA 279 (May 12, 2004).

Administrative Review
Generally

BLM properly dismisses a protest against an oil and gas lease sale based on assertions of the wilderness character of the lands, because the final administrative determination that the land was not wilderness in character was made in the 1980's. Even where the land has been proposed for wilderness designation in pending legislation, BLM may properly administer those lands for other purposes, where the land has not been included in a wilderness study area. Because the time for taking appeals from inventory decisions has long since passed, the doctrine of administrative finality precludes appellants from challenging those decisions by filing protests against actions taken by BLM to administer the land for other purposes.

Colorado Environmental Coalition, The Wilderness Society, Sierra Club, 162 IBLA 293 (Aug. 17, 2004).

Administrative Review
Generally

When the decision of an administrative law judge declaring placer mining claims invalid was not stayed during the pendency of the appeal, there were no mining claims on which mining operations could be conducted, and thus nothing to which a mining plan of operations could pertain. In these circumstances, a BLM decision revoking the plans of operations for the invalid mining claims will be upheld. When the revocation of a plan of operations for an invalid mining claim is affirmed on appeal, an appeal of an earlier BLM decision finding that operations exceeded the scope of the approved plan of operations and requiring the submission of a new plan of operations is properly declared moot, and the appeal of that decision is properly dismissed as moot.

Pass Minerals, Inc., K. Ian Matheson, Kiminco, Inc., 168 IBLA 164 (Mar. 16, 2006).

Administrative Review
Generally

When the Board has previously considered and rejected the same arguments urged in the present appeal, and an appellant does not file supplemental briefing to address the impact of that earlier decision, appellant has not shown that the arguments expressly considered and rejected in the previous decision remain viable in these cases. In such circumstances, the Board properly concludes that the earlier decision is dispositive.

Wyoming Outdoor Council, Wyoming Wildlife Federation, 170 IBLA 240 (Sept. 29, 2006).

Administrative Review
Administrative Finality

BLM properly dismisses a protest against an oil and gas lease sale based on assertions of the wilderness character of the lands, because the final administrative determination that the land was not wilderness in character was made in the 1980's. Even where the land has been proposed for wilderness designation in pending legislation, BLM may properly administer those lands for other purposes, where the land has not been included in a wilderness study area. Because the time for taking appeals from inventory decisions has long since passed, the doctrine of administrative finality precludes appellants from challenging those decisions by filing protests against actions taken by BLM to administer the land for other purposes.

Colorado Environmental Coalition, The Wilderness Society, Sierra Club, 162 IBLA 293 (Aug. 17, 2004).

Administrative Review
State Director Review

Under 43 C.F.R. § 3809.806(a), if the BLM State Director does not make a decision within 21 days of receipt of a request for State Director review, the applicant is to consider the request denied and may appeal the original BLM decision to the Board of Land Appeals. However, neither that regulation nor any other regulation in 43 C.F.R. Subpart 3809 imposes any specific deadline for filing such an appeal.

Ferrell Anderson, 171 IBLA 289 (May 25, 2007).

Airports

Departmental regulation 43 C.F.R. § 4.410 provides a right of appeal to the Board to any party adversely affected by a decision of an officer of the Bureau of Land Management but not the agencies of other Departments. When BLM issues a decision approving issuance of an airport lease to enable the operator of an airport to extend runways from land owned by the airport onto public land based in part on an environmental assessment approved by the Federal Aviation Administration, and the party appealing BLM's decision alleges injury arising from airport operations, that party will be deemed to have been adversely affected by the FAA decision rather than that of BLM. On appeal, the Board will only consider those adverse effects and issues which the appellant has identified that have a nexus to BLM's decision that is distinct from the issues decided by the FAA.

Las Vegas Valley Action Committee et al., 156 IBLA 110 (2001).

Airports

BLM's determination of the annual rental for an airport lease on public lands, based on its appraisal of the fair market rental value of the lease, will be upheld where the lessee fails to demonstrate, by a preponderance of the evidence, that the appraisal was flawed in its methodology, analysis, or conclusions, or otherwise fails to demonstrate that BLM did not properly assess the fair market rental value.

Spanish Springs Pilots Association, Inc., 167 IBLA 284 (Dec. 28, 2005).

Airports

In the absence of a showing that a party has a legally-cognizable right to drive cattle across lands to be conveyed to a county under the the Airport and Airways Improvement Act of 1982 and in the presence of indications that there is in fact no such right, BLM is not obligated to place a reservation in the conveyance to the county guaranteeing use of a grazing corridor or stock lane

William J. & Grace Gandolfo, 161 IBLA 7 (Mar. 2, 2004).

Airports

When the FAA files a request with BLM under section 516 of the Airport and Airway Improvement Act of 1982 to convey Federally-owned lands covered by a public airport, 43 C.F.R. § 2641.2(a) dictates that BLM must complete the requested conveyance unless it is inconsistent with the needs of the Department. Where BLM determines that the conveyance (1) is consistent with its resource management plan, (2) will not result in environmental harm and unnecessary or undue degradation of the public land, and (3) will promote the public interest of citizens in the area of the airport, BLM has demonstrated that the conveyance is not inconsistent with the needs of the Department and properly decides to make the conveyance.

William J. & Grace Gandolfo, 161 IBLA 7 (Mar. 2, 2004).

Airports

A BLM decision to issue a conveyance to a county under the Airport and Airways Improvement Act of 1982 will be affirmed where BLM has prepared an environmental assessment taking a "hard look" at the environmental consequences of the proposal, and reasonable alternatives thereto.

William J. & Grace Gandolfo, 161 IBLA 7 (Mar. 2, 2004).

Airport Site Leases
Lease Terms
Lease Amendments
Rental Rate

BLM's grant of a 15-year airport site lease in 1963 was initially subject to a $15 per year rental rate; but was thereafter amended to a 20-year lease term which was renewed effective February 25, 1983, with an expiration date of February 25, 2003, subject to lease terms and applicable regulations authorizing BLM to reasonably raise the rental if, during any 3-year period, annual gross receipts exceeded $5,000.

Desert Farms, Inc., 151 IBLA 88 (Nov. 8, 1999).

Airport Sites
Lease Rentals
Lease Terms

BLM is bound by a lease provision that does not authorize a rental rate increase during its term unless annual gross receipts exceed $5,000 and, where annual gross receipts did not exceed $5,000, BLM is precluded from applying a 1986 amendment to the airport rental rate regulation providing for a minimum $100 annual payment and fair market value assessment until the lease terminates in 2003.

Desert Farms, Inc., 151 IBLA 88 (Nov. 8, 1999).

Alaska
Generally

Where the State of Alaska fails to appeal a decision finding a native allotment to be legislatively approved the State may not subsequently challenge any of the predicate facts determined by BLM in its initial decision.

State of Alaska Department of Transportation & Public Facilities, 154 IBLA 57 (Nov. 21, 2000).

Alaska
Generally

On the date of Alaska Statehood (Jan. 3, 1959), the State received title to submerged lands forming the bed of navigable rivers within its borders pursuant to the Equal Footing Doctrine, as codified in the Submerged Lands Act of 1953, 43 U.S.C. § 1301 (2000). Lands situated in beds of navigable waterways in the State were not available for selection by regional corporations, pursuant to the Alaska Native Claims Settlement Act. Nevertheless, the State could not receive title to a river "island" that was in existence at the time of Statehood, as it was not then part of the bed of the navigable waterway. The question of whether land was an "island" in 1996 is not controlling, as an "island" that emerged from the riverbed after Statehood in 1959 would belong to the State.

State of Alaska, 167 IBLA 250 (Dec. 2, 2005).

Alaska
Generally

A BLM decision implicitly determining that lands within the Copper River were an "island" (and thus were situated above the ordinary high water mark at the time of Alaska Statehood on January 3, 1959) will be set aside where the record does not contain evidence or analysis supporting that determination.

State of Alaska, 167 IBLA 250 (Dec. 2, 2005).

Alaska
Generally

Where an applicant for a Native allotment voluntarily and knowingly relinquishes his application as to a portion of the lands applied for, he loses a portion of his entitlement corresponding to the portion that he relinquishes.

Mack Wiehl (Heir of Alfred M. Wiehl), 169 IBLA 25 (May 3, 2006).

Alaska
Generally

Section 3 of the Native Allotment Act requires that, in order to qualify for an allotment of up to 160 acres of land, a Native applicant must submit satisfactory proof that he has engaged in "substantially continuous use and occupancy of the land for a period of five years." 43 U.S.C. § 270-3 (1970). The Departmental regulation at 43 C.F.R. § 2561.0-5(a) states that such use and occupancy "contemplates the customary seasonality of use and occupancy by the applicant of any land used by him for his livelihood and well-being and that of his family. Such use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not merely intermittent use." When land is withdrawn from appropriation under the Act, an applicant is required to show he initiated qualifying use and occupancy prior to the withdrawal.

United States v. Frank R. Peterson, 170 IBLA 231 (Sept. 27, 2006).

Alaska
Alaska Native Claims Settlement Act

When a Native allotment applicant alleges that he timely submitted allotment applications for two separate parcels of land with officials of the Bureau of Indian Affairs but the Bureau of Land Management has no record of timely receiving the application for one of the parcels, the applicant will normally be afforded a fact-finding hearing in which he may attempt to show that he did, in fact, make timely application for the parcel in question. However, when the applicant himself presents contradictory evidence as to the filing of the application for the second parcel that undermines his claim that the application was timely filed, BLM properly rejects the application without a hearing.

Gaither D. Paul, 160 IBLA 77 (Sept. 22, 2003).

Alaska
Alaska Native Claims Settlement Act

Where on appeal from a BLM decision rejecting a Native allotment application because the application was not pending before the Department on December 18, 1971, the Board determines that there is a question of fact whether the application was pending on that date, the Board will set aside the BLM decision and refer the case for a hearing before an Administrative Law Judge.

Arthur John, 160 IBLA 211 (Dec. 3, 2003)

Alaska
Alaska Native Claims Settlement Act

A party who claims a property interest in land affected by a BLM decision approving for conveyance land that has been selected by a Native village corporation and who has participated in administrative proceedings leading to that decision has a right of appeal to the Board under 43 C.F.R. § 4.410(b) (2002)

Kawerak, Inc., 165 IBLA 94 (Mar. 18, 2005).

Alaska

Alaska Native Claims Settlement Act

The acquisition and holding of a parcel of land by the United States under the terms of the Reindeer Industry Act of 1937 and the subsequent use of that land by BIA for BIA teacher housing did not constitute a "valid existing right" that precluded the land from being withdrawn for purposes of Native village selection under ANCSA section 11(a)(1), 43 U.S.C. § 1610(a)(1) (2000).

Kawerak, Inc., 165 IBLA 94 (Mar. 18, 2005).

Alaska
Alaska Native Claims Settlement Act

Lands acquired by the United States under the Reindeer Industry Act of 1937 have been available as public lands for withdrawal for selection by a Native village corporation under ANCSA sections 3(e) and 11(a) (1). 43 U.S.C. §§ 1602 (e) and 1610 (a) (1) (2000).

Kawerak, Inc., 165 IBLA 94 (Mar. 18, 2005).

Alaska
Alaska Native Claims Settlement Act

Although the Board has discretionary authority to order a hearing before an administrative law judge, it normally will order a hearing when an appellant presents an issue of material fact requiring resolution through the introduction of testimony and other evidence not readily obtainable through ordinary appeals procedures. Where an appellant seeks to elicit testimony which could not be probative of whether lands constituted the "smallest practicable tract . . . enclosing land actually used in connection with the administration of [a] Federal installation," within the meaning of ANCSA section 3(e), the Board will not order a hearing to determine whether the lands were public lands withdrawn for Native village selection under ANCSA section 11(a)(1). 43 U.S.C. §§ 1602(e) and 1610(a)(1) (2000).

Kawerak, Inc., 165 IBLA 94 (Mar. 18, 2005).

Alaska
Alaska Native Claims Settlement Act

On the date of Alaska Statehood (Jan. 3, 1959), the State received title to submerged lands forming the bed of navigable rivers within its borders pursuant to the Equal Footing Doctrine, as codified in the Submerged Lands Act of 1953, 43 U.S.C. § 1301 (2000). Lands situated in beds of navigable waterways in the State were not available for selection by regional corporations, pursuant to the Alaska Native Claims Settlement Act. Nevertheless, the State could not receive title to a river "island" that was in existence at the time of Statehood, as it was not then part of the bed of the navigable waterway. The question of whether land was an "island" in 1996 is not controlling, as an "island" that emerged from the riverbed after Statehood in 1959 would belong to the State.

State of Alaska, 167 IBLA 250 (Dec. 2, 2005).

Alaska
Alaska Native Claims Settlement Act

A BLM decision implicitly determining that lands within the Copper River were an "island" (and thus were situated above the ordinary high water mark at the time of Alaska Statehood on January 3, 1959) will be set aside where the record does not contain evidence or analysis supporting that determination.

State of Alaska, 167 IBLA 250, (Dec. 2, 2005).

Alaska
Alaska Native Veteran Allotment

The Alaska Native Veterans Allotment Act, 43 U.S.C. § 1629*g* (2000), allows certain Alaska Natives who were on active military duty during a specific period of time to apply for an allotment of not more than two parcels of Federal land totaling 160 acres or less under the Act of May 17, 1906, *as amended*, 43 U.S.C. §§ 270-1 through 270-3 (1970), as that Act was in effect before December 18, 1971. Allotments may be selected only from lands that were vacant, unappropriated, and unreserved on the date the person eligible for the allotment first used and occupied the lands.

Larry M. Evanoff, 162 IBLA 62 (June 29, 2004).

Alaska
Alaska Native Veteran Allotment

BLM properly rejects an Alaska Native Veteran Allotment application, pursuant to the Alaska Native Veterans Allotment Act, 43 U.S.C. § 1629*g* (2000), when at the time the Native initiated use and occupancy of claimed lands those lands were reserved as part of a National Forest, and thus not "vacant, unappropriated, and unreserved," as required by the Act.

Larry M. Evanoff, 162 IBLA 62 (June 29, 2004).

Alaska
Alaska Native Veteran Allotment

The Alaska Native Veterans Allotment Act, *as amended*, 43 U.S.C. § 1629*g* (2000), allows certain Alaska Natives who were on active military duty during a specific period of time to apply for an allotment of not more than two parcels of Federal land totaling 160 acres or less under the Act of May 17, 1906, *as amended*, 43 U.S.C. §§ 270-1 through 270-3 (1970), as that Act was in effect before December 18, 1971. However, the lands applied for must be currently owned by the Federal government. If they are not at the time the application is filed, the application is properly rejected.

Andrew Evan, et al., 164 IBLA 56 (Nov. 18, 2004).

Alaska
Alaska Native Veteran Allotment

The Alaska Native Veterans Allotment Act, *as amended*, 43 U.S.C. § 1629*g* (2000), allows certain Alaska Natives who were on active military duty during a specific period of time to apply for an allotment of not more than two parcels of Federal lands totaling 160 acres or less under the Act of May 17, 1906, *as amended*, 43 U.S.C. §§ 270-1 through 270-3 (1970), as that Act was in effect before December 18, 1971. However, the lands applied for must be currently owned by the Federal government. If they are not at the time the application is filed, the application is properly rejected under 43 C.F.R. § 2568.90(a)(1).

James Duley, 164 IBLA 172 (Dec. 13, 2004).

Alaska
Alaska Native Veteran Allotment

BLM properly rejects an Alaska Native Veteran Allotment application, pursuant to the Alaska Native Veterans Allotment Act, 43 U.S.C. § 1629*g* (2000), when at the time of the filing of the application, the lands had previously been conveyed outside the ownership of the United States.

Herbert Dennis Ivey, 164 IBLA 232 (Jan. 6, 2005).

Alaska
Alaska Native Veteran Allotment

Section 905(a)(1)(A) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1634(a)(1)(A) (2000), providing for legislative approval of Alaska Native allotment applications pending before the Department of the Interior on December 18, 1971, for land within the National Petroleum Reserve-Alaska, does not apply to an Alaska Native Veteran allotment application filed pursuant to the Alaska Native Veterans Allotment Act, *as amended*, 43 U.S.C. § 1629*g* (2000), for land within that reserve.

Bart G. Ahsogeak, et al., 167 IBLA 148 (Oct. 26, 2005).

Alaska
Alaska Native Veteran Allotment

BLM properly rejects an Alaska Native Veteran allotment application filed pursuant to the Alaska Native Veterans Allotment Act, *as amended*, 43 U.S.C. § 1629*g* (2000), when, at the time the Native applicant initiated use and occupancy, the claimed lands were set apart and reserved as part of the National Petroleum Reserve-Alaska, and, therefore, were not "vacant, unappropriated, and unreserved," as required by the Act.

Bart G. Ahsogeak, et al, 167 IBLA 148 (Oct. 26, 2005).

Alaska
Alaska Native Veteran Allotment

BLM properly rejects an Alaska Native Veteran allotment application filed pursuant to the Alaska Native Veterans Allotment Act, *as amended*, 43 U.S.C. § 1629*g* (2000), when the Alaska Native had applied for the same lands under the Act of May 17, 1906, *as amended*, 43 U.S.C. §§ 270-1 through 270-3 (1970), and the Department had determined with finality that the Native did not establish qualifying use and occupancy of those lands.

John J. Estabrook, 167 IBLA 226 (Nov. 17, 2005).

Alaska
Alaska Native Veteran Allotment

When it passed section 306 of the Alaska Land Transfer Acceleration Act of 2004, amending 43 U.S.C. § 1629g(b) (2000), Congress acted with the manifest intent to remove from the Department of Veterans Affairs the sole authority to determine whether a decedent, on whose behalf an application for an allotment under the Alaska Native Veterans Allotment Act had been filed, died as a direct consequence of a wound received in action in South East Asia during the specified time period and vested in the Secretary of the Interior the same authority to make such a determination "based on other evidence acceptable to the Secretary." 43 C.F.R. § 2568.60(b) (2004), which has not been amended to reflect the statutory change, does not prevent BLM, acting for the Secretary, from considering other evidence to make such a determination without referring the matter to the Department of Veterans Affairs.

Alice Rock, et al., 168 IBLA 54 (Mar. 14, 2006).

Alaska
Alaska Native Veteran Allotment

When BLM rejects an Alaska Native Veterans Allotment Act application filed by a Special Administrator or Personal Representative of a deceased Native veteran because the application and information filed in support thereof show that the deceased veteran is not eligible for an allotment under 43 U.S.C. § 1629g(b)(2)(A), *amended by* section 306 of the Alaska Lands Transfer Acceleration Act of 2004, the due process rights of the applicant are protected by the right to appeal that determination to the Board of Land Appeals.

Alice Rock, et al., 168 IBLA 54 (Mar. 14, 2006)

Alaska
Alaska Native Veteran Allotment

The Alaska Native Veterans Allotment Act, *as amended*, 43 U.S.C. § 1629g (2000), permits Alaska Natives who are veterans who served in the U.S. military under prescribed circumstances between January 1, 1969, and December 31, 1971, an open season in which to apply for a Native allotment under the Act of May 17, 1906, the

Alaska Native Allotment Act, formerly codified at 43 U.S.C. §§ 270-1 through 270-3 (1970). BLM properly rejects a Native allotment application where the applicant began use and occupancy on a date after the repeal of the Act of May 17, 1906. Allegations that use and occupancy began in 1973 or 1980 do not qualify an Alaska Native veteran to apply for land "under the Act of May 17, 1906 . . . as such Act was in effect before December 18, 1971," or make him a person who "would have been eligible for an allotment under the Act of May 17, 1906." 43 U.S.C. § 1629g(a)(1) and (b)(1)(A) (2000).

Burkher M. Ivanoff, Evan Nick, 169 IBLA 83 (May 23, 2006).

Alaska
Alaska Native Veteran Allotment

The Alaska Native Veterans Allotment Act, *as amended*, 43 U.S.C. § 1629g (2000), provided an opportunity to those who may have missed the deadline to apply for a Native allotment pursuant to the Alaska Native Allotment Act of May 17, 1906, formerly codified at 43 U.S.C. § 270-1 through 270-3 (1970); it did not extend an opportunity to relitigate principles well settled under the 1906 Act. An assertion that independent use and occupancy potentially exclusive of others began in 1980 does not qualify an Alaska Native veteran to apply for land "under the Act of May 17, 1906 . . . as such Act was in effect before December 18, 1971," or make him a person who "would have been eligible for an allotment under the Act of May 17, 1906." 43 U.S.C. § 1629g(a)(1) and (b)(1)(A) (2000).

David O. Osterback, 169 IBLA 230 (June 29, 2006).

Alaska
Alaska Native Veteran Allotment

The Alaska Native Veterans Allotment Act, 43 U.S.C. § 1629g (2000), allows Alaska Natives who were on active military duty during a specific period of time to apply for an allotment under the Alaska Native Allotment Act of May 17, 1906, *as amended*, formerly codified at 43 U.S.C. §§ 270-1 through 270-3 (1970), as that Act was in effect before December 18, 1971. Allotments may be selected only from lands that were vacant, unappropriated, and unreserved on the date the person eligible for the allotment first used and occupied the lands.

Irving P. Sheldon, 169 IBLA 276 (July 27, 2006).

Alaska
Alaska Native Veteran Allotment

Presidential Proclamation 37 (Aug. 20, 1902) reserved from settlement, entry, or sale certain described public lands in Alaska for the Alexander Archipelago Forest Reserve (later merged into the Tongass National Forest). One seeking an Alaska Native Veteran Allotment for lands within that forest reservation may not rely on the possession and occupancy of relatives predating the Proclamation as excepting the lands from that reservation, as such possession and occupancy amounted only to an inchoate preference right.

Irving P. Sheldon, 169 IBLA 276 (July 27, 2006).

Alaska
Alaska Native Veteran Allotment

BLM properly rejects an application pursuant to the Alaska Native Veterans Allotment Act, 43 U.S.C. § 1629g (2000), when, at the time the Alaska Native veteran initiated use and occupancy of the claimed lands, those lands were reserved as part of a National Forest, and thus were not "vacant, unappropriated, and unreserved," as required by the Act of May 17, 1906.

Irving P. Sheldon, 169 IBLA 276 (July 27, 2006).

Alaska
Alaska Native Veteran Allotment

BLM properly rejects an Alaska Native veteran allotment application, pursuant to the Alaska Native Veterans Allotment Act, *as amended*, 43 U.S.C. § 1629g (2000), after notifying the applicant that it found "correctable errors," when the applicant fails to make the corrections within the specified time. 43 C.F.R. § 2568.81.

Andrey Mandregan, Jr., 170 IBLA 19 (Aug. 30, 2006).

Alaska
Alaska Native Veteran Allotment

The purpose of the requirement that a Native applicant file an Alaska Native veteran allotment application, pursuant to the Alaska Native Veterans Allotment Act, *as amended*, 43 U.S.C. § 1629g (2000), "with a sufficient description to identify the lands" is to allow BLM to determine both whether the applicant is qualified and whether the land is available for conveyance. 43 C.F.R. § 2568.78; 43 C.F.R. § 2091.0-5; 43 C.F.R. § 2568.80; 43 C.F.R. § 2568.90.

Andrey Mandregan, Jr., 170 IBLA 19 (Aug. 30, 2006).

Alaska
Alaska Native Veteran Allotment

In order to be eligible for an allotment under the Alaska Native Veterans Allotment Act (ANVAA), *as amended*, 43 U.S.C. § 1629g (2000), an applicant must have filed an application between July 31, 2000, and January 31, 2002, with the BLM Alaska State Office in Anchorage, Alaska. An applicant who delivered an application to a different bureau or office is not eligible unless BLM's Alaska State Office received the application by January 31, 2002, or the envelope containing that application is postmarked by that date.

John Jones, 170 IBLA 281 (Oct. 30, 2006).

Alaska

Alaska Native Veteran Allotment

BLM properly rejects an application under the Alaska Native Veterans Allotment Act, *as amended*, 43 U.S.C. § 1629g (2000), if it was postmarked after January 31, 2002, absent a persuasive explanation supported by satisfactory corroborating evidence, typically by a postal official.

John Jones, 170 IBLA 281 (Oct. 30, 2006).

Alaska
Alaska Native Veteran Allotment
Deceased Veteran

When it passed section 306 of the Alaska Land Transfer Acceleration Act of 2004, amending 43 U.S.C. § 1629g(b) (2000), Congress acted with the manifest intent to remove from the Department of Veterans Affairs the sole authority to determine whether a decedent, on whose behalf an application for an allotment under the Alaska Native Veterans Allotment Act had been filed, died as a direct consequence of a wound received in action in South East Asia during the specified time period and vested in the Secretary of the Interior the same authority to make such a determination "based on other evidence acceptable to the Secretary." 43 C.F.R. § 2568.60(b) (2004), which has not been amended to reflect the statutory change, does not prevent BLM, acting for the Secretary, from considering other evidence to make such a determination without referring the matter to the Department of Veterans Affairs.

Alice Rock, et al., 168 IBLA 54 (Mar. 14, 2006).

Alaska
Alaska Native Veteran Allotment
Deceased Veteran

When BLM rejects an Alaska Native Veterans Allotment Act application filed by a Special Administrator or Personal Representative of a deceased Native veteran because the application and information filed in support thereof show that the deceased veteran is not eligible for an allotment under 43 U.S.C. § 1629g(b)(2)(A), *amended by* section 306 of the Alaska Lands Transfer Acceleration Act of 2004, the due process rights of the applicant are protected by the right to appeal that determination to the Board of Land Appeals.

Alice Rock, et al., 168 IBLA 54 (Mar. 14, 2006).

Alaska
Land Grants and Selections

Even after a hearing by an Administrative Law Judge, the Board has authority to conduct de novo review of a record in the context of a decision involving an applicant for a Native allotment. This authority includes all the powers which the Secretary would have in making the initial decision.

United States v. Heirs of Harry McKinley, 169 IBLA 184 (June 27, 2006).

Alaska
Land Grants and Selections

The fact that a Native allotment application had been rejected without an APA hearing does not necessarily establish that the application is properly reinstated under section 905(a) of ANILCA, 43 U.S.C. § 1634(a) (2000). Mere application for a parcel of land, without occupancy, does not establish a preference right for the land under the Native Allotment Act of 1906. Where a 1909 application was not premised on occupancy, no evidence of occupancy was identified, an applicant received notice of termination in 1922 under then-prevailing procedures, and no objection was raised then or subsequently, the applicant had not established a property right that was terminated without due process requiring reinstatement of the application under the terms of *Pence v. Kleppe*, 529 F.2d 135 (9th Cir. 1976). Where the land was withdrawn in between the date the application was denied and the date it was reinstated, an applicant would only have a right to the land if he had established, prior to withdrawal, a preference right to it by occupancy.

United States v. Heirs of Harry McKinley, 169 IBLA 184 (June 27, 2006).

Alaska
Native Allotments

The legislative approval of certain pending Native allotment applications effected by section 905 of ANILCA, 43 U.S.C. § 1634 (1994), is constrained by the terms of that statute. So long as legal title remains in the United States, an erroneous initial determination by BLM that an allotment application has been legislatively approved does not deprive BLM of the authority to reconsider that determination and to conclude that the Native allotment application was not subject to legislative approval under the terms of the statute.

Betty J. (Thompson) Bonin, 151 IBLA 16 (Oct. 20, 1999).

Alaska
Native Allotments

Notwithstanding the fact that lands embraced within a recreation and public purposes classification as of December 13, 1968, might never have been utilized for purposes consistent with that classification, the existence of such classification prevented the land from being "unreserved on December 13, 1968," within the meaning of section 905(a) of ANILCA and, therefore, allotments embracing such lands were not subject to legislative approval under ANILCA.

Betty J. (Thompson) Bonin, 151 IBLA 16 (Oct. 20, 1999).

Alaska
Native Allotments

Application of the principle of administrative finality involves jurisprudential rather than jurisdictional considerations. The doctrine of administrative finality will not be invoked where to do so would result in a manifest injustice.

Betty J. (Thompson) Bonin, 151 IBLA 16 (Oct. 20, 1999).

Alaska
Native Allotments

Where the public land records have been noted to show that a specific parcel of land is not open to entry and settlement under the various public land laws, including the Alaska Native Allotment Act, such lands are not available until such time as the notation is removed and the land restored to entry, even if the original notation was made in error.

Betty J. (Thompson) Bonin, 151 IBLA 16 (Oct. 20, 1999).

Alaska
Native Allotments

A recreation and public purposes classification, issued pursuant to the Recreation Act of 1926, *as amended*, 43 U.S.C. § 869 (1994), segregates lands from entry and settlement in conformity with its terms until such time as the classification is expressly revoked.

Betty J. (Thompson) Bonin, 151 IBLA 16 (Oct. 20, 1999).

Alaska
Native Allotments

The Board of Land Appeals will deny a request, filed in 1996, for a hearing on an assertion that qualifying personal use and occupancy of a parcel of land commenced prior to July 17, 1961, where the record shows that the Native allotment applicant had initially sought the grant of the allotment based on allegations that qualifying personal use and occupancy of the land had commenced in 1966 and had submitted an affidavit and witness statements attesting to this fact, and such application was rejected by BLM in 1978 because the land had been segregated from entry and settlement as of July 17, 1961, and the allotment applicant then pursued an appeal to the Board in which she maintained that qualifying personal use and occupancy commenced in 1966, which appeal was rejected in 1979.

Betty J. (Thompson) Bonin, 151 IBLA 16 (Oct. 20, 1999).

Alaska
Native Allotments

Under the provisions of section 905(d) of ANILCA, unless the lands sought by a Native allotment application are part of a project licensed under part I of the Federal Power Act, lands within powersite withdrawals and classification are available for allotment, subject to certain conditions applicable where the occupancy commenced after the withdrawal or classification.

Betty J. (Thompson) Bonin, 151 IBLA 16 (Oct. 20, 1999).

Alaska
Native Allotments

Qualifying substantial actual possession and use of land prior to its inclusion in a national forest was established by a preponderance of recorded evidence which included a Native allotment application corroborated by other proof of use and occupancy beginning in 1901.

U.S. Department of Agriculture, Forest Service (Johnny P. Wilson), 152 IBLA 237 (May 1, 2000).

Alaska
Native Allotments

The Board will dismiss an appeal from a BLM decision rendered pursuant to the Stipulated Procedures for Implementation of Order approved by the Federal district court in *Aguilar v. United States*, No. A76–271 (D. Alaska Feb. 9, 1983), as a decision rendered pursuant to those stipulations is final for the Department of the Interior.

Wassilie Roberts, Goodnews River Lodge, Inc., 153 IBLA 1 (July 11, 2000).

Alaska
Native Allotments

The issue of passage of title would be properly before the Board on the appeal by a Native of a BLM decision ruling that the land claimed by a Native had been conveyed to a third party. However, that issue cannot be raised in an appeal to this Board from a determination rendered pursuant to the *Aguilar* proceedings.

Wassilie Roberts, Goodnews River Lodge, Inc., 153 IBLA 1 (July 11, 2000).

Alaska
Native Allotments

Legislative approval of a Native allotment application pursuant to section 905(a) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1643(a) (1994), precludes any inquiry into whether the Native's use and occupancy of the land was sufficient to entitle the Native to approval of the allotment, and BLM properly rejects a regional selection application for a cemetery site/historical place to the extent it includes land within a legislatively approved Native allotment application.

Bristol Bay Native Corporation, 153 IBLA 309 (Sept. 28, 2000).

Alaska
Native Allotments

Where the State of Alaska fails to appeal a decision finding a native allotment to be legislatively approved the State may not subsequently challenge any of the predicate facts determined by BLM in its initial decision.

State of Alaska Department of Transportation & Public Facilities, 154 IBLA 57 (Nov. 21, 2000).

Alaska
Native Allotments

A highway right-of-way grant for land which was withdrawn and the withdrawal then converted to an easement reserved for highway purposes is a valid existing right to which a native allotment is subject, where the use and occupancy began after the land was withdrawn.

State of Alaska Department of Transportation & Public Facilities, 154 IBLA 57 (Nov. 21, 2000).

Alaska
Native Allotments

Under the doctrine of administrative finality–the administrative counterpart of the doctrine of res judicata–when a party has had an opportunity to obtain review within the Department and no appeal was taken, or an appeal was taken and the decision was affirmed, the decision may not be reconsidered in later proceedings except upon a showing of compelling legal or equitable reasons, such as violations of basic rights of the parties or the need to prevent an injustice.

Erling Skaflestad, Bonnie Skaflestad, 155 IBLA 141 (June 27, 2001).

Alaska
Native Allotments

A decision rejecting a Native allotment application in 1928, after notice to the applicant and an opportunity to provide further information, on the basis of a field examination which disclosed no evidence of occupancy of the tract by the applicant prior to withdrawal of the land, becomes a final Departmental decision when no appeal is taken. A request for reinstatement of the application filed in 1985, after valuable improvements have been placed on the land by a third party pursuant to a special use permit, alleging use and occupancy by the applicant 100 years previously which does not appear from the record to have been at least potentially exclusive, does not establish a fundamental injustice or inequity justifying an exception to the doctrine of administrative finality. In these circumstances, a BLM decision reinstating the application and approving the allotment is properly reversed.

Erling Skaflestad, Bonnie Skaflestad, 155 IBLA 141 (June 27, 2001).

Alaska
Native Allotments

A BLM decision rejecting a request by a Native allotment applicant's heirs to amend his allotment application, pursuant to section 905(c) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1634(c) (1994), to describe other land is properly reversed when the preponderance of the evidence, adduced at a hearing, establishes that the amended description conforms to what the applicant had originally intended to claim when applying.

Heirs of Setuck Harry, 155 IBLA 373 (Oct. 30, 2001).

Alaska
Native Allotments

The Alaska Native Allotment Act (formerly codified at 43 U.S.C. §§ 270-1 through 270-3 (1970)) was repealed by sec. 18(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617(a) (1994), subject to applications pending before the Department of the Interior on December 18, 1971. A Departmental memorandum issued by Assistant Secretary Jack O. Horton on October 18, 1973, which stated that Native allotment applications filed with a bureau, division, or agency of the Department on or before December 18, 1971, would be considered "pending before the Department" on December 18, 1971, was consistent with section 18(a), created no new law, rights, or duties limiting the eligibility of Native allotment applicants, and therefore is an interpretative rule and not subject to the notice and comment provisions of the APA, 5 U.S.C. § 553 (1994).

Timothy Afcan, Sr., 157 IBLA 210 (Sept. 25, 2002).

Alaska
Native Allotments

Where on appeal from a BLM decision rejecting a Native allotment application because the application was not pending before the Department on December 18, 1971, the Board determines that there is a question of fact whether the application was pending on that date, the Board will set aside the BLM decision and refer the case for a hearing before an Administrative Law Judge. Evidence that a BIA employee may have accepted an allotment application prior to December 18, 1971, establishes a question of fact as to whether the application was "pending before the Department" on that date.

Timothy Afcan, Sr., 157 IBLA 210 (Sept. 25, 2002).

Alaska
Native Allotments

Where an Alaska Native filed an application for allotment in 1970, and BLM substituted a lot for a parcel she claimed in her application and thereby rejected her claim without notification to her of the reasons for the proposed rejection of her original claim, and without granting her the ability to submit written evidence or request a hearing or adjudication, BLM has improperly deprived her of a property interest in her Native allotment application without due process of law.

Shirley Nielsen, 158 IBLA 26 (Dec. 3, 2002).

Alaska
Native Allotments

Application of the principle of administrative finality involves jurisprudential rather than jurisdictional considerations. The doctrine of administrative finality will not be invoked where to do so would result in a manifest injustice.

Shirley Nielsen, 158 IBLA 26 (Dec. 3, 2002).

Alaska
Native Allotments

Pursuant to section 905(c) of ANILCA, 43 U.S.C. § 1634(c) (1994), where a protest has been filed to an amended land description submitted by a Native allotment applicant to change a previous land description so as to correctly reflect the land originally intended, BLM must adjudicate the amended application to determine whether or not the requirements of the Native Allotment Act of May 17, 1906, *as amended*, 43 U.S.C. §§ 270-1 through 270-3 (1970), have been met with respect to the amended application. Only after this adjudication has been completed may section 905(b) of ANILCA, 43 U.S.C. § 1634(b) (1994), be invoked to resolve conflicts between overlapping Native allotment applications.

Shirley Nielsen, 158 IBLA 26 (Dec. 3, 2002).

Alaska
Native Allotments

Section 905(b) of ANILCA, 43 U.S.C. § 1634(b) (1994), requires BLM to exercise its discretion to eliminate conflicts between two or more allotment applications which exist due to overlapping land descriptions. Neither section 905(b) of ANILCA nor its legislative history permits BLM to mandate agreement where there is none, and any agreement accepted by BLM must be, to the extent practicable, consistent with prior use of the allotted lands and beneficial to the affected parties.

Shirley Nielsen, 158 IBLA 26 (Dec. 3, 2002).

Alaska
Native Allotments

Where a Native allotment applicant has relinquished her claim, and the applicant provides convincing evidence that she relinquished a parcel in her allotment application as a result of duress and misrepresentation, which evidence is supported by the record as a whole, the relinquishment may be found to be involuntary and unknowing, and a violation of her right to due process of law.

Shirley Nielsen, 158 IBLA 26 (Dec. 3, 2002).

Alaska
Native Allotments

The Alaska Native Veterans Allotment Act, 43 U.S.C. 1629g (2000 Supp.), permits Alaska Natives who were veterans who served in the U.S. military under prescribed circumstances between January 1, 1969, and December 31, 1971, an open season in which to apply for a Native allotment under the Act of May 17, 1906, the Alaska Native Allotment Act, formerly codified at 43 U.S.C. §§ 270-1 through 270-3 (1970). BLM properly rejects a Native allotment application where the appellant's military service concluded in 1965.

George F. Jackson, 158 IBLA 305 (Mar. 19, 2003).

Alaska
Native Allotments

The Alaska Native Veterans Allotment Act, 43 U.S.C. § 1629g (2000), created an "open season" by declaring certain persons eligible (during a prescribed 18-month time period) for an allotment totaling 160 acres or less under the Alaska Native Allotment Act. A person is eligible to select an allotment only if, *inter alia*, he or she is a veteran who served during the period between January 1, 1969, and December 31, 1971. A BLM decision rejecting an allotment application filed pursuant to that provision because the appellant's military service concluded in 1968 will be affirmed, as the applicant is not eligible under the plain terms of the governing statute.

Robert P. Vlasoff, 158 IBLA 380 (Apr. 15, 2003).

Alaska
Native Allotments

A Native allotment application made pursuant to the Act of May 17, 1906, *as amended*, 43 U.S.C. §§ 270-1 through 270-3 (1970), is properly rejected where the applicant's heirs fail to overcome, by a preponderance of the evidence offered in a contest proceeding, the Government's prima facie case that the applicant had failed to initiate qualifying use and occupancy prior to the 1909 withdrawal of the land from entry under the 1906 Act, by substantially using and occupying the land to the potential exclusion of others.

United States v. Heirs of Annie Davis, 159 IBLA 62 (May 13, 2003).

Alaska
Native Allotments

A Native allotment application made pursuant to the Act of May 17, 1906, *as amended*, 43 U.S.C. §§ 270-1 through 270-3 (1970), is properly rejected where the applicant fails to overcome, by a preponderance of the evidence in a contest proceeding, the Government's prima facie case that claimant had failed to substantially use and occupy

the land claimed, to the potential exclusion of others, for 5 years.

United States v. Violet N. Mack and Heir of Charlie Blatchford, Jr., 159 IBLA 83 (May 20, 2003).

Alaska
Native Allotments

Affidavits attesting to a timely filing of a Native allotment application on December 18, 1971, standing alone, may not be sufficient to establish that such filing occurred. However, affidavits may be sufficient to raise a material factual question as to whether the application was timely filed.

Alice D. Brean, 159 IBLA 310 (July 14, 2003).

Alaska
Native Allotments

Where on appeal from a BLM decision rejecting a Native allotment application because the application was not pending before the Department on December 18, 1971, the Board determines that there is a question of fact whether the application was pending on that date, the Board will set aside the BLM decision and refer the case for a hearing before an Administrative Law Judge.

Alice D. Brean, 159 IBLA 310 (July 14, 2003).

Alaska
Native Allotments

A decision denying reinstatement of an Alaska Native allotment application is properly affirmed when no evidence of use and occupancy was filed with BLM as required by regulation at 43 C.F.R. § 2561.1(f), because the application terminated as a matter of law. Although due process has been held to require notice and an opportunity for a hearing before a Native allotment application is rejected on the ground of the sufficiency of the evidence of use and occupancy, no hearing is required when no evidence of 5 years of use and occupancy was tendered in support of the application and, hence, the application is deficient as a matter of law.

Robert F. Paul, Sr., 159 IBLA 357 (July 16, 2003).

Alaska
Native Allotments

An Alaska Native allotment application is deemed pending before the Department of the Interior on December 18, 1971, if it was filed in any bureau, division, or agency of the Department on or before that date. Evidence of pendency before the Department on or before December 18, 1971, shall be satisfied by any bureau, division, or agency time stamp, or by affidavit of any bureau, division, or agency officer that the application was received on or before December 18, 1971. If a signed declaration found in the record and attributed to a BIA official indicates the application was filed timely but fails to give a basis for that conclusion, further examination as to this material fact is necessary before the application can be accepted or rejected.

Robert F. Paul, Sr., 159 IBLA 357 (July 16, 2003).

Alaska
Native Allotments

When a Native allotment applicant alleges that he timely submitted allotment applications for two separate parcels of land with officials of the Bureau of Indian Affairs but the Bureau of Land Management has no record of timely receiving the application for one of the parcels, the applicant will normally be afforded a fact-finding hearing in which he may attempt to show that he did, in fact, make timely application for the parcel in question. However, when the applicant himself presents contradictory evidence as to the filing of the application for the second parcel that undermines his claim that the application was timely filed, BLM properly rejects the application without a hearing.

Gaither D. Paul, 160 IBLA 77 (Sept. 22, 2003).

Alaska
Native Allotments

Where on appeal from a BLM decision rejecting a Native allotment application because the application was not pending before the Department on December 18, 1971, the Board determines that there is a question of fact whether the application was pending on that date, the Board will set aside the BLM decision and refer the case for a hearing before an Administrative Law Judge.

Arthur John, 160 IBLA 211 (Dec. 3, 2003)

Alaska
Native Allotments

When a Native Allotment Act applicant does not respond to a Government contest complaint within 30 days, as required by 43 C.F.R. § 4.450-6, the Bureau of Land Management properly takes the allegations of the complaint as admitted and rejects the application without a hearing, in accordance with 43 C.F.R. § 4.450-7.

Katherine E. Mathis, 160 IBLA 277 (Jan. 15, 2004).

Alaska
Native Allotments

Section 41 of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1629 (2000), permitted a "person described in subsection (b)" an "Open Season for Certain Alaska Native Veterans for Allotments," during an 18-month period subsequent to its 1998 date of enactment. Those eligible to select an allotment under Section 41 are

"veterans" who served at least 6 months between January 1, 1969, and December 31, 1971, or enlisted or were drafted into military service after June 2, 1971, but before December 3, 1971. 43 U.S.C. § 1629g(b)(1)(B) (2000).

James N. Frank, 161 IBLA 188 (Apr. 21, 2004).

Alaska
Native Allotments

Departmental regulation 43 C.F.R. § 2568.30 gives "veteran" the same meaning as that prescribed in 38 U.S.C. § 101 paragraph 2, which defines "veteran" as "a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable." 38 U.S.C. § 101 (2) (2000). "Active military, naval, or air service" is defined as including active duty, any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty, and any period of inactive duty training during which the individual concerned was disabled or died from an injury incurred or aggravated in line of duty or from a covered disease which occurred during such training. 38 U.S.C. § 101 (24) (2000); *see also* 38 C.F.R. § 3.6 (a) (2002).

James N. Frank, 161 IBLA 188 (Apr. 21, 2004).

Alaska
Native Allotments

"Active duty" generally means "full-time duty in the Armed Forces, other than active duty for training." 38 C.F.R. § 3.6(b) (2002); *see also* 30 U.S.C. § 101 (21) (2000). Persons serving in a reserve component of the military who have not been mustered into active duty in the Armed Forces are deemed to be in either active duty for training, or inactive duty for training, depending upon the nature of the duty undertaken. 38 U.S.C. § 101 (22), (23) (2000); 38 C.F.R. § 3.6(c) (2002). Whether an individual's service constitutes active duty, active duty for training, or inactive duty for training must be reflected in relevant service department records.

James N. Frank, 161 IBLA 188 (Apr. 21, 2004).

Alaska
Native Allotments

A Native allotment applicant seeking to establish a preference right to an allotment of land withdrawn for a national forest prior to the time the allotment application was filed must establish prior use and occupancy of the land. Such qualifying occupancy and use requires "substantially continuous" use and occupancy.

Bureau of Land Management v. Heirs of James Rudolph, Sr., 163 IBLA 252 (Oct. 27, 2004).

Alaska
Native Allotments

The Department of the Interior has no jurisdiction to adjudicate questions concerning title to land conveyed out of United States' ownership. The Department may, however, investigate to determine whether to recommend litigation to recover the land, and such investigation may be conducted in such manner as suits its own convenience.

Lillian Pitka, Heirs of Alfred Jacobs, 164 IBLA 50 (Nov. 17, 2004).

Alaska
Native Allotments

The *Aguilar* Stipulations define the limited administrative mechanism used to conduct investigations of Native allotment applications involving lands conveyed out of United States' ownership.

Lillian Pitka, Heirs of Alfred Jacobs, 164 IBLA 50 (Nov. 17, 2004).

Alaska
Native Allotments

When BLM investigates a Native allotment application for land patented to a Native corporation and rejects the application because it was legally defective and incapable of being corrected, pursuant to *Aguilar* Stipulation No. 1, the Board has no role in that process and an appeal of BLM's decision is properly dismissed.

Lillian Pitka, Heirs of Alfred Jacobs, 164 IBLA 50 (Nov. 17, 2004).

Alaska
Native Allotments
Under the implementing regulations at 43 C.F.R. § 2568.50(f), an Alaska Native who does not reside in the State of Alaska is not eligible, as a matter of law, to select an allotment pursuant to the Alaska Native Veterans Allotment Act, *as amended*, 43 U.S.C. § 1629g(b)(1) (2000).

Michael G. Dirgo, 165 IBLA 242 (Apr. 20, 2005).

Alaska
Native Allotments

A BLM decision rejecting a request by a Native allotment applicant to amend her allotment application to describe other land pursuant to section 905(c) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1634(c) (2000), is properly affirmed when the preponderance of the evidence, adduced at a hearing on a Government contest, establishes that the amended description does not identify land that the applicant had originally intended to claim.
United States v. Angeline Galbraith, 166 IBLA 84 (June 24, 2005).

Alaska
Native Allotments

Where, on appeal from a BLM decision rejecting a Native allotment application for untimeliness, appellant presents evidence consisting of her affidavit, attesting to timely filing, and a map, purportedly identifying parcels of land claimed by Native applicants (including appellant), such evidence is sufficient to raise a factual question as to whether appellant's Native allotment application was pending before the Department on December 18, 1971. In such a situation, the Board will set aside the BLM decision and refer the case for hearing before an Administrative Law Judge.

Hilma M. McKinnon, 166 IBLA 180 (July 12, 2005).

Alaska
Native Allotments

A BLM decision rejecting Alaska Native allotment applications because of lack of evidence showing that they were pending before the Department on or before December 18, 1971, will be set aside and the matter referred to the Hearings Division for a hearing under 43 C.F.R. § 4.415 where an affidavit is submitted on appeal stating that the applications were filed with the Bureau of Indian Affairs in November 1970, and where the record contains evidence lending credence to that assertion.

Fred T. Angasan, Clarence Kraun, 166 IBLA 239 (Aug. 3, 2005).

Alaska
Native Allotments

When the Government contests a Native allotment application, it bears the burden of going forward with evidence sufficient to establish a prima facie case that the Native allotment applicant did not satisfy the use and occupancy requirements of the Act of May 17, 1906, *as amended*, 43 U.S.C. §§ 270-1 through 270-3 (1970), whereupon the ultimate burden of persuasion rests with the applicant to overcome that case by a preponderance of the evidence. In determining whether the Government has established a prima facie case, an administrative law judge may properly consider the evidence offered by the Government in its case-in-chief together with the evidence presented by a Native village corporation, which, claiming an interest in the land at issue adverse to the applicant, had properly been allowed to intervene in support of the Government's position as a full party in the proceeding.

United States v. Heirs of Pat P. Pestrikoff, 167 IBLA 361 (Feb. 2, 2006).

Alaska
Native Allotments

An administrative law judge properly denies a Native allotment application when he correctly concludes that the evidence presented by the Government and the intervenor at a hearing into the validity of the application, considered together, established a prima facie case that the applicant had not satisfied the use and occupancy requirements of the Native Allotment Act, where the applicant, with full knowledge of the potential consequences of the decision, declines to offer any evidence rebutting that case before the close of the hearing record.

United States v. Heirs of Pat P. Pestrikoff, 167 IBLA 361 (Feb. 2, 2006).

Alaska
Native Allotments

Where an applicant for a Native allotment voluntarily and knowingly relinquishes his application as to a portion of the lands applied for, he loses a portion of his entitlement corresponding to the portion that he relinquishes.

Mack Wiehl (Heir of Alfred M. Wiehl), 169 IBLA 25 (May 3, 2006).

Alaska
Native Allotments

The Alaska Native Veterans Allotment Act, *as amended*, 43 U.S.C. § 1629g (2000), permits Alaska Natives who are veterans who served in the U.S. military under prescribed circumstances between January 1, 1969, and December 31, 1971, an open season in which to apply for a Native allotment under the Act of May 17, 1906, the Alaska Native Allotment Act, formerly codified at 43 U.S.C. §§ 270-1 through 270-3 (1970). BLM properly rejects a Native allotment application where the applicant began use and occupancy on a date after the repeal of the Act of May 17, 1906. Allegations that use and occupancy began in 1973 or 1980 do not qualify an Alaska Native veteran to apply for land "under the Act of May 17, 1906 as such Act was in effect before December 18, 1971," or make him a person who "would have been eligible for an allotment under the Act of May 17, 1906." 43 U.S.C. § 1629g(a)(1) and (b)(1)(A) (2000).

Burkher M. Ivanoff, Evan Nick, 169 IBLA 83 (May 23, 2006).

Alaska
Native Allotments

The Alaska Native Veterans Allotment Act, *as amended*, 43 U.S.C. § 1629g (2000), provided an opportunity to those who may have missed the deadline to apply for a Native allotment pursuant to the Alaska Native Allotment Act of May 17, 1906, formerly codified at 43 U.S.C. § 270-1 through 270-3 (1970); it did not extend an opportunity to relitigate principles well settled under the 1906 Act. An assertion that independent use and occupancy potentially exclusive of others began in 1980 does not qualify an Alaska Native veteran to apply for land "under the Act of May 17, 1906 as such Act was in effect before December 18, 1971," or make him a person who "would have been eligible for an allotment under the Act of May 17, 1906." 43 U.S.C. § 1629g(a)(1) and (b)(1)(A) (2000).

David O. Osterback, 169 IBLA 230 (June 29, 2006).

Alaska

Native Allotments

The Alaska Native Veterans Allotment Act, 43 U.S.C. § 1629g (2000), allows Alaska Natives who were on active military duty during a specific period of time to apply for an allotment under the Alaska Native Allotment Act of May 17, 1906, *as amended*, formerly codified at 43 U.S.C. §§ 270-1 through 270-3 (1970), as that Act was in effect before December 18, 1971. Allotments may be selected only from lands that were vacant, unappropriated, and unreserved on the date the person eligible for the allotment first used and occupied the lands.

Irving P. Sheldon, 169 IBLA 276 (July 27, 2006).

Alaska
Native Allotments

An Alaska Native Veteran Allotment application is properly rejected, as a matter of law, without the necessity for a hearing, where the applicant fails to allege, in his application or anywhere in the record, that he initiated his qualifying use and occupancy under the 1906 Act before the 1968 withdrawal of the claimed lands from entry under the 1906 Act, or that his use and occupancy was as an independent citizen acting on his own behalf, potentially exclusive of others, and not as a dependent child in the company and under the supervision of a parent.

Irving P. Sheldon, 169 IBLA 276 (July 27, 2006).

Alaska
Native Allotments

BLM properly rejects an Alaska Native veteran allotment application, pursuant to the Alaska Native Veterans Allotment Act, *as amended*, 43 U.S.C. § 1629g (2000), after notifying the applicant that it found "correctable errors," when the applicant fails to make the corrections within the specified time. 43 C.F.R. § 2568.81.

Andrey Mandregan, Jr., 170 IBLA 19 (Aug. 30, 2006).

Alaska
Native Allotments

The purpose of the requirement that a Native applicant file an Alaska Native veteran allotment application, pursuant to the Alaska Native Veterans Allotment Act, *as amended*, 43 U.S.C. § 1629g (2000), "with a sufficient description to identify the lands" is to allow BLM to determine both whether the applicant is qualified and whether the land is available for conveyance. 43 C.F.R. § 2568.78; 43 C.F.R. § 2091.0-5; 43 C.F.R. § 2568.80; 43 C.F.R. § 2568.90.

Andrey Mandregan, Jr., 170 IBLA 19 (Aug. 30, 2006).

Alaska
Native Allotments

Section 3 of the Native Allotment Act requires that, in order to qualify for an allotment of up to 160 acres of land, a Native applicant must submit satisfactory proof that he has engaged in "substantially continuous use and occupancy of the land for a period of five years." 43 U.S.C. § 270-3 (1970). The Departmental regulation at 43 C.F.R. § 2561.0-5(a) states that such use and occupancy "contemplates the customary seasonality of use and occupancy by the applicant of any land used by him for his livelihood and well-being and that of his family. Such use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not merely intermittent use." When land is withdrawn from appropriation under the Act, an applicant is required to show he initiated qualifying use and occupancy prior to the withdrawal.

United States v. Frank R. Peterson, 170 IBLA 231 (Sept. 27, 2006).

Alaska
Native Allotments

In order to demonstrate that the land was used and occupied to the potential exclusion of others as required by 43 C.F.R. § 2561.0-5(a), a Native allotment applicant must show that others knew or should have known that the applicant asserted a superior right to the land because he actually used or occupied the land and/or left behind physical evidence of such use or occupancy, sufficient to put others on notice of the assertion of such a right, or because others acknowledged that assertion in some way. The Native Allotment Act was not intended to allow individual Natives to acquire lands used in common.

United States v. Frank R. Peterson, 170 IBLA 231 (Sept. 27, 2006).

Alaska
Native Allotments

In order to be eligible for an allotment under the Alaska Native Veterans Allotment Act (ANVAA), *as amended*, 43 U.S.C. § 1629g (2000), an applicant must have filed an application between July 31, 2000, and January 31, 2002, with the BLM Alaska State Office in Anchorage, Alaska. An applicant who delivered an application to a different bureau or office is not eligible unless BLM's Alaska State Office received the application by January 31, 2002, or the envelope containing that application is postmarked by that date.

John Jones, 170 IBLA 281 (Oct. 30, 2006).

Alaska
Native Allotments

A decision of an administrative law judge finding that a Native allotment applicant's use and occupancy before the date of withdrawal of land from appropriation was not established by a preponderance of the evidence will be affirmed on appeal where the evidence fails to establish qualifying use and occupancy of any particular location potentially exclusive of others that was substantially continuous in nature and not intermittent. Where evidence shows that the applicant's use and occupancy, to the extent it was qualifying, began at the earliest in 1953, but the land had been withdrawn from appropriation in 1952, the contestees did not preponderate. Where the evidence

failed to show that a claimant's use would put others on notice of his superior claim, but rather indicates common use by large numbers of residents, potential exclusivity is not shown.

United States v. Heirs of Harlan L. Mahle, 171 IBLA 330 (June 29, 2007).

Alaska
Native Allotments

Where BLM's tentative approval of an Alaska State selection expressly excluded a Native allotment claim by its serial number and parcel designation, whether or not lands were approved for or excluded from tentative approval depended on whether the lands were included in the plats of survey designating the claim. Where the State selection pre-dated the filing of the Native allotment application, the lands in question were validly selected by the State, and were therefore not "unreserved" on December 13, 1968. Accordingly, the applicant's claim could not be legislatively approved under section 905(a)(1) or section 906(c) of ANILCA, but instead had to be adjudicated pursuant to the requirements of the Native Allotment Act of May 17, 1906, ANCSA, and implementing regulations.

United States v. Heirs of Harlan L. Mahle, 171 IBLA 330 (June 29, 2007).

Alaska
Native Allotments

The right to amend a Native allotment application provided by section 905(c) of ANILCA, 43 U.S.C. § 1634(c) (2000), terminates by the adoption, after December 2, 1980, of a plat of survey for either originally described or newly described land.

United States v. Heirs of Harlan L. Mahle, 171 IBLA 330 (June 29, 2007).

Alaska
Native Allotments

Where land described in a Native allotment application has been patented, the *Aguilar* Stipulated Procedures require a hearing before a BLM hearing officer, whose decision is final for the Department and not subject to appeal to the Board of Land Appeals. Where the parcel only in part describes lands conveyed out of U.S. ownership and a hearing on the entire parcel is required, Government contest procedures may properly be used. Despite the potential overlap in issues in such proceedings, the fundamental character of the proceeding with respect to the patented land is no more than investigatory. Because the *Aguilar* procedures make no provision for review by the Board of such an investigatory determination, the Board properly dismisses an appeal from the administrative law judge's determination made pursuant to the *Aguilar* Stipulated Procedures.

United States v. Heirs of Harlan L. Mahle, 171 IBLA 330 (June 29, 2007).

Alaska
Native Allotments

The regulations have always required a written and signed application, which must be filed with the Bureau of Land Management office having jurisdiction over the land sought. More than a written declaration of the desire to apply for additional lands is necessary. Without a duly filed, written application in a form that identifies the entry and lands sought, there is no proper basis for identifying and segregating lands and potentially defeating subsequent applications and entries. Where the applicant did not file a new or amended application for additional lands identified as Parcels B and C prior to December 18, 1971, an application after that time constitutes a new application under the Native Allotment Act which must be denied as a matter of law.

Heirs of Simeon Moxie, 172 IBLA 280 (Sept. 14, 2007).

Alaska
Navigable Waters

On the date of Alaska Statehood (Jan. 3, 1959), the State received title to submerged lands forming the bed of navigable rivers within its borders pursuant to the Equal Footing Doctrine, as codified in the Submerged Lands Act of 1953, 43 U.S.C. § 1301 (2000). Lands situated in beds of navigable waterways in the State were not available for selection by regional corporations, pursuant to the Alaska Native Claims Settlement Act. Nevertheless, the State could not receive title to a river "island" that was in existence at the time of Statehood, as it was not then part of the bed of the navigable waterway. The question of whether land was an "island" in 1996 is not controlling, as an "island" that emerged from the riverbed after Statehood in 1959 would belong to the State.

State of Alaska, 167 IBLA 250 (Dec. 2, 2005).

Alaska
Navigable Waters

"*Island*." Through the evolution of American common law, the term "island" for purposes of surveying river boundaries has become defined as an upland area that is surrounded by water when the river is at a stage known as the ordinary high water mark (OHWM). Because the definition of OHWM itself has become involved, an island may be redefined as land that is surrounded by a line marked by the action of the water upon the soil of the island, such that the upland (woody types) vegetation is removed by the constant action and presence of water over longer periods of time, and the character of the soil is altered as well. However, if an OHWM can be discerned around a questioned gravel or sand bar (by means of woody vegetation present or other marks on the soil), the supposed bar must then be an island; a bare rock protruding well above a reasonable ordinary high water mark might thus be an island even without vegetation.

State of Alaska, 167 IBLA 250 (Dec. 2, 2005).

Alaska
Navigable Waters

A BLM decision implicitly determining that lands within the Copper River were an "island" (and thus were situated above the ordinary high water mark at the time of Alaska Statehood on January 3, 1959) will be set aside where the record does not contain evidence or analysis supporting that determination.

State of Alaska, 167 IBLA 250 (Dec. 2, 2005).

Alaska
Navigable Waters

Where BLM terminates seven public easements, which had been reserved to guarantee access to three lakes pursuant to section 17(b) of ANSCA, 43 U.S.C. § 1616(b) (1976), on the basis of a determination that the lakes are non-navigable and not major waterways and therefore that the easements do not provide access to publicly owned lands or major waterways, and the record does not support BLM's determination, the Board will remand the cases to BLM. Should BLM wish to proceed with decisions regarding the easements under 43 C.F.R. § 2650.4-7(a)(13), it must render an initial determination of navigability of the lakes as an aid to deciding whether the easements may be terminated.

State of Alaska Louis and Marion Collier, 168 IBLA 334 (Apr. 6, 2006).

Alaska
Statehood Act

On the date of Alaska Statehood (Jan. 3, 1959), the State received title to submerged lands forming the bed of navigable rivers within its borders pursuant to the Equal Footing Doctrine, as codified in the Submerged Lands Act of 1953, 43 U.S.C. § 1301 (2000). Lands situated in beds of navigable waterways in the State were not available for selection by regional corporations, pursuant to the Alaska Native Claims Settlement Act. Nevertheless, the State could not receive title to a river "island" that was in existence at the time of Statehood, as it was not then part of the bed of the navigable waterway. The question of whether land was an "island" in 1996 is not controlling, as an "island" that emerged from the riverbed after Statehood in 1959 would belong to the State.

State of Alaska, 167 IBLA 250 (Dec. 2, 2005).

Alaska
Statehood Act

A BLM decision implicitly determining that lands within the Copper River were an "island" (and thus were situated above the ordinary high water mark at the time of Alaska Statehood on January 3, 1959) will be set aside where the record does not contain evidence or analysis supporting that determination.

State of Alaska, 167 IBLA 250 (Dec. 2, 2005).

Alaska National Interest Lands Conservation Act
Duty of Department of the Interior to
Native Allotment Applicants

Where an Alaska Native filed an application for allotment in 1970, and BLM substituted a lot for a parcel she claimed in her application and thereby rejected her claim without notification to her of the reasons for the proposed rejection of her original claim, and without granting her the ability to submit written evidence or request a hearing or adjudication, BLM has improperly deprived her of a property interest in her Native allotment application without due process of law.

Shirley Nielsen, 158 IBLA 26 (Dec. 3, 2002).

Alaska National Interest Lands Conservation Act
Duty of Department of the Interior to
Native Allotment Applicants

Application of the principle of administrative finality involves jurisprudential rather than jurisdictional considerations. The doctrine of administrative finality will not be invoked where to do so would result in a manifest injustice.

Shirley Nielsen, 158 IBLA 26 (Dec. 3, 2002).

Alaska National Interest Lands Conservation Act
Duty of Department of the Interior to
Native Allotment Applicants

Where a Native allotment applicant has relinquished her claim, and the applicant provides convincing evidence that she relinquished a parcel in her allotment application as a result of duress and misrepresentation, which evidence is supported by the record as a whole, the relinquishment may be found to be involuntary and unknowing, and a violation of her right to due process of law.

Shirley Nielsen, 158 IBLA 26 (Dec. 3, 2002).

Alaska National Interest Lands Conservation Act
Native Allotments

Under the provisions of section 905(d) of ANILCA, unless the lands sought by a Native allotment application are part of a project licensed under part I of the Federal Power Act, lands within powersite withdrawals and classification are available for allotment, subject to certain conditions applicable where the occupancy commenced after the withdrawal or classification.

Betty J. (Thompson) Bonin, 151 IBLA 16 (Oct. 20, 1999).

Alaska National Interest Lands Conservation Act
Native Allotments

The legislative approval of certain pending Native allotment applications effected by section 905 of ANILCA, 43 U.S.C. § 1634 (1994), is constrained by the terms of that

statute. So long as legal title remains in the United States, an erroneous initial determination by BLM that an allotment application has been legislatively approved does not deprive BLM of the authority to reconsider that determination and to conclude that the Native allotment application was not subject to legislative approval under the terms of the statute.

Betty J. (Thompson) Bonin, 151 IBLA 16 (Oct. 20, 1999).

Alaska National Interest Lands Conservation Act
Native Allotments

Notwithstanding the fact that lands embraced within a recreation and public purposes classification as of December 13, 1968, might never have been utilized for purposes consistent with that classification, the existence of such classification prevented the land from being "unreserved on December 13, 1968," within the meaning of section 905(a) of ANILCA and, therefore, allotments embracing such lands were not subject to legislative approval under ANILCA.

Betty J. (Thompson) Bonin, 151 IBLA 16 (Oct. 20, 1999).

Alaska National Interest Lands Conservation Act
Native Allotments

Application of the principle of administrative finality involves jurisprudential rather than jurisdictional considerations. The doctrine of administrative finality will not be invoked where to do so would result in a manifest injustice.

Betty J. (Thompson) Bonin, 151 IBLA 16 (Oct. 20, 1999).

Alaska National Interest Lands Conservation Act
Native Allotments

Where the public land records have been noted to show that a specific parcel of land is not open to entry and settlement under the various public land laws, including the Alaska Native Allotment Act, such lands are not available until such time as the notation is removed and the land restored to entry, even if the original notation was made in error.

Betty J. (Thompson) Bonin, 151 IBLA 16 (Oct. 20, 1999).

Alaska National Interest Lands Conservation Act
Native Allotments

A recreation and public purposes classification, issued pursuant to the Recreation Act of 1926, *as amended*, 43 U.S.C. § 869 (1994), segregates lands from entry and settlement in conformity with its terms until such time as the classification is expressly revoked.

Betty J. (Thompson) Bonin, 151 IBLA 16 (Oct. 20, 1999).

Alaska National Interest Lands Conservation Act
Native Allotments

The Board of Land Appeals will deny a request, filed in 1996, for a hearing on an assertion that qualifying personal use and occupancy of a parcel of land commenced prior to July 17, 1961, where the record shows that the Native allotment applicant had initially sought the grant of the allotment based on allegations that qualifying personal use and occupancy of the land had commenced in 1966 and had submitted an affidavit and witness statements attesting to this fact, and such application was rejected by BLM in 1978 because the land had been segregated from entry and settlement as of July 17, 1961, and the allotment applicant then pursued an appeal to the Board in which she maintained that qualifying personal use and occupancy commenced in 1966, which appeal was rejected in 1979.
Betty J. (Thompson) Bonin, 151 IBLA 16 (Oct. 20, 1999).

Alaska National Interest Lands Conservation Act
Native Allotments

Legislative approval of a Native allotment application pursuant to section 905(a) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1643(a) (1994), precludes any inquiry into whether the Native's use and occupancy of the land was sufficient to entitle the Native to approval of the allotment, and BLM properly rejects a regional selection application for a cemetery site/historical place to the extent it includes land within a legislatively approved Native allotment application.

Bristol Bay Native Corporation, 153 IBLA 309 (Sept. 28, 2000).

Alaska National Interest Lands Conservation Act
Native Allotments

Under the doctrine of administrative finality--the administrative counterpart of the doctrine of res judicata--when a party has had an opportunity to obtain review within the Department and no appeal was taken, or an appeal was taken and the decision was affirmed, the decision may not be reconsidered in later proceedings except upon a showing of compelling legal or equitable reasons, such as violations of basic rights of the parties or the need to prevent an injustice.

Erling Skaflestad, Bonnie Skaflestad, 155 IBLA 141 (June 27, 2001).

Alaska National Interest Lands Conservation Act
Native Allotments

A decision rejecting a Native allotment application in 1928, after notice to the applicant and an opportunity to provide further information, on the basis of a field examination which disclosed no evidence of occupancy of the tract by the applicant prior to withdrawal of the land, becomes a final Departmental decision when no appeal

is taken. A request for reinstatement of the application filed in 1985, after valuable improvements have been placed on the land by a third party pursuant to a special use permit, alleging use and occupancy by the applicant 100 years previously which does not appear from the record to have been at least potentially exclusive, does not establish a fundamental injustice or inequity justifying an exception to the doctrine of administrative finality. In these circumstances, a BLM decision reinstating the application and approving the allotment is properly reversed.

Erling Skaflestad, Bonnie Skaflestad, 155 IBLA 141 (June 27, 2001).

Alaska National Interest Lands Conservation Act
Native Allotments

A BLM decision rejecting a request by a Native allotment applicant's heirs to amend his allotment application, pursuant to section 905(c) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1634(c) (1994), to describe other land is properly reversed when the preponderance of the evidence, adduced at a hearing, establishes that the amended description conforms to what the applicant had originally intended to claim when applying.

Heirs of Setuck Harry, 155 IBLA 373 (Oct. 30, 2001).

Alaska National Interest Lands Conservation Act
Native Allotments

Pursuant to section 905(c) of ANILCA, 43 U.S.C. § 1634(c) (1994), where a protest has been filed to an amended land description submitted by a Native allotment applicant to change a previous land description so as to correctly reflect the land originally intended, BLM must adjudicate the amended application to determine whether or not the requirements of the Native Allotment Act of May 17, 1906, as amended, 43 U.S.C. §§ 270-1 through 270-3 (1970), have been met with respect to the amended application. Only after this adjudication has been completed may section 905(b) of ANILCA, 43 U.S.C. § 1634(b) (1994), be invoked to resolve conflicts between overlapping Native allotment applications.

Shirley Nielsen, 158 IBLA 26 (Dec. 3, 2002).

Alaska National Interest Lands Conservation Act
Native Allotments

Section 905(b) of ANILCA, 43 U.S.C. § 1634(b) (1994), requires BLM to exercise its discretion to eliminate conflicts between two or more allotment applications which exist due to overlapping land descriptions. Neither section 905(b) of ANILCA nor its legislative history permits BLM to mandate agreement where there is none, and any agreement accepted by BLM must be, to the extent practicable, consistent with prior use of the allotted lands and beneficial to the affected parties.

Shirley Nielsen, 158 IBLA 26 (Dec. 3, 2002).

Alaska National Interest Lands Conservation Act
Native Allotments

A decision denying reinstatement of an Alaska Native allotment application is properly affirmed when no evidence of use and occupancy was filed with BLM as required by regulation at 43 C.F.R. § 2561.1(f), because the application terminated as a matter of law. Although due process has been held to require notice and an opportunity for a hearing before a Native allotment application is rejected on the ground of the sufficiency of the evidence of use and occupancy, no hearing is required when no evidence of 5 years of use and occupancy was tendered in support of the application and, hence, the application is deficient as a matter of law.

Robert F. Paul, Sr., 159 IBLA 357 (July 16, 2003).

Alaska National Interest Lands Conservation Act
Native Allotments

An Alaska Native allotment application is deemed pending before the Department of the Interior on December 18, 1971, if it was filed in any bureau, division, or agency of the Department on or before that date. Evidence of pendency before the Department on or before December 18, 1971, shall be satisfied by any bureau, division, or agency time stamp, or by affidavit of any bureau, division, or agency officer that the application was received on or before December 18, 1971. If a signed declaration found in the record and attributed to a BIA official indicates the application was filed timely but fails to give a basis for that conclusion, further examination as to this material fact is necessary before the application can be accepted or rejected.

Robert F. Paul, Sr., 159 IBLA 357 (July 16, 2003).

Alaska National Interest Lands Conservation Act
Native Allotments

A BLM decision rejecting a request by a Native allotment applicant to amend her allotment application to describe other land pursuant to section 905(c) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1634(c) (2000), is properly affirmed when the preponderance of the evidence, adduced at a hearing on a Government contest, establishes that the amended description does not identify land that the applicant had originally intended to claim.

United States v. Angeline Galbraith, 166 IBLA 84 (June 24, 2005).

Alaska National Interest Lands Conservation Act
Native Allotments

Section 905(a)(1)(A) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1634(a)(1)(A) (2000), providing for legislative approval of Alaska Native allotment applications pending before the Department of the Interior on December 18, 1971, for land within the National Petroleum Reserve-Alaska, does not apply to an Alaska Native Veteran allotment application filed pursuant to the Alaska Native Veterans Allotment Act, *as amended*, 43 U.S.C. § 1629g (2000), for land within that reserve.

Bart G. Ahsogeak, et al., 167 IBLA 148 (Oct. 26, 2005).

Alaska National Interest Lands Conservation Act
Native Allotments

BLM properly rejects an Alaska Native Veteran allotment application filed pursuant to the Alaska Native Veterans Allotment Act, *as amended*, 43 U.S.C. § 1629*g* (2000), when, at the time the Native applicant initiated use and occupancy, the claimed lands were set apart and reserved as part of the National Petroleum Reserve-Alaska, and, therefore, were not "vacant, unappropriated, and unreserved," as required by the Act.

Bart G. Ahsogeak, et al., 167 IBLA 148, 153 (Oct. 26, 2005).

Alaska National Interest Lands Conservation Act
Native Allotments

BLM properly rejects an Alaska Native Veteran allotment application filed pursuant to the Alaska Native Veterans Allotment Act, *as amended*, 43 U.S.C. § 1629*g* (2000), when the Alaska Native had applied for the same lands under the Act of May 17, 1906, *as amended*, 43 U.S.C. §§ 270-1 through 270-3 (1970), and the Department had determined with finality that the Native did not establish qualifying use and occupancy of those lands.

John J. Estabrook, 167 IBLA 226 (Nov. 17, 2005).

Alaska National Interest Lands Conservation Act
Native Allotments

Even after a hearing by an Administrative Law Judge, the Board has authority to conduct de novo review of a record in the context of a decision involving an applicant for a Native allotment. This authority includes all the powers which the Secretary would have in making the initial decision.

United States v. Heirs of Harry McKinley, 169 IBLA 184, (June 27, 2006).

Alaska National Interest Lands Conservation Act
Native Allotments

The fact that a Native allotment application had been rejected without an APA hearing does not necessarily establish that the application is properly reinstated under section 905(a) of ANILCA, 43 U.S.C. § 1634(a) (2000). Mere application for a parcel of land, without occupancy, does not establish a preference right for the land under the Native Allotment Act of 1906. Where a 1909 application was not premised on occupancy, no evidence of occupancy was identified, an applicant received notice of termination in 1922 under then-prevailing procedures, and no objection was raised then or subsequently, the applicant had not established a property right that was terminated without due process requiring reinstatement of the application under the terms of *Pence v. Kleppe*, 529 F.2d 135 (9th Cir. 1976). Where the land was withdrawn in between the date the application was denied and the date it was reinstated, an applicant would only have a right to the land if he had established, prior to withdrawal, a preference right to it by occupancy.

United States v. Heirs of Harry McKinley, 169 IBLA 184 (June 27, 2006).

Alaska National Interest Lands Conservation Act
Native Allotments

Where BLM's tentative approval of an Alaska State selection expressly excluded a Native allotment claim by its serial number and parcel designation, whether or not lands were approved for or excluded from tentative approval depended on whether the lands were included in the plats of survey designating the claim. Where the State selection pre-dated the filing of the Native allotment application, the lands in question were validly selected by the State, and were therefore not "unreserved" on December 13, 1968. Accordingly, the applicant's claim could not be legislatively approved under section 905(a)(1) or section 906(c) of ANILCA, but instead had to be adjudicated pursuant to the requirements of the Native Allotment Act of May 17, 1906, ANCSA, and implementing regulations.

United States v. Heirs of Harlan L. Mahle, 171 IBLA 330 (June 29, 2007).

Alaska National Interest Lands Conservation Act
Native Allotments

The right to amend a Native allotment application provided by section 905(c) of ANILCA, 43 U.S.C. § 1634(c) (2000), terminates by the adoption, after December 2, 1980, of a plat of survey for either originally described or newly described land.

United States v. Heirs of Harlan L. Mahle, 171 IBLA 330 (June 29, 2007).

Alaska National Interest Lands Conservation Act
Native Allotments

Where land described in a Native allotment application has been patented, the *Aguilar* Stipulated Procedures require a hearing before a BLM hearing officer, whose decision is final for the Department and not subject to appeal to the Board of Land Appeals. Where the parcel only in part describes lands conveyed out of U.S. ownership and a hearing on the entire parcel is required, Government contest procedures may properly be used. Despite the potential overlap in issues in such proceedings, the fundamental character of the proceeding with respect to the patented land is no more than investigatory. Because the *Aguilar* procedures make no provision for review by the Board of such an investigatory determination, the Board properly dismisses an appeal from the administrative law judge's determination made pursuant to the *Aguilar* Stipulated Procedures.

United States v. Heirs of Harlan L. Mahle, 171 IBLA 330 (June 29, 2007).

Alaska Native Claims Settlement Act
Administrative Procedure
Applications

The Alaska Native Allotment Act (formerly codified at 43 U.S.C. §§ 270-1 through 270-3 (1970)) was repealed by sec. 18(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617(a) (1994), subject to applications pending before the Department of the Interior on December 18, 1971. A Departmental memorandum issued by Assistant Secretary Jack O. Horton on October 18, 1973, which stated that Native allotment applications filed with a bureau, division, or agency of the Department on or before December 18, 1971, would be considered "pending before the Department" on December 18, 1971, was consistent with section 18(a), created no new law, rights, or duties limiting the eligibility of Native allotment applicants, and therefore is an interpretative rule and not subject to the notice and comment provisions of the APA, 5 U.S.C. § 553 (1994).

Timothy Afcan, Sr., 157 IBLA 210 (Sept. 25, 2002).

Alaska Native Claims Settlement Act
Administrative Procedure
Applications

Where on appeal from a BLM decision rejecting a Native allotment application because the application was not pending before the Department on December 18, 1971, the Board determines that there is a question of fact whether the application was pending on that date, the Board will set aside the BLM decision and refer the case for a hearing before an Administrative Law Judge. Evidence that a BIA employee may have accepted an allotment application prior to December 18, 1971, establishes a question of fact as to whether the application was "pending before the Department" on that date.

Timothy Afcan, Sr., 157 IBLA 210 (Sept. 25, 2002).

Alaska Native Claims Settlement Act
Administrative Procedure
Applications

Where on appeal from a BLM decision rejecting a Native allotment application because the application was not pending before the Department on December 18, 1971, the Board determines that there is a question of fact whether the application was pending on that date, the Board will set aside the BLM decision and refer the case for a hearing before an Administrative Law Judge.

Alice D. Brean, 159 IBLA 310 (July 14, 2003).

Alaska Native Claims Settlement Act
Administrative Procedure
Applications

When a Native allotment applicant alleges that he timely submitted allotment applications for two separate parcels of land with officials of the Bureau of Indian Affairs but the Bureau of Land Management has no record of timely receiving the application for one of the parcels, the applicant will normally be afforded a fact-finding hearing in which he may attempt to show that he did, in fact, make timely application for the parcel in question. However, when the applicant himself presents contradictory evidence as to the filing of the application for the second parcel that undermines his claim that the application was timely filed, BLM properly rejects the application without a hearing.

Gaither D. Paul, 160 IBLA 77 (Sept. 22, 2003).

Alaska Native Claims Settlement Act
Administrative Procedure
Applications

Where on appeal from a BLM decision rejecting a Native allotment application because the application was not pending before the Department on December 18, 1971, the Board determines that there is a question of fact whether the application was pending on that date, the Board will set aside the BLM decision and refer the case for a hearing before an Administrative Law Judge.

Arthur John, 160 IBLA 211 (Dec. 3, 2003)

Alaska Native Claims Settlement Act
Appeals
Standing

Departmental regulation 43 C.F.R. § 4.410(b) limits standing to appeal a decision relating to a land selection pursuant to the Alaska Native Claims Settlement Act (ANCSA) to parties claiming a property interest in land affected by the decision. The State of Alaska's reversionary interest in land below the ordinary high water line, which it had transferred to a municipal corporation on the understanding an easement to it had been reserved, and the State's interest in submerged lands beyond the transferred land together constitute a sufficient property interest to sustain the State's standing to appeal a BLM decision determining that no public easement providing access to the submerged lands had been reserved in an ANCSA land conveyance to a Native corporation.

State of Alaska, 167 IBLA 156 (Oct. 27, 2005).

Alaska Native Claims Settlement Act
Conveyances
Generally

A BLM decision determining that an easement segment was not reserved in the interim conveyance and patent conveying selected lands to a Native corporation will be reversed where, although the easement language in the interim conveyance and in the patent do not explicitly describe the segment at issue and the maps associated with the interim conveyance are ambiguous as to the existence of the easement, the map incorporated into the patent as part of the conformance process clearly depicts the easement segment and establishes that the easement segment was reserved in the patent. The patent's clear reservation of the easement segment precludes BLM from determining that the easement segment never existed.

State of Alaska, 167 IBLA 156 (Oct. 27, 2005).

Alaska Native Claims Settlement Act
Conveyances
Cemetery Sites and Historical Places

BLM properly declines to consider a purported 1995 amendment of a Native historical place selection application, filed pursuant to section 14(h)(1) of the Alaska Native Claims Settlement Act, *as amended*, 43 U.S.C. § 1613(h)(1) (2000), and 43 C.F.R. Subpart 2653, where the Native regional corporation fails to demonstrate that the amendment is intended to correct an erroneous description of the land encompassing the site selected in the original application for a Native historical place.

Chugach Alaska Corporation, 169 IBLA 286 (Aug. 1, 2006).

Alaska Native Claims Settlement Act
Conveyances
Cemetery Sites and Historical Places

Legislative approval of a Native allotment application pursuant to section 905(a) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1643(a) (1994), precludes any inquiry into whether the Native's use and occupancy of the land was sufficient to entitle the Native to approval of the allotment, and BLM properly rejects a regional selection application for a cemetery site/historical place to the extent it includes land within a legislatively approved Native allotment application.

Bristol Bay Native Corporation, 153 IBLA 309 (Sept. 28, 2000).

Alaska Native Claims Settlement Act
Conveyances
Cemetery Sites and Historical Places

A BLM decision approving a Native historical place application for conveyance under section 14(h)(1) of the Alaska Native Claims Settlement Act, *as amended*, 43 U.S.C. § 1613(h)(1) (2000), and 43 C.F.R. Subpart 2653, will be affirmed on appeal where error in BLM's decision has not been established by a preponderance of the evidence.

United States Forest Service, 160 IBLA 1 (July 28, 2003).

Alaska Native Claims Settlement Act
Conveyances
Cemetery Sites and Historical Places

A BLM decision approving a Native historical place application for conveyance under section 14(h)(1) of the Alaska Native Claims Settlement Act, *as amended*, 43 U.S.C. § 1613(h)(1) (2000), and 43 C.F.R. Subpart 2653, will be affirmed on appeal where error in BLM's decision has not been established by a preponderance of the evidence.

United States Forest Service, 167 IBLA 174 (October 27, 2005).

Alaska Native Claims Settlement Act
Conveyances
Cemetery Sites and Historical Places

Section 14(h)(1) of the Alaska Native Claims Settlement Act, *as amended*, 43 U.S.C. § 1613(h)(1) (2000), permits amendment of a Native historical place application only where the appropriate Native regional corporation identifies a distinguishable tract of land or area upon which occurred the significant Native historical event, which is importantly associated with Native historical or cultural events or persons, or which was subject to the sustained historical Native activity originally justifying selection of the site, the location of which was erroneously described in the application. *See* 43 C.F.R. § 2653.0-5(b), 43 C.F.R. § 2653.5

Chugach Alaska Corporation, 169 IBLA 286 (Aug. 1, 2006).

Alaska Native Claims Settlement Act
Conveyances
Easements

BLM properly refused to reserve an easement for a trail to provide access to public land where that land has been transferred into private ownership and therefore no access to public lands or waters would be denied. A request for a site easement was also properly denied where the land sought for the easement had been transferred into private ownership and where an approved site easement exists within 3 miles of the requested rest site.

State of Alaska, 153 IBLA 303 (Sept. 27, 2000).

Alaska Native Claims Settlement Act
Conveyances
Easements

Jurisdiction of the Board to consider an appeal is governed by Departmental appeal regulations at 43 C.F.R. Part 4. The failure to file an appeal within 30 days of receipt of a decision reserving a public access easement under section 17(b) of the Alaska Native Claims Settlement Act requires dismissal of an appeal of that decision. Once a party has had an opportunity to challenge such a decision, further consideration of the issue in a subsequent appeal is barred by administrative finality.

Seldovia Native Association, 161 IBLA 279 (May 12, 2004).

Alaska Native Claims Settlement Act

Conveyances
Interim Conveyance

The Board will dismiss an appeal from a BLM decision rendered pursuant to the Stipulated Procedures for Implementation of Order approved by the Federal district court in *Aguilar v. United States*, No. A76–271 (D. Alaska Feb. 9, 1983), as a decision rendered pursuant to those stipulations is final for the Department of the Interior.

Wassilie Roberts, Goodnews River Lodge, Inc., 153 IBLA 1 (July 11, 2000).

Alaska Native Claims Settlement Act
Conveyances
Interim Conveyance

The issue of passage of title would be properly before the Board on the appeal by a Native of a BLM decision ruling that the land claimed by a Native had been conveyed to a third party. However, that issue cannot be raised in an appeal to this Board from a determination rendered pursuant to the *Aguilar* proceedings.

Wassilie Roberts, Goodnews River Lodge, Inc., 153 IBLA 1 (July 11, 2000).

Alaska Native Claims Settlement Act
Conveyances
Interim Conveyance

A BLM decision determining that an easement segment was not reserved in the interim conveyance and patent conveying selected lands to a Native corporation will be reversed where, although the easement language in the interim conveyance and in the patent do not explicitly describe the segment at issue and the maps associated with the interim conveyance are ambiguous as to the existence of the easement, the map incorporated into the patent as part of the conformance process clearly depicts the easement segment and establishes that the easement segment was reserved in the patent. The patent's clear reservation of the easement segment precludes BLM from determining that the easement segment never existed.

State of Alaska, 167 IBLA 156 (Oct. 27, 2005).

Alaska Native Claims Settlement Act
Conveyances
Native Groups

A Native group locality under *Tanalian, Inc.*, 75 IBLA 316 (1983), includes both the land on which group members live and the greater area in which other residents lived in relative proximity, as compared with the population density of lands beyond the area so designated. The factors of relative proximity, amenities, and other aspects of the community are interrelated in a total balance in determining locality, and evidence of the extent to which residents of the area share common interests or concerns in the local amenities, facilities, and services may be received as indicative of the geographic area of the locality.

Minchumina Natives, Inc. (On Judicial Remand), 153 IBLA 225 (Aug. 31, 2000).

Alaska Native Claims Settlement Act
Conveyances
Native Groups

A residence meets the requirement of "relative proximity," as used in *Tanalian Inc.*, 75 IBLA 316 (1983), where the evidence discloses that inclusion of the residence in the locality would result in a significant break in population density beyond the limits of the locality as delineated so as to include the residence in question.

Minchumina Natives, Inc. (On Judicial Remand), 153 IBLA 225 (Aug. 31, 2000).

Alaska Native Claims Settlement Act
Conveyances
Native Groups

Under *Tanalian Inc.*, 75 IBLA 316 (1983), evidence of the extent to which residents of an area share common interests or concerns in the local amenities, facilities, and services is properly received as indicative of the geographic area of the locality.

Minchumina Natives, Inc. (On Judicial Remand), 153 IBLA 225 (Aug. 31, 2000).

Alaska Native Claims Settlement Act
Conveyances
Regional Conveyances

On the date of Alaska Statehood (Jan. 3, 1959), the State received title to submerged lands forming the bed of navigable rivers within its borders pursuant to the Equal Footing Doctrine, as codified in the Submerged Lands Act of 1953, 43 U.S.C. § 1301 (2000). Lands situated in beds of navigable waterways in the State were not available for selection by regional corporations, pursuant to the Alaska Native Claims Settlement Act. Nevertheless, the State could not receive title to a river "island" that was in existence at the time of Statehood, as it was not then part of the bed of the navigable waterway. The question of whether land was an "island" in 1996 is not controlling, as an "island" that emerged from the riverbed after Statehood in 1959 would belong to the State.

State of Alaska, 167 IBLA 250 (Dec. 2, 2005).

Alaska Native Claims Settlement Act
Conveyances
Regional Conveyances

A BLM decision implicitly determining that lands within the Copper River were an "island" (and thus were situated above the ordinary high water mark at the time of Alaska Statehood on January 3, 1959) will be set aside where the record does not contain evidence or analysis supporting that determination.

State of Alaska, 167 IBLA 250 (Dec. 2, 2005).

Alaska Native Claims Settlement Act
Definitions
Generally

A Native group locality under *Tanalian, Inc.*, 75 IBLA 316 (1983), includes both the land on which group members live and the greater area in which other residents lived in relative proximity, as compared with the population density of lands beyond the area so designated. The factors of relative proximity, amenities, and other aspects of the community are interrelated in a total balance in determining locality, and evidence of the extent to which residents of the area share common interests or concerns in the local amenities, facilities, and services may be received as indicative of the geographic area of the locality.

Minchumina Natives, Inc. (On Judicial Remand), 153 IBLA 225 (Aug. 31, 2000).

Alaska Native Claims Settlement Act
Easements
Access

BLM properly refused to reserve an easement for a trail to provide access to public land where that land has been transferred into private ownership and therefore no access to public lands or waters would be denied. A request for a site easement was also properly denied where the land sought for the easement had been transferred into private ownership and where an approved site easement exists within 3 miles of the requested rest site.

State of Alaska, 153 IBLA 303 (Sept. 27, 2000).

Alaska Native Claims Settlement Act
Easements
Decision to Reserve

Jurisdiction of the Board to consider an appeal is governed by Departmental appeal regulations at 43 C.F.R. Part 4. The failure to file an appeal within 30 days of receipt of a decision reserving a public access easement under section 17(b) of the Alaska Native Claims Settlement Act requires dismissal of an appeal of that decision. Once a party has had an opportunity to challenge such a decision, further consideration of the issue in a subsequent appeal is barred by administrative finality.

Seldovia Native Association, 161 IBLA 279 (May 12, 2004).

Alaska Native Claims Settlement Act
Easements
Decision to Reserve

Departmental regulation 43 C.F.R. § 4.410(b) limits standing to appeal a decision relating to a land selection pursuant to the Alaska Native Claims Settlement Act (ANCSA) to parties claiming a property interest in land affected by the decision. The State of Alaska's reversionary interest in land below the ordinary high water line, which it had transferred to a municipal corporation on the understanding an easement to it had been reserved, and the State's interest in submerged lands beyond the transferred land together constitute a sufficient property interest to sustain the State's standing to appeal a BLM decision determining that no public easement providing access to the submerged lands had been reserved in an ANCSA land conveyance to a Native corporation.

State of Alaska, 167 IBLA 156 (Oct. 27, 2005).

Alaska Native Claims Settlement Act
Easements
Decision to Reserve

A BLM decision determining that an easement segment was not reserved in the interim conveyance and patent conveying selected lands to a Native corporation will be reversed where, although the easement language in the interim conveyance and in the patent do not explicitly describe the segment at issue and the maps associated with the interim conveyance are ambiguous as to the existence of the easement, the map incorporated into the patent as part of the conformance process clearly depicts the easement segment and establishes that the easement segment was reserved in the patent. The patent's clear reservation of the easement segment precludes BLM from determining that the easement segment never existed.

State of Alaska, 167 IBLA 156 (Oct. 27, 2005).

Alaska Native Claims Settlement Act
Easements
Public Easements

BLM properly refused to reserve an easement for a trail to provide access to public land where that land has been transferred into private ownership and therefore no access to public lands or waters would be denied. A request for a site easement was also properly denied where the land sought for the easement had been transferred into private ownership and where an approved site easement exists within 3 miles of the requested rest site.

State of Alaska, 153 IBLA 303 (Sept. 27, 2000).

Alaska Native Claims Settlement Act
Native Land Selections
Regional Selections

On the date of Alaska Statehood (Jan. 3, 1959), the State received title to submerged lands forming the bed of navigable rivers within its borders pursuant to the Equal

Footing Doctrine, as codified in the Submerged Lands Act of 1953, 43 U.S.C. § 1301 (2000). Lands situated in beds of navigable waterways in the State were not available for selection by regional corporations, pursuant to the Alaska Native Claims Settlement Act. Nevertheless, the State could not receive title to a river "island" that was in existence at the time of Statehood, as it was not then part of the bed of the navigable waterway. The question of whether land was an "island" in 1996 is not controlling, as an "island" that emerged from the riverbed after Statehood in 1959 would belong to the State.

State of Alaska, 167 IBLA 250 (Dec. 2, 2005).

Alaska Native Claims Settlement Act
Native Land Selections
Regional Selections

A BLM decision implicitly determining that lands within the Copper River were an "island" (and thus were situated above the ordinary high water mark at the time of Alaska Statehood on January 3, 1959) will be set aside where the record does not contain evidence or analysis supporting that determination.

State of Alaska, 167 IBLA 250 (Dec. 2, 2005).

Alaska Native Claims Settlement Act
Native Land Selections
Village Selections

Although the Board has discretionary authority to order a hearing before an administrative law judge, it normally will order a hearing when an appellant presents an issue of material fact requiring resolution through the introduction of testimony and other evidence not readily obtainable through ordinary appeals procedures. Where an appellant seeks to elicit testimony which could not be probative of whether lands constituted the "smallest practicable tract . . . enclosing land actually used in connection with the administration of [a] Federal installation," within the meaning of ANCSA section 3(e), the Board will not order a hearing to determine whether the lands were public lands withdrawn for Native village selection under ANCSA section 11(a)(1). 43 U.S.C. §§ 1602(e) and 1610(a)(1) (2000).

Kawerak, Inc., 165 IBLA 94 (Mar. 18, 2005).

Alaska Native Claims Settlement Act
Native Land Selections
Village Selections

While the effect of the issuance of a patent by the United States is to transfer the legal title from the United States and to remove from the jurisdiction of the Department the consideration of all disputed questions concerning the rights to lands, that rule is not without qualification, and in a case involving the Secretary of the Interior's special fiduciary responsibility to Alaska Natives, it has been held that the Department retains the responsibility of making an initial determination as to the validity of a Native allotment claim to patented land as a prerequisite to deciding whether or not the Government should bear the burden of going forward with a suit to annul the patent and thereby restore adjudicatory jurisdiction over the land in question to the Department. However, when an individual, who does not stand in any special legal relationship with the Department, seeks to overturn an Alaska Native village eligibility determination approved by the Secretary, which has been the basis for transfer of lands to the village corporation, and the individual has no conflicting claim to the lands, the rationale for the exception does not exist.

Omar Stratman v. Leisnoi, Inc., 157 IBLA 302 (Oct. 29, 2002).

Alaska Native Claims Settlement Act
Native Land Selections
Village Selections

A party who claims a property interest in land affected by a BLM decision approving for conveyance land that has been selected by a Native village corporation and who has participated in administrative proceedings leading to that decision has a right of appeal to the Board under 43 C.F.R. § 4.410(b) (2002)

Kawerak, Inc., 165 IBLA 94 (Mar. 18, 2005).

Alaska Native Claims Settlement Act
Native Land Selections
Village Selections

The acquisition and holding of a parcel of land by the United States under the terms of the Reindeer Industry Act of 1937 and the subsequent use of that land by BIA for BIA teacher housing did not constitute a "valid existing right" that precluded the land from being withdrawn for purposes of Native village selection under ANCSA section 11(a)(1), 43 U.S.C. § 1610(a)(1) (2000).

Kawerak, Inc., 165 IBLA 94 (Mar. 18, 2005).

Alaska Native Claims Settlement Act
Native Land Selections
Village Selections

Lands acquired by the United States under the Reindeer Industry Act of 1937 have been available as public lands for withdrawal for selection by a Native village corporation under ANCSA sections 3(e) and 11(a) (1). 43U.S.C. §§ 1602 (e) and 1610 (a) (1) (2000).

Kawerak, Inc., 165 IBLA 94 (Mar. 18,2005).

Alaska Native Claims Settlement Act
Navigable Waters

Where BLM terminates seven public easements, which had been reserved to guarantee access to three lakes pursuant to section 17(b) of ANSCA, 43 U.S.C. ' 1616(b) (1976), on the basis of a determination that the lakes are non-navigable and not major waterways and therefore that the easements do not provide access to publicly owned lands or major waterways, and the record does not support BLM's determination, the Board will remand the cases to BLM. Should BLM wish to proceed with

decisions regarding the easements under 43 C.F.R. § 2650.4-7(a)(13), it must render an initial determination of navigability of the lakes as an aid to deciding whether the easements may be terminated.

State of Alaska, Louis and Marion Collier, 168 IBLA 334 (Apr. 6, 2006).

Alaska Native Claims Settlement Act
Primary Place of Residence
Criteria

In order for a Native Alaskan to obtain a primary place of residence under section 14(h)(5) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(h)(5) (2000), among other requirements, the land claimed must have been used and occupied by the claimant as of August 31, 1971, and located on land unreserved and unappropriated under the public land laws on the date the application was filed. An application for a primary place of residence must be rejected where the lands applied for were withdrawn from entry under the authority of section 17(d) of ANCSA on the date the application was filed, and where those lands 0were subsequently included in the Wild and Scenic River System.

Joan A. (Anagick) Johnson, 159 IBLA 121 (May 22, 2003).

Alaska Native Claims Settlement Act
Village Eligibility

While the effect of the issuance of a patent by the United States is to transfer the legal title from the United States and to remove from the jurisdiction of the Department the consideration of all disputed questions concerning the rights to lands, that rule is not without qualification, and in a case involving the Secretary of the Interior's special fiduciary responsibility to Alaska Natives, it has been held that the Department retains the responsibility of making an initial determination as to the validity of a Native allotment claim to patented land as a prerequisite to deciding whether or not the Government should bear the burden of going forward with a suit to annul the patent and thereby restore adjudicatory jurisdiction over the land in question to the Department. However, when an individual, who does not stand in any special legal relationship with the Department, seeks to overturn an Alaska Native village eligibility determination approved by the Secretary, which has been the basis for transfer of lands to the village corporation, and the individual has no conflicting claim to the lands, the rationale for the exception does not exist.

Omar Stratman v. Leisnoi, Inc., 157 IBLA 302 (Oct. 29, 2002).

Alaska Native Claims Settlement Act
Village Eligibility

Suits by the United States to vacate and annul any patent must, in accordance with 43 U.S.C. § 1166 (1994), be brought within six years after the date of issuance of such patents. Where land conveyances to an Alaska Native village corporation were made by patents and interim conveyances more than six years ago and title has been quieted in that corporation, the statutory limitation bars further Departmental involvement at any level, regardless of the possible merits of a challenge to the village's eligibility by an individual with no special relationship to the Department and no adverse claim to any of the land transferred to the Native village corporation.

Omar Stratman v. Leisnoi, Inc., 157 IBLA 302 (Oct. 29, 2002).

Animal Damage Control

In deciding whether to authorize the reintroduction of big game wildlife on Federal lands, using predator control deemed necessary to the optimal success of the reintroduction effort, BLM is not required to consider the alternative of going forward with reintroduction without any such control, and did not violate section 102(2)(E) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2)(E) (2000), by failing to address that alternative.

Escalante Wilderness Project, 163 IBLA 235 (Oct. 25, 2004).

Appeals
Generally

A motion to dismiss an appeal of the record of decision approving a coal bed methane project for lack of standing based on the assertion that the appellant is not adversely affected because the decision does not approve any on-the-ground operations will be denied when the decision approves a massive development on public lands with on-the-ground consequences.

William E. Love, 151 IBLA 309 (Jan. 13, 2000).

Appeals
Generally

The Board will properly decline to rule on a request for an advisory opinion.

Bowers Oil and Gas, Inc., 152 IBLA 12 (Feb. 24, 2000).

Appeals
Generally

When BLM imposes a condition of approval to an operator's request to plug and abandon a well, in order to protect a fresh water zone from contamination by gas or saline water from deeper formations, and the operator asserts that such a condition is unnecessary, the operator must show by a preponderance of the evidence that the condition is excessive in order to prevail.

Grynberg Petroleum Co., 152 IBLA 300 (June 8, 2000).

Appeals

Generally

When, on the basis of differing interpretations of the same geological data, the operator of an oil and gas well and BLM disagree on the proper procedure to be used in plugging and abandoning an oil and gas well, the Secretary is entitled to rely on the reasoned opinions and conclusions of his technical experts in the field, absent a showing by a preponderance of the evidence that such opinions are erroneous.

Grynberg Petroleum Co., 152 IBLA 300 (June 8, 2000).

Appeals
Generally

Upon receipt of an appeal, BLM is required to forward to the Board the complete, original Administrative Record, including all original documentation. A decision may be set aside and remanded when the record does not allow review of the basis upon which the decision was made or the documentation does not support the factual findings placed at issue by the appeal.

Silverado Nevada, Inc., 152 IBLA 313 (June 22, 2000).

Appeals
Generally

Where an operator requested State Director Review of a District Office letter responding to its demand for a decision on its plan of operations, and such letter offered several courses of action, including completing review of the original mining plan of operations, the State Director could have denied review as premature. However, where the State Director issues a decision which affirms that the plan of operations cannot be processed as it was submitted and allows the operator 30 days to decide to modify the plan or suggest other alternatives to the proposed plan of operations or the plan shall be deemed denied, the State Director's decision constitutes an appealable decision.

Mount Royal Joint Venture, 153 IBLA 90 (July 31, 2000).

Appeals
Generally

Where, after receiving a letter from BLM advising that it will resume processing a proposed mining plan of operations, an appellant contends that BLM in the past had deliberately delayed taking action thereon, appellant's allegations will be rejected as moot.

Mount Royal Joint Venture, 153 IBLA 90 (July 31, 2000).

Appeals
Generally

When an appeal is filed with the Board of Land Appeals, subject matter jurisdiction is lodged with the Board, suspending the authority of the deciding official to exercise further decisionmaking jurisdiction over matters directly relating to the subject of the appeal. However, it does not have the effect of suspending the deciding official's authority to act on matters that are functionally independent from the subject of the appeal.

McMurry Oil Co., 153 IBLA 391 (Oct. 11, 2000).

Appeals
Generally

An appeal of a decision implementing a land exchange is properly dismissed as moot when it is filed after legal title to the land has been transferred, BLM no longer has jurisdiction over the lands transferred out of Government ownership, and appellant's requested relief cannot be afforded.

Michael V. McLucas, 154 IBLA 42 (Nov. 2, 2000).

Appeals
Generally

Where the State of Alaska fails to appeal a decision finding a native allotment to be legislatively approved the State may not subsequently challenge any of the predicate facts determined by BLM in its initial decision.

State of Alaska Department of Transportation & Public Facilities, 154 IBLA 57 (Nov. 21, 2000).

Appeals
Generally

It is incumbent upon BLM to ensure that its decision is supported by a rational basis and that such basis is stated in the written decision, as well as being demonstrated in the Administrative Record accompanying the decision. A BLM decision claiming trespass damages for the unauthorized use of 3 acres of public lands will be set aside and the case remanded where neither the decision nor the case record provide any support for a finding that the trespass encompassed 3 acres.

Parkway Retail Centre, LLC, 154 IBLA 246 (Apr. 4, 2001).

Appeals
Generally

The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 provides that demands or orders are subject to the 33-month deadline for final decisions of

administrative appeals. A "demand" is an order to pay which has a reasonable basis to conclude that the obligation in the amount of the demand is due and owing. An "order to pay" means a written order which (A) asserts a specific, definite, and quantified obligation claimed to be due, and (B) specifically identifies the obligation by lease, production month and monetary amount of such obligation claimed to be due and ordered to be paid, as well as the reason such obligation is claimed to be due, but such term does not include any other communication or action by or on behalf of the Secretary, including value determinations which do not contain mandatory or ordering language.

Marathon Oil Company, 155 IBLA 27 (May 1, 2001).

Appeals
Generally

Where the Board has previously held that various millsites were null and void and that decision constitutes the final determination of the matter for the Department, the correctness of that determination is not subject to attack before the Board in a collateral proceeding arising out of BLM's actions in implementing the Board decision, absent compelling legal or equitable considerations.

Robert C. Lefaivre, 155 IBLA 137 (June 20, 2001).

Appeals
Generally

Under 43 C.F.R. § 4.410(a), "[a]ny party to a case who is adversely affected by a [BLM] decision shall have a right of appeal to the Board." An appeal brought by an organization is properly dismissed where the organization fails to identify any members who had been adversely affected by BLM's decision or where the person representing the organization does not, in response to a challenge, produce evidence independent from his own declaration that he has authority to do so. However, where the individual who filed both the protest and the appeal as a purported officer of the organization has been personally adversely affected by BLM's decision, that individual may be recognized as having filed an appeal on his or her own behalf.

Las Vegas Valley Action Committee et al., 156 IBLA 110 (Dec. 19, 2001).

Appeals
Generally

On appeal from a BLM decision authorizing a sand and gravel mining project, the Board may review whether BLM considered the potential impact to threatened and endangered species or their habitat. However, it lacks jurisdiction to review the merits of a biological opinion issued by USFWS, as a result of consultation regarding a species, which serves, in part, as a basis for BLM's decision.

Sierra Club, Angeles Chapter, Santa Clarita Group, et al., 156 IBLA 144 (Jan. 8, 2002).

Appeals
Generally

The regulation at 43 C.F.R. § 4.470(b) is a codification of the doctrine of "administrative finality," the administrative counterpart of *res judicata*, which normally precludes reconsideration in a subsequent case of matters finally resolved for the Department in an earlier appeal. A precondition for the application of the doctrine is that the matter raised in the subsequent proceeding was one distinctly put in issue and directly determined in the earlier appeal, as reflected in the language of 43 C.F.R. § 4.470(b) providing that a party who fails to appeal a BLM final grazing decision be barred thereafter from challenging "the matters adjudicated in that final decision." Where a party failed to appeal a final BLM grazing decision rejecting his application for a grazing permit on the grounds that the permitted use he sought was not available (but not mentioning cancellation of his grazing preference), that party's successor-in-interest is not barred under 43 C.F.R. § 4.470(b) from appealing a subsequent final BLM decision declaring the party's grazing preference canceled for failure to comply with the notice requirements of 43 C.F.R. § 4110.2-3.

James G. Katsilometes v. Bureau of Land Management, 157 IBLA 230 (Oct. 4, 2002).

Appeals
Generally

A decision of an administrative law judge dismissing a grazing appeal for lack of standing is properly set aside where the party appealing is adversely affected by a BLM final grazing decision rejecting his protest.

James G. Katsilometes v. Bureau of Land Management, 157 IBLA 230 (Oct. 4, 2002).

Appeals
Generally

Standing to appeal requires that a party to the case be adversely affected by a decision of the authorized officer. 43 C.F.R. § 4.410(a). An appeal of a recommendation by the U.S. Fish and Wildlife Service to redefine the boundaries of an interim conveyance to enhance wildlife protection is properly dismissed in the absence of a decision by BLM to implement the recommendation.

Nevada Outdoor Recreation Association, 158 IBLA 207 (Jan. 22, 2003).

Appeals
Generally

Upon the filing of an appeal, it is incumbent upon BLM to forward the complete, original case file to the Board within the time frame and manner provided by *BLM Manual* 1841.15A

Terrence Timmins, 158 IBLA 318 (Mar. 26, 2003).

Appeals
Generally

Under 43 C.F.R. § 4.410(a), a party to a case who is adversely affected by a BLM decision has a right of appeal to the Board. Where an organization commented on an environmental assessment and protested a finding of no significant impact, and submitted affidavits of members showing that they would be adversely affected by a BLM decision, the Board will not dismiss the appeal for lack of standing.

Southern Utah Wilderness Alliance, 159 IBLA 220 (June 16, 2003).

Appeals
Generally

The timely filing of a notice of appeal is a jurisdictional requirement, and if an appeal is not timely filed, the Board of Land Appeals does not have jurisdiction to consider it and, pursuant to 43 C.F.R. § 4.411(b), the officer issuing the decision must close the case. If an appeal is properly filed, however, the office issuing the decision loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal, until jurisdiction over it is restored by Board action disposing of the appeal. Any adjudicative action taken by the office issuing the decision relating to the subject matter of the appeal after the filing of a timely appeal is a nullity since the office will have acted without jurisdiction.

American Petroleum Energy Company, 160 IBLA 59 (Aug. 28, 2003).

Appeals
Generally

Pursuant to 43 C.F.R. § 4.411(b), "the notice of appeal must give the serial number or other identification of the case." A timely filed notice of appeal that mistakenly uses the docket number of an MMS matter involving a different appellant that was settled several years before the notice of appeal was submitted, but correctly identifies the name of the party filing the appeal, the date of the order being appealed, and the nature of the order being appealed contains sufficient "other identification of the case" to meet the regulatory requirement. An MMS decision dismissing the appeal as untimely based on the lack of a correct serial number is a nullity and will be vacated by the Board.

American Petroleum Energy Company, 160 IBLA 59 (Aug. 28, 2003).

Appeals
Generally

When MMS issues an order to pay additional royalty, indicating that it is subject to immediate appeal, but places the order and bill for collection on hold pending additional review, the appeal period for the order does not begin to run until MMS notifies the appellant that the hold has been lifted, and an MMS decision dismissing as untimely an appeal to the Commissioner of Indian Affairs timely filed within 30 days of receipt of the notice of the lifting of the hold will be reversed and the case remanded for adjudication of the merits of the appeal.

American Petroleum Energy Company, 160 IBLA 59 (Aug. 28, 2003).

Appeals
Generally

Under 43 C.F.R. § 4.410(a), a party to a case who is adversely affected by a BLM decision has a right of appeal to the Board. A party challenging a BLM decision to go forward with a lease sale is not adversely affected by BLM's failure to notify nominees of oil and gas leases of its decision 7 days prior to the sale, when the Instruction Memorandum requires notice to the nominee at that juncture only if BLM decides to suspend leasing of the nominee's chosen parcel. A party opposing the lease sale does not have standing to champion the rights of a nominee for a lease, particularly when those rights were not implicated by BLM.

Southern Utah Wilderness Alliance, 160 IBLA 225 (Dec. 11, 2003).

Appeals
Generally

Under 43 C.F.R. § 4.411(a), a party to a case who is adversely affected by a decision of an officer of BLM may appeal to the Board of Land Appeals by filing a notice of appeal in the office of the officer who made the decision within 30 days after the date of service. A notice of decision published by BLM in a newspaper, providing that an appeal of the decision had to be filed "within 30 days after the publication of this notice," does not establish a date of service from which the 30-day appeal period can be calculated.

Oregon Natural Resources Council, Hells Canyon Preservation Council, 161 IBLA 323 (May 25, 2004).

Appeals
Generally

The procedures governing wildfire management decisions affecting forests are set forth at 43 C.F.R. § 5003.1(b). Appeals of such decisions are to the Board of Land Appeals, which is required under 43 C.F.R. § 4.416 to decide such appeals within 60 days after all pleadings have been filed, and within 180 days after the appeal is filed. Other BLM decisions governing or relating to forest management proceed through the protest and appeal process of 43 C.F.R. § 5003.1(a), 43 C.F.R. § 5003.2, and 43 C.F.R. § 5003.3.

Oregon Natural Resources Council, Hells Canyon Preservation Council, 161 IBLA 323 (May 25, 2004).

Appeals
Generally

When BLM provides in a decision record approving a fuels treatment project, and subsequent notice thereof, for a right of appeal to the Board of Land Appeals, pursuant to 43 C.F.R. Part 4, but explains on appeal that the project will be implemented through a timber sale contract and a stewardship contract and that the timber sale contract will be subject to the protest and appeal procedures of 43 C.F.R. Subpart 5300, the Board will grant BLM's motion to dismiss, as premature, an appeal of the decision record, as it relates to activities to be conducted pursuant to a timber sale contract.

Oregon Natural Resources Council, Hells Canyon Preservation Council, 161 IBLA 323 (May 25, 2004).

Appeals
Generally

Under 43 C.F.R. § 5003.1(b), BLM may make a wildfire management decision effective immediately or on a date certain when it determines that "vegetation, soil, or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire." In the absence of such a determination, a wildfire management decision is automatically stayed in accordance with 43 C.F.R. § 4.21(a). Regardless, 43 C.F.R. § 4.21(b) clearly is applicable to wildfire management decisions whether or not such a decision is made effective immediately.

Oregon Natural Resources Council, Hells Canyon Preservation Council, 161 IBLA 323 (May 25, 2004).

Appeals
Generally

Proof that a document was faxed (evidenced by sender's transmission log) is not the equivalent of proof of receipt. A request for State Director review is not considered properly filed until received by the office of the appropriate State Director.

National Wildlife Federation et al., 162 IBLA 263 (Aug. 13, 2004).

Appeals
Generally

When wells that were the subject of a protest of the issuance of Applications for Permit to Drill have been drilled, the appeal ordinarily will be dismissed as moot because there is no further relief that can be granted on appeal. Where the appeal raises issues which are capable of repetition and may yet evade review, the Board properly determines to adjudicate the appeal even though the relief sought by an appellant cannot be granted for the particular event.

Colorado Environmental Coalition, The Wilderness Society, 165 IBLA 221 (Apr. 8, 2005).

Appeals
Generally

BLM has the general authority to carry out its management obligations without Board permission, but BLM has no jurisdiction unilaterally to reverse a decision under appeal and grant relief. Instead, BLM should seek a remand of the matter and issue a new decision.

Benton C. Cavin, 166 IBLA 78 (June 22, 2005).

Appeals
Generally

The Board of Land Appeals decides appeals involving the use and disposition of public lands and their resources. The Board is without jurisdiction to decide survey disputes that do not involve public lands or resources.

Benton C. Cavin, 166 IBLA 78 (June 22, 2005).

Appeals
Generally

When the decision of an administrative law judge declaring placer mining claims invalid was not stayed during the pendency of the appeal, there were no mining claims on which mining operations could be conducted, and thus nothing to which a mining plan of operations could pertain. In these circumstances, a BLM decision revoking the plans of operations for the invalid mining claims will be upheld. When the revocation of a plan of operations for an invalid mining claim is affirmed on appeal, an appeal of an earlier BLM decision finding that operations exceeded the scope of the approved plan of operations and requiring the submission of a new plan of operations is properly declared moot, and the appeal of that decision is properly dismissed as moot.

Pass Minerals, Inc., K. Ian Matheson, Kiminco, Inc., 168 IBLA 164 (Mar. 16, 2006).

Appeals
Generally

Under 43 C.F.R. § 4.411, a party to a case who is adversely affected by a decision of an officer of BLM may appeal to the Board of Land Appeals by filing a notice of appeal in the office of the officer who made the decision within 30 days after the date of service. The Board has no jurisdiction to consider challenges to BLM actions raised after the time for appealing those actions. To the extent those actions are raised as further evidence of the alleged error in a BLM decision properly appealed to the Board, consideration of such evidence must attend a finding that BLM erred in undertaking the challenged action.

Defenders of Wildlife Wyoming Outdoor Council, 169 IBLA 117 (May 31, 2006).

Appeals
Generally

An Alaska Native Veteran Allotment application is properly rejected, as a matter of law, without the necessity for a hearing, where the applicant fails to allege, in his application or anywhere in the record, that he initiated his qualifying use and occupancy under the 1906 Act before the 1968 withdrawal of the claimed lands from entry under the 1906 Act, or that his use and occupancy was as an independent citizen acting on his own behalf, potentially exclusive of others, and not as a dependent child in the company and under the supervision of a parent.

Irving P. Sheldon, 169 IBLA 276 (July 27, 2006).

Appeals
Generally

As a BLM decision concerning permissibility of occupancy of a mining claim is not a decision determining whether the claim is invalid due to lack of a discovery under the Mining Law of 1872, the mining claimant is not entitled to a pre-decisional fact-finding hearing before an administrative law judge. The claimant's due process rights are fully protected by its right to appeal such decision to the Interior Board of Land Appeals.

Combined Metals Reduction Co., 170 IBLA 56 (Sept. 7, 2006).

Appeals
Generally

The requirement that there be "a decision of an officer" before an appeal can lie is essential. A *decision* either authorizes or prohibits an action affecting individuals who have interests in the public lands. When an adverse impact on a party is contingent upon some future occurrence, or where the adverse impact is merely hypothetical, it is premature for this Board to decide the matter. Where BLM has stated that it will finally decide certain issues at a future date, and identified factors that could influence its decisionmaking or moot an appeal, there is presently no decision which could be appealed.

Geo-Energy Partners-1983 Ltd., 170 IBLA 99 (Sept. 14, 2006).

Appeals
Generally

When the Board has previously considered and rejected the same arguments urged in the present appeal, and an appellant does not file supplemental briefing to address the impact of that earlier decision, appellant has not shown that the arguments expressly considered and rejected in the previous decision remain viable in these cases. In such circumstances, the Board properly concludes that the earlier decision is dispositive.

Wyoming Outdoor Council, Wyoming Wildlife Federation, 170 IBLA 240 (Sept. 29, 2006).

Appeals
Generally

Parties to agency decisions are given the right to appeal in appropriate circumstances by regulation; failure to include an appeals paragraph in an agency decision does not alter that right.

Devon Energy, et al., 171 IBLA 43 (Jan. 24, 2007).

Appeals
Generally

A "Dear Reporter Letter" issued by MMS to numerous Federal and Indian oil and gas lessees is not an appealable "order" under 30 C.F.R. Part 290, where the letter, although occasionally cast in mandatory terms, does not "contain mandatory or ordering language" because it does not require immediate and specific action and does not address any specific leases, gas volumes, treatment costs, or additional royalties due. The letter is properly seen only as generalized guidance on how Federal and Indian lessees nationwide are expected to proceed concerning royalty due on coalbed methane. Unless and until MMS issues specific orders containing specific instructions to specific lessees governing how they must compute, report, and/or pay royalty, among other actions, no appealable order has been issued under 30 C.F.R. Part 290.

Devon Energy, et al., 171 IBLA 43 (Jan. 24, 2007).

Appeals
Generally

Under 43 C.F.R. § 3809.806(a), if the BLM State Director does not make a decision within 21 days of receipt of a request for State Director review, the applicant is to consider the request denied and may appeal the original BLM decision to the Board of Land Appeals. However, neither that regulation nor any other regulation in 43 C.F.R. Subpart 3809 imposes any specific deadline for filing such an appeal.

Ferrell Anderson, 171 IBLA 289 (May 25, 2007).

Appeals
Generally

When, during the pendency of an appeal, the arguments raised by an appellant have been addressed in other Board decisions, or by Federal courts, whether or not the appellant was a party thereto, or in other Board adjudication to which it was a party, and the appellant fails to show that those arguments remain viable, the Board may dispose of such arguments in summary fashion.

Wyoming Outdoor Council, Biodiversity Conservation Alliance, 172 IBLA 289 (Sept. 20, 2007).

Appeals
Burden of Proof

The appropriate time for considering the potential impacts of oil and gas exploration and development is when BLM proposes to lease public lands for oil and gas purposes because leasing, at least without no surface occupancy stipulations, constitutes an irreversible and irretrievable commitment to permit surface-disturbing activity, in some form and to some extent. Where the environmental assessment (EA) of each parcel at issue shows that there is no serious promise of CBM development, the burden falls upon the appellant to come forward with objective, countering evidence showing error in the EA's conclusions, to demonstrate that BLM could not properly rely on the RMP/EIS's environmental analysis to support the decision to offer these parcels for sale. In light of the absence of any serious potential for CBM development on the parcels, BLM could rely on the impacts analysis contained in the RMP to fulfill its pre-leasing NEPA obligation.

Wyoming Outdoor Council, et al., 164 IBLA 84 (Nov. 30, 2004).

Appeals
Jurisdiction

Since 30 C.F.R. Part 290 gives the Board jurisdiction only over appeals of decisions of the Director, MMS, a direct appeal to the Board of a decision of an MMS official will be dismissed for lack of jurisdiction where the appellant has not first obtained review of the decision by the Director, MMS.

KMF Mineral Resources, Inc., 151 IBLA 35 (Oct. 21, 1999).

Appeals
Jurisdiction

The Office of Hearings and Appeals does not have authority to review the merits of biological opinions issued by the FWS under section 7 of the Endangered Species Act, 16 U.S.C. § 1536 (1994). BLM properly limits activity on a private inholding in a wilderness area where the limitations imposed are directed by an FWS biological opinion in order to prevent adverse impacts on wildlife.

National Wildlife Federation, et al., Erik and Tina Barnes, 151 IBLA 104 (Nov. 24, 1999).

Appeals
Jurisdiction

The Board has no jurisdiction to review a BLM decision that there will be fire rehabilitation when that decision was made within the context of a land use plan. Therefore, BLM need not consider a no-action alternative when it concludes that alternative is not in conformance with approved land use plans. However, the Board has jurisdiction to review a BLM decision implementing the rehabilitation plan.

Southern Utah Wilderness Alliance, 154 IBLA 275 (Apr. 16, 2001).

Appeals
Jurisdiction

The Board of Land Appeals will not entertain an appeal when no effective relief can be afforded an appellant. Where a challenged interim decision has been superceded by a final multiple use decision, this Board will decline to entertain the appeal with respect to the interim decision because no effective relief is available.

Von L. and Marian Sorensen v. Bureau of Land Management, 155 IBLA 207 (July 18, 2001).

Appeals
Jurisdiction

Where an appellant opposes BLM's choice among alternatives in a record of decision on the basis of an environmental assessment and asks that the Board implement the appellant's choice of alternatives, the Board will not entertain the appeal when: (1) reversal would require a new NEPA process rather than implementation of appellant's choice and (2) a subsequent BLM decision has already supplanted the record of decision in question.

Von L. and Marian Sorensen v. Bureau of Land Management, 155 IBLA 207 (July 18, 2001).

Appeals
Jurisdiction

A well-recognized exception to the rule of mootness is that the Board will not dismiss an appeal when an issue raised by the appeal is capable of repetition, yet evading review. A decision on appeal does not fall into this exception where the appellant did not appeal a subsequent BLM decision supplanting the decision at issue.

Von L. and Marian Sorensen v. Bureau of Land Management, 155 IBLA 207 (July 18, 2001).

Appeals
Jurisdiction

Departmental regulation 43 C.F.R. § 4.410 provides a right of appeal to the Board to any party adversely affected by a decision of an officer of the Bureau of Land Management but not the agencies of other Departments. When BLM issues a decision approving issuance of an airport lease to enable the operator of an airport to extend runways from land owned by the airport onto public land based in part on an environmental assessment approved by the Federal Aviation Administration, and the party appealing BLM's decision alleges injury arising from airport operations, that party will be deemed to have been adversely affected by the FAA decision rather than that of BLM. On appeal, the Board will only consider those adverse effects and issues which the appellant has identified that have a nexus to BLM's decision that is distinct from the issues decided by the FAA.

Las Vegas Valley Action Committee et al., 156 IBLA 110 (Dec. 19, 2001).

Appeals
Jurisdiction

As an appellate tribunal, the Board of Land Appeals does not exercise supervisory authority over BLM except in the context of deciding an appeal over which the Board has jurisdiction. The Board will decline to render advisory opinions on questions not involved in a properly-filed appeal.

Nevada Outdoor Recreation Association, 158 IBLA 207 (Jan. 22, 2003).

Appeals
Jurisdiction

A decision rejecting an Indian Allotment application is properly affirmed where the land sought to be entered has been classified for retention in public ownership in the applicable resource management plan. The Board has no jurisdiction to review such a land-use plan or the classifications contained therein.

Jane Delorme, et al., 158 IBLA 260 (Feb. 3, 2003).

Appeals
Jurisdiction

Under 43 C.F.R. § 4.1281, any person who is or may be adversely affected by a written decision of the Director of OSM or his delegate may appeal to the Board, if the decision specifically grants such right of appeal. A letter from OSM to a person who has filed a citizen complaint informing him of preliminary results of a reinvestigation of his complaint relating to methane contamination of his water supply, which does not grant the right of appeal, is not an appealable decision under 43 C.F.R. § 4.1281.

Moses Tennant, 158 IBLA 293 (Mar. 11, 2003).

Appeals
Jurisdiction

An appeal from an OSM decision closing its reinvestigation of a citizen complaint relating to methane contamination because the complainant would not authorize OSM to enter his property for the purposes of completing that reinvestigation will be affirmed when the appellant fails to establish any error in OSM's decision.

Moses Tennant, 158 IBLA 293 (Mar. 11, 2003).

Appeals
Jurisdiction

Under the Endangered Species Act (ESA), BLM is obligated to ensure that an authorized action is not likely to jeopardize the continued existence of a threatened or endangered species or result in the destruction or adverse modification of its habitat. The Act imposes the same obligation for species that have been proposed for listing. Compliance with the ESA is also an element of complying with NEPA. In evaluating whether BLM took the requisite "hard look" at the environmental impacts of a proposed action that NEPA requires, the Board properly considers whether BLM considered the potential impacts on listed or proposed species or their habitat that the ESA mandates. However, the Board lacks jurisdiction to review the merits of a biological opinion issued by the U.S. Fish and Wildlife Service as a result of formal consultation regarding a species, which opinion serves, in part, as a basis for BLM's decisionmaking.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

Appeals
Jurisdiction

The Board does not have the delegated authority to review, reverse, reject, or amend proclamations issued by Presidents of the United States.

Richard D. Sawyer, 160 IBLA 158 (Oct. 22, 2003).

Appeals
Jurisdiction

Jurisdiction of the Board to consider an appeal is governed by Departmental appeal regulations at 43 C.F.R. Part 4. The failure to file an appeal within 30 days of receipt of a decision reserving a public access easement under section 17(b) of the Alaska Native Claims Settlement Act requires dismissal of an appeal of that decision. Once a party has had an opportunity to challenge such a decision, further consideration of the issue in a subsequent appeal is barred by administrative finality.

Seldovia Native Association, 161 IBLA 279 (May 12, 2004).

Appeals
Jurisdiction

Departmental regulations at 43 C.F.R. §§ 4.1(b)(3) and 4.410 provide a right of appeal to the Board to any party adversely affected by decisions of officers of the Bureau of Land Management, not from decisions by agencies of other Departments. On appeal, a BLM decision to grant rights-of-way on public lands for communications facilities designed to facilitate training operations at a military installation will be affirmed when, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2)(C) (2000), BLM has, in an environmental impact statement jointly prepared with the Department of the Navy, taken a hard look at the potential significant environmental impacts of anticipated jet aircraft overflights and other military activities, and the appellant has failed to demonstrate that adverse effects it has identified have a causal nexus to BLM's decision.

Rural Alliance for Military Accountability, 163 IBLA 131 (Sept. 15, 2004).

Appeals
Jurisdiction

The Board does not have proper authority to oversee a State program approved by the Environmental Protection Agency under the Resource Conservation and Recovery Act, and will not present a forum for arguments against the State's exercise of such delegated authority. Where an appeal requires the Board to intervene in the State's, or EPA's, implementation of authority under that statute, it will be dismissed.

Great Basin Mine Watch, 164 IBLA 87 (Sept. 26, 2003).

Appeals
Jurisdiction

The Board properly dismisses an appeal by a state from a decision of the Director, Minerals Management Service, granting an appeal by a lessee or its designee from an

MMS order to pay royalty on production from a Federal onshore oil and gas lease, because the regulations at 43 C.F.R. Part 4, Subpart J, which implement the time limits and rule of decision of 30 U.S.C. § 1724(h) (2000), do not provide any opportunity for states to appeal from a decision of the Director, MMS, rescinding or modifying an MMS or delegated state order under 30 C.F.R. § 290.108, and because 43 C.F.R. § 4.906(b)(3) specifically provides that, in the absence of an appeal by the lessee or its designee, the MMS Director's decision constitutes the final decision of the Department, thus depriving the Board of jurisdiction to entertain the appeal.

California State Controller, 166 IBLA 5 (May 18, 2005).

Appeals
Jurisdiction

The Board will dismiss an appeal, filed pursuant to 43 C.F.R. § 4.478(a), from an order of an administrative law judge granting or denying a petition for a stay of the effect of a BLM grazing decision when the appellant challenging the stay order fails to comply with the general appeal regulations of the Board that require an appeal from a decision of an administrative law judge to be filed within 30 days following the date of service of the decision on the appellant. In such circumstances, the Board is deprived of jurisdiction to adjudicate the appeal.

Western Watersheds Project v. Bureau of Land Management, 166 IBLA 30 (June 9, 2005).

Appeals
Jurisdiction

The Board has no jurisdiction to review Bureau of Land Management policies outlined in a letter setting forth stated future plans with respect to applications it might receive for use of a particular site, in the absence of an actual application pending before the agency upon which an appealable decision is rendered.

Rock Crawlers Association of America, 167 IBLA 232 (Nov. 23, 2005).

Appeals
Jurisdiction

As an appellate tribunal, the Board of Land Appeals does not exercise supervisory authority over BLM except in the context of deciding an appeal over which the Board has jurisdiction. The Board will decline to render advisory opinions on questions not involved in a properly filed appeal.

Defenders of Wildlife Wyoming Outdoor Council, 169 IBLA 117 (May 31, 2006).

Appeals
Jurisdiction

A standard for identifying leasable minerals and classifying public lands for possible disposal, that was later used by BLM to identify potash enclaves under a subsequently issued secretarial order is subject to challenge and review by the Interior Board of Land Appeals to determine whether BLM properly identified and periodically revised such enclaves based upon its consideration of "existing technology and economics," under and as required by the then applicable Secretarial Order, 51 Fed. Reg. 39425 (Oct. 28, 1986).

IMC Kalium Carlsbad, Inc., Potash Association of New Mexico; Yates Petroleum Corporation; Pogo Producing Company; Bureau of Land Management, 170 IBLA 25 (Sept. 7, 2006).

Appeals
Jurisdiction

An Administrative Law Judge has no authority to invalidate an otherwise valid BLM grazing trespass decision based on proof of improper motive on the part of a BLM official or employee involved in the development or issuance of the decision.

Frank Robbins and High Island Ranch v. Bureau of Land Management, 170 IBLA 219 (Sept. 26, 2006).

Appeals
Jurisdiction

As a general rule, the Board of Land Appeals has authority to review decisions by BLM relating to the use and disposition of the public lands. *See* 43 C.F.R. §§ 4.1(b)(3), 4.410(a). However, the Board does not have jurisdiction to review appeals of decisions to approve or amend a resource management plan, which is designed to guide and control future management actions.

Friends of Living Oregon Waters et al., 171 IBLA 271 (May 21, 2007).

Appeals
Jurisdiction

Whether the Board of Land Appeals exercises jurisdiction over a BLM action as an implementation decision depends upon the effect of that action. If it is in the nature of a direction to BLM's employees, so that an action would be required to produce an adverse effect, the Board does not have jurisdiction. Thus, a BLM decision adopting a management plan providing for guidance and direction regarding recreation activities along a wild and scenic river is not within the jurisdiction of the Board of Land Appeals because it does not implement those actions.

Friends of Living Oregon Waters et al., 171 IBLA 271 (May 21, 2007).

Appeals
Jurisdiction

Under 43 C.F.R. § 3809.806(a), if the BLM State Director does not make a decision within 21 days of receipt of a request for State Director review, the applicant is to

consider the request denied and may appeal the original BLM decision to the Board of Land Appeals. However, neither that regulation nor any other regulation in 43 C.F.R. Subpart 3809 imposes any specific deadline for filing such an appeal.

Ferrell Anderson, 171 IBLA 289 (May 25, 2007).

Appeals
Mootness

When the decision of an administrative law judge declaring placer mining claims invalid was not stayed during the pendency of the appeal, there were no mining claims on which mining operations could be conducted, and thus nothing to which a mining plan of operations could pertain. In these circumstances, a BLM decision revoking the plans of operations for the invalid mining claims will be upheld. When the revocation of a plan of operations for an invalid mining claim is affirmed on appeal, an appeal of an earlier BLM decision finding that operations exceeded the scope of the approved plan of operations and requiring the submission of a new plan of operations is properly declared moot, and the appeal of that decision is properly dismissed as moot.

Pass Minerals, Inc., K. Ian Matheson, Kiminco, Inc., 168 IBLA 164 (Mar. 16, 2006).

Appeals
Standing

Under 43 C.F.R. § 4.410(a), in order to have standing to appeal a BLM decision dismissing a protest to the offering of multiple parcels at a competitive oil and gas lease sale, the appellant must be a party to the case and be adversely affected by the dismissal decision. Dismissal of the protest establishes that the appellant is a party to the case; however, the appellant may appeal the dismissal only as to those parcels for which it can establish that it is adversely affected.

Center for Native Ecosystems, Forest Guardians, 163 IBLA 86 (Sept. 7, 2004).

Appeals
Standing

The regulations at 43 C.F.R. § 4.410(d) provide that "[a] party to a case is adversely affected, as set forth in paragraph (a) of this section, when that party has a legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest." While use of the land in question may constitute such a legally cognizable interest, a legally cognizable interest must exist as of the time of issuance of the decision being appealed in order to have standing to appeal under 43 C.F.R. § 4.410(a). Thus, when an appellant asserts use of the land in question in support of its standing to appeal, the asserted use must have taken place on or before the date of issuance of the decision being appealed.

Center for Native Ecosystems, Forest Guardians, 163 IBLA 86 (Sept. 7, 2004).

Appeals
Standing

In order to have a right to appeal a BLM decision, a person or organization must be a "party to a case" and must be "adversely affected" by the decision. 43 C.F.R. § 4.410 (a). A party may show adverse effect through evidence of use of the lands in question. A party may also show it is adversely affected by setting forth a legally cognizable interest, in resources or in other land, affected by a decision and showing how the decision has caused or is substantially likely to cause injury to those interests. 43 C.F.R. § 4.410(d).

The Coalition of Concerned National Park Retirees, et al., 165 IBLA 79 (Mar. 14, 2005).

Appeals
Standing

An appellant must establish that he will, or is substantially likely to, suffer injury or harm to a legally cognizable interest in order to be adversely affected by a BLM decision. The interest need not be an economic or a property interest and, generally, it is sufficient that an organization show that its members use the public land in question. Stipulations and mitigation measures added to a permit may serve to minimize environmental impacts or prevent significant environmental impacts from occurring, but do not mean that the action approved will have no effect on the land, waters, or wildlife of the area and, therefore, do not preclude an appellant from being adversely affected by a decision to issue a permit to undertake the action.

Missouri Coalition for the Environment, Heartwood, 172 IBLA 226 (Sept. 5, 2007).

Application for Permit to Drill

Applications for permits to drill may be denied pursuant to the oil and gas lease stipulations of the Secretarial Order if BLM determines that contamination from oil and gas drilling will occur, that such contamination cannot be prevented, and that this contamination will interfere with potash mining, result in undue potash waste, or constitute a hazard to potash mining.

IMC Kalium Carlsbad, Inc., Potash Association of New Mexico; Yates Petroleum Corporation; Pogo Producing Company; Bureau of Land Management, 170 IBLA 25 (Sept. 7, 2006).

Applications and Entries
Generally

The Recreation and Public Purposes Act authorizes the Secretary, in his discretion, to sell or lease tracts of public lands for recreational or public purposes under certain conditions. A Recreation and Public Purpose lease/purchase application properly may be rejected by BLM on the basis that the lands sought are not identified for disposal in the applicable management plan.

Nevada Pacific Consortium, 158 IBLA 108 (Dec. 31, 2002).

Applications and Entries
Filing

The execution of an application for patent to a mining claim by an authorized representative, at a time when the applicants are physically within the land district in which the mining claim is located and the applicants have no legal incapacity, is unauthorized and the application is invalid.

Salmon Creek Association, 151 IBLA 369 (Feb. 3, 2000).

Applications and Entries
Filing

The Alaska Native Allotment Act (formerly codified at 43 U.S.C. §§ 270-1 through 270-3 (1970)) was repealed by sec. 18(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617(a) (1994), subject to applications pending before the Department of the Interior on December 18, 1971. A Departmental memorandum issued by Assistant Secretary Jack O. Horton on October 18, 1973, which stated that Native allotment applications filed with a bureau, division, or agency of the Department on or before December 18, 1971, would be considered "pending before the Department" on December 18, 1971, was consistent with section 18(a), created no new law, rights, or duties limiting the eligibility of Native allotment applicants, and therefore is an interpretative rule and not subject to the notice and comment provisions of the APA, 5 U.S.C. § 553 (1994).

Timothy Afcan, Sr., 157 IBLA 210 (Sept. 25, 2002).

Applications and Entries
Filing

Where on appeal from a BLM decision rejecting a Native allotment application because the application was not pending before the Department on December 18, 1971, the Board determines that there is a question of fact whether the application was pending on that date, the Board will set aside the BLM decision and refer the case for a hearing before an Administrative Law Judge. Evidence that a BIA employee may have accepted an allotment application prior to December 18, 1971, establishes a question of fact as to whether the application was "pending before the Department" on that date.

Timothy Afcan, Sr., 157 IBLA 210 (Sept. 25, 2002).

Applications and Entries
Filing

Where on appeal from a BLM decision rejecting a Native allotment application because the application was not pending before the Department on December 18, 1971, the Board determines that there is a question of fact whether the application was pending on that date, the Board will set aside the BLM decision and refer the case for a hearing before an Administrative Law Judge.

Alice D. Brean, 159 IBLA 310 (July 14, 2003).

Applications and Entries
Filing

An Alaska Native allotment application is deemed pending before the Department of the Interior on December 18, 1971, if it was filed in any bureau, division, or agency of the Department on or before that date. Evidence of pendency before the Department on or before December 18, 1971, shall be satisfied by any bureau, division, or agency time stamp, or by affidavit of any bureau, division, or agency officer that the application was received on or before December 18, 1971. If a signed declaration found in the record and attributed to a BIA official indicates the application was filed timely but fails to give a basis for that conclusion, further examination as to this material fact is necessary before the application can be accepted or rejected.

Robert F. Paul, Sr., 159 IBLA 357 (July 16, 2003).

Applications and Entries
Filing

When a Native allotment applicant alleges that he timely submitted allotment applications for two separate parcels of land with officials of the Bureau of Indian Affairs but the Bureau of Land Management has no record of timely receiving the application for one of the parcels, the applicant will normally be afforded a fact-finding hearing in which he may attempt to show that he did, in fact, make timely application for the parcel in question. However, when the applicant himself presents contradictory evidence as to the filing of the application for the second parcel that undermines his claim that the application was timely filed, BLM properly rejects the application without a hearing.

Gaither D. Paul, 160 IBLA 77 (Sept. 22, 2003).

Applications and Entries
Filing

Where on appeal from a BLM decision rejecting a Native allotment application because the application was not pending before the Department on December 18, 1971, the Board determines that there is a question of fact whether the application was pending on that date, the Board will set aside the BLM decision and refer the case for a hearing before an Administrative Law Judge.

Arthur John, 160 IBLA 211 (Dec. 3, 2003).

Applications and Entries
Filing

Where, on appeal from a BLM decision rejecting a Native allotment application for untimeliness, appellant presents evidence consisting of her affidavit, attesting to timely

filing, and a map, purportedly identifying parcels of land claimed by Native applicants (including appellant), such evidence is sufficient to raise a factual question as to whether appellant's Native allotment application was pending before the Department on December 18, 1971. In such a situation, the Board will set aside the BLM decision and refer the case for hearing before an Administrative Law Judge.

Hilma M. McKinnon, 166 IBLA 180 (July 12, 2005).

Applications and Entries
Filing

A BLM decision rejecting Alaska Native allotment applications because of lack of evidence showing that they were pending before the Department on or before December 18, 1971, will be set aside and the matter referred to the Hearings Division for a hearing under 43 C.F.R. § 4.415 where an affidavit is submitted on appeal stating that the applications were filed with the Bureau of Indian Affairs in November 1970, and where the record contains evidence lending credence to that assertion.

Fred T. Angasan, Clarence Kraun, 166 IBLA 239 (Aug. 3, 2005).

Applications and Entries
Filing

The regulations have always required a written and signed application, which must be filed with the Bureau of Land Management office having jurisdiction over the land sought. More than a written declaration of the desire to apply for additional lands is necessary. Without a duly filed, written application in a form that identifies the entry and lands sought, there is no proper basis for identifying and segregating lands and potentially defeating subsequent applications and entries. Where the applicant did not file a new or amended application for additional lands identified as Parcels B and C prior to December 18, 1971, an application after that time constitutes a new application under the Native Allotment Act which must be denied as a matter of law.

Heirs of Simeon Moxie, 172 IBLA 280 (Sept. 14, 2007).

Appraisals

An appraisal will not be set aside unless an appellant shows error in the method of appraisal or shows by convincing evidence that the value is excessive. Where BLM attempts to implement the comparable use method of valuation by using a master appraisal, the Board will uphold the BLM decision where the record contains sufficient detail to show that the specific material at issue matches the representative material.

El Rancho Pistachio, 152 IBLA 87 (Mar. 29, 2000).

Appraisals

A BLM decision increasing rental rate above the schedule rent because the appraised rent exceeds the schedule rent by more than a factor of five will be vacated and the case remanded for reappraisal where the appraisal fails to establish sufficient familiarity with the communication site being appraised and the communication uses thereon.

Kitchens Productions, Inc., 152 IBLA 336 (June 23, 2000).

Appraisals

Where an appraisal determined fair market rental value based on analysis of Los Angeles Basin Data and comparable telecommunication site leases but did not disclose any of the particulars of such data, thereby precluding independent verification of the lease data, effective challenge as to the accuracy of the data and appraisal, and meaningful review by the Board, a BLM decision increasing rental based on an appraisal is properly vacated and remanded for reappraisal.

Kitchens Productions, Inc., 152 IBLA 336 (June 23, 2000).

Appraisals

It is incumbent upon BLM to ensure that its decision is supported by a rational basis, and that such basis is stated in the written decision and is demonstrated in the administrative record accompanying the decision. The recipient of the decision is entitled to a reasoned and factual explanation providing a basis for understanding and accepting the decision or, alternatively, for appealing and disputing it before the Board.

Kitchens Productions, Inc., 152 IBLA 336 (June 23, 2000).

Appraisals

BLM's fair market value determination will be affirmed if the appellant does not demonstrate error in the appraisal method or otherwise present convincing evidence that the fair market value determination is erroneous. Where there is no showing of error in BLM's appraisal method, it normally must be rebutted by another appraisal.

Factory Homes Outlet, 153 IBLA 83 (July 28, 2000).

Appraisals

A BLM appraisal of the fair market rental value of a right-of-way for a petroleum byproducts removal plant site will be affirmed where the appraisal was based on a market survey of comparable rentals and the right-of-way holder has neither demonstrated error in that methodology nor shown that the resulting rental charges are excessive.

Wesfrac, Inc., 153 IBLA 164 (Aug. 22, 2000).

Appraisals

An annual rental charge for a right-of-way will be affirmed where an analysis of the record establishes that the BLM decision setting the rental was in accordance with the underlying appraisal on which the new rental was based and an adequate explanation for BLM's actions is provided.

Southern California Sunbelt Developers, Inc., 154 IBLA 115 (Jan. 12, 2001).

Appraisals

A BLM determination of the fair market value of the use of public land, both authorized and unauthorized, will be set aside where the value is based on a rental estimate which explicitly states that an appraisal is necessary if the case is controversial and the record establishes that the matter has been controversial from the outset.

Sydney Dowton, 154 IBLA 222 (Mar. 30, 2001).

Appraisals

A fair market value determination will be affirmed if the appellant does not demonstrate error in the appraisal method or otherwise present convincing evidence that the fair market value determination is erroneous.

Parkway Retail Centre, LLC, 154 IBLA 246 (Apr. 4, 2001).

Appraisals

The regulations provide that annual rental payments for communication uses of rights-of-ways will be based on "rental payment schedules." 43 C.F.R. § 2803.1-2(d). However, other methods may be used to establish rental payments for communication uses, including when the State Director concurs in a determination made by the authorized officer that the expected rent exceeds the scheduled rent by five times. 43 C.F.R. § 2803.1-2(d)(7)(iv). When BLM has determined the "expected rent" on the basis of an appraisal containing multiple deficiencies, and, even assuming the validity of the appraisal, a proper calculation of the expected rent based on that appraisal does not exceed the scheduled rent by five times, BLM's decision imposing rental on that basis will be reversed and the case remanded for imposition of rent based on the scheduled amount.

KHWY, Inc., 155 IBLA 6 (Apr. 30, 2001).

Appraisals

BLM may not rely on an appraisal for determining expected rent in accordance with 43 C.F.R. § 2801.1-2(d)(7)(iv), when that appraisal fails to disclose any information regarding the comparable data utilized, thereby precluding independent verification of the lease data, effective challenge as to the accuracy of the data and appraisal, and meaningful review by the Board.

KHWY, Inc., 155 IBLA 6 (Apr. 30, 2001).

Appraisals

An appraisal of fair market value for a land use permit issued pursuant to sec. 302(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732(b) (1994), will be affirmed unless an appellant either demonstrates error in the appraisal method or presents convincing evidence that the charge is excessive. In the absence of a preponderance of the evidence that a BLM appraisal is erroneous, such an appraisal may be rebutted only by another appraisal.

Yukon River Tours, 156 IBLA 1 (Nov. 6, 2001).

Appraisals

The Board may set aside a rental decision where an appellant has not proven that the fair market rental value is excessive, but has raised sufficient doubt regarding the method of appraising the value of permits to justify setting aside the decision and remanding for further appraisal. The Board will not set aside and remand a decision based on an appraisal where an independent review answers doubts raised by an appellant.

Yukon River Tours, 156 IBLA 1 (Nov. 6, 2001).

Appraisals

Where BLM consolidates two land use permits with different effective dates under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732 (1994), and adjusts the rental for the consolidated permit effective at the beginning of the 1998 calendar year despite the fact that one of the previous permits did not expire until September 30, 1998, BLM may subsequently appraise the land included within the permit where the permit specified and BLM advised that the rental may be changed based on fair market appraisal. The rental charges imposed from the date of the permit will not be considered retroactive in these circumstances.

Yukon River Tours, 156 IBLA 1 (Nov. 6, 2001).

Appraisals

Where a ROW holder providing private two-way radio service to members of the community, including businesses which serve the public good, demonstrates total loss of a business facility and equipment due to accidental fire, BLM must examine the specific financial data presented to determine whether the fair market rental charge will create an "undue hardship" on the applicant's ability to successfully operate.

Gifford Engineering, Inc., 157 IBLA 277 (Oct. 24, 2002).

Appraisals

It is incumbent upon BLM to ensure that its decision is supported by a rational basis and that such basis is stated in the written decision, as well as being demonstrated in the administrative record accompanying the decision.

Mississippi Potash, Inc., 158 IBLA 9 (Nov. 25, 2002).

Appraisals

In challenging a BLM decision increasing rental pursuant to 43 C.F.R. § 2801.1-2(d)(7)(iv) for a communication site right-of-way, an appellant bears the burden of demonstrating by a preponderance of the evidence that BLM's appraisal methodology was erroneous, that BLM used inappropriate data or erred in its calculations, or that the annual rental arrived at by BLM deviated from the fair market value of the right-of-way. Where BLM issues a decision setting a communications site rental pursuant to 43 C.F.R. § 2803.1-2(d)(7)(iv), it must ensure that its decision is supported by a rational basis and that such basis is reflected in the administrative record accompanying the decision.

Lone Pine Television, Inc., 158 IBLA 86 (Dec. 26, 2002).

Appraisals

A BLM decision increasing rent above the schedule rate based upon an appraisal pursuant to 43 C.F.R. § 2801.1-2(d)(7)(iv) will be reversed when that appraisal fails to establish sufficient familiarity with the communication site being appraised and the communication uses thereon or to disclose information regarding the comparable data utilized, thereby precluding independent verification of the lease data, effective challenge as to the accuracy of the data and appraisal, and meaningful review by the Board.

Lone Pine Television, Inc., 158 IBLA 86 (Dec. 26, 2002).

Appraisals

An appraisal establishing fair market rental value rental of a Federal communication site right-of- ay grant is properly prepared under standards governing Federal appraisals; such an appraisal is not affected by the measure of schedule rent established at 43 C.F.R. § 2803.1-2(d)(3).

Lone Pine Television, Inc., 158 IBLA 86 (Dec. 26, 2002).

Appraisals

A BLM decision increasing annual rental for a communications site lease, as determined by appraisal in accordance with 43 C.F.R. § 2803.1-2(d)(7)(iv), will be set aside where BLM fails to provide an administrative record adequately supporting its fair market rental value determination.

Scott Schmidt, Century El Centro Cellular Corp., 158 IBLA 183 (Jan. 13, 2003).

Appraisals

Where rental of a Federal communications site lease must be determined by appraising its fair market value, such appraisal must be prepared under standards governing Federal appraisals. The appraisal is not governed by the measure of schedule rent established at 43 C.F.R. § 2803.1-2(d)(3).

Scott Schmidt, Century El Centro Cellular Corp., 158 IBLA 183 (Jan. 13, 2003).

Appraisals

BLM properly requires payment of an annual rental for a non-linear right-of-way for an irrigation wastewater pump, pipeline, and pond, where the right-of-way holder fails to show error in BLM's appraisal or that the annual rental is not the fair market rental value of the right-of-way.

George A. Weitz, Inc., Kurt Weitz, 158 IBLA 194 (Jan. 14, 2003).

Appraisals

Anyone properly determined by BLM to be in trespass on Federally-owned lands shall be liable to the United States for damages, including the administrative costs incurred by the United States as a consequence of such trespass and the fair market value rental of the lands for the current year and past years of trespass. Where trespass is "knowing and willful," the trespasser shall be liable to the United States for three times the fair market rental value which has accrued since the inception of the trespass, not to exceed a total of 6 years. In determining the "fair market rental value," it was proper for BLM to consider the value of the improvements (most particularly the fruit trees) placed on the Federally-owned lands in trespass.

Stanley Dimeglio et al., 163 IBLA 365 (Nov. 8, 2004).

Appraisals

A decision determining rental for a pipeline right-of-way issued pursuant to sec. 28 of the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 185 (2000), based on an appraisal of fair market value will be affirmed unless the appellant demonstrates error in the appraisal method or result. In the absence of such a showing, a BLM appraisal may be rebutted only by another appraisal.

Alaska Pipeline Company, Enstar Natural Gas Company, 164 IBLA 149 (Dec. 2, 2004).

Appraisals

In the absence of a showing by a preponderance of the evidence that a BLM appraisal is erroneous, such an appraisal may be rebutted only by another appraisal.

David M. Stanton, 166 IBLA 234 (July 28, 2005).

Appraisals

Letter Decisions determining rental for a pipeline right-of-way issued pursuant to sec. 28 of the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 185 (2000), based upon an appraisal of fair market rental value, will be set aside and remanded where the administrative record does not adequately support the appraisal method and result.

Alyeska Pipeline Service Company, 167 IBLA 112 (Oct. 13, 2005).

Appraisals

Letter Decisions based upon an appraisal prepared by an outside contractor jointly for BLM and the State of Alaska for the Trans-Alaska Pipeline System will be set aside and remanded when the outside contractor accepted a special instruction from BLM and the State dictating that rental be calculated using an "encumbrance of rights" factor of 100 percent, and the administrative record does not provide a rational basis for the special instruction.

Alyeska Pipeline Service Company, 167 IBLA 112 (Oct. 13, 2005).

Attorney Fees
Equal Access to Justice Act
Generally

A person who holds a permit under the Surface Mining Control and Reclamation Act and who prevails in a proceeding to review issuance of a notice of violation may apply either for fees and other expenses under the Equal Access to Justice Act, 5 U.S.C. § 504(a), or for costs and expenses, including attorney fees, under the Surface Mining Act, 30 U.S.C. § 1275(e).

Pacific Coast Coal Company v. OSM, 164 IBLA 52 (Feb. 25, 2005).

Attorney Fees
Equal Access to Justice Act
Adversary Adjudication

A request for an award of costs and attorney fees under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994), will be denied where there has been no adversary adjudication within the meaning of the Act.

Tom Cox, 155 IBLA 273 (July 26, 2001).

Attorney Fees
Equal Access to Justice Act
Adversary Adjudication

A proceeding to review a Notice of Violation under section 525(a) of the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1275(a), is an adversary adjudication under the Equal Access to Justice Act, 5 U.S.C. § 504(a)(1).

Pacific Coast Coal Company v. OSM, 164 IBLA 52 (Feb. 25, 2005).

Attorney Fees
Equal Access to Justice Act
Application and Jurisdiction

Action on an application for an award of fees and/or other expenses filed prior to final disposition of the proceeding must be stayed pending final disposition of the proceedings. Final disposition is the latter of (1) the date upon which the final Departmental decision is issued, or (2) the date of the order which finally resolves the proceeding, such as an order approving settlement or voluntary dismissal.

American Independence Mines & Minerals, 163 IBLA 192 (Sept. 29, 2004).

Attorney Fees
Equal Access to Justice Act
Prevailing Party

In order to qualify for attorney fees and expenses under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994), an applicant must be a prevailing party in an adversary adjudication. Where an issue in a hearing on a grazing permit is remanded to BLM by an Administrative Law Judge for clarification but the decision of BLM has been substantially affirmed, the applicant is not a prevailing party.

Tim Hart v. Bureau of Land Management, Tim Hart and Darwin Hillberry v. Bureau of Land Management, 154 IBLA 260 (Apr. 9, 2001).

Attorney Fees
Surface Mining Control and Reclamation Act of 1977

Under 43 C.F.R. § 4.1294(b), OSM may award appropriate costs and expenses, including attorney fees, to any person, other than a permittee or his representative, who initiates or participates in any proceeding under SMCRA, and who prevails in whole or in part, achieving at least some degree of success on the merits, upon a finding that such person made a substantial contribution to a full and fair determination of the issues. Under 43 C.F.R. § 4.1295, the award includes all costs, expenses, and

attorney fees reasonably incurred as a result of initiating or participating in a proceeding under the Act, as well as those reasonably incurred in seeking the award.

Angus E. Peyton v. Office of Surface Mining Reclamation and Enforcement, 158 IBLA 335 (Apr. 8, 2003).

Attorney Fees
Surface Mining Control and Reclamation Act of 1977

Section 525(e) of SMCRA, 30 U.S.C. § 1275(e) (2000), authorizes an award of "all costs and expenses (including attorney fees) as determined by the Secretary to have been reasonably incurred" for or in connection with a person's participation in an administrative proceeding under the Act. In section 701 of SMCRA "permit applicant" or "applicant" and "permittee" are separately defined as "a person applying for a permit," and "person holding a permit," respectively. 30 U.S.C. § 1291(16) and (18) (2000). The definition of a "person" who may qualify for costs, expenses, and attorney fees under section 701(19) of SMCRA, 30 U.S.C. § 1275(e)(2000), includes non-permittees. Accordingly, a non-permittee seeking reversal of an Applicant Violator System link applied as a result of an alleged offending relationship with a violator coal company is a person who may properly petition for an award of costs and expenses, including attorney fees, under 43 C.F.R. § 4.1294(b).

Angus E. Peyton v. Office of Surface Mining Reclamation and Enforcement, 158 IBLA 335 (Apr. 8, 2003).

Attorney Fees
Surface Mining Control and Reclamation Act of 1977

A petition for an award of costs and expenses, including attorney fees, filed pursuant to sec. 525(e) of the Surface Mining Control and Reclamation Act of 1977, will be granted where petitioner establishes his entitlement to an award by showing a causal nexus between his administrative appeal of OSM's determination that his name be placed in the AVS with a recommendation that he be denied future permits and a decision issued by an administrative law judge granting temporary and permanent relief and by the Interior Board of Land Appeals reversing OSM's decision.

David Ruth, 164 IBLA 253 (Jan. 6, 2005).

Attorney Fees
Surface Mining Control and Reclamation Act of 1977

A proceeding to review a Notice of Violation under section 525(a) of the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1275(a), is an adversary adjudication under the Equal Access to Justice Act, 5 U.S.C. § 504(a)(1).

Pacific Coast Coal Company v. OSM, 164 IBLA 52 (Feb. 25, 2005).

Attorney Fees
Surface Mining Control and Reclamation Act of 1977

A person who holds a permit under the Surface Mining Control and Reclamation Act and who prevails in a proceeding to review issuance of a notice of violation may apply either for fees and other expenses under the Equal Access to Justice Act, 5 U.S.C. § 504(a), or for costs and expenses, including attorney fees, under the Surface Mining Act, 30 U.S.C. § 1275(e).

Pacific Coast Coal Company v. OSM, 165 IBLA 52 (Feb. 25, 2005).

Attorney Fees
Surface Mining Control and Reclamation Act of 1977

Under 43 C.F.R. § 4.1294, OSM may award appropriate costs and expenses, including attorney fees, to any person who participates in any proceeding under SMCRA and achieves some degree of success on the merits, upon a finding that such person made a substantial contribution to a full and fair determination of the issues. An intervenor claiming costs and expenses based upon its challenge to an application to review an NOV must make a substantial contribution which is separate and distinct from OSM's. A petition for an award will be denied where the record does not show that the petitioner made a substantial contribution to the full and fair determination of the issues or that it achieved some degree of success on the merits.

Citizens Coal Council, 168 IBLA 220 (Mar. 20, 2006).

Avulsion

A BLM decision assessing fees and damages for the unauthorized use of public land will be set aside and referred for a hearing where the record contains significant unresolved factual and legal issues concerning whether the subject land was created by accretion or avulsion and who has title to the land.

Sydney Dowton, 154 IBLA 291 (Apr. 19, 2001).

Avulsion

The rule of avulsion states that sudden and perceptible changes in the course of a river do not deprive riparian owners of their land. In such case, the ownership must be determined based upon the ownership prior to avulsion.

Western Aggregates, LLC, 169 IBLA 64 (May 17, 2006).

Bankruptcy Code
Generally

The Minerals Management Service is authorized under 30 C.F.R. § 218.202 to impose a late payment charge where royalty payments for coal from Federal coal leases are untimely. The imposition of late payment charges is appropriate to compensate the Government for loss of use of funds due but not paid. A late payment charge is properly assessed against the lessee for late payment of royalties when payment for coal production under a coal supply agreement is delayed because the purchaser is in bankruptcy.

Colowyo Coal Company L.P., 154 IBLA 31 (Oct. 30, 2000).

Board of Land Appeals

The Office of Hearings and Appeals does not have authority to review the merits of biological opinions issued by the FWS under section 7 of the Endangered Species Act, 16 U.S.C. § 1536 (1994). BLM properly limits activity on a private inholding in a wilderness area where the limitations imposed are directed by an FWS biological opinion in order to prevent adverse impacts on wildlife.

National Wildlife Federation, et al., Erik and Tina Barnes, 151 IBLA 104 (Nov. 24, 1999).

Board of Land Appeals

On appeal from a decision of an Administrative Law Judge, the Board of Land Appeals possesses all of the powers which the Judge had in making his initial decision. Accordingly, where the record establishes that an Administrative Law Judge applied the wrong standard of proof to the detriment of an appellant, it is within the authority of the Board to review the record de novo and apply the correct legal standard without remanding the matter to the Hearings Division.

Riddle Ranches, Inc. v. Bureau of Land Management, 152 IBLA 119 (Apr. 3, 2000).

Board of Land Appeals

Whether the Board will, in any given appeal, exercise its full de novo review authority is a matter committed to its discretion. Where the parties allege and make a preliminary showing that, subsequent to a hearing, new information has come to light which directly bears on the matter at issue, the Board will normally decline to exercise its de novo review authority and will, instead, remand the matter to the Hearings Division for a new fact-finding hearing.

Riddle Ranches, Inc. v. Bureau of Land Management, 152 IBLA 119 (Apr. 3, 2000).

Board of Land Appeals

When an appeal is taken from an OSM decision, that office loses jurisdiction over the matter until jurisdiction is restored by final disposition of the appeal by the appellate body. When, subsequent to an appeal, OSM renders additional conclusions, the Board would normally remand the matter to OSM to recover jurisdiction and properly adopt and render those conclusions. However, where the record in an appeal already contains a clear statement by OSM of its conclusions on each site-specific issue, as well as full briefing by the parties, no purpose would be served by remanding the matter and the Board may exercise its de novo authority to consider whether OSM's conclusions should be adopted.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000).

Board of Land Appeals

When an administrative law judge has erred in determining that the Government failed to present a prima facie case in support of the charges in a mining claim contest and both parties have presented their cases at the hearing on the complaint, the Board may exercise its de novo review authority and proceed to review all the evidence to decide whether the contestee overcame the Government's prima facie case by a preponderance of the evidence.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Board of Land Appeals

Subject to Secretarial review, a decision by the Interior Board of Land Appeals is final for the Department. If the Board's decision is appealed to Federal court, the Board must be able to certify that the record it submits to the court is the complete record that it reviewed and upon which its decision was based.

Silverado Nevada, Inc., 152 IBLA 313 (June 22, 2000).

Board of Land Appeals

The Board will dismiss an appeal from a BLM decision rendered pursuant to the Stipulated Procedures for Implementation of Order approved by the Federal district court in *Aguilar v. United States*, No. A76–271 (D. Alaska Feb. 9, 1983), as a decision rendered pursuant to those stipulations is final for the Department of the Interior.

Wassilie Roberts, Goodnews River Lodge, Inc., 153 IBLA 1 (July 11, 2000).

Board of Land Appeals

The issue of passage of title would be properly before the Board on the appeal by a Native of a BLM decision ruling that the land claimed by a Native had been conveyed to a third party. However, that issue cannot be raised in an appeal to this Board from a determination rendered pursuant to the *Aguilar* proceedings.

Wassilie Roberts, Goodnews River Lodge, Inc., 153 IBLA 1 (July 11, 2000).

Board of Land Appeals

The Board of Land Appeals will not entertain an appeal when no effective relief can be afforded an appellant. Where a challenged interim decision has been superceded by a final multiple use decision, this Board will decline to entertain the appeal with respect to the interim decision because no effective relief is available.

Von L. and Marian Sorensen v. Bureau of Land Management, 155 IBLA 207 (July 18, 2001).

Board of Land Appeals

Where an appellant opposes BLM's choice among alternatives in a record of decision on the basis of an environmental assessment and asks that the Board implement the appellant's choice of alternatives, the Board will not entertain the appeal when: (1) reversal would require a new NEPA process rather than implementation of appellant's choice and (2) a subsequent BLM decision has already supplanted the record of decision in question.

Von L. and Marian Sorensen v. Bureau of Land Management, 155 IBLA 207 (July 18, 2001).

Board of Land Appeals

A well-recognized exception to the rule of mootness is that the Board will not dismiss an appeal when an issue raised by the appeal is capable of repetition, yet evading review. A decision on appeal does not fall into this exception where the appellant did not appeal a subsequent BLM decision supplanting the decision at issue.

Von L. and Marian Sorensen V. Bureau of Land Management, 155 IBLA 207 (July 18, 2001).

Board of Land Appeals

The Bureau of Land Management has jurisdiction to issue a decision ruling that mining claims were located on lands that had, at the time of location, been patented to the State of Idaho. The Board of Land Appeals has jurisdiction to hear an appeal from such decision.

Aberdeen Idaho Mining Co., 155 IBLA 358 (Oct. 1, 2001).

Board of Land Appeals

The Board of Land Appeals has authority to review information submitted on appeal to demonstrate the sufficiency of BLM's NEPA analysis and to permit that information to "cure," if necessary, an otherwise perceived deficiency in that analysis, since, when the Board ultimately acts in deciding an appeal, its decision becomes the "agency" decision for the purposes of any court review. However, such exercise of our de novo review authority is discretionary with the Board and it should be used with caution and not to mask any substantial defect which may have occurred in the NEPA analysis.

Southern Utah Wilderness Alliance, Natural Resources Defense Council, Wilderness Society, Utah Chapter of the Sierra Club, 157 IBLA 150 (Aug. 22, 2002).

Board of Land Appeals

Standing to appeal requires that a party to the case be adversely affected by a decision of the authorized officer. 43 C.F.R. § 4.410(a). An appeal of a recommendation by the U.S. Fish and Wildlife Service to redefine the boundaries of an interim conveyance to enhance wildlife protection is properly dismissed in the absence of a decision by BLM to implement the recommendation.

Nevada Outdoor Recreation Association, 158 IBLA 207 (Jan. 22, 2003).

Board of Land Appeals

As an appellate tribunal, the Board of Land Appeals does not exercise supervisory authority over BLM except in the context of deciding an appeal over which the Board has jurisdiction. The Board will decline to render advisory opinions on questions not involved in a properly-filed appeal.

Nevada Outdoor Recreation Association, 158 IBLA 207 (Jan. 22, 2003).

Board of Land Appeals

Under the Endangered Species Act (ESA), BLM is obligated to ensure that an authorized action is not likely to jeopardize the continued existence of a threatened or endangered species or result in the destruction or adverse modification of its habitat. The Act imposes the same obligation for species that have been proposed for listing. Compliance with the ESA is also an element of complying with NEPA. In evaluating whether BLM took the requisite "hard look" at the environmental impacts of a proposed action that NEPA requires, the Board properly considers whether BLM considered the potential impacts on listed or proposed species or their habitat that the ESA mandates. However, the Board lacks jurisdiction to review the merits of a biological opinion issued by the U.S. Fish and Wildlife Service as a result of formal consultation regarding a species, which opinion serves, in part, as a basis for BLM's decisionmaking.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

Board of Land Appeals

In a mining contest, the Government establishes a prima facie case when a mineral examiner testifies that he has examined a claim and found mineral values insufficient to support a finding of discovery. In proper circumstances the Government may establish a prima facie case even though its witnesses were not physically present on the mining claims. The Government's prima facie case is not defeated by a claimant's assertion that the mineral examiner did not physically visit the claim, when the claimant fails to submit evidence that a site visit would have affected the outcome of a mineral report which was based on evidence derived from sampling during a field examination of the claims in question by another mineral examiner.

United States of America v. Barbara Winkley, 160 IBLA 126 (Oct. 15, 2003).

Board of Land Appeals

After a hearing considering a mining claim contest complaint, the Board may review the decision of the administrative law judge to determine whether it is consistent with law and whether conclusions regarding the evidence are consistent with the facts of record. If not, the Board may exercise its de novo review authority to review and consider the evidence of record and issue a decision consistent with applicable law.

United States v. E. K. Lehmann & Associates of Montana, Inc., et al., 161 IBLA 40 (Mar. 16, 2004).

Board of Land Appeals

In a mining contest, the Government establishes a prima facie case when a mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery. The determination of whether or not the Government has presented a prima facie case is to be made solely on the evidence adduced during the Government's case-in-chief. When the Government presents a prima facie case, the burden shifts to the contestee to rebut that case by a preponderance of the evidence. Where the issue is the validity of a mining claim, and not a patent, a contestee must preponderate on the matters placed at issue by the Government's case.

United States v. E. K. Lehmann & Associates of Montana, Inc., et al., 161 IBLA 40 (Mar. 16, 2004).

Board of Land Appeals

Before suspending or terminating a right-of-way grant for failure to comply with grant terms and conditions or applicable law or regulations, BLM must give the holder written notice that such action is contemplated and state the grounds therefor, and must allow the holder a reasonable opportunity to cure such noncompliance. 43 U.S.C. § 1766 (2000); 43 C.F.R. § 2803.4(d).

Dan Bradshaw, 161 IBLA 116 (Apr. 7, 2004).

Board of Land Appeals

The Board properly dismisses an appeal by a state from a decision of the Director, Minerals Management Service, granting an appeal by a lessee or its designee from an MMS order to pay royalty on production from a Federal onshore oil and gas lease, because the regulations at 43 C.F.R. Part 4, Subpart J, which implement the time limits and rule of decision of 30 U.S.C. § 1724(h) (2000), do not provide any opportunity for states to appeal from a decision of the Director, MMS, rescinding or modifying an MMS or delegated state order under 30 C.F.R. § 290.108, and because 43 C.F.R. § 4.906(b)(3) specifically provides that, in the absence of an appeal by the lessee or its designee, the MMS Director's decision constitutes the final decision of the Department, thus depriving the Board of jurisdiction to entertain the appeal.

California State Controller, 166 IBLA 5 (May 18, 2005).

Board of Land Appeals

The Board will dismiss an appeal, filed pursuant to 43 C.F.R. § 4.478(a), from an order of an administrative law judge granting or denying a petition for a stay of the effect of a BLM grazing decision when the appellant challenging the stay order fails to comply with the general appeal regulations of the Board that require an appeal from a decision of an administrative law judge to be filed within 30 days following the date of service of the decision on the appellant. In such circumstances, the Board is deprived of jurisdiction to adjudicate the appeal.

Western Watersheds Project v. Bureau of Land Management, 166 IBLA 30 (June 9, 2005).

Board of Land Appeals

The Board has no jurisdiction to review Bureau of Land Management policies outlined in a letter setting forth stated future plans with respect to applications it might receive for use of a particular site, in the absence of an actual application pending before the agency upon which an appealable decision is rendered.

Rock Crawlers Association of America, 167 IBLA 232 (Nov. 23, 2005).

Board of Land Appeals

As an appellate tribunal, the Board of Land Appeals does not exercise supervisory authority over BLM except in the context of deciding an appeal over which the Board has jurisdiction. The Board will decline to render advisory opinions on questions not involved in a properly filed appeal.

Defenders of Wildlife, Wyoming Outdoor Council, 169 IBLA 117 (May 31, 2006).

Board of Land Appeals

When an appellant attaches a copy of a communication between BLM and its attorney to a pleading filed in a pending case before the Board and BLM asserts that the document is privileged material protected from disclosure by the attorney-client communication or attorney work-product privileges, the Board will adjudicate the claim of privilege to determine if it has been properly asserted.

Wyoming Outdoor Council, et al., 169 IBLA 223 (June 28, 2006).

Board of Land Appeals

In determining whether the attorney work-product privilege has been waived by an inadvertent disclosure, the Board will examine all the circumstances surrounding the disclosure, including: (1) the reasonableness of precautions taken to prevent disclosure; (2) the amount of time taken to remedy the error; (3) the scope of discovery; (4) the extent of the disclosure; and (5) the overriding issue of fairness.

Wyoming Outdoor Council, et al., 169 IBLA 223 (June 28, 2006).

Board of Land Appeals

When a party attempts to use a privileged document of another party and the privilege has not been waived, the Board may issue a protective order placing the privileged document under seal and striking references to the document in pleadings.

Wyoming Outdoor Council, et al., 169 IBLA 223 (June 28, 2006).

Board of Land Appeals

After a hearing considering a mining claim contest complaint, the Board may review the decision of the Administrative Law Judge to determine whether it is consistent with law and whether conclusions regarding the evidence are consistent with the facts of record. If the Board concludes that the Judge improperly dismissed the contest for the Government's failure to present a prima facie case, and the parties have submitted their entire cases at a hearing, the Board may exercise its de novo review authority to consider the evidence of record and issue a decision consistent with applicable law.

United States v. Pitkin Iron Corporation, et al., 170 IBLA 352 (Nov. 29, 2006).

Board of Land Appeals

As a general rule, the Board of Land Appeals has authority to review decisions by BLM relating to the use and disposition of the public lands. *See* 43 C.F.R. §§ 4.1(b)(3), 4.410(a). However, the Board does not have jurisdiction to review appeals of decisions to approve or amend a resource management plan, which is designed to guide and control future management actions.

Friends of Living Oregon Waters et al., 171 IBLA 271 (May 21, 2007).

Board of Land Appeals

Whether the Board of Land Appeals exercises jurisdiction over a BLM action as an implementation decision depends upon the effect of that action. If it is in the nature of a direction to BLM's employees, so that an action would be required to produce an adverse effect, the Board does not have jurisdiction. Thus, a BLM decision adopting a management plan providing for guidance and direction regarding recreation activities along a wild and scenic river is not within the jurisdiction of the Board of Land Appeals because it does not implement those actions.

Friends of Living Oregon Waters et al., 171 IBLA 271 (May 21, 2007).

Bureau of Land Management

Upon the filing of an appeal, it is incumbent upon BLM to forward the complete, original case file to the Board within the time frame and manner provided by *BLM Manual* 1841.15A.

Terrence Timmins, 158 IBLA 318 (Mar. 26, 2003).

Bureau of Land Management

The Bureau of Land Management has jurisdiction to issue a decision ruling that mining claims were located on lands that had, at the time of location, been patented to the State of Idaho. The Board of Land Appeals has jurisdiction to hear an appeal from such decision.

Aberdeen Idaho Mining Co., 155 IBLA 358 (Oct. 1, 2001).

Bureau of Land Management

BLM may not properly temporarily segregate lands from entry under the mining laws under the authority of section 206(i) of the Federal Land Policy and Management Act of 1976 (FLPMA), *as amended*, 43 U.S.C. § 1716(i) (2000), and 43 C.F.R. § 2201.1-2 in the absence of a proposal to exchange Federal lands. A statement in a resource management plan to the effect that upwards of 149,000 acres of Federal lands are "available for exchange" is not a "proposal" made by BLM to exchange lands within the meaning of 43 C.F.R. Subpart 2201, as it does not identify the lands to be exchanged or the parties seeking the exchange. BLM's improper use of this temporary segregation authority effectively works a withdrawal of the lands without compliance with the procedural requirements of section 204 of FLPMA, 43 U.S.C. § 1714 (2000).

Michael L. Carver, et al., 163 IBLA 77 (*Sept. 8, 2004)*.

Bureau of Land Management

A presumption of regularity supports the official acts of public officers; absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. In the absence of evidence to the contrary, it is appropriate to presume that BLM officials noted the public land records to reflect the existence of a temporary segregation on January 19, 2000, where those records indicate that such notation was made at that time.

Michael L. Carver, et al, 163 IBLA 77 (Sept. 8, 2004).

Bureau of Land Management

"Abandonment." Abandonment of a property interest results from the failure of the holder of a right to exercise that right over an extended period, and abandonment of an interest granted by BLM may thus generally occur without BLM's knowledge. While the BLM Manual states that grazing "[r]esource improvements and treatments cannot be abandoned or removed without authorization," it provides that BLM "may require a permittee/lessee or cooperator to remove a project and rehabilitate the site," but does not require such action. Since abandonment generally occurs over a long period of time, so that BLM may not be aware that it has occurred, it may not be in a position to issue a decision authorizing the abandonment and requiring rehabilitation in every case. Even where BLM is aware of the abandonment, it may not deem it necessary to issue a decision authorizing the abandonment and requiring rehabilitation in every case, such as where abandonment in place without rehabilitation is a satisfactory conclusion to the project. BLM's failure to notify the holder of a grazing right or interest that it has been abandoned is without significance.

Terry Jones v. Bureau of Land Management, 170 IBLA 295 (Nov. 7, 2006).

California Desert Protection Act of 1994
Generally

The drilling of a water well on a private inholding to supply a source of water to support camping within the inholding and the use of the land for the purpose of stargazing are "reasonable" uses of the land within the meaning of § 708 of the California Desert Protection Act of 1994, 16 U.S.C. § 410aaa-78 (1994).

Wilderness Watch, 156 IBLA 17 (Nov. 8, 2001).

California Desert Protection Act of 1994
Generally

Under the express provisions of § 519 of the California Desert Protection Act, 16 U.S.C. § 410aaa-59 (1994), rules and regulations applicable solely to Federal lands within the boundaries of wilderness areas established by that Act are not applicable to private inholdings unless or until such inholdings are acquired by the United States.

Wilderness Watch, 156 IBLA 17 (Nov. 8, 2001).

California Desert Protection Act of 1994
Generally

So long as BLM provides "adequate" access to inholdings within the meaning of § 708 of the California Desert Protection Act of 1994, 16 U.S.C. § 410aaa-78 (1994), the degree and manner of access provided is within BLM's sound discretion.

Wilderness Watch, 156 IBLA 17 (Nov. 8, 2001).

Coal Leases and Permits
Generally

Where a coal lease readjustment stipulation merely informs the operator/lessee of Federal coal leases that at some time in the future the Department might seek to obtain damages on the basis of royalty that would have been payable on coal bypassed in violation of the operator/lessee's obligation to seek maximum economic recovery, but there is presently no alleged violation of that obligation nor any decision imposing royalty, a dispute does not exist and the case is not ripe for review.

Chevron U.S.A. Inc., 154 IBLA 88 (Dec. 18, 2000).

Coal Leases and Permits
Generally

Section 5(b) of the Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. § 202a (1994), authorizes the consolidation of coal leases into logical mining units for development when this would facilitate development of the coal reserves in a logical and efficient manner designed to achieve maximum economic recovery and avoid bypassing coal deposits which could not be economically recovered in a subsequent operation.

Lodestar Energy, Inc., 155 IBLA 286 (July 31, 2001).

Coal Leases and Permits
Generally

A logical mining unit is defined as an area of contiguous lands under the effective control of a single operator in which the coal resources can be developed in an efficient, economical, and orderly manner as a unit with due regard to conservation of the coal reserves and other resources.

Lodestar Energy, Inc., 155 IBLA 286 (July 31, 2001).

Coal Leases and Permits
Generally

Effective control for purposes of a logical mining unit requires that the operator establish the right to enter and mine all recoverable coal reserves. A decision to reject a logical mining unit for lack of effective control of contiguous lands based on the operator's lack of coal rights in a tract of land in which the operator has secured the right to use the surface of the land for coal mining operations will be set aside and remanded when the record does not establish the existence of recoverable coal reserves in the tract.

Lodestar Energy, Inc., 155 IBLA 286 (July 31, 2001).

Coal Leases and Permits
Generally

When certain coal leases described in a logical mining unit application are found not to qualify for inclusion in a logical mining unit, rejection of the application as to other leases which may qualify for a logical mining unit without providing a basis for rejection of those leases is arbitrary and capricious and cannot be sustained on appeal.

Lodestar Energy, Inc., 155 IBLA 286 (July 31, 2001).

Coal Leases and Permits
Generally

Sec. 7(a) of the Mineral Leasing Act, *as amended by* sec. 6(a) of the Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. § 207(a) (2000), requires the termination of any Federal coal lease that has not produced "commercial quantities" of coal (defined as 1 percent of recoverable coal reserves) at the end of 10 years. Sec. 2(d) of the Mineral Leasing Act, *as amended by* sec. 5(b) of the Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. § 202a (2000), authorizes the consolidation of coal leases into logical mining units for development when this would facilitate development of the coal reserves in a logical and efficient manner designed to achieve maximum economic recovery or avoid bypassing coal deposits which could not be economically recovered in a subsequent operation.

Carbon Tech Fuels, Inc., 161 IBLA 147, 159 (Apr. 13, 2004).

Coal Leases and Permits

Generally

A BLM decision terminating a logical mining unit containing one Federal coal lease and one private tract and terminating the included Federal lease for failure to meet diligent development obligations will be affirmed where BLM has not credited pre-LMU production from the private tract to the LMU diligence requirement, and the lessee has not shown that this decision was an abuse of BLM's discretion.

Carbon Tech Fuels, Inc., 161 IBLA 147 (Apr. 13, 2004).

Coal Leases and Permits
Generally

The provisions of 30 U.S.C. § 201(b)(3) (2000) and 43 C.F.R. § 3410.4 direct BLM to maintain the confidentiality of information obtained under a coal exploration license until after the areas involved have been leased or until BLM determines that public access to the data will not damage the competitive position of the licensee, whichever comes first. BLM properly releases information obtained under a coal exploration license issued in 1981 where no bids for the explored area were received when the lands were offered for competitive leasing, no entity has subsequently expressed an interest in leasing the area, and the licensee has not asserted that its competitive position will be damaged by the public release of the information.

Canyon Fuel Company, LLC, et al., 162 IBLA 235 (July 28, 2004).

Coal Leases and Permits
Applications

It is incumbent upon BLM to ensure that its decision is supported by a rational basis and that such basis is stated in the written decision, as well as being demonstrated in the administrative record accompanying the decision. The recipient of a BLM decision is entitled to a reasoned and factual explanation providing a basis for understanding and accepting the decision or, alternatively, for appealing and disputing it before the Board. Where BLM approves preference right lease applications for coal leases without documenting its reasoned analysis in reaching its conclusions, BLM's decision will be set aside and remanded for further adjudication.

The Navajo Nation, et al., 152 IBLA 227 (Apr. 28, 2000).

Coal Leases and Permits
Applications

The revised regulations defining "commercial quantities" governing preference right coal lease applications, first promulgated in 1976, apply to BLM's adjudication of pending preference right coal lease applications even if the applications satisfied the standards in effect during the term of the prospecting permit. A determination made by a USGS official that coal is present in commercial quantities is not binding on USGS, BLM, or the Secretary of the Interior, and an applicant for a preference right coal lease does not acquire a vested right to a lease by virtue of the USGS finding as to commercial quantities. The Supreme Court's decision in *Bowen v. Georgetown University Hospital*, 488 U.S. 204 (1988), does not alter these conclusions.

Jesse H. Knight, et al., 155 IBLA 104 (May 23, 2001).

Coal Leases and Permits
Applications

A party does not obtain a vested right to a lease under a preference right lease application until BLM makes a final determination that commercial quantities of coal exist on the lands under application.

Jesse H. Knight, et al., 155 IBLA 104 (May 23, 2001).

Coal Leases and Permits
Applications

BLM regulations at 43 C.F.R. § 3430.4-1(a) and § 3430.5-1(c) demonstrate that the Department envisioned situations where BLM would require submission of a final showing of commercial quantities of coal with respect to a preference right lease application before the full completion of all necessary environmental reviews.

Jesse H. Knight, et al., 155 IBLA 104 (May 23, 2001).

Coal Leases and Permits
Applications

The screening procedures outlined in Chapter III of BLM Manual Handbook H-3430-1 establish the process by which BLM determines whether a preference right lease application clearly cannot satisfy the commercial quantities test and therefore can be rejected without the preparation of additional environmental documentation. These manual provisions are not inconsistent with the plain terms of the regulations at 43 C.F.R. Subpart 3430.

Jesse H. Knight, et al., 155 IBLA 104 (May 23, 2001).

Coal Leases and Permits
Applications

Where a set of factors and studies of current market potential for the coal underlying the lands embraced by a coal preference right lease application indicate that the applicant is unlikely to be able to satisfy the commercial quantities test, where this Board found that further evidence was necessary to show commercial quantities, and where USGS, BLM and the applicant all stated that additional information was required to show commercial quantities of coal or a valid mine development plan, BLM is not arbitrary or capricious in ordering the applicant to submit a final showing, without first preparing additional environmental documentation.

Jesse H. Knight, et al., 155 IBLA 104 (May 23, 2001).

Coal Leases and Permits
Applications

Under 30 U.S.C. § 201(b) (1970) and 43 C.F.R. § 3430.1-1, an applicant for a preference right coal lease must demonstrate it made a discovery of commercial quantities of coal on the lands involved within the term of the prospecting permit. Neither the statute nor the regulation prevents consideration of evidence concerning commercial quantities that was obtained after the permit expired. A preference right lease applicant must be allowed to perform additional drilling to prove that it discovered commercial quantities of coal during the term of its prospecting permit even though that permit has expired, where the applicant can show that its proposed drilling would be calculated to show that a discovery was made during the term of the permit and that this discovery meets the terms of revised regulations imposing more stringent requirements of proof of commercial quantities of coal.

Jesse H. Knight, et al., 155 IBLA 104 (May 23, 2001).

Coal Leases and Permits
Applications

A deficiency in a coal prospecting permit application related to evidence of qualifications of the applicant under the Mineral Leasing Act is a curable defect. When a party challenges the response to a request for additional information made by BLM 35 years ago in adjudicating the prospecting permit application, a presumption of regularity pertaining to the actions of BLM officials supports a finding that the information was provided to the satisfaction of BLM and a challenge to the validity of the prospecting permit is properly denied.

Ark Land Company, et al., 168 IBLA 235 (Mar. 23, 2006).

Coal Leases and Permits
Applications

The limitation on issuance of coal prospecting permits under the Mineral Leasing Act to "unclaimed, undeveloped" lands was intended to protect the rights of entrymen with a vested adverse claim to purchase the lands which predated the filing of the prospecting permit application.

Ark Land Company, et al., 168 IBLA 235 (Mar. 23, 2006).

Coal Leases and Permits
Applications

Under the former preference right coal leasing provisions of the Mineral Leasing Act, 30 U.S.C. § 201(b) (1970), governing public lands for which prospecting or exploratory work is necessary to determine the existence or workability of coal deposits, the holder of a prospecting permit is entitled to a preference coal lease if he shows within the term of the prospecting permit that the land contains coal in commercial quantities. This requires a showing that the mineral deposit is of such quality and quantity that a prudent person would be justified in the further expenditure of his labor and capital with a reasonable prospect of success in developing a mine. The permittee must show a reasonable expectation that revenue from the sale of coal will exceed the costs of developing the mine, including costs of environmental protection and reclamation, and extracting, removing, and marketing the coal.

Ark Land Company, et al., 168 IBLA 235 (Mar. 23, 2006).

Coal Leases and Permits
Applications

In determining commercial quantities when adjudicating a coal preference right lease application, prices and costs are not considered to be frozen at the time the application is filed, and the Department may consider changes in the prices of coal and costs occurring before a final Departmental decision is made, as well as expected prices and costs over the life of the deposit.

Ark Land Company, et al., 168 IBLA 235 (Mar. 23, 2006).

Coal Leases and Permits
Continued Operation

When BLM has approved the payment of advance royalty in lieu of continued operation on a logical mining unit encompassing Federal coal leases, it properly finds the amount of production on which such royalty is computed for a continued operating year (COY) to be the lesser of (a) one percent of the recoverable coal reserves underlying the unit, and (b) the amount by which the total of estimated production during that COY and actual production during the two previous COYs falls short of required production during that 3-year period.

Caballo Coal Company, 163 IBLA 116 (Sept. 9, 2004).

Coal Leases and Permits
Continued Operation

Under section 7 of the Mineral Leasing Act, as amended by section 6 of the Federal Coal Leasing Act Amendments of 1976, 30 U.S.C. § 207(b) (2000), the Secretary of the Interior may suspend continued operation of a coal lease upon payment of advance royalty in lieu of production in an amount "no less than the production royalty which would otherwise be paid . . . ." Where a lessee submits information suggesting that prices from five captive mines in a coal region defined by an industry journal do not represent the unit value of the production royalty which would otherwise be paid for coal from its leases, and presents probative data showing that prices for coal from a mine closer geographically and producing from the same mine seam (as the lessee's leases subject to a suspension of continued operations) are representative of the unit value of production royalty from the subject mine, and MMS fails to explain why the lessee's arguments and data are irrelevant to its decision regarding the proper valuation of the lessee's advance royalty payments due, the Board will set aside the decision on appeal and remand the matter for further consideration.

BTU Empire Corporation, 172 IBLA 206 (Aug. 28, 2007).

Coal Leases and Permits
Diligence

Sec. 7(a) of the Mineral Leasing Act, *as amended by* sec. 6(a) of the Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. § 207(a) (2000), requires the termination of any Federal coal lease that has not produced "commercial quantities" of coal (defined as 1 percent of recoverable coal reserves) at the end of 10 years. Sec. 2(d) of the Mineral Leasing Act, *as amended by* sec. 5(b) of the Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. § 202a (2000), authorizes the consolidation of coal leases into logical mining units for development when this would facilitate development of the coal reserves in a logical and efficient manner designed to achieve maximum economic recovery or avoid bypassing coal deposits which could not be economically recovered in a subsequent operation.

Carbon Tech Fuels, Inc., 161 IBLA 147 (Apr. 13, 2004).

Coal Leases and Permits
Diligence

A BLM decision terminating a logical mining unit containing one Federal coal lease and one private tract and terminating the included Federal lease for failure to meet diligent development obligations will be affirmed where BLM has not credited pre-LMU production from the private tract to the LMU diligence requirement, and the lessee has not shown that this decision was an abuse of BLM's discretion.

Carbon Tech Fuels, Inc., 161 IBLA 147 (Apr. 13, 2004).

Coal Leases and Permits
Leases

Where a coal lease readjustment stipulation merely informs the operator/lessee of Federal coal leases that at some time in the future the Department might seek to obtain damages on the basis of royalty that would have been payable on coal bypassed in violation of the operator/lessee's obligation to seek maximum economic recovery, but there is presently no alleged violation of that obligation nor any decision imposing royalty, a dispute does not exist and the case is not ripe for review.

Chevron U.S.A. Inc., 154 IBLA 88 (Dec. 18, 2000).

Coal Leases and Permits
Leases

The revised regulations defining "commercial quantities" governing preference right coal lease applications, first promulgated in 1976, apply to BLM's adjudication of pending preference right coal lease applications even if the applications satisfied the standards in effect during the term of the prospecting permit. A determination made by a USGS official that coal is present in commercial quantities is not binding on USGS, BLM, or the Secretary of the Interior, and an applicant for a preference right coal lease does not acquire a vested right to a lease by virtue of the USGS finding as to commercial quantities. The Supreme Court's decision in *Bowen v. Georgetown University Hospital*, 488 U.S. 204 (1988), does not alter these conclusions.

Jesse H. Knight, et al., 155 IBLA 104 (May 23, 2001).

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Leases

A party does not obtain a vested right to a lease under a preference right lease application until BLM makes a final determination that commercial quantities of coal exist on the lands under application.

Jesse H. Knight, et al., 155 IBLA 104 (May 23, 2001).

Coal Leases and Permits
Leases

BLM regulations at 43 C.F.R. § 3430.4-1(a) and § 3430.5-1(c) demonstrate that the Department envisioned situations where BLM would require submission of a final showing of commercial quantities of coal with respect to a preference right lease application before the full completion of all necessary environmental reviews.

Jesse H. Knight, et al., 155 IBLA 104 (May 23, 2001).

Coal Leases and Permits
Leases

The screening procedures outlined in Chapter III of BLM Manual Handbook H-3430-1 establish the process by which BLM determines whether a preference right lease application clearly cannot satisfy the commercial quantities test and therefore can be rejected without the preparation of additional environmental documentation. These manual provisions are not inconsistent with the plain terms of the regulations at 43 C.F.R. Subpart 3430.

Jesse H. Knight, et al., 155 IBLA 104 (May 23, 2001).

Coal Leases and Permits
Leases

Where a set of factors and studies of current market potential for the coal underlying the lands embraced by a coal preference right lease application indicate that the applicant is unlikely to be able to satisfy the commercial quantities test, where this Board found that further evidence was necessary to show commercial quantities, and where USGS, BLM and the applicant all stated that additional information was required to show commercial quantities of coal or a valid mine development plan, BLM is not arbitrary or capricious in ordering the applicant to submit a final showing, without first preparing additional environmental documentation.

Jesse H. Knight, et al., 155 IBLA 104 (May 23, 2001).

Coal Leases and Permits
Leases

Where the Board, in a previous decision, ordered BLM to consider an applicant's "evidence that by the standards of the mining industry, a prudent person would be justified in expending labor and means to work the coal deposits on the subject land," to show commercial quantities of coal, and BLM orders submission of a final showing under its regulations, BLM's order is valid under agency regulations, notwithstanding whether the applicant avers that more drilling may support his position.

Jesse H. Knight, et al., 155 IBLA 104 (May 23, 2001).

Coal Leases and Permits
Leases

Under 30 U.S.C. § 201(b) (1970) and 43 C.F.R. § 3430.1-1, an applicant for a preference right coal lease must demonstrate it made a discovery of commercial quantities of coal on the lands involved within the term of the prospecting permit. Neither the statute nor the regulation prevents consideration of evidence concerning commercial quantities that was obtained after the permit expired. A preference right lease applicant must be allowed to perform additional drilling to prove that it discovered commercial quantities of coal during the term of its prospecting permit even though that permit has expired, where the applicant can show that its proposed drilling would be calculated to show that a discovery was made during the term of the permit and that this discovery meets the terms of revised regulations imposing more stringent requirements of proof of commercial quantities of coal.

Jesse H. Knight, et al., 155 IBLA 104 (May 23, 2001).

Coal Leases and Permits
Permits
Generally

Where the Board, in a previous decision, ordered BLM to consider an applicant's "evidence that by the standards of the mining industry, a prudent person would be justified in expending labor and means to work the coal deposits on the subject land," to show commercial quantities of coal, and BLM orders submission of a final showing under its regulations, BLM's order is valid under agency regulations, notwithstanding whether the applicant avers that more drilling may support his position.

Jesse H. Knight, et al., 155 IBLA 104 (May 23, 2001).

Coal Leases and Permits
Permits
Generally

A deficiency in a coal prospecting permit application related to evidence of qualifications of the applicant under the Mineral Leasing Act is a curable defect. When a party challenges the response to a request for additional information made by BLM 35 years ago in adjudicating the prospecting permit application, a presumption of regularity pertaining to the actions of BLM officials supports a finding that the information was provided to the satisfaction of BLM and a challenge to the validity of the prospecting permit is properly denied.

Ark Land Company, et al., 168 IBLA 235 (Mar. 23, 2006).

Coal Leases and Permits
Permits
Generally

The limitation on issuance of coal prospecting permits under the Mineral Leasing Act to "unclaimed, undeveloped" lands was intended to protect the rights of entrymen with a vested adverse claim to purchase the lands which predated the filing of the prospecting permit application.

Ark Land Company, et al., 168 IBLA 235 (Mar. 23, 2006).

Coal Leases and Permits
Permits
Generally

Under the former preference right coal leasing provisions of the Mineral Leasing Act, 30 U.S.C. § 201(b) (1970), governing public lands for which prospecting or exploratory work is necessary to determine the existence or workability of coal deposits, the holder of a prospecting permit is entitled to a preference coal lease if he shows within the term of the prospecting permit that the land contains coal in commercial quantities. This requires a showing that the mineral deposit is of such quality and quantity that a prudent person would be justified in the further expenditure of his labor and capital with a reasonable prospect of success in developing a mine. The permittee must show a reasonable expectation that revenue from the sale of coal will exceed the costs of developing the mine, including costs of environmental protection and reclamation, and extracting, removing, and marketing the coal.

Ark Land Company, et al., 168 IBLA 235 (Mar. 23, 2006).

Coal Leases and Permits
Permits
Generally

In determining commercial quantities when adjudicating a coal preference right lease application, prices and costs are not considered to be frozen at the time the application is filed, and the Department may consider changes in the prices of coal and costs occurring before a final Departmental decision is made, as well as expected prices and costs over the life of the deposit.

Ark Land Company, et al., 168 IBLA 235 (Mar. 23, 2006).

Coal Leases and Permits
Readjustment

Under 30 C.F.R. § 206.256(d), coal that is produced before the effective date of the readjustment of a federal coal lease but sold more than 30 days after that date is properly subject to the royalty rate in the readjusted lease.

Plateau Mining Company, 156 IBLA 177 (Jan. 23, 2002).

Coal Leases and Permits
Royalties

A BLM decision assessing advance royalty in lieu of continued operation will be affirmed where the coal lessee has not shown error in the method used to determine the unit value of the recoverable coal reserves under 43 C.F.R. § 3483.4(c).

KMF Mineral Resources, Inc., 151 IBLA 35 (Oct. 21 1999).

Coal Leases and Permits
Royalties

The Minerals Management Service is authorized under 30 C.F.R. § 218.202 to impose a late payment charge where royalty payments for coal from Federal coal leases are untimely. The imposition of late payment charges is appropriate to compensate the Government for loss of use of funds due but not paid. A late payment charge is properly assessed against the lessee for late payment of royalties when payment for coal production under a coal supply agreement is delayed because the purchaser is in bankruptcy.

Colowyo Coal Company L.P., 154 IBLA 31 (Oct. 30, 2000).

Coal Leases and Permits
Royalties

A management fee paid by buyers to their agent for coal procurement need not be included as part of "gross proceeds accruing to the lessee," for royalty valuation purposes, pursuant to 30 C.F.R. § 206.257(c) (1995). Such a fee may be excluded from gross proceeds when the lessee demonstrates, by a preponderance of the evidence, that the management fee is not part of the total consideration paid for the coal, in accordance with 30 C.F.R. § 206.257(b)(5) (1995).

Dry Fork Coal Company, 154 IBLA 207 (Mar. 27, 2001).

Coal Leases and Permits
Royalties

Where the lessee of an Indian coal lease fails to pay additional royalty resulting from an increase in the cost-based sales price it received for production owing to royalty readjustment of a related lease, MMS is entitled to assess late payment charges. Such charges are properly computed from the date of readjustment to the date that the lessee made a lump-sum payment of that royalty. The fact that the readjustment was appealed and the appeal was later settled, resulting in less of an increase in the sales price, does not alter the fact that additional royalty became due each month following the month of production for the subject lease. Failure to pay properly results in the assessment of late payment charges.

Peabody Coal Co, 155 IBLA 83 (May 18, 2001).

Coal Leases and Permits
Royalties

The obligations of a lessee under a Federal coal lease are not those of a fiduciary but rather require the exercise of reasonable business judgment in all actions relating to the mining and marketing of the coal.

Powder River Coal Company, 156 IBLA 73 (2001).

Coal Leases and Permits
Royalties

Where the record establishes that a coal lessee failed to exercise reasonable business judgment resulting in the receipt by the lessee of less than fair market value for a shipment of coal, the Government, as lessor, has the right to insist that its royalty payment be based on the fair market value of the coal that would have been obtained had the lessee exercised reasonable business judgment.

Powder River Coal Company, 156 IBLA 73 (2001).

Coal Leases and Permits
Royalties

Under 30 C.F.R. § 206.256(d), coal that is produced before the effective date of the readjustment of a federal coal lease but sold more than 30 days after that date is properly subject to the royalty rate in the readjusted lease.

Plateau Mining Company, 156 IBLA 177 (Jan. 23, 2002).

Coal Leases and Permits
Royalties

The pre-March 1, 1989, regulations governing valuation of coal for royalty purposes prohibit the deduction of the costs of loading from gross value in determining value for Federal royalty purposes. Where the coal purchasers pay fees for loading coal, MMS properly requires the lessee to add those fees to the sales price of the coal to determine

value for Federal royalty purposes.

ExxonMobil Coal and Minerals Company, 159 IBLA 106 (May 21, 2003).

Coal Leases and Permits
Royalties

The coal valuation regulations effective March 1, 1989, provide that the term "gross proceeds" for royalty purposes includes payments for certain services, including loading coal, to the extent that the lessee is obligated to perform them at no cost to the lessor.

ExxonMobil Coal and Minerals Company, 159 IBLA 106 (May 21, 2003).

Coal Leases and Permits
Royalties

MMS properly requires that the costs of primary crushing be included in the value of coal produced from a Federal lease for Federal royalty purposes when the record establishes that such crushing is necessary to place the coal in a marketable condition, and the producer fails to demonstrate otherwise by a preponderance of the evidence. This is so even where the producer of the coal crushes it at its own expense after it has been produced and sold at the mine and the cost of crushing is reimbursed by the purchaser.

San Juan Coal Company, 162 IBLA 127 (July 8, 2004).

Coal Leases and Permits
Royalties

When BLM has approved the payment of advance royalty in lieu of continued operation on a logical mining unit encompassing Federal coal leases, it properly finds the amount of production on which such royalty is computed for a continued operating year (COY) to be the lesser of (a) one percent of the recoverable coal reserves underlying the unit, and (b) the amount by which the total of estimated production during that COY and actual production during the two previous COYs falls short of required production during that 3-year period.

Caballo Coal Company, 163 IBLA 116 (Sept. 9, 2004).

Coal Leases and Permits
Royalties

A contract for the sale of coal from one affiliate to another, when the affiliates are under common control and do not have opposing economic interests, is not arm's-length under either the pre-1989 regulation, 30 C.F.R. § 203.250(g), or the current regulation, 30 C.F.R. § 206.251.

Decker Coal Company, 172 IBLA 1 (July 17, 2007).

Coal Leases and Permits
Royalties

Under the pre-1989 regulation governing coal valuation, 30 C.F.R. § 203.250(g), MMS may accept non-arm's-length contract prices when the lessee demonstrates independent indicia establishing that the contract price is one fairly derived from the marketplace. However, when the totality of the circumstances shows that the non-arm's-length contract prices result from an arrangement between affiliates and that the ultimate purchaser actually pays and reports substantially more for the coal in accordance with the contract, MMS properly values the coal at the prices actually paid for that coal.

Decker Coal Company, 172 IBLA 1 (July 17, 2007).

Coal Leases and Permits
Royalties

In valuing coal for royalty purposes under a non-arm's-length contract, MMS properly applies the criteria of 30 C.F.R. § 206.257(c)(2)(i)-(iv) and determines coal value based upon the first applicable criterion. When MMS determines that the first three criteria of 30 C.F.R. § 206.257(c)(2) do not apply, it properly considers "[o]ther relevant matters" under subsection 206.257(c)(2)(iv), including information showing that the value of the coal claimed by the lessee was substantially less than what the ultimate purchaser actually paid for the same coal.

Decker Coal Company, 172 IBLA 1 (July 17, 2007).

Coal Leases and Permits
Royalties

Under section 7 of the Mineral Leasing Act, as amended by section 6 of the Federal Coal Leasing Act Amendments of 1976, 30 U.S.C. § 207(b) (2000), the Secretary of the Interior may suspend continued operation of a coal lease upon payment of advance royalty in lieu of production in an amount "no less than the production royalty which would otherwise be paid . . . ." Where a lessee submits information suggesting that prices from five captive mines in a coal region defined by an industry journal do not represent the unit value of the production royalty which would otherwise be paid for coal from its leases, and presents probative data showing that prices for coal from a mine closer geographically and producing from the same mine seam (as the lessee's leases subject to a suspension of continued operations) are representative of the unit value of production royalty from the subject mine, and MMS fails to explain why the lessee's arguments and data are irrelevant to its decision regarding the proper valuation of the lessee's advance royalty payments due, the Board will set aside the decision on appeal and remand the matter for further consideration.

BTU Empire Corporation, 172 IBLA 206 (Aug. 28, 2007).

Coal Leases and Permits
Royalties

The cost of transporting coal from the mine to the edge of the permit area, where the purchaser's power plant is located, is properly considered to be a cost of the mining operation and not a transportation allowance.

Western Energy Company, 172 IBLA 258 (Sept. 12, 2007).

Coal Leases and Permits
Suspension of Operations and Production

A suspension of operations and production granted under sec. 39 of the Mineral Leasing Act, *as amended*, 30 U.S.C. § 209 (2000), "in the interest of conservation" suspends the requirement of sec. 7(a) and (b) of the Mineral Leasing Act, *as amended*, 30 U.S.C. § 207(a) and (b) (2000), that diligent development of the lease occur within 10 years of the date of issuance of a Federal coal lease. A BLM decision denying an extension of a previously granted suspension of operations and production and a *force majeure* suspension will be affirmed where the lessee has not shown error in that decision. BLM properly refuses to grant a second suspension of operations and production in the interest of conservation where the applicant does not show how the suspension would further the interests of conservation.

Carbon Tech Fuels, Inc., 161 IBLA 147 (Apr. 13, 2004).

Coal Leases and Permits
Termination

Sec. 7(a) of the Mineral Leasing Act, *as amended by* sec. 6(a) of the Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. § 207(a) (2000), requires the termination of any Federal coal lease that has not produced "commercial quantities" of coal (defined as 1 percent of recoverable coal reserves) at the end of 10 years. Sec. 2(d) of the Mineral Leasing Act, *as amended by* sec. 5(b) of the Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. § 202a (2000), authorizes the consolidation of coal leases into logical mining units for development when this would facilitate development of the coal reserves in a logical and efficient manner designed to achieve maximum economic recovery or avoid bypassing coal deposits which could not be economically recovered in a subsequent operation.

Carbon Tech Fuels, Inc., 161 IBLA 147 (Apr. 13, 2004).

Collateral Estoppel

Adjudication of a royalty rate reduction application is not barred by the principal of collateral estoppel, insofar as it concerns a royalty rate reduction application for a time period separate and distinct from an application that was the subject of earlier administrative and judicial litigation between the same parties concerning the same lease.

Union Oil Company of California, 158 IBLA 265 (Feb. 21, 2003).

Color or Claim of Title
Generally

When BLM has not notified a Color of Title Act applicant to provide an abstract of title or other documentation to establish color of title, the applicant cannot be found to have failed to bear its burden of proof and the application can be denied only if, as a matter of law, a specific deficiency precludes the applicant from qualifying.

Silverado Nevada, Inc., 152 IBLA 313 (June 22, 2000).

Color or Claim of Title
Generally

An applicant under the Color of Title Act can receive only a maximum of 160 acres based upon a single claim of color of title. When an application is for more than 160 acres, the Act authorizes the Department to select the land to be patented.

Silverado Nevada, Inc., 152 IBLA 313 (June 22, 2000).

Color or Claim of Title
Generally

BLM properly rejects a class 2 color-of-title application if the applicant fails to submit evidence showing payment of taxes levied on the land for the period commencing not later than January 1, 1901, to the date of the application.

Thomas E. Pluska & Michael J. McCormack, 154 IBLA 38 (Oct. 31, 2000).

Color or Claim of Title
Generally

Faced with both class 1 and class 2 color-of-title applications from an applicant, where the tax records cannot sustain the class 2 application, BLM should permit applicants to submit evidence to substantiate their class 1 claim, when that claim is the more recent.

Thomas E. Pluska & Michael J. McCormack, 154 IBLA 38 (Oct. 31, 2000).

Color or Claim of Title
Generally

A class 1 color-of-title claim requires proof that the land has been held in good faith and in peaceful adverse possession by a claimant, his ancestors, or grantors for more than 20 years, under claim or color of title based on a document from a party other than the United States which on its face purports to convey the claimed land to the applicant or the applicant's predecessors, and that valuable improvements have been placed on the land or some part of the land has been reduced to cultivation. An applicant under the Color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory requirements for purchase under the Act have been met, and a failure to carry the burden of proof with respect to one of the requirements is fatal to the application.

Hi-Country Estates Phase II, 155 IBLA 129 (May 24, 2001).

Color or Claim of Title
Generally

A claim under the Color of Title Act, 43 U.S.C. § 1068 (1994), has not been held in peaceful, adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes.

Hi-Country Estates Phase II, 155 IBLA 129 (May 24, 2001).

Color or Claim of Title
Generally

A right to federal lands cannot be created by state law pertaining to adverse possession of non-federal land. Where the basis for a claimant's asserted title to federal land is derived from state law, the claim is not cognizable under the Color of Title Act, *as amended*, 43 U.S.C. § 1068 (1994).

Archie Ledon Cole, 155 IBLA 202 (July 18, 2001).

Color or Claim of Title
Generally

A claim under the Color of Title Act, *as amended*, 43 U.S.C. § 1068 (1994), must be predicated upon a deed or other instrument which on its face purports to convey title to the land sought by the applicant.

Archie Ledon Cole, 155 IBLA 202 (July 18, 2001).

Color or Claim of Title
Generally

Knowledge that land belongs to the United States defeats an assertion that it was held in good faith.

Archie Ledon Cole, 155 IBLA 202 (July 18, 2001).

Color or Claim of Title
Generally

When the Government conveys title to a parcel of land fronting navigable water, the intention, in all ordinary cases, is that the parcel's edge extends to the water's edge. When a homestead patent contains nothing to indicate that the United States intended to retain title to the Federal land between the meander line and the mean high water line, BLM properly concluded that there is no Federal interest it could convey under a color-of-title application.

Irving and Jeanette Stevens, 172 IBLA 157 (Aug. 20, 2007).

Color or Claim of Title
Adverse Possession

Parties could not have acquired any prescriptive rights against the United States by using a beach for overnight camping while the beach lands were in Federal ownership, as prescriptive rights cannot be obtained against the Federal government.

Lee and Jody Sprout, Dick and Shauna Sprout, 160 IBLA 9 (July 29, 2003).

Color or Claim of Title
Adverse Possession

To the extent that parties assert that they have "prescriptive rights" to use a beach area for overnight camping based on their past use of the beach lands while they were in private ownership, the assertion is not cognizable by BLM in the absence of (1) an indicium of title (such as a title report or a determination of title based on adverse possession against private parties by a court of competent jurisdiction); (2) an offer of proof showing facts from which BLM could determine that prescriptive rights had arisen under State law; or (3) other evidence showing that the United States acquired the property subject to such prescriptive rights.

Lee and Jody Sprout, Dick and Shauna Sprout, 160 IBLA 9 (July 29, 2003).

Color or Claim of Title
Adverse Possession

Land sought pursuant to an application under the Color of Title Act, *as amended*, 43 U.S.C. §§ 1068-1068b (2000), is not required to have been "public land" for any 20-year period preceding the filing of the application, during which it was held under claim or color of title by the applicant and her predecessors, but only to be "public land" at the time of application.

Beulah Alder, 161 IBLA 181 (Apr. 13, 2004).

Color or Claim of Title
Applications

BLM properly rejects a class 2 color-of-title application if the applicant fails to submit evidence showing payment of taxes levied on the land for the period commencing not later than January 1, 1901, to the date of the application.

Thomas E. Pluska & Michael J. McCormack, 154 IBLA 38 (Oct. 31, 2000).

Color or Claim of Title
Applications

Faced with both class 1 and class 2 color-of-title applications from an applicant, where the tax records cannot sustain the class 2 application, BLM should permit applicants to submit evidence to substantiate their class 1 claim, when that claim is the more recent.

Thomas E. Pluska & Michael J. McCormack, 154 IBLA 38 (Oct. 31, 2000).

Color or Claim of Title
Applications

A class 1 color-of-title claim requires proof that the land has been held in good faith and in peaceful adverse possession by a claimant, his ancestors, or grantors for more than 20 years, under claim or color of title based on a document from a party other than the United States which on its face purports to convey the claimed land to the applicant or the applicant's predecessors, and that valuable improvements have been placed on the land or some part of the land has been reduced to cultivation. An applicant under the Color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory requirements for purchase under the Act have been met, and a failure to carry the burden of proof with respect to one of the requirements is fatal to the application.

Hi-Country Estates Phase II, 155 IBLA 129 (May 24, 2001).

Color or Claim of Title
Applications

BLM properly rejects a Class 1 color-of-title application pursuant to section 1 of the Color of Title Act, *as amended*, 43 U.S.C. § 1068 (1994), when a claimant fails to present any evidence that the land sought had valuable improvements or some part of it had been reduced to cultivation at the time of application.

Johnny S. Bustos, Margaret Bustos, 157 IBLA 178 (Aug. 23, 2002).

Color or Claim of Title
Applications

BLM properly rejects an application under the Color of Title Act, *as amended*, 43 U.S.C. §§ 1068-1068b (2000), when the claim or color of title of the applicant and her predecessors cannot be shown to have been initiated with a written document of transfer, from a source other than the United States, which, on its face, purported to convey the land sought. Nor will mere possession and improvement of the land by the applicant and her predecessors, in the mistaken belief that they own the land, give rise to a proper claim or color of title under the Act.

Beulah Alder, 161 IBLA 181 (Apr. 13, 2004).

Color or Claim of Title
Applications

BLM properly rejects a Class 1 color-of-title application pursuant to section 1 of the Color of Title Act, *as amended*, 43 U.S.C. § 1068 (2000), when a claimant fails to present any evidence that the land sought had valuable improvements or that some part of it had been reduced to cultivation at the time of application.

Johnny S. Bustos, Margaret Bustos, 169 IBLA 360 (Aug. 16, 2006).

Color or Claim of Title
Applications

When the Government conveys title to a parcel of land fronting navigable water, the intention, in all ordinary cases, is that the parcel's edge extends to the water's edge. When a homestead patent contains nothing to indicate that the United States intended to retain title to the Federal land between the meander line and the mean high water line, BLM properly concluded that there is no Federal interest it could convey under a color-of-title application.

Irving and Jeanette Stevens, 172 IBLA 157 (Aug. 20, 2007).

Color or Claim of Title
Cultivation

BLM properly rejects a Class 1 color-of-title application pursuant to section 1 of the Color of Title Act, *as amended*, 43 U.S.C. § 1068 (1994), when a claimant fails to present any evidence that the land sought had valuable improvements or some part of it had been reduced to cultivation at the time of application.

Johnny S. Bustos, Margaret Bustos, 157 IBLA 178 (Aug. 23, 2002).

Color or Claim of Title
Cultivation

BLM properly rejects a Class 1 color-of-title application pursuant to section 1 of the Color of Title Act, *as amended*, 43 U.S.C. § 1068 (2000), when a claimant fails to present any evidence that the land sought had valuable improvements or that some part of it had been reduced to cultivation at the time of application.

Johnny S. Bustos, Margaret Bustos, 169 IBLA 360 (Aug. 16, 2006).

Color or Claim of Title
Description of Land

BLM properly rejects an application under the Color of Title Act, *as amended*, 43 U.S.C. §§ 1068-1068b (2000), when the claim or color of title of the applicant and her predecessors cannot be shown to have been initiated with a written document of transfer, from a source other than the United States, which, on its face, purported to convey the land sought. Nor will mere possession and improvement of the land by the applicant and her predecessors, in the mistaken belief that they own the land, give rise to a proper claim or color of title under the Act.

Beulah Alder, 161 IBLA 181 (Apr. 13, 2004).

Color or Claim of Title
Good Faith

While a Color of Title Act applicant must have acquired its interest in the land in good faith, and thus without knowledge that title to the land properly resides in the United States, knowledge that the title is uncertain because it is in litigation is neither knowledge that title belongs to the United States nor a basis to find that it was unreasonable for a party to believe it held title.

Silverado Nevada, Inc., 152 IBLA 313 (June 22, 2000).

Color or Claim of Title
Improvements

BLM properly rejects a Class 1 color-of-title application pursuant to section 1 of the Color of Title Act, *as amended*, 43 U.S.C. § 1068 (1994), when a claimant fails to present any evidence that the land sought had valuable improvements or some part of it had been reduced to cultivation at the time of application.

Johnny S. Bustos, Margaret Bustos, 157 IBLA 178 (Aug. 23, 2002).

Color or Claim of Title
Improvements

BLM properly rejects a Class 1 color-of-title application pursuant to section 1 of the Color of Title Act, *as amended*, 43 U.S.C. § 1068 (2000), when a claimant fails to present any evidence that the land sought had valuable improvements or that some part of it had been reduced to cultivation at the time of application.

Johnny S. Bustos, Margaret Bustos, 169 IBLA 360 (Aug. 16, 2006).

Communication Sites

Termination of a right-of-way grant for failure of the holder to comply with the terms and conditions thereof requires notice by BLM of the violation and a reasonable opportunity for the holder to cure the noncompliance. When a decision terminating a communications site right-of-way is based on a sheriff's sale of the equipment used on the right-of-way and the holder has taken action to redeem his ownership interest, the decision is properly set aside and remanded pending the outcome of redemption proceedings.

Arden Casper and Tel-Car, Inc., 151 IBLA 160 (Nov. 30, 1999).

Communication Sites

The holder of a right-of-way which has terminated because it is no longer used for communication site purposes and has been abandoned is generally responsible for removal of structures erected on the right-of-way and reclamation of the site. When the record on appeal from a decision requiring removal of improvements presents a question of whether the right-of-way has been abandoned and whether appellant is the owner of the improvements thereon, the case will be remanded.

California Department of Forestry and Fire Protection, 152 IBLA 290 (May 30, 2000).

Communication Sites

A BLM decision increasing rental rate above the schedule rent because the appraised rent exceeds the schedule rent by more than a factor of five will be vacated and the case remanded for reappraisal where the appraisal fails to establish sufficient familiarity with the communication site being appraised and the communication uses thereon.

Kitchens Productions, Inc., 152 IBLA 336 (June 23, 2000).

Communication Sites

Where an appraisal determined fair market rental value based on analysis of Los Angeles Basin Data and comparable telecommunication site leases but did not disclose any of the particulars of such data, thereby precluding independent verification of the lease data, effective challenge as to the accuracy of the data and appraisal, and meaningful review by the Board, a BLM decision increasing rental based on an appraisal is properly vacated and remanded for reappraisal.

Kitchens Productions, Inc., 152 IBLA 336 (June 23, 2000).

Communication Sites

It is incumbent upon BLM to ensure that its decision is supported by a rational basis, and that such basis is stated in the written decision and is demonstrated in the administrative record accompanying the decision. The recipient of the decision is entitled to a reasoned and factual explanation providing a basis for understanding and accepting the decision or, alternatively, for appealing and disputing it before the Board.

Kitchens Productions, Inc., 152 IBLA 336 (June 23, 2000).

Communication Sites

The regulations provide that annual rental payments for communication uses of rights-of-ways will be based on "rental payment schedules." 43 C.F.R. § 2803.1-2(d). However, other methods may be used to establish rental payments for communication uses, including when the State Director concurs in a determination made by the authorized officer that the expected rent exceeds the scheduled rent by five times. 43 C.F.R. § 2803.1-2(d)(7)(iv). When BLM has determined the "expected rent" on the basis of an appraisal containing multiple deficiencies, and, even assuming the validity of the appraisal, a proper calculation of the expected rent based on that appraisal does not exceed the scheduled rent by five times, BLM's decision imposing rental on that basis will be reversed and the case remanded for imposition of rent based on the scheduled amount.

KHWY, Inc., 155 IBLA 6 (Apr. 30, 2001).

Communication Sites

BLM may not rely on an appraisal for determining expected rent in accordance with 43 C.F.R. § 2801.1-2(d)(7)(iv), when that appraisal fails to disclose any information regarding the comparable data utilized, thereby precluding independent verification of the lease data, effective challenge as to the accuracy of the data and appraisal, and meaningful review by the Board.

KHWY, Inc., 155 IBLA 6 (Apr. 30, 2001).

Communication Sites

Where a ROW holder providing private two-way radio service to members of the community, including businesses which serve the public good, demonstrates total loss of a business facility and equipment due to accidental fire, BLM must examine the specific financial data presented to determine whether the fair market rental charge will create an "undue hardship" on the applicant's ability to successfully operate.

Gifford Engineering, Inc., 157 IBLA 277 (Oct. 24, 2002).

Communication Sites

The holder of a ROW under FLPMA is entitled to be notified of a decision establishing a rental rate, provided a copy of the appraisal, and given an opportunity to appeal.

Gifford Engineering, Inc., 157 IBLA 277 (Oct. 24, 2002).

Communication Sites

In challenging a BLM decision increasing rental pursuant to 43 C.F.R. § 2801.1-2(d)(7)(iv) for a communication site right-of-way, an appellant bears the burden of demonstrating by a preponderance of the evidence that BLM's appraisal methodology was erroneous, that BLM used inappropriate data or erred in its calculations, or that the annual rental arrived at by BLM deviated from the fair market value of the right-of-way. Where BLM issues a decision setting a communications site rental pursuant to 43 C.F.R. § 2803.1-2(d)(7)(iv), it must ensure that its decision is supported by a rational basis and that such basis is reflected in the administrative record accompanying the decision.

Lone Pine Television, Inc., 158 IBLA 86 (Dec. 26, 2002).

Communication Sites

A BLM decision increasing rent above the schedule rate based upon an appraisal pursuant to 43 C.F.R. § 2801.1-2(d)(7)(iv) will be reversed when that appraisal fails to establish sufficient familiarity with the communication site being appraised and the communication uses thereon or to disclose information regarding the comparable data utilized, thereby precluding independent verification of the lease data, effective challenge as to the accuracy of the data and appraisal, and meaningful review by the Board.

Lone Pine Television, Inc., 158 IBLA 86 (Dec. 26, 2002).

Communication Sites

An appraisal establishing fair market rental value rental of a Federal communication site right-of- ay grant is properly prepared under standards governing Federal appraisals; such an appraisal is not affected by the measure of schedule rent established at 43 C.F.R. § 2803.1-2(d)(3).

Lone Pine Television, Inc., 158 IBLA 86 (Dec. 26, 2002).

Communication Sites

Pursuant to 43 C.F.R. § 2803.1-2(b)(2)(ii), a reduction or waiver of rental for a communication site right-of-way may be granted when the holder provides without charge, or at a reduced rate, a valuable benefit to the public. BLM may reduce or waive rental payments for a communication site right-of-way pursuant to 43 C.F.R. § 2803.1-2(b)(2)(iv) if BLM determines that the imposition of the fair market rental value would cause undue hardship on the right-of-way holder and it is in the public interest to do so.

Lone Pine Television, Inc., 158 IBLA 86 (Dec. 26, 2002).

Communication Sites

A BLM decision increasing annual rental for a communications site lease, as determined by appraisal in accordance with 43 C.F.R. § 2803.1-2(d)(7)(iv), will be set aside where BLM fails to provide an administrative record adequately supporting its fair market rental value determination.

Scott Schmidt, Century El Centro Cellular Corp., 158 IBLA 183 (Jan. 13, 2003).

Communication Sites

Where rental of a Federal communications site lease must be determined by appraising its fair market value, such appraisal must be prepared under standards governing Federal appraisals. The appraisal is not governed by the measure of schedule rent established at 43 C.F.R. § 2803.1-2(d)(3).

Scott Schmidt, Century El Centro Cellular Corp., 158 IBLA 183 (Jan. 13, 2003).

Communication Sites

Where the term of a communications site right-of-way was defined to coincide with the expiration of a Federal Communications Commission license to operate an FM radio station and did not otherwise specify that the license must be maintained by the right-of-way grantee, and the record shows that a valid license has been in place since 1981, a BLM decision holding that the right-of-way automatically terminated will be reversed.

Dan Bradshaw, 161 IBLA 116 (Apr. 7, 2004).

Communication Sites

The phrase *subject to* when used in a conveyance means "subordinate to", "subservient to", "limited by", or "charged to", and it serves to put a purchaser on notice that he is receiving less than a fee simple. An *exception* in a deed withdraws from the description of the property conveyed the property excepted therefrom. An *exception* thus is *in esse* at the time of the conveyance, and title remains in the grantor. In contrast, a *reservation* technically is a conveyance of the grantor's entire interest in property by which an interest that did not previously exist as an independent right or interest is simultaneously created and vested in the grantor. When a patent contains a clause *excepting and reserving to* the United States certain identified rights-of-way and easements, while also conveying the patented lands *subject to* other provisions, the patent will be construed as excepting the lands within the boundaries of the rights-of-way and easements from the description of the land conveyed by the patent.

Dan Bradshaw, 161 IBLA 116 (Apr. 7, 2004).

Communication Sites

Where BLM has patented lands excepting and reserving to the United States a communication site right-of-way, BLM may not divest the United States of land thus retained without first complying with the provisions of sec. 508 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1768 (2000), by determining that retention of Federal control is no longer necessary to assure that (1) the purpose of Title V of the Act will be carried out, based on the effect on the public interest, (2) the terms and conditions of the right-of-way will be complied with, and (3) the lands affected will be protected.

Dan Bradshaw, 161 IBLA 116 (Apr. 7, 2004).

Communication Sites

In order to prevail on a challenge to a rental determination assessed by BLM for a communication site right-of-way and calculated pursuant to the rental schedule established in 43 C.F.R. § 2803.1-2(d), an appellant bears the burden of demonstrating that BLM used inappropriate data or erred in its calculations, or otherwise erred in applying the rental schedule to its particular right-of-way. Conclusory statements challenging BLM's rental determination that lack a factual basis do not satisfy the burden of proof which necessarily rests with an appellant.

Treasure Valley Broadcasting Company, 165 IBLA 113 (Mar. 22, 2005).

Communication Sites

BLM may reduce rental payments for a communication site right-of-way if it determines that the imposition of the fair market value rental would cause an undue hardship on the right-of-way holder or applicant, and it is in the public interest to do so.

Treasure Valley Broadcasting Company, 165 IBLA 113 (Mar. 22, 2005).

Communication Sites

BLM must ensure that a decision increasing rental for a communication site right-of-way is supported by a rational basis, set forth in the written decision and demonstrated in the administrative record accompanying the decision. Although BLM may, pursuant to its policy for implementing 43 C.F.R. § 2803.1-2(d)(2)(i), assess a higher rental schedule rate for a communication site right-of-way based upon a modification combining two or more Ranally Metro Areas published in the "Rand McNally Commercial Atlas and Marketing Guide," it is nonetheless incumbent upon BLM to develop an administrative record that provides a rational basis for doing so.

Citicasters Co., 166 IBLA 111 (June 24, 2005).

Communication Sites

BLM erred in assessing rentals based on its Calendar Year 2003 Communication Uses Rental Schedule (BLM Information Bulletin No. 2003-005) for communication sites which are defined as "related facilities" by the Agreement and Grant of Right-of-Way for the Trans-Alaska Pipeline System (TAPS Agreement), or by a related Grant of Right-of-Way for Communication Site expressly made subject to the TAPS Agreement, which were issued pursuant to section 28 of the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 185 (2000), and section 203(b) and (c) of the Trans-Alaska Pipeline Authorization Act of 1973, 43 U.S.C. § 1652(b) and (c) (2000). Such communication sites are exempt from the nationwide rental schedules established by BLM (*see* 43 C.F.R. § 2803.1-2(d)(1)), and rental for such communication sites should be assessed at fair market rental value in accordance with Section 8 of the TAPS Agreement and 43 C.F.R. § 2803.1-2(a), rather than based upon nationwide rental schedules established by BLM.

Alyeska Pipeline Service Company, 167 IBLA 298 (Dec. 29, 2005).

Confidential Information

The provisions of 30 U.S.C. § 201(b)(3) (2000) and 43 C.F.R. § 3410.4 direct BLM to maintain the confidentiality of information obtained under a coal exploration license until after the areas involved have been leased or until BLM determines that public access to the data will not damage the competitive position of the licensee, whichever comes first. BLM properly releases information obtained under a coal exploration license issued in 1981 where no bids for the explored area were received when the lands were offered for competitive leasing, no entity has subsequently expressed an interest in leasing the area, and the licensee has not asserted that its competitive position will be damaged by the public release of the information.

Canyon Fuel Company, LLC, et al., 162 IBLA 235 (July 28, 2004).

Contests and Protests
Generally

When the United States contests a mining claim, it bears the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint. That burden is discharged in a contest challenging the validity of two millsites when the Government examiners possess sufficient training and experience to qualify as expert witnesses, and both testify that they personally inspected the millsites and found nothing which would indicate that they are being occupied for uses that are reasonably incident to, or necessary for, prospecting, mining, or processing operations..

United States v. James L. Pence, d.b.a. Shooter Mining Co., and Milton Embry, 157 IBLA 124 (July 31, 2002).

Contests and Protests
Generally

A protest against BLM's yearly issuance of permits for grazing use for cattle is properly considered as a protest under 43 C.F.R. § 4.450-2. Where such protest challenges BLM's authority to issue permits for grazing cattle under the governing resource management plan, it raises an issue that is capable of repetition and is therefore not moot, even though the time is past when BLM's action can be redressed by canceling any permit improperly issued in a particular year. Where, by confessing error in a proceeding before the Hearings Division, BLM effectively denies the protest without explanation, the matter is properly remanded to BLM for further consideration.

James G. Katsilometes v.Bureau of Land Management, 157 IBLA 230 (Oct. 4, 2002).

Contests and Protests
Government Contests

The essence of the statutory grant allowing the appropriation of the public lands for millsites is actual use and occupancy for mining and milling purposes. The Surface Resources Act of July 23, 1955, 30 U.S.C. § 612(a) (1994), further clarifies that use and occupancy shall be for the purposes of prospecting, mining, or processing and uses reasonably incident thereto. The mining claimant must stand ready to prove the validity of the millsite at any time before patent issues, by demonstrating that he uses and occupies the land for such purposes.

United States v. James L. Pence, d.b.a. Shooter Mining Co., and Milton Embry, 157 IBLA 124 (July 31, 2002).

Contests and Protests
Government Contests

Where a contestee chose not to retain counsel, despite ample opportunity and urging to do so, and chose not to put on a case on his own behalf, the Government's prima facie case is unrebutted. In such circumstances, the Board properly affirms the Administrative Law Judge's decision declaring the millsites null and void.

United States v. James L. Pence, d.b.a. Shooter Mining Co., and Milton Embry, 157 IBLA 124 (July 31, 2002).

Contests and Protests
Government Contests

When a Native Allotment Act applicant does not respond to a Government contest complaint within 30 days, as required by 43 C.F.R. § 4.450-6, the Bureau of Land Management properly takes the allegations of the complaint as admitted and rejects the application without a hearing, in accordance with 43 C.F.R. § 4.450-7.

Katherine E. Mathis, 160 IBLA 277 (Jan. 15, 2004).

Contests and Protests
Government Contests

Where BLM's administrative record does not contain a date-stamped copy verifying that BLM timely received contestees' answer to a Government contest complaint, but the record contains substantial corroborating evidence establishing that it is more probable than not that the document was received timely, the legal presumption of regularity, which would ordinarily operate to force a conclusion that the Answer was untimely, is rebutted, and the Office of Hearings and Appeals retains jurisdiction to adjudicate the contest.

United States v. Lyle I. Thompson, et al., 168 IBLA 64 (Mar. 16, 2006).

Contests and Protests
Government Contests

A valid deed of conveyance requires a grantee in existence who is legally capable of accepting the deed and of taking and holding title to the property at the time of the conveyance. The rule that a deed is void that names a fictitious person as grantee applies only when the named grantee does not in fact exist and does not apply to the situation where a person in existence is described by a fictitious or assumed name. Where a quitclaim deed granted an interest in a mining claim to a business name assumed by an individual in existence at the time, the deed is effective to transfer to him a legal interest in the claim for the purpose of participation in a mining contest

brought by the Government.

United States v. Gerald E. Hobbs, 170 IBLA 200 (Sept. 26, 2006).

Contests and Protests
Government Contests

A decision of an administrative law judge finding that a Native allotment applicant's use and occupancy before the date of withdrawal of land from appropriation was not established by a preponderance of the evidence will be affirmed on appeal where the evidence fails to establish qualifying use and occupancy of any particular location potentially exclusive of others that was substantially continuous in nature and not intermittent. Where evidence shows that the applicant's use and occupancy, to the extent it was qualifying, began at the earliest in 1953, but the land had been withdrawn from appropriation in 1952, the contestees did not preponderate. Where the evidence failed to show that a claimant's use would put others on notice of his superior claim, but rather indicates common use by large numbers of residents, potential exclusivity is not shown.

United States v. Heirs of Harlan L. Mahle, 171 IBLA 330 (June 29, 2007).

Contracts
Generally

Settlement Agreement barred lessor's recovery of amounts offset by lessee to balance overpayment of advance rentals where lessee was gas purchaser under a gas purchasing agreement, and where the Settlement Agreement unequivocally resolved this issue because the offset lessee had executed was as a gas purchaser under the gas purchasing agreement, not as a royalty payor or lessee, and these gas purchase issues were settled without question under the Settlement Agreement.

Williams Production Company, 154 IBLA 283 (Apr. 19, 2001).

Contracts
Generally

Under 30 C.F.R. § 206.151, a gas purchase and sale contract will be considered an arm's-length contract for royalty valuation purposes where it "has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract." A determination by MMS that a purchase and sale contract entered into by a Federal oil and gas lessee and a marketing company in which it has a 40 percent ownership interest is non-arm's-length because the parties did not have opposing economic interests will be reversed where the lessee (1) has demonstrated that the parties did, in fact, have opposing economic interests and (2) has further shown the inapplicability of any of the exceptions to valuing gas sold under an arm's-length contract based on the gross proceeds accruing to the lessee under the contract.

Vastar Resources, Inc., 167 IBLA 17 (Sept. 26, 2005).

Contracts
Construction and Operation
Generally

Settlement Agreement barred lessor's recovery of amounts offset by lessee to balance overpayment of advance rentals where lessee was gas purchaser under a gas purchasing agreement, and where the Settlement Agreement unequivocally resolved this issue because the offset lessee had executed was as a gas purchaser under the gas purchasing agreement, not as a royalty payor or lessee, and these gas purchase issues were settled without question under the Settlement Agreement.

Williams Production Company, 154 IBLA 283 (Apr. 19, 2001).

Contracts
Construction and Operation
Generally

When the provisions of an agreement are unambiguous, parol evidence that an obligation is a condition precedent to the other party's obligations is inadmissible.

William J. Thoman v. Bureau of Land Management (On Reconsideration), 155 IBLA 266 (July 27, 2001).

Contracts
Construction and Operation
Generally

When the language of a contract is unambiguous, the terms of the contract will be given their plain meaning and the interpretation of the contract will be determined by the four corners of the document alone.

Ralph Eason, et al. v. Bureau of Land Management, 166 IBLA 292 (Aug. 16, 2005).

Contracts
Construction and Operation
Generally

A letter granting a party "official authorization to conduct maintenance activities on existing public land reservoirs, pits, and spreader dikes within" a grazing allotment, and requiring that party, "[p]rior to beginning construction work on any projects . . . to notify [BLM] of the location of the projects that you will be maintaining," is properly interpreted as requiring that BLM be notified and approve the construction work, where the record shows that both the party and BLM believed that the party would inform BLM in advance before commencing work. Where the party notified BLM of his intention to undertake construction on a dam/reservoir within a wilderness study area and BLM expressly notified the party not to proceed until the validity of the construction could be confirmed, the party was not authorized to proceed with the construction.

Terry Jones v. Bureau of Land Management, 170 IBLA 295 (Nov. 7, 2006).

Contracts
Construction and Operation
Conflicting Clauses

Where a mineral materials sales contract contains two provisions, one allowing the purchaser 30 days after the expiration of the time for extraction and removal of minerals to remove his/her equipment, improvements, or other personal property from Government lands and a second allowing 60 days from expiration to remove equipment, improvements, and other personal property, the contract is properly interpreted to allow the purchaser 60 days to do so. A decision by BLM unilaterally changing that time limit is properly vacated as unauthorized.

Quality Earth Materials, LLC, 163 IBLA 160 (Sept. 23, 2004).

Contracts
Construction and Operation
Construction Against Drafter

Where a mineral materials sales contract contains two provisions, one allowing the purchaser 30 days after the expiration of the time for extraction and removal of minerals to remove his/her equipment, improvements, or other personal property from Government lands and a second allowing 60 days from expiration to remove equipment, improvements, and other personal property, the contract is properly interpreted to allow the purchaser 60 days to do so. A decision by BLM unilaterally changing that time limit is properly vacated as unauthorized.

Quality Earth Materials, LLC, 163 IBLA 160 (Sept. 23, 2004).

Contracts
Construction and Operation
General Rules of Construction

In interpreting lease provisions, the Board attempts to determine and give effect to the intent of the parties to the lease as manifested by the language used therein. Where the escalated rental schedule incorporated into allotted Indian oil and gas leases does not specify that rentals freeze as of the date of first production but simply states that "the procedures covering the payment of such fees and the due date thereof shall operate in accordance with past practices," MMS properly requires the lessee to calculate rentals based on the escalated rates.

Linmar Petroleum Co., 153 IBLA 99 (Aug. 3, 2000).

Contracts
Construction and Operation
General Rules of Construction

When the language of a contract is unambiguous, the terms of the contract will be given their plain meaning and the interpretation of the contract will be determined by the four corners of the document alone.

Ralph Eason, et al. v. Bureau of Land Management, 166 IBLA 292 (Aug. 16, 2005).

Conveyances
Interests Conveyed

Where the term of a communications site right-of-way was defined to coincide with the expiration of a Federal Communications Commission license to operate an FM radio station and did not otherwise specify that the license must be maintained by the right-of-way grantee, and the record shows that a valid license has been in place since 1981, a BLM decision holding that the right-of-way automatically terminated will be reversed.

Dan Bradshaw, 161 IBLA 116 (Apr. 7, 2004).

Conveyances
Interests Conveyed

The phrase *subject to* when used in a conveyance means "subordinate to", "subservient to", "limited by", or "charged to", and it serves to put a purchaser on notice that he is receiving less than a fee simple. An *exception* in a deed withdraws from the description of the property conveyed the property excepted therefrom. An *exception* thus is *in esse* at the time of the conveyance, and title remains in the grantor. In contrast, a *reservation* technically is a conveyance of the grantor's entire interest in property by which an interest that did not previously exist as an independent right or interest is simultaneously created and vested in the grantor. When a patent contains a clause *excepting and reserving to* the United States certain identified rights-of-way and easements, while also conveying the patented lands *subject to* other provisions, the patent will be construed as excepting the lands within the boundaries of the rights-of-way and easements from the description of the land conveyed by the patent.

Dan Bradshaw, 161 IBLA 116 (Apr. 7, 2004).

Conveyances
Interests Conveyed

Where BLM has patented lands excepting and reserving to the United States a communication site right-of-way, BLM may not divest the United States of land thus retained without first complying with the provisions of sec. 508 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1768 (2000), by determining that retention of Federal control is no longer necessary to assure that (1) the purpose of Title V of the Act will be carried out, based on the effect on the public interest, (2) the terms and conditions of the right-of-way will be complied with, and (3) the lands affected will be protected.

Dan Bradshaw, 161 IBLA 116 (Apr. 7, 2004).

Conveyances
Reservations

Where the term of a communications site right-of-way was defined to coincide with the expiration of a Federal Communications Commission license to operate an FM radio station and did not otherwise specify that the license must be maintained by the right-of-way grantee, and the record shows that a valid license has been in place since 1981, a BLM decision holding that the right-of-way automatically terminated will be reversed.

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Reservations

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Dan Bradshaw, 161 IBLA 116 (Apr. 7, 2004).

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Where BLM has patented lands excepting and reserving to the United States a communication site right-of-way, BLM may not divest the United States of land thus retained without first complying with the provisions of sec. 508 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1768 (2000), by determining that retention of Federal control is no longer necessary to assure that (1) the purpose of Title V of the Act will be carried out, based on the effect on the public interest, (2) the terms and conditions of the right-of-way will be complied with, and (3) the lands affected will be protected.

Dan Bradshaw, 161 IBLA 116 (Apr. 7, 2004).

Conveyances
Reservations

A railroad patent passes fee simple title to public land from the United States to the grantee. After a patent has issued, questions of property rights are governed by State law. Where public land in Arizona was patented to the Santa Fe and Pacific Railroad Company and later conveyed subject to both a general mineral reservation and a reservation of "gravel and ballast" for "railroad purposes," under State law, sand, gravel, and ballast are excluded from the general mineral reservation in the deed.

Alfred Jay Schritter, 171 IBLA 123 (Feb. 21, 2007).

Conveyances
Reservations

Where the record fails to support a finding that BLM erred in determining (1) that the owner of a mineral estate on lands acquired by the United States was removing sand, gravel, and common earthen material, and (2) that such material was not reserved under the general mineral clause of the relevant deed, Arizona law dictates a finding that the material removed was not included in appellant's mineral estate, but rather was included in the surface estate held by the United States.

Alfred Jay Schritter, 171 IBLA 123 (Feb. 21, 2007).

Conveyances
Reservations and Exceptions

When a patent conveys lands "subject to . . . all communication site and related facility rights-of-way, granted or to be granted" in accordance with documents referred to in the patent that describe areas that "will be reserved for communications site use" and state "[i]t is understood that patents issued for the above described lands will provide for continued use of the communication sites," the patent reserved an interest in lands for use as communication sites and those areas are public lands over which BLM has jurisdiction to grant rights-of-way for communication sites.

AZ Spectrum Wireless, 161 IBLA 311 (May 17, 2004).

Cooperative Agreements

A party is not authorized to undertake construction activities on a dam/reservoir within a wilderness study area by virtue of a cooperative agreement authorizing and obliging its predecessor-in-interest to conduct maintenance on the dam/reservoir where BLM documentation shows that it was abandoned in 1972, where there is no reference to it in BLM's record assignments of cooperative agreements after 1970 (including assignments to the party itself), where it was not listed in a 1980 wilderness inventory, and where the party lacked knowledge of its existence.

Terry Jones v. Bureau of Land Management, 170 IBLA 295 (Nov. 7, 2006).

Courts

Judgments within the powers vested in courts by the Judiciary Article of the Constitution may not lawfully be revised, overturned or refused faith and credit by another department of government. *Silverado Nevada, Inc.*, 152 IBLA 313 (June 22, 2000).

Delegation of Authority

The Office of Hearings and Appeals does not have authority to review the merits of biological opinions issued by the FWS under section 7 of the Endangered Species Act,

16 U.S.C. § 1536 (1994). BLM properly limits activity on a private inholding in a wilderness area where the limitations imposed are directed by an FWS biological opinion in order to prevent adverse impacts on wildlife.

National Wildlife Federation, et al., Erik and Tina Barnes, 151 IBLA 104 (Nov. 24, 1999).

Delegation of Authority

On appeal from a BLM decision authorizing a sand and gravel mining project, the Board may review whether BLM considered the potential impact to threatened and endangered species or their habitat. However, it lacks jurisdiction to review the merits of a biological opinion issued by USFWS, as a result of consultation regarding a species, which serves, in part, as a basis for BLM's decision.

Sierra Club, Angeles Chapter, Santa Clarita Group, et al., 156 IBLA 144 (Jan. 8, 2002).

Delegation of Authority

Under the Endangered Species Act (ESA), BLM is obligated to ensure that an authorized action is not likely to jeopardize the continued existence of a threatened or endangered species or result in the destruction or adverse modification of its habitat. The Act imposes the same obligation for species that have been proposed for listing. Compliance with the ESA is also an element of complying with NEPA. In evaluating whether BLM took the requisite "hard look" at the environmental impacts of a proposed action that NEPA requires, the Board properly considers whether BLM considered the potential impacts on listed or proposed species or their habitat that the ESA mandates. However, the Board lacks jurisdiction to review the merits of a biological opinion issued by the U.S. Fish and Wildlife Service as a result of formal consultation regarding a species, which opinion serves, in part, as a basis for BLM's decisionmaking.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

Desert Land Entry
Applications

A desert land entry application is properly rejected by BLM when the land sought has been designated for retention in Federal ownership in the applicable resource management plan.

Dona Jeanette Ong, Carie L. Nash, 165 IBLA 274 (Apr. 28, 2005).

Desert Land Entry
Applications

When BLM rejects a desert land entry application because the land sought has been included in an area of environmental concern (ACEC) as part of the resource management planning process and one of the management guidelines for that area is to retain it in Federal ownership, the applicant may not challenge the basis for the establishment of the ACEC in an appeal of the decision rejecting the desert land entry application. The establishment of an ACEC is a land use planning decision subject to review only by the Director, BLM.

Dona Jeanette Ong, Carie L. Nash, 165 IBLA 274 (Apr. 28, 2005).

Desert Land Entry
Applications

Under 43 C.F.R. § 4.403, "[t]he Board may reconsider a decision in extraordinary circumstances for sufficient reason." A petition for reconsideration of a Board decision affirming the rejection of desert land entry applications does not satisfy the regulation and will be denied when the petitioners merely restate arguments previously made.

Dona Jeanette Ong, Carie L. Nash (On Reconsideration), 166 IBLA 65 (June 14, 2005).

Desert Land Entry
Lands Subject To

A desert land entry application is properly rejected by BLM when the land sought has been designated for retention in Federal ownership in the applicable resource management plan.

Dona Jeanette Ong, Carie L. Nash, 165 IBLA 274 (Apr. 28, 2005).

Desert Land Entry
Lands Subject To

When BLM rejects a desert land entry application because the land sought has been included in an area of environmental concern (ACEC) as part of the resource management planning process and one of the management guidelines for that area is to retain it in Federal ownership, the applicant may not challenge the basis for the establishment of the ACEC in an appeal of the decision rejecting the desert land entry application. The establishment of an ACEC is a land use planning decision subject to review only by the Director, BLM.

Dona Jeanette Ong, Carie L. Nash, 165 IBLA 274 (Apr. 28, 2005).

Documents
Date and Time of Filing

Any document required or permitted to be filed, which was received in the proper BLM office, either in the mail or by personal delivery when the office is not open to the public, will be deemed to have been filed as of the day and hour the office next opens to the public under regulations in effect on August 21, 1995. 43 C.F.R. § 1821.2-2(d) (1995).

Thomas E. Smigel, Barbara W. Smigel v. Bureau of Land Management, 155 IBLA 158 (July 17, 2001).

Endangered Species Act of 1973
Generally

When, on appeal of a timber sale, key issues regarding implementation of the Northwest Forest Plan and compliance with the Aquatic Conservation Strategy and the Endangered Species Act of 1973 have been decided in Federal court by an agreement settling litigation, or by the preparation of further environmental documentation, and those issues that remain must await the development of a new site-specific consultation process and the issuance of new biological opinions, BLM's decision denying appellant's protest and authorizing commercial thinning will be vacated and the case remanded to BLM for further action after reconsultation and issuance of new biological opinions.

Umpqua Watersheds, Inc., In re Johnson Creek Commercial Thinning Project, 163 IBLA 94 (Sept. 9, 2004).

Endangered Species Act of 1973
Generally

The Office of Hearings and Appeals does not have authority to review the merits of biological opinions issued by the FWS under section 7 of the Endangered Species Act, 16 U.S.C. § 1536 (1994). BLM properly limits activity on a private inholding in a wilderness area where the limitations imposed are directed by an FWS biological opinion in order to prevent adverse impacts on wildlife.

National Wildlife Federation, et al., Erik and Tina Barnes, 151 IBLA 104 (Nov. 24, 1999).

Endangered Species Act of 1973
Generally

Under the Endangered Species Act, BLM is obligated to ensure that any authorized project is not likely to jeopardize the continued existence of any threatened or endangered species or adversely impact its habitat.

Sierra Club, Angeles Chapter, Santa Clarita Group, et al., 156 IBLA 144 (Jan. 8, 2002)

Endangered Species Act of 1973
Generally

On appeal from a BLM decision authorizing a sand and gravel mining project, the Board may review whether BLM considered the potential impact to threatened and endangered species or their habitat. However, it lacks jurisdiction to review the merits of a biological opinion issued by USFWS, as a result of consultation regarding a species, which serves, in part, as a basis for BLM's decision.

Sierra Club, Angeles Chapter, Santa Clarita Group, et al., 156 IBLA 144 (Jan. 8, 2002).

Endangered Species Act of 1973
Generally

Under the Endangered Species Act (ESA), BLM is obligated to ensure that an authorized action is not likely to jeopardize the continued existence of a threatened or endangered species or result in the destruction or adverse modification of its habitat. The Act imposes the same obligation for species that have been proposed for listing. Compliance with the ESA is also an element of complying with NEPA. In evaluating whether BLM took the requisite "hard look" at the environmental impacts of a proposed action that NEPA requires, the Board properly considers whether BLM considered the potential impacts on listed or proposed species or their habitat that the ESA mandates. However, the Board lacks jurisdiction to review the merits of a biological opinion issued by the U.S. Fish and Wildlife Service as a result of formal consultation regarding a species, which opinion serves, in part, as a basis for BLM's decisionmaking.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

Endangered Species Act of 1973
Generally

Where BLM held an oil and gas lease sale prior to the date a species was proposed for listing under the ESA, there was no obligation to confer with USFWS before conducting the sale.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

Endangered Species Act of 1973
Generally

Under section 6840 of the BLM *Manual*, BLM is required to carry out management for the conservation of candidate species and to ensure that its actions do not contribute to the need to list such species as threatened or endangered. BLM is required to request technical assistance on any planned action that may contribute to the need to list a candidate species.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

Endangered Species Act of 1973
Generally

Under the Endangered Species Act, BLM is obligated to ensure that any authorized project is not likely to jeopardize the continued existence of any threatened or endangered species or adversely affect its critical habitat. A "no effect" determination in a Biological Assessment/ Biological Evaluation does not trigger formal consultation with the U.S. Fish and Wildlife Service.

Native Ecosystems Council, 160 IBLA 288 (Jan. 22, 2004).

Endangered Species Act of 1973
Generally

When a fish species is listed as threatened or endangered, its critical habitat is afforded protection under section 7 of the ESA. Under section 7(a)(2) of the ESA, 16 U.S.C. § 1536(a)(2) (2000), BLM may not take action likely to jeopardize the continued existence of an endangered or threatened (listed) species or result in the destruction or adverse modification of its critical habitat. To that end, section 7(a)(2) of the ESA imposes an obligation on BLM to consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (depending on whether the species is under the jurisdiction of the Secretary of the Interior or the Secretary of Commerce) to insure that "any action authorized, funded, or carried out" by BLM is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of its critical habitat. If, after either informal consultation or preparation of a biological assessment, BLM, with the concurrence of the Director of the wildlife agency, makes a determination that the action is not likely to adversely affect listed species or critical habitat, then formal consultation is not required.

In re Big Deal Timber Sale, 165 IBLA 18 (Feb. 17, 2005).

Endangered Species Act
Generally

Where the record in an appeal from the denial of a protest of an oil and gas lease sale shows that BLM excluded some parcels from the sale when it determined that leasing them might have impacts on species that are candidates for listing as sensitive, threatened, or endangered, it follows that BLM determined that the parcels that remained in the sale would not have such impacts. In the absence of a showing to the contrary by a protestant/appellant, BLM's determination that previous environmental review was adequate to determine any effects on such species will be affirmed on appeal.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Endangered Species Act
Generally

Where BLM determines to proceed with a specific well relocation project after it has formally consulted with the FWS regarding a listed species, and FWS has issued a biological opinion concurring in the conclusion that the proposed action will not jeopardize the continued existence of the species or destroy or adversely modify its critical habitat without disapproving the proposed action as one of a number of similar projects in a geographical area or a segment of a comprehensive plan, no violation of the Endangered Species Act has been shown. A challenge to FWS' failure to disapprove the well relocation project as the impermissible segmenting of a comprehensive project plan is not within the jurisdiction of this Board.

Defenders of Wildlife, Wyoming Outdoor Council, 169 IBLA 117 (May 31, 2006).

Endangered Species Act of 1973
Section 6

When a species is not listed as threatened or endangered under the Endangered Species Act, 16 U.S.C. §§ 1531-44 (1994), but is listed as a "state threatened species" under Colorado law, recognizing Colorado law as authority for including a stipulation providing for time limitations on sand and gravel operations in a free use permit for the protection of that species is a proper exercise of BLM's discretion.

Moffat County Road Department, 158 IBLA 221 (Jan. 24, 2003).

Endangered Species Act of 1973
Section 7
Consultation

The Office of Hearings and Appeals does not have authority to review the merits of biological opinions issued by the FWS under section 7 of the Endangered Species Act, 16 U.S.C. § 1536 (1994). BLM properly limits activity on a private inholding in a wilderness area where the limitations imposed are directed by an FWS biological opinion in order to prevent adverse impacts on wildlife.

National Wildlife Federation, et al., Erik and Tina Barnes, 151 IBLA 104 (Nov. 24, 1999).

Endangered Species Act of 1973
Section 7
Consultation

Under the Endangered Species Act, BLM is obligated to ensure that any authorized project is not likely to jeopardize the continued existence of any threatened or endangered species or adversely impact its habitat.

Sierra Club, Angeles Chapter, Santa Clarita Group, et al., 156 IBLA 144 (Jan. 8, 2002)

Endangered Species Act of 1973
Section 7
Consultation

On appeal from a BLM decision authorizing a sand and gravel mining project, the Board may review whether BLM considered the potential impact to threatened and endangered species or their habitat. However, it lacks jurisdiction to review the merits of a biological opinion issued by USFWS, as a result of consultation regarding a species, which serves, in part, as a basis for BLM's decision.

Sierra Club, Angeles Chapter, Santa Clarita Group, et al., 156 IBLA 144 (Jan. 8, 2002).

Endangered Species Act of 1973
Section 7
Consultation

Under the Endangered Species Act (ESA), BLM is obligated to ensure that an authorized action is not likely to jeopardize the continued existence of a threatened or endangered species or result in the destruction or adverse modification of its habitat. The Act imposes the same obligation for species that have been proposed for listing. Compliance with the ESA is also an element of complying with NEPA. In evaluating whether BLM took the requisite "hard look" at the environmental impacts of a proposed action that NEPA requires, the Board properly considers whether BLM considered the potential impacts on listed or proposed species or their habitat that the ESA mandates. However, the Board lacks jurisdiction to review the merits of a biological opinion issued by the U.S. Fish and Wildlife Service as a result of formal consultation regarding a species, which opinion serves, in part, as a basis for BLM's decisionmaking.

Wyoming Outdoor, Council James M. Walsh, 159 IBLA 388 (July 25, 2003).

Endangered Species Act of 1973
Section 7
Consultation

Where BLM held an oil and gas lease sale prior to the date a species was proposed for listing under the ESA, there was no obligation to confer with USFWS before conducting the sale.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

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Consultation

Under the Endangered Species Act, BLM is obligated to ensure that any authorized project is not likely to jeopardize the continued existence of any threatened or endangered species or adversely affect its critical habitat. A "no effect" determination in a Biological Assessment/ Biological Evaluation does not trigger formal consultation with the U.S. Fish and Wildlife Service.

Native Ecosystems Council, 160 IBLA 288 (Jan. 22, 2004).

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Consultation

When a fish species is listed as threatened or endangered, its critical habitat is afforded protection under section 7 of the ESA. Under section 7(a)(2) of the ESA, 16 U.S.C. § 1536(a)(2) (2000), BLM may not take action likely to jeopardize the continued existence of an endangered or threatened (listed) species or result in the destruction or adverse modification of its critical habitat. To that end, section 7(a)(2) of the ESA imposes an obligation on BLM to consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (depending on whether the species is under the jurisdiction of the Secretary of the Interior or the Secretary of Commerce) to insure that "any action authorized, funded, or carried out" by BLM is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of its critical habitat. If, after either informal consultation or preparation of a biological assessment, BLM, with the concurrence of the Director of the wildlife agency, makes a determination that the action is not likely to adversely affect listed species or critical habitat, then formal consultation is not required.

In re Big Deal Timber Sale, 165 IBLA 18 (Feb. 17, 2005).

Endangered Species Act of 1973
Section 7
Consultation

BLM is not required to reinitiate consultation with the Fish and Wildlife Service pursuant to section 7 of the Endangered Species Act of 1973, *as amended*, 16 U.S.C. § 1536 (2000), in connection with its decision to offer lands for competitive oil and gas leasing where there is no new information disclosing that leasing and potential oil and gas development may affect listed species or critical habitat in a manner or to an extent not previously considered in previous consultations.

Forest Guardians, 170 IBLA 80 (Sept. 8, 2006).

Endangered Species Act of 1973
Section 7
Consultation

BLM is not required to initiate or reinitiate consultation with the U.S. Fish and Wildlife Service pursuant to section 7 of the Endangered Species Act of 1973, *as amended*, 16 U.S.C. § 1536 (2000), in connection with its decision to offer lands for competitive oil and gas leasing where there is no information disclosing that leasing and potential oil and gas development may affect listed species or critical habitat in a manner or to an extent not previously considered in previous consultations.

Forest Guardians, 170 IBLA 253 (Sept. 29, 2006).

Endangered Species Act of 1973
Section 7
Consultation

BLM is not required to initiate consultation with the U.S. Fish and Wildlife Service pursuant to section 7 of the Endangered Species Act of 1973, *as amended*, 16 U.S.C. § 1536 (2000), in connection with its decision to approve oil and gas exploration and development where there is no information disclosing that such activity may affect listed species or critical habitat.

Biodiversity Conservation Alliance et al., 171 IBLA 218 (Apr. 19, 2007).

Energy Policy Act of 1992
Generally

Subsection (d) of the Energy Policy Act, 30 U.S.C. § 242(d) (2000), provides a procedural mechanism for formally ascertaining and resolving the status of oil shale mining claims. In establishing opportunities to affirmatively declare one's intentions, it does not abolish the basic necessity of maintaining a claim in conformity with the law until patent issues. That necessity extends to and includes the two-year period allowed for the filing of an application for limited patent.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Energy Policy Act of 1992
Generally

All persons who hold unpatented mining claims do so by timely fulfilling the requirements of relevant law necessary to maintain the claims. The phrase "maintains or elects to maintain unpatented claims" in subsection (d) of the Energy Policy Act is structured to reflect the elective aspects of the law, but does not negate the fundamental necessity of complying with the mining law and with sec. 314 of the Federal Land Policy and Management Act, 43 U.S.C. § 1744 (2000), as amended by the Energy Policy Act with respect to oil shale claims, to maintain one's possessory right as against the United States, nor does it create an exemption to that obligation. Oil shale mining claims for which an election to proceed to limited patent has been filed must be maintained until such time as patent may be issued, including during the 2-year period before the deadline for filing the application expires.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Energy Policy Act of 1992
Generally

Oil shale claim holders subject to subsection (c)(3) or (d) of the Energy Policy Act are required to maintain their claims by complying with the mining law as amended by that Act, which terminated the obligation to perform annual labor and now requires those oil shale claimants to pay a fee of $550 per claim per year to maintain their claims.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Energy Policy Act of 1992
Generally

In enacting the Energy Policy Act, Congress established an affirmative obligation to pay $550 per year per oil shale claim to maintain such claims, a default in which subjects the claims to voidance. Congress did not mandate the conclusive, self-executing forfeiture by operation of law that attends failure to timely file a notice of election, failure to timely apply for limited patent or failure to timely notify the Department in writing of a subsequent election to maintain a claim. Instead, BLM properly provides notice of the failure to comply with the Energy Policy Act and a reasonable opportunity to resolve such failure before it can issue a final decision determining that a claim is null and void.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Energy Policy Act of 1992
Generally

The Energy Policy Act's oil shale maintenance fee of "$550 per claim per year" is not merely a matter of convenience. It is instead a substantive matter essential to maintaining the possessory right to an oil shale claim as against the United States, and payment of the fee is mandatory.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Energy Policy Act of 1992
Generally

When no stay of BLM's decisions voiding unpatented oil shale mining claims pursuant to the Energy Policy Act was sought or granted, they were effective as of the close of the appeal period, and in accordance with the decisions, those mining claims were void and ceased to exist. In that circumstance, payment of yearly claim fees while the appeals were pending before this Board would be directly contrary to, and inconsistent with, the voidance decisions.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Energy Policy Act of 1992
Generally

When a decision declaring unpatented oil shale claims null and void pursuant to the Energy Policy Act is reversed by this Board, the claims are restored to the claim holder *nunc pro tunc*, as if the decision had never been issued. Upon reinstatement of the oil shale claims, the obligation to maintain them as provided by the Energy Policy Act is also revived, including the obligation to pay the maintenance fees "per claim per year" for each year of the claim's existence.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Energy Policy Act of 1992
Generally

Because the Energy Policy Act does not expressly provide for automatic forfeiture or conclusive abandonment of an oil shale claim for failure to comply with a mandatory requirement, the appropriate course of action is to provide a party an opportunity to comply with that Act. Where a party fails or refuses to come into compliance after receiving notice of maintenance fees that are due, BLM properly may declare such oil shale claims null and void.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Energy Policy Act of 1992
Generally

The $100 claim rental fee established by the Interior Department and Related Agencies Appropriations Act of 1993 (Rental Fee Act), Pub. L. No. 102-381, 106 Stat. 1378-79 (Oct. 5, 1992), applied to all unpatented mining claims, mill sites, and tunnel sites. As to oil shale claims, the Rental Fee Act applied only to those oil shale claims for which patent applications had been filed and accepted for processing by the Department by October 24, 1992, the date the Energy Policy Act of 1992, 30 U.S.C. § 242 (2000), was enacted, for which no first half final certificate has been issued. Such claims are to be maintained in accordance with the requirements of applicable law prior to the enactment of the Energy Policy Act until such time as patent may be issued. The Rental Fee Act required payment of the $100 fee for each claim for the 1993 and 1994 assessment years on or before August 31, 1993, to avoid conclusive abandonment of the claims.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover IV), 160 IBLA 261 (Dec. 22, 2003).

Energy Policy Act of 1992
Generally

Oil shale claims which are subject to the provisions of the Energy Policy Act, 30 U.S.C. § 242(c)(1) and (2) (2000), must be maintained in accordance with the requirements of applicable law before the EPA was enacted.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover IV), 160 IBLA 261 (Dec. 22, 2003).

Energy Policy Act of 1992
Generally

Under the Rental Fee Act, August 31, 1993, was the last date a claim holder could avoid conclusive abandonment of his unpatented mining claims by paying the rental fee. That deadline is to be distinguished from the obligation to pay the rental fees, which was established as of the effective date of the Rental Fee Act. Subsection (c)(3) of the Energy Policy Act plainly provides that claim holders subject to subsection (c)(1) and (2) are to continue to maintain their claims in accordance with the requirements of applicable law. Such claim holders were therefore required to pay rental fees for the 1993 and 1994 assessment years on or before August 31, 1993, to avoid the conclusive presumption of abandonment of their oil shale claims.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover IV), 160 IBLA 261 (Dec. 22, 2003).

Energy Policy Act of 1992
Generally

The validity of the Rental Fee Act and the Energy Policy Act does not depend on the validity of the regulations adopted by the Department to implement them. A regulation cannot create authority where none has been conferred by Congress, and where Congress has enacted a statute, a regulation cannot exceed, diminish, or negate the authority thus granted.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover IV), 160 IBLA 261 (Dec. 22, 2003).

Energy Policy Act of 1992
Generally

Where an oil shale application for patent was filed in October 1989 and BLM took no action to reject it until March 1993, a patent application had been filed and accepted for processing by the Department by October 24, 1992, as specified by the Energy Policy Act, 30 U.S.C. § 242(c)(1) (2000). By meeting this statutory criterion, the applicant fell into the category of persons who thereafter must maintain their claims "in accordance with the requirements of applicable law prior to the enactment of [the Energy Policy] Act." 30 U.S.C. § 242(c)(2) (2000).

Jerry D. Grover d.b.a. Kingston Rust Development (Grover V), 160 IBLA 318 (Jan. 22, 2004).

Energy Policy Act of 1992
Generally

Payment of a $100 rental fee for each oil shale claim on or before August 31, 1994, was required for the 1993 assessment year that ended at noon on September 1, 1993, and the 1994 assessment year that began at noon on September 1, 1993. Pub. L. No. 102-381, 106 Stat. 1378-79 (1992). The failure to pay the claim rental fees on or before August 31, 1994, conclusively constituted abandonment of the claim. That consequence is self-executing, and the Department is without authority to excuse lack of compliance with the rental fee requirement, to extend the time for compliance, or to afford any relief from such statutory consequence.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover V), 160 IBLA 318 (Jan. 22, 2004).

Energy Policy Act of 1992
Generally

Prior to July 1993, 43 C.F.R. § 3833.5(d) (1992) required personal notice to claim holders of record and "owners whose names show on annual filings" of contest proceedings or actions initiated by the United States. The regulation was amended in July 1993, and now requires BLM to look only to its official recordation files to ascertain owners when serving process in contest or other proceedings. The regulation does not constitute or establish an independent basis for attacking the sufficiency of notice required by and provided pursuant to the Energy Policy Act, 30 U.S.C. § 242 (2000).

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VI), 161 IBLA 26 (Mar. 10, 2004).

Energy Policy Act of 1992
Generally

Actual notice of the requirements of the Energy Policy Act was provided by BLM and by this Board in prior decisions construing the Act in appeals filed by appellant or his predecessor in interest. Nothing in the Act mandates renewed personal notice for each claim held by an individual claim holder after he has received actual and

constructive notice of the Act's requirements.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VI), 161 IBLA 26 (Mar. 10, 2004).

Energy Policy Act of 1992
Generally

Where oil shale applications for limited patent were filed and accepted for processing on May 13, 1993, *after* October 24, 1992, the effective date of the Energy Policy Act, the claims are subject to the election provisions of the Act, 30 U.S.C. § 242(d) (2000), and must be maintained until such time as patent may be issued by, among other things, paying $550 per claim per year. 30 U.S.C. § 242(e) (2000). Where BLM's decisions treated appellant's oil shale claims as if the patent applications had been pending before the Department *on or before* October 24, 1992, which instead would have required appellant to maintain the claims in accordance with the requirements of applicable law prior to enactment of the EPA by paying a $100 claim maintenance fee, the decisions are properly reversed.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VI), 161 IBLA 26 (Mar. 10, 2004).

Energy Policy Act of 1992
Generally

In *Jerry D. Grover d.b.a. Kingston Rust Development (Grover III)*, 160 IBLA 234 (2003), this Board clearly described what was necessary to comply with the Energy Policy Act of 1992 (EPA), 30 U.S.C. § 242 (2000). All holders of oil shale claims, except those who had filed patent applications and received first half final certificates as of the date the EPA was enacted, are required to pay a $550 fee per claim per year to maintain possession as against the United States until such time as patent may issue or the claim is otherwise invalidated. When it is undisputed that appellant failed to pay the fees mandated by the EPA after written notice and an opportunity to do so, exercising its *de novo* review authority, the Board properly affirms a BLM decision declaring oil shale mining claims null and void on the basis of that failure to comply with the EPA.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VII), 163 IBLA 310 (Nov. 2, 2004).

Energy Policy Act of 1992
Oil Shale
Mining Claims
Rental or Claim Maintenance Fees

Subsection (d) of the Energy Policy Act, 30 U.S.C. § 242(d) (2000), provides a procedural mechanism for formally ascertaining and resolving the status of oil shale mining claims. In establishing opportunities to affirmatively declare one's intentions, it does not abolish the basic necessity of maintaining a claim in conformity with the law until patent issues. That necessity extends to and includes the two-year period allowed for the filing of an application for limited patent.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Energy Policy Act of 1992
Oil Shale
Mining Claims
Rental or Claim Maintenance Fees

All persons who hold unpatented mining claims do so by timely fulfilling the requirements of relevant law necessary to maintain the claims. The phrase "maintains or elects to maintain unpatented claims" in subsection (d) of the Energy Policy Act is structured to reflect the elective aspects of the law, but does not negate the fundamental necessity of complying with the mining law and with sec. 314 of the Federal Land Policy and Management Act, 43 U.S.C. § 1744 (2000), as amended by the Energy Policy Act with respect to oil shale claims, to maintain one's possessory right as against the United States, nor does it create an exemption to that obligation. Oil shale mining claims for which an election to proceed to limited patent has been filed must be maintained until such time as patent may be issued, including during the 2-year period before the deadline for filing the application expires.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Energy Policy Act of 1992
Oil Shale
Mining Claims
Rental or Claim Maintenance Fees

Oil shale claim holders subject to subsection (c)(3) or (d) of the Energy Policy Act are required to maintain their claims by complying with the mining law as amended by that Act, which terminated the obligation to perform annual labor and now requires those oil shale claimants to pay a fee of $550 per claim per year to maintain their claims.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Energy Policy Act of 1992
Oil Shale
Mining Claims
Rental or Claim Maintenance Fees

In enacting the Energy Policy Act, Congress established an affirmative obligation to pay $550 per year per oil shale claim to maintain such claims, a default in which subjects the claims to voidance. Congress did not mandate the conclusive, self-executing forfeiture by operation of law that attends failure to timely file a notice of election, failure to timely apply for limited patent or failure to timely notify the Department in writing of a subsequent election to maintain a claim. Instead, BLM properly provides notice of the failure to comply with the Energy Policy Act and a reasonable opportunity to resolve such failure before it can issue a final decision determining that a claim is null and void.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Energy Policy Act of 1992
Oil Shale
Mining Claims
Rental or Claim Maintenance Fees

The Energy Policy Act's oil shale maintenance fee of "$550 per claim per year" is not merely a matter of convenience. It is instead a substantive matter essential to maintaining the possessory right to an oil shale claim as against the United States, and payment of the fee is mandatory.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Energy Policy Act of 1992
Oil Shale
Mining Claims
Rental or Claim Maintenance Fees

When no stay of BLM's decisions voiding unpatented oil shale mining claims pursuant to the Energy Policy Act was sought or granted, they were effective as of the close of the appeal period, and in accordance with the decisions, those mining claims were void and ceased to exist. In that circumstance, payment of yearly claim fees while the appeals were pending before this Board would be directly contrary to, and inconsistent with, the voidance decisions.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Energy Policy Act of 1992
Oil Shale
Mining Claims
Rental or Claim Maintenance Fees

When a decision declaring unpatented oil shale claims null and void pursuant to the Energy Policy Act is reversed by this Board, the claims are restored to the claim holder *nunc pro tunc*, as if the decision had never been issued. Upon reinstatement of the oil shale claims, the obligation to maintain them as provided by the Energy Policy Act is also revived, including the obligation to pay the maintenance fees "per claim per year" for each year of the claim's existence.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Energy Policy Act of 1992
Oil Shale
Mining Claims
Rental or Claim Maintenance Fees

Because the Energy Policy Act does not expressly provide for automatic forfeiture or conclusive abandonment of an oil shale claim for failure to comply with a mandatory requirement, the appropriate course of action is to provide a party an opportunity to comply with that Act. Where a party fails or refuses to come into compliance after receiving notice of maintenance fees that are due, BLM properly may declare such oil shale claims null and void.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Energy Policy Act of 1992
Oil Shale
Mining Claims
Rental or Claim Maintenance Fees

The $100 claim rental fee established by the Interior Department and Related Agencies Appropriations Act of 1993 (Rental Fee Act), Pub. L. No. 102-381, 106 Stat. 1378-79 (Oct. 5, 1992), applied to all unpatented mining claims, mill sites, and tunnel sites. As to oil shale claims, the Rental Fee Act applied only to those oil shale claims for which patent applications had been filed and accepted for processing by the Department by October 24, 1992, the date the Energy Policy Act of 1992, 30 U.S.C. § 242 (2000), was enacted, for which no first half final certificate has been issued. Such claims are to be maintained in accordance with the requirements of applicable law prior to the enactment of the Energy Policy Act until such time as patent may be issued. The Rental Fee Act required payment of the $100 fee for each claim for the 1993 and 1994 assessment years on or before August 31, 1993, to avoid conclusive abandonment of the claims.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover IV), 160 IBLA 261 (Dec. 22, 2003).

Energy Policy Act of 1992
Oil Shale
Mining Claims
Rental or Claim Maintenance Fees

Oil shale claims which are subject to the provisions of the Energy Policy Act, 30 U.S.C. § 242(c)(1) and (2) (2000), must be maintained in accordance with the requirements of applicable law before the EPA was enacted.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover IV), 160 IBLA 261 (Dec. 22, 2003).

Energy Policy Act of 1992
Oil Shale
Mining Claims
Rental or Claim Maintenance Fees

Under the Rental Fee Act, August 31, 1993, was the last date a claim holder could avoid conclusive abandonment of his unpatented mining claims by paying the rental fee. That deadline is to be distinguished from the obligation to pay the rental fees, which was established as of the effective date of the Rental Fee Act. Subsection (c)(3) of the Energy Policy Act plainly provides that claim holders subject to subsection (c)(1) and (2) are to continue to maintain their claims in accordance with the requirements of

applicable law. Such claim holders were therefore required to pay rental fees for the 1993 and 1994 assessment years on or before August 31, 1993, to avoid the conclusive presumption of abandonment of their oil shale claims.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover IV), 160 IBLA 261 (Dec. 22, 2003).

Energy Policy Act of 1992
Oil Shale
Mining Claims
Rental or Claim Maintenance Fees

The validity of the Rental Fee Act and the Energy Policy Act does not depend on the validity of the regulations adopted by the Department to implement them. A regulation cannot create authority where none has been conferred by Congress, and where Congress has enacted a statute, a regulation cannot exceed, diminish, or negate the authority thus granted.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover IV), 160 IBLA 261 (Dec. 22, 2003).

Energy Policy Act of 1992
Oil Shale
Mining Claims
Rental or Claim Maintenance Fees

Where an oil shale application for patent was filed in October 1989 and BLM took no action to reject it until March 1993, a patent application had been filed and accepted for processing by the Department by October 24, 1992, as specified by the Energy Policy Act, 30 U.S.C. § 242(c)(1) (2000). By meeting this statutory criterion, the applicant fell into the category of persons who thereafter must maintain their claims "in accordance with the requirements of applicable law prior to the enactment of [the Energy Policy] Act." 30 U.S.C. § 242(c)(2) (2000).

Jerry D. Grover d.b.a. Kingston Rust Development (Grover V), 160 IBLA 318 (Jan. 22, 2004).

Energy Policy Act of 1992
Oil Shale
Mining Claims
Rental or Claim Maintenance Fees

Payment of a $100 rental fee for each oil shale claim on or before August 31, 1994, was required for the 1993 assessment year that ended at noon on September 1, 1993, and the 1994 assessment year that began at noon on September 1, 1993. Pub. L. No. 102-381, 106 Stat. 1378-79 (1992). The failure to pay the claim rental fees on or before August 31, 1994, conclusively constituted abandonment of the claim. That consequence is self-executing, and the Department is without authority to excuse lack of compliance with the rental fee requirement, to extend the time for compliance, or to afford any relief from such statutory consequence.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover V), 160 IBLA 318 (Jan. 22, 2004).

Energy Policy Act of 1992
Oil Shale
Mining Claims
Rental or Claim Maintenance Fees

Prior to July 1993, 43 C.F.R. § 3833.5(d) (1992) required personal notice to claim holders of record and "owners whose names show on annual filings" of contest proceedings or actions initiated by the United States. The regulation was amended in July 1993, and now requires BLM to look only to its official recordation files to ascertain owners when serving process in contest or other proceedings. The regulation does not constitute or establish an independent basis for attacking the sufficiency of notice required by and provided pursuant to the Energy Policy Act, 30 U.S.C. § 242 (2000).

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VI), 161 IBLA 26 (Mar. 10, 2004).

Energy Policy Act of 1992
Oil Shale
Mining Claims
Rental or Claim Maintenance Fees

Actual notice of the requirements of the Energy Policy Act was provided by BLM and by this Board in prior decisions construing the Act in appeals filed by appellant or his predecessor in interest. Nothing in the Act mandates renewed personal notice for each claim held by an individual claim holder after he has received actual and constructive notice of the Act's requirements.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VI), 161 IBLA 26 (Mar. 10, 2004).

Energy Policy Act of 1992
Oil Shale
Mining Claims
Rental or Claim Maintenance Fees

Where oil shale applications for limited patent were filed and accepted for processing on May 13, 1993, *after* October 24, 1992, the effective date of the Energy Policy Act, the claims are subject to the election provisions of the Act, 30 U.S.C. § 242(d) (2000), and must be maintained until such time as patent may be issued by, among other things, paying $550 per claim per year. 30 U.S.C. § 242(e) (2000). Where BLM's decisions treated appellant's oil shale claims as if the patent applications had been pending before the Department *on or before* October 24, 1992, which instead would have required appellant to maintain the claims in accordance with the requirements of applicable law prior to enactment of the EPA by paying a $100 claim maintenance fee, the decisions are properly reversed.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VI), 161 IBLA 26 (Mar. 10, 2004).

Energy Policy Act of 1992
Oil Shale
Mining Claims
Rental or Claim Maintenance Fees

In *Jerry D. Grover d.b.a. Kingston Rust Development (Grover III)*, 160 IBLA 234 (2003), this Board clearly described what was necessary to comply with the Energy Policy Act of 1992 (EPA), 30 U.S.C. § 242 (2000). All holders of oil shale claims, except those who had filed patent applications and received first half final certificates as of the date the EPA was enacted, are required to pay a $550 fee per claim per year to maintain possession as against the United States until such time as patent may issue or the claim is otherwise invalidated. When it is undisputed that appellant failed to pay the fees mandated by the EPA after written notice and an opportunity to do so, exercising its *de novo* review authority, the Board properly affirms a BLM decision declaring oil shale mining claims null and void on the basis of that failure to comply with the EPA.

Jerry D. Grover D.b.a. Kingston Rust Development (Grover VII), 163 IBLA 310 (Nov. 2, 2004).

Environmental Policy Act

When BLM has denied a protest of the inclusion of parcels in an oil and gas lease sale, asserting that it has complied with the National Environmental Policy Act by preparing a pre-leasing environmental impact statement to which its action can be tiered, but there is no pre-leasing EIS that addresses the parcels in question, the Bureau of Land Management's decision will be reversed.

Southern Utah Wilderness Alliance, et al., 164 IBLA 118 (Nov. 30, 2004).

Environmental Policy Act

BLM may properly rely on existing land use documents and their associated environmental statements where there is no foreseeable likelihood of CBM development or where the impacts of CBM development do not differ significantly from the effects of oil and gas development already described in existing NEPA documents. Whether more NEPA analysis based on new information is required depends on the nature of the NEPA analysis already completed, and the nature of the information available at the time of the agency action. Where an appellant asserts a failure to perform NEPA review in the context of an "RMP level" document, this argument alone is insufficient to prove a violation of NEPA. Where recent Board and judicial precedent affirm that the question of whether additional environmental analysis is required in any given case depends on whether an appellant can show that existing NEPA documents failed to analyze the likely effects of the action at hand, and an appellant fails to show why arguments expressly considered and rejected in recent precedent remain viable, the Board properly rejects such arguments.

Biodiversity Conservation Alliance, Center for Native Ecosystems, Wyoming Wilderness Association, Clark Resource Council, 171 IBLA 313 (June 26, 2007).

Environmental Policy Act

BLM did not err in not adopting a 2-mile buffer zone for sage grouse leks or strutting grounds in the ROD/FEIS where authorities relied on in support of a 2-mile buffer zone and addressed widespread sagebrush eradication rather than the more limited impacts associated with oil and gas operations, and no scientific evidence was offered showing that a 2-mile buffer zone was necessary to protect sage grouse leks or strutting grounds.

Wyoming Audubon et al., 151 IBLA 42, 50 (Oct. 22, 1999).

Environmental Policy Act

BLM did not violate seasonal sage grouse restrictions identified in the RMP where the RMP also provided for modification of the restrictions if necessary based upon environmental analysis of specific proposal and site specific mitigation, and BLM prepared an environmental impact statement modifying the seasonal restriction based on post-RMP research more clearly defining sage grouse breeding and nesting activity and required site-specific mitigation which protects nests and chicks identified through required surveys.

Wyoming Audubon et al., 151 IBLA 42 (Oct. 22, 1999).

Environmental Policy Act

Where the scientific data relied on by BLM and appellants indicate that a ½-mile buffer zone is preferable but not essential to protect sage grouse leks, and there is no scientific evidence or studies indicating a ¼-mile buffer zone with appropriate mitigation measures is insufficient to protect sage grouse leks, BLM's conclusion that a ¼-mile buffer zone with additional mitigation is sufficient to lessen the impact on sage grouse due to oil and gas development will be affirmed.

Wyoming Audubon et al., 151 IBLA 42 (Oct. 22, 1999).

Environmental Policy Act

Where the EA supporting the Decision Notice and Finding of No Significant Impact describes the proposed action of the Montana Department of Fish Wildlife and Parks as maintaining an "observed" late-winter elk population of 2,000 rather than maintaining a late-winter elk population of 2,000, the inclusion of the word does not result in a new proposal or overrule the population objectives in the State Elk Plan and its use is not inconsistent with the Decision where the record shows that the target elk population contained in Elkhorn Mountains Travel Management Plan is in fact based on the elk population objectives established in the State Elk Plan which BLM has no authority to alter.

Paul B. Smith and Bill Myers, The Boulder Technical Advisory Group, 153 IBLA 334 (Sept. 29, 2000).

Environmental Policy Act

A BLM finding (based on preparation of an EA) that no significant environmental impact will occur as a result of issuing a travel management plan will be affirmed when the record shows that BLM took a hard look at the environmental consequences of its action and appellant fails to show that BLM's finding was based on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared.

Paul B. Smith and Bill Myers, The Boulder Technical Advisory Group, 153 IBLA 334 (Sept. 29, 2000).

Environmental Policy Act

Appellants bear the burden of demonstrating, by a preponderance of the evidence, that BLM committed a material error in its factual analysis or that the decision generally is not supported by a record showing that BLM gave due consideration to all relevant factors and acted on the basis of a rational connection between the facts found and the choice made.

Bear River Development Corporation, et al., 157 IBLA 37 (July 19, 2002).

Environmental Policy Act

The Board of Land Appeals has the authority under 43 C.F.R. § 4.403 to grant a petition for reconsideration in extraordinary circumstances for sufficient reason. A petition for reconsideration filed by BLM seeking to have the Board reconsider its determination that the agency failed to take the requisite hard look at the environmental consequences of coalbed methane extraction and development and relevant leasing alternatives before deciding to offer three parcels of land for oil and gas leasing will be denied when BLM fails to satisfy the requirements of 43 C.F.R. § 4.403.

Wyoming Outdoor Council, et al., (On Reconsideration), 157 IBLA 259 (Oct. 15, 2002).

Environmental Policy Act

An environmental assessment addressing the impacts of a coalbed methane pilot project proposed for land adjacent to parcels included in an oil and gas lease sale, prepared after BLM issued its decision approving the oil and gas lease sale, does not cure the defects in the environmental documentation relied upon by BLM as support for the leasing decision, when that documentation did not mention coalbed methane extraction and its impacts.

Wyoming Outdoor Council, et al., 158 IBLA 384 (Apr. 15, 2003).

Environmental Policy Act

A BLM decision dismissing a protest of a competitive oil and gas lease sale will be affirmed to the extent the environmental documentation relied upon in the decision considered the impacts of coalbed methane production before deciding that certain lands, including those embraced by the parcel at issue, should be open to oil and gas leasing and development.

Wyoming Outdoor Council, et al., 158 IBLA 384 (Apr. 15, 2003).

Environmental Policy Act

When making a determination whether a proposed action will have a significant effect on the human environment, the cumulative effect of the proposed action and other actions not connected with the proposed action must be taken into consideration. A cumulative impact is one which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions and can result from individually minor but collectively significant actions taking place over time. The Board may affirm BLM's conclusion that the possible cumulative impact of a future action need not be considered significant when the reasonably foreseeable future action is speculative.

Southern Utah Wilderness Alliance, 159 IBLA 220 (June 16, 2003).

Environmental Policy Act

Connected actions are closely related and should be discussed in the same environmental impact statement if they include those which: (i) automatically trigger other actions which may require an EIS; (ii) cannot or will not proceed unless other actions are undertaken previously or simultaneously; or (iii) are interdependent parts of a larger action and depend on the larger action for their justification.

Southern Utah Wilderness Alliance, 159 IBLA 220 (June 16, 2003).

Environmental Policy Act

A BLM decision dismissing a protest challenging the approval of an oil and gas lease sale will be reversedas to the parcels for which the appellants have established standing when the decision to offer the parcels for leasing was based on existing environmental analyses which either did not contain any discussion of the unique potential impacts associated with coalbed methane extraction and development or failed to consider reasonable alternatives relevant to a pre-leasing environmental analysis.

Wyoming Outdoor Council, et al., 158 IBLA 384 (Apr. 15, 2003).

Environmental Policy Act

A BLM decision dismissing a protest challenging the approval of an oil and gas lease sale will be affirmed as to the sale parcels for which the appellant has established standing, when the Board reviews the record de novo and determines that that record, as supplemented by BLM with the submission of a new "Interim Documentation of Land Use Conformance and NEPA Adequacy" worksheet and supporting information, provides a hard look at the environmental consequences of leasing, including the impacts of exploration for and development of coalbed methane.

Wyoming Outdoor Council, 160 IBLA 387 (Feb. 19, 2004).

Environmental Policy Act

When BLM prepares an environmental analysis for a proposed action to issue an oil and gas lease in an area open to leasing under a governing resource management plan,

it is not required to postpone leasing under its existing resource management plan in order to consider a wilderness proposal from an advocacy group. Proposed designations that would require amendment of the existing resource management plan need not be considered each time BLM decides to grant a right to undertake an activity in conformity with the existing land use plan.

Colorado Environmental Coalition, The Wilderness Society, 161 IBLA 386 (June 4, 2004).

Environmental Policy Act

An environmental assessment of a proposal to issue an oil and gas lease which is tiered to a final environmental impact statement for a resource management plan or activity plan need not restate cumulative impacts or the no action alternative considered in the environmental impact statement to which the environmental assessment is tiered.

Colorado Environmental Coalition, The Wilderness Society, 161 IBLA 386 (June 4, 2004).

Environmental Policy Act

A BLM decision dismissing a protest to a competitive oil and gas lease sale is properly affirmed on appeal where appellant fails to demonstrate with objective proof that BLM's decision was premised on a clear error of law or demonstrable error of fact, or that BLM's analysis failed to consider a substantial environmental question of material significance to the proposed action. BLM did not fail to consider alleged significant unique impacts associated with coalbed methane production on the North Fork Valley parcels in the Piceance Basin where no evidence was produced establishing that significant impacts had occurred or were reasonably likely to occur in connection with coalbed methane production. Evidence of asserted significant impacts associated with coalbed methane production in other basins was insufficient to establish that those impacts would occur on the North Fork Valley parcels in the Piceance Basin, absent objective proof that the conditions that exist on the North Fork Valley parcels in the Piceance Basin will result in the asserted significant impacts.

Western Slope Environmental Resource Council, et al., 163 IBLA 262 (Oct. 28, 2004).

Environmental Policy Act

A BLM decision dismissing a protest to a competitive oil and gas lease sale is properly affirmed on appeal where the appellant fails to demonstrate with objective proof that BLM's decision was premised on a clear error of law or demonstrable error of fact, or that BLM's analysis failed to consider a substantial environmental question of material significance to the proposed action. BLM did not fail to consider alleged significant unique impacts associated with coalbed methane production in the Piceance Basin where no evidence was produced establishing that significant impacts had occurred or were reasonably likely to occur in connection with coalbed methane production. Evidence of asserted significant impacts associated with coalbed methane production in other basins is insufficient to establish that those impacts would occur on parcels in the Piceance Basin, absent objective proof that the conditions that exist in the Piceance Basin will result in the asserted significant impacts.

Western Slope Environmental Resource Council, High Country Citizens Alliance, 164 IBLA 329 (Feb. 8, 2005).

Environmental Policy Act

The impact of more than one timber sale may be addressed in a single environmental analysis. The Board will not set aside a timber sale based on an appellant's objections that pertain to another timber sale which had been addressed in the same environmental analysis unless those objections are tied to the cumulative effect of the action.

In re Big Deal Timber Sale, 165 IBLA 18 (Feb. 17, 2005).

Environmental Policy Act

The reasonableness of a FONSI will be upheld if the record establishes that BLM took a "hard look" at the proposed action, carefully reviewed environmental problems, identified all relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or that any such impacts will be reduced to insignificance by the adoption of appropriate mitigation measures. A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Where a FONSI is based on mitigation measures designed to minimize acknowledged adverse environmental impacts, analysis of the proposed mitigation measures and how effective they would be in eliminating those impacts is required. A mitigation plan must be sufficiently developed and explained to provide a convincing case that significant environmental impacts will be reduced to insignificance. A FONSI will be set aside where an appellant has shown that the proposed actions will have a significant impact to riparian resources and that BLM has failed to demonstrate that the proposed mitigation measures will reduce those impacts to insignificance.

Southern Utah Wilderness Alliance, et al., 166 IBLA 140 (July 12, 2005).

Environmental Policy Act

The appropriate time for considering the potential impacts of oil and gas exploration and development is when BLM proposes to lease public lands for oil and gas purposes, because leasing without no-surface-occupancy stipulations constitutes an irreversible and irretrievable commitment to permit surface-disturbing activity, in some form and to some extent.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Environmental Policy Act

In considering the potential impacts of oil and gas exploration and development when BLM proposes to lease public lands for oil and gas purposes, BLM may properly use "Documentation of Land Use Plan Conformance and NEPA Adequacy" worksheets (DNAs) to assess the adequacy of previous environmental review documents. Although preparation of DNAs is a valid vehicle to determine whether previous NEPA documentation adequately considered the environmental effects of proposed oil and gas leasing, DNAs are not a replacement for EAs or EISs and cannot properly be used to supplement previous EAs or EISs or to address site-specific environmental effects not previously considered in them.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Environmental Policy Act

When BLM has denied a protest of the inclusion of parcels in an oil and gas lease sale, asserting that it has complied with the National Environmental Policy Act by preparing pre-leasing environmental review documents, but the pre-leasing documents contain only an outdated, brief review of environmental consequences, the BLM decision denying the protest will be reversed and the case remanded. However, where those pre-leasing documents adequately address the environmental consequences of issuing oil and gas leases both with and without special protective stipulations, BLM's decision denying the protest is properly affirmed.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Environmental Policy Act

Where the record in an appeal from the denial of a protest of an oil and gas lease sale shows that BLM excluded some parcels from the sale when it determined that leasing them might have impacts on species that are candidates for listing as sensitive, threatened, or endangered, it follows that BLM determined that the parcels that remained in the sale would not have such impacts. In the absence of a showing to the contrary by a protestant/appellant, BLM's determination that previous environmental review was adequate to determine any effects on such species will be affirmed on appeal.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Environmental Policy Act

Even though existing land use plans and their associated environmental statements may not provide a separate analysis of the effects of coalbed methane (CBM) development, BLM may properly rely on those documents in support of a decision to offer a parcel of Federal land for competitive oil and gas leasing where there is no foreseeable likelihood of CBM development or where the impacts of CBM development do not differ significantly from the effects of oil and gas development already described in those documents.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Environmental Policy Act

An EA serves to (1) provide evidence and analysis for determining whether to prepare an EIS or a FONSI; (2) aid an agency's decisionmaking process when no EIS is necessary; and (3) facilitate preparation of an EIS when one is necessary. If the agency chooses to prepare an EA for a proposed action, but the resulting analysis projects a significant impact, the EA is insufficient and an EIS is required. To support a FONSI, and, hence, the conclusion that an EIS is not required, an EA must take a hard look at the environmental consequences of a proposed action, identify the relevant areas of environmental concern, and make a convincing case that environmental impacts from it are insignificant. Where the EA met the first two standards of the test but failed to make a convincing case that the identified impacts were not significant, the FONSI is reversed.

Wilderness Watch, et al., 168 IBLA 16 (Feb. 17, 2006).

Environmental Policy Act

Where BLM determines to proceed with a specific well relocation project after it has formally consulted with the FWS regarding a listed species, and FWS has issued a biological opinion concurring in the conclusion that the proposed action will not jeopardize the continued existence of the species or destroy or adversely modify its critical habitat without disapproving the proposed action as one of a number of similar projects in a geographical area or a segment of a comprehensive plan, no violation of the Endangered Species Act has been shown. A challenge to FWS' failure to disapprove the well relocation project as the impermissible segmenting of a comprehensive project plan is not within the jurisdiction of this Board.

Defenders of Wildlife, Wyoming Outdoor Council, 169 IBLA 117 (May 31, 2006).

Environmental Policy Act

Where in a biological opinion FWS concurs in the determination that a listed species has merely passed through a proposed well site area that contains no critical habitat on a transient basis and that the proposed well project is not likely to affect the species or its habitat, and where appellants have provided no persuasive evidence to the contrary, BLM is not prohibited from authorizing site-specific action while it updates or revises an EIS to which that action is tiered. In such circumstances, the question is whether in the EA the agency sufficiently considered those environmental effects not analyzed in the EIS. If BLM took a hard look at the potential environmental impacts of its proposed action and properly concluded that no significant impact would likely result, it has complied with section 102(2) of the NEPA, 42 U.S.C. § 4332(2) (2000).

Defenders of Wildlife Wyoming Outdoor Council, 169 IBLA 117 (May 31, 2006).

Environmental Policy Act

When an agency prepares an EA to determine whether an EIS is necessary, it must consider all relevant matters of environmental concern and take a hard look at potential environmental impacts so that it can make an informed decision about whether the environmental impacts are significant or that significant impacts can be reduced to insignificance by mitigation measures.

Biodiversity Conservation Alliance, 169 IBLA 321 (Aug. 2, 2006).

Environmental Policy Act

A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is based on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action.

Biodiversity Conservation Alliance, 169 IBLA 321 (Aug. 2, 2006).

Environmental Policy Act

When making a determination as to whether a proposed action will have a significant effect on the human environment, the cumulative effects of the proposed action and other actions not connected with the proposed activity must be taken into consideration. A cumulative impact is one which results from the incremental impact of the action when added to other past, present, and reasonably future actions and can result from individually minor but collectively significant actions taking place over time.

Biodiversity Conservation Alliance, 169 IBLA 321 (Aug. 2, 2006).

Environmental Policy Act

When a cumulative impacts analysis in an EA is tiered to the cumulative impact analysis contained in a project EIS that also includes the EA project wells, the EA properly summarizes the issues discussed in the EIS. A party challenging the adequacy of the EA must show that the impacts analysis as tiered does not constitute a reasonably thorough discussion of significant impacts of the probable environmental consequences of the proposed action.

Biodiversity Conservation Alliance, 169 IBLA 321 (Aug. 2, 2006).

Environmental Policy Act

Section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2000), requires consideration of a reasonable range of alternatives to a proposed action, including a no-action alternative. An EA which considers a range of alternatives and gives reasons for BLM's rejection of the alternatives not selected will be upheld when it appears that BLM assessed alternatives in a manner that will avoid or minimize the adverse impacts of the proposed action.

Biodiversity Conservation Alliance, 169 IBLA 321 (Aug. 2, 2006).

Environmental Policy Act

A BLM decision dismissing a protest to a competitive oil and gas lease sale is properly affirmed on appeal when the appellant fails to demonstrate with objective proof that BLM's decision was premised on a clear error of law or demonstrable error of fact, or that BLM's analysis failed to consider a substantial environmental question of material significance to the proposed action.

The Coalition of Concerned National Park Service Retirees, et al., 169 IBLA 366 (Aug. 22, 2006).

Environmental Policy Act

In considering the potential impacts of oil and gas development when BLM proposes to lease public lands for oil and gas purposes, BLM may properly use "Documentation of Land Use Plan Conformance and NEPA Adequacy" worksheets (DNAs) to assess the adequacy of previous environmental review documents. Where pre-leasing documents, including an EIS, adequately address the environmental consequences of issuing oil and gas leases both with and without special protective stipulations, BLM's decision denying the protest is properly affirmed.

The Coalition of Concerned National Park Service Retirees, et al., 169 IBLA 366 (Aug. 22, 2006).

Environmental Policy Act

An EIS prepared to evaluate the environmental impacts of a modification of a mining plan of operations complies with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), *as amended*, 42 U.S.C. § 4332(2)(C) (2000), when it shows that BLM has taken a "hard look" at potential environmental consequences of the proposed action and reasonable alternatives thereto, considering relevant matters of environmental concern. To successfully challenge a decision based on an EIS, an appellant must demonstrate by a preponderance of the evidence and with objective proof that BLM failed adequately to consider a substantial environmental question of material significance to the proposed action, or otherwise failed to abide by section 102(2) of NEPA.

Western Exploration Inc. & Doby George LLC, 169 IBLA 388 (Aug. 23, 2006).

Environmental Policy Act

In the preparation of an EIS, BLM is obligated to assess alternatives to a proposed action, including the no-action alternative and reasonable alternatives which are feasible, will accomplish the intended purpose, and will avoid or minimize the adverse impacts of the action upon theenvironment. A proposed modification to a mining plan of operations will be upheld where an appellant fails to identify an alternative that will accomplish the intended purpose of the proposed action, is technically and economically feasible, and has a lesser impact that BLM failed to consider.

Western Exploration Inc. & Doby George LLC, 169 IBLA 388 (Aug. 23, 2006).

Environmental Policy Act

A BLM decision dismissing a protest challenging the approval of a competitive oil and gas lease sale will be affirmed as to the sale parcels for which the appellant has established standing, when the record shows that existing environmental documentation provided BLM with a hard look at the environmental consequences of leasing, supporting the conclusion that the impacts from exploration and development of coalbed methane would not be significantly different from those associated with conventional oil and gas exploration and development.

Wyoming Outdoor Council, et al., 170 IBLA 130 (Sept. 21, 2006).

Environmental Policy Act

A BLM decision dismissing a protest challenging a competitive oil and gas lease sale will be affirmed when the record shows that existing environmental documentation provided BLM with a hard look at the environmental consequences of leasing, supporting the conclusion that the impacts from exploration and development of coalbed methane would not be significantly different than those associated with conventional oil and gas exploration and development.

Forest Guardians, 170 IBLA 253 (Sept. 29, 2006).

Environmental Policy Act

Section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. § 4332(2)(C) (2000), requires consideration of potential environmental impacts of a proposed action in an environmental impact statement if that action is a "major Federal action significantly affecting the quality of the human environment." The appropriate time for considering the potential impacts of oil and gas exploration and development is when BLM proposes to lease public land for oil and gas purposes, because leasing without stipulations requiring no surface occupancy constitutes an irreversible and irretrievable commitment to permit surface-disturbing activity.

Center for Native Ecosystems, 170 IBLA 331 (Nov. 22, 2006).

Environmental Policy Act

In considering the potential impacts of oil and gas exploration and development when BLM proposes to lease public lands for oil and gas purposes, BLM may properly use "Documentation of Land Use Plan Conformance and NEPA Adequacy" worksheets to assess the adequacy of previous NEPA documents. Although BLM may use DNAs to determine whether new NEPA documentation is required, DNAs cannot properly be used to supplement previous EAs or EISs or to address site-specific environmental effects not previously considered in them. Information developed after the last NEPA analysis may be used to determine whether supplemental analysis is required, but it cannot be used as a substitute for a NEPA analysis. When BLM decides on the basis of a DNA not to supplement an existing EIS or EA, its decision must rise or fall on the contents of previously issued NEPA documents.

Center for Native Ecosystems, 170 IBLA 331 (Nov. 22, 2006).

Environmental Policy Act

A finding that impacts of issuing an oil and gas lease would not be significant due to the mitigative effects of a special status species stipulation must be based on NEPA analysis. The stipulation does not provide a basis for deferring an environmental analysis in the absence of an existing NEPA statement that includes an analysis of the mitigative effects of the stipulation.

Center for Native Ecosystems, 170 IBLA 331 (Nov. 22, 2006).

Environmental Policy Act

BLM's decision to issue oil and gas leases without an evaluation of best management practices prior to leasing is not contrary to a BLM instruction memorandum, which was issued to guide the exercise of BLM's discretionary authority regarding whether to temporarily defer oil and gas leasing during periods when land use plans are being revised or amended.

Wyoming Outdoor Council, et al., 171 IBLA 153 (Mar. 29, 2007).

Environmental Policy Act

When an agency prepares an EA to determine whether an EIS is necessary, it must consider all relevant matters of environmental concern and take a hard look at potential environmental impacts so that it can make an informed decision about whether the environmental impacts will be significant or whether any significant impacts will be reduced to insignificance by mitigation measures. A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is based on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action.

Biodiversity Conservation Alliance et al., 171 IBLA 218 (Apr. 19, 2007).

Environmental Policy Act

When making a determination as to whether a proposed action will have a significant effect on the human environment, the cumulative effects of the proposed action and other actions not connected with the proposed activity must be taken into consideration. A cumulative impact is one which results from the incremental impact of the action when added to other past, present, and reasonably future actions and can result from individually minor but collectively significant actions taking place over time.

Biodiversity Conservation Alliance et al., 171 IBLA 218 (Apr. 19, 2007).

Environmental Policy Act

Section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2000), requires consideration of a reasonable range of alternatives to a proposed action, including a no-action alternative. An EA which considers a range of alternatives will be upheld when BLM has assessed alternatives in a manner that will avoid or minimize the adverse impacts of the proposed action.

Biodiversity Conservation Alliance et al., 171 IBLA 218 (Apr. 19, 2007).

Environmental Policy Act

A BLM decision dismissing a protest to a competitive oil and gas lease sale will be affirmed when the appellant fails to demonstrate with objective proof clear error of law or demonstrable error of fact in the decision and when the record shows that existing environmental documentation provided BLM with a hard look at the environmental consequences of the lease sale. In considering the potential impacts of an oil and gas lease sale, BLM may properly use "Documentation of Land Use Plan Conformance and NEPA Adequacy" worksheets to assess the adequacy of previous environmental review documents.

Colorado Environmental Coalition, et al., 171 IBLA 256 (May 9, 2007).

Environmental Policy Act

The approval of a proposed action in a Decision Record and Finding of No Significant Impact, following the preparation of an Environmental Assessment, does not constitute an authorization to use the public lands. BLM authorizes use of public land for grazing by issuing grazing permits or leases which specify all grazing use. Allowing cattle to graze on public land without a permit or lease and an annual grazing authorization is a prohibited act under 43 C.F.R. § 4140.1(b)(1)(I).

Badger Ranch, et al. v. Bureau of Land Management, 171 IBLA 285 (May 23, 2007).

Environmental Policy Act

A BLM decision to deny a grazing privileges does not require the preparation of an Environmental Assessment. Only when an agency reaches the point in its deliberations when it is ready to approve an action that may have adverse effects on the human environment is it obligated to assess the environmental impacts of such action.

Jennifer J. Walt, Box D Ranch, 172 IBLA 300 (Sept. 21, 2007).

Environmental Policy Act

Where BLM chooses to exercise its discretionary authority to deny grazing privileges based upon environmental considerations presented in an Environmental Assessment which adequately assessed the impacts of four alternatives that included some form of a grazing scenario, absent objective proof of a clear error of law or demonstrable error of fact, or proof that the analysis failed to consider a substantial environmental question of significance to the proposed action, the Board properly finds that BLM's decision has a rational basis in the record and that it is not arbitrary and capricious.

Jennifer J. Walt, Box D Ranch, 172 IBLA 300 (Sept. 21, 2007).

Environmental Quality
Generally

Where an analysis of a resource management plan (RMP) indicates that the location of a proposed well is within an area open to oil and gas leasing without special stipulations, and the RMP identifies an anticipated range of annual well approvals, the Board will not find that the projected number is a mandatory maximum which is violated by approval of a particular well.

Southern Utah Wilderness Alliance, 159 IBLA 220 (June 16, 2003).

Environmental Quality
Environmental Statements

An EA for a proposed action properly considers the indirect effects caused by the action which, although later in time or further removed, are reasonably foreseeable. Thus, the impacts of connected actions conducted by private parties which would not occur without the supporting Federal action are appropriately considered in an EA.

Defenders of Wildlife, 151 IBLA 1 (Feb. 17, 2000).

Environmental Quality
Environmental Statements

BLM did not err in not adopting a 2-mile buffer zone for sage grouse leks or strutting grounds in the ROD/FEIS where authorities relied on in support of a 2-mile buffer zone and addressed widespread sagebrush eradication rather than the more limited impacts associated with oil and gas operations, and no scientific evidence was offered showing that a 2-mile buffer zone was necessary to protect sage grouse leks or strutting grounds. *Wyoming Audubon et al.*, 151 IBLA 42 (Oct. 22, 1999).

Environmental Quality
Environmental Statements

BLM did not violate seasonal sage grouse restrictions identified in the RMP where the RMP also provided for modification of the restrictions if necessary based upon environmental analysis of specific proposal and site specific mitigation, and BLM prepared an environmental impact statement modifying the seasonal restriction based on post-RMP research more clearly defining sage grouse breeding and nesting activity and required site-specific mitigation which protects nests and chicks identified through required surveys.

Wyoming Audubon et al., 151 IBLA 42 (Oct. 22, 1999).

Environmental Quality
Environmental Statements

Where the scientific data relied on by BLM and appellants indicate that a ½-mile buffer zone is preferable but not essential to protect sage grouse leks, and there is no scientific evidence or studies indicating a ¼-mile buffer zone with appropriate mitigation measures is insufficient to protect sage grouse leks, BLM's conclusion that a ¼-mile buffer zone with additional mitigation is sufficient to lessen the impact on sage grouse due to oil and gas development will be affirmed.

Wyoming Audubon et al., 151 IBLA 42 (Oct. 22, 1999).

Environmental Quality
Environmental Statements

A BLM decision to adopt a range improvement maintenance plan will be affirmed on appeal if the decision is based on a consideration of all relevant factors and is supported by the record, including an environmental assessment which establishes that a careful review of environmental problems has been made, all relevant areas of environmental concern have been identified, and the final determination is reasonable in light of the environmental analysis. A party challenging the BLM decision must show that it was premised on an error of law or fact or that the analysis failed to consider a material environmental question. Unsupported differences of opinion provide no basis for reversal.

National Wildlife Federation, et al., Erik and Tina Barnes, 151 IBLA 104 (Nov. 24, 1999).

Environmental Quality
Environmental Statements

Compliance with the National Environmental Policy Act of 1969 requires BLM to take a hard look at the issues, identify relevant areas of environmental concern, identify alternatives, and, where no EIS is prepared, make a convincing case that the potential environmental impacts are insignificant.

National Wildlife Federation, et al., Erik and Tina Barnes, 151 IBLA 104 (Nov. 24, 1999).

Environmental Quality
Environmental Statements

Compliance with the National Environmental Policy Act of 1969 requires BLM to take a hard look at the issues, identify relevant areas of environmental concern, identify alternatives, and, where no EIS is prepared, make a convincing case that the potential environmental impacts are insignificant.

Erik and Tina Barnes, National Wildlife Federation, et al., 151 IBLA 128 (Nov. 30, 1999).

Environmental Quality
Environmental Statements

NEPA is primarily a procedural statute designed to insure a fully informed and well-considered decision. It requires that an agency take a "hard look" at the environmental effects of any major Federal action. An EIS must fulfill the primary mission of NEPA, which is to ensure that a Federal agency, in exercising the substantive discretion afforded it to approve or disapprove a project, is fully informed regarding the environmental consequences of such action. In deciding whether an EIS has done so, it is well settled that a rule of reason will be employed such that the question becomes whether the statement contains a reasonably thorough discussion of the significant aspects of the probable environmental consequences.

Newmont Mining Corp., 151 IBLA 190 (Dec. 6, 1999).

Environmental Quality
Environmental Statements

An environmental analysis for a mineral material sale properly considers the impact of connected actions which are triggered by the action or which are part of a larger action and which depend on the larger action for their justification. An environmental analysis for a sand and gravel mining operation is not required to consider the impact of construction of a processing plant for crushing and asphalt mixing which is not authorized by the sales contract and is not a necessary result of the sale.

Larry Thompson, et al., 151 IBLA 208 (Dec. 10, 1999).

Environmental Quality
Environmental Statements

A decision approving a mineral material sale based on an EA and FONSI may be upheld in the absence of considering a requirement for a permit under section 404 of the Clean Water Act when it appears from the record that no section 404 dredge and fill permit is required for incidental fallback from a sand and gravel mining operation.

Larry Thompson, et al., 151 IBLA 208 (Dec. 10, 1999).

Environmental Quality
Environmental Statements

A BLM decision approving issuance of a mineral sales contract is properly affirmed when the record shows the FONSI was based on reasoned decisionmaking, and appellant fails to demonstrate that the finding was based on an error of law or fact, or that the analysis failed to consider a substantial environmental problem of material significance.

Larry Thompson, et al., 151 IBLA 208 (Dec. 10, 1999).

Environmental Quality
Environmental Statements

An EIS must ensure that a Federal agency, in exercising the substantive discretion afforded it to approve or disapprove a project, is fully informed regarding the environmental consequences of an agency action. In deciding whether an EIS has done so, it is well settled that a rule of reason will be employed such that the question becomes whether the statement contains a reasonably thorough discussion of the significant aspects of the probable environmental consequences.

Wyoming Outdoor Council, 151 IBLA 260 (Dec. 22, 1999).

Environmental Quality
Environmental Statements

Section 102(2)(C) of NEPA provides that BLM "shall consult with and obtain the comments of any Federal Agency which has jurisdiction by law or special expertise with respect to any environmental impact involved." 42 U.S.C. § 4332(2)(C) (1994). Assuming BLM was required to consult with the U.S. Department of Agriculture, Forest Service, regarding impacts from a natural gas development project, where BLM publishes notice of the DEIS for that project in the *Federal Register* with a 60-day period for comment and the Forest Service fails to comment and there is no evidence that BLM's environmental analysis was in any way compromised by lack of consultation with the Forest Service, failure to consult is not a prejudicial error.

Wyoming Outdoor Council, 151 IBLA 260 (Dec. 22, 1999).

Environmental Quality
Environmental Statements

Sections 102(2)(C) and 102(2)(E) of NEPA require an agency to present alternatives to the proposed action and to "study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(C) and (E) (1994). NEPA requires that the range of alternatives be reasonably related to the purposes of the project and sufficient to permit a reasoned choice. Where the record shows that this was done, there has been compliance with this NEPA requirement.

Wyoming Outdoor Council, 151 IBLA 260 (Dec. 22, 1999).

Environmental Quality
Environmental Statements

A rule of reason applies when reviewing new alternatives and information regarding a proposed action analyzed in a draft and final EIS and considering whether a supplemental EIS is required. A decision to approve a coalbed methane project analyzed in both a draft EIS and a final EIS without preparation of a supplemental draft EIS will be affirmed when the new alternative developed and adopted in the final EIS responds to public comments seeking increased protection for big game and falls qualitatively within the spectrum of alternatives discussed in the draft, and the new and expanded information generated in the preparation of the final EIS does not significantly vary from that considered in the draft EIS in either the nature or magnitude of the disclosed impacts.

William E. Love, 151 IBLA 309 (Jan. 13, 2000).

Environmental Quality
Environmental Statements

A BLM decision not to adopt an alternative mitigation measure preferred by an appellant will be upheld when BLM considered the suggested mitigation measure but chose not to incorporate it because it conflicted with applicable land use plans, and the selected mitigation measure had been successfully implemented in the past.

William E. Love, 151 IBLA 309 (Jan. 13, 2000).

Environmental Quality
Environmental Statements

BLM properly decides to approve construction of a new trail providing motorized access to public lands for hunting and other recreational purposes, absent preparation of an EIS, where, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2)(C) (1994), it has taken a hard look at the environmental consequences of doing so, considering all relevant matters of environmental concern, including the effects of off–road vehicle use away from the trail, and made a convincing case that, given appropriate mitigation measures, no significant impact will result therefrom. Its decision not to prepare an EIS will be affirmed when no appellant demonstrates, with objective proof, that BLM failed to consider a substantial environmental problem of material significance to the proposed action, or otherwise failed to abide by the statute.

Bales Ranch, Inc., et al., 151 IBLA 353 (Feb. 2, 2000).

Environmental Quality
Environmental Statements

Section 102(2)(E) of NEPA, 42 U.S.C. § 4332 (2)(E) (1994), requires consideration of "appropriate alternatives" to a proposed action, as well as their environmental consequences. The alternatives to the proposed action should accomplish the intended purpose, be technically and economically feasible, and have a lesser or no impact. Consideration of alternatives ensures that the decisionmaker has before him and takes into proper account all possible approaches to a particular project.

Bales Ranch, Inc., et al., 151 IBLA 353 (Feb. 2, 2000).

Environmental Quality
Environmental Statements

A decision to issue a right-of-way for a power line to supply electricity for the reopening of an open pit mining operation on private land based on an EA and FONSI will be upheld when the record establishes a reasonable basis for the FONSI. An appeal challenging the scope of the EA for failure to consider all the impacts of the mining operation will be denied when it appears from the record that the mining operation would proceed in the absence of approval of the right-of-way.

Defenders of Wildlife, 152 IBLA 1 (Feb. 17, 2000).

Environmental Quality
Environmental Statements

Pursuant to section 102(2) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2) (1994), and its implementing regulations (40 C.F.R. Chapter V), BLM is required to consider a reasonable range of alternatives to a proposed action, including a no-action alternative. An EA which considers a range of alternatives and gives reasons for BLM rejection of alternatives not selected will be upheld when it appears that BLM assessed alternatives in a manner that will avoid or minimize the adverse effects of the proposed action.

Defenders of Wildlife, 152 IBLA 1 (Feb. 17, 2000).

Environmental Quality
Environmental Statements

A finding of no significant impact requiring preparation of an environmental impact statement will be affirmed when the record demonstrates that BLM has considered the relevant environmental concerns, taken a hard look at potential environmental impacts, and made a convincing case that no significant environmental impact will result

from the action to be implemented. The adequacy of the record to support a finding of no significant impact is evaluated on the basis of the action which BLM has decided to implement in the absence of connected actions upon which the proposed action depends for its justification or cumulative impacts from past, present, or reasonably foreseeable future actions.

Emerald Trail Riders Association, 152 IBLA 210 (Apr. 28, 2000).

Environmental Quality
Environmental Statements

A BLM decision to approve expansion and commercial use of airstrip on public land, to include rights-of-way to commercial providers, will be affirmed on appeal if the decision is based on a consideration of all relevant factors and is supported by the record, including an environmental assessment which establishes that a careful review of environmental problems has been made, all relevant areas of environmental concern have been identified, and the final determination is reasonable in light of the environmental analysis. A party challenging the BLM decision must show that it was premised on an error of law or fact or that the analysis failed to consider a material environmental question. Unsupported differences of opinion provide no basis for reversal.

Southern Utah Wilderness Alliance, 152 IBLA 216 (Apr. 28, 2000).

Environmental Quality
Environmental Statements

Compliance with the National Environmental Policy Act of 1969 requires BLM to take a hard look at the issues, identify relevant areas of environmental concern, identify alternatives, and, where no EIS is prepared, make a convincing case that the potential environmental impacts are insignificant.

Southern Utah Wilderness Alliance, 152 IBLA 216 (Apr. 28, 2000).

Environmental Quality
Environmental Statements

Preparation of an environmental impact statement for a water pipeline right-of-way requires that BLM rigorously and objectively analyze reasonable alternatives to the proposed action which will accomplish the intended purpose, are technically and economically feasible, and will have less environmental impact. A decision to implement the proposed action may be affirmed when the record discloses that other alternatives analyzed were rejected because they are not feasible.

Sierra Club Uncompahgre Group, Concerned Citizens Resource Association, 152 IBLA 371 (June 29, 2000).

Environmental Quality
Environmental Statements

In preparing an environmental impact statement, BLM is required to consider the indirect impacts which will be caused by the proposed action. When the record discloses that a proposed water pipeline was prompted in part by existing population growth, no error is established by the failure of BLM to consider the impacts of population growth as indirect impacts of the pipeline.

Sierra Club Uncompahgre Group, Concerned Citizens Resource Association, 152 IBLA 371 (June 29, 2000).

Environmental Quality
Environmental Statements

Under section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C) (1994), the adequacy of an EA must be judged by whether it took a "hard look" at the potential significant environmental consequences of the proposed action, and reasonable alternatives thereto, and considered all relevant matters of environmental concern. In general, the EA must fulfill the primary mission of that section, which is to ensure that BLM, in exercising the substantive discretion afforded it to approve or disapprove an action, is fully informed regarding the environmental consequences of such action.

Wade Patrick Stout, et al., 153 IBLA 13 (July 13, 2000).

Environmental Quality
Environmental Statements

An appellant must demonstrate that, when finding that its proposed action will not result in significant adverse impact on the human environment, BLM erred in its analysis or acted contrary to any law to prevail on appeal. A BLM decision to approve amendment of a special recreation permit to authorize a jet boat race on a Federally–designated wild and scenic river will be affirmed when the record adequately supports the decision, demonstrates that BLM took a hard look at the potential environmental impacts of its decision, and makes a convincing case that no significant impact will likely result, in accordance with section 102(2) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2) (1994).

Klamath–Siskiyou Wildlands Center, 153 IBLA 110 (Aug. 7, 2000).

Environmental Quality
Environmental Statements

The Council on Environmental Quality regulations provide at 40 C.F.R. § 1506.5(c) that the contractor preparing an EIS be chosen solely by the lead agency in order to avoid any conflict of interest. It is a violation of that regulation for BLM to approve three contractors and allow the right-of-way applicant to select the contractor. Such a violation, however, is a de minimis error if the objectivity and integrity of the NEPA process is otherwise maintained.

Northern Alaska Environmental Center, et al., 153 IBLA 253 (Sept. 18, 2000).

Environmental Quality

Environmental Statements

Executive Order 11990 requires agencies to avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practical alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. Where new construction in wetlands cannot be avoided, all practicable measures to minimize harm to wetlands which may result from such use must be assured. In making these findings, an agency may consider economic, environmental, and other pertinent factors and need not prepare a separate document that explicitly illustrates compliance with Executive Order 11990 so long as the project's consistency with that order can reasonably be inferred from the record.

Northern Alaska Environmental Center, et al., 153 IBLA 253 (Sept. 18, 2000).

Environmental Quality
Environmental Statements

Where the EA supporting the Decision Notice and Finding of No Significant Impact describes the proposed action of the Montana Department of Fish Wildlife and Parks as maintaining an "observed" late-winter elk population of 2,000 rather than maintaining a late-winter elk population of 2,000, the inclusion of the word does not result in a new proposal or overrule the population objectives in the State Elk Plan and its use is not inconsistent with the Decision where the record shows that the target elk population contained in Elkhorn Mountains Travel Management Plan is in fact based on the elk population objectives established in the State Elk Plan which BLM has no authority to alter.

Paul B. Smith and Bill Myers, The Boulder Technical Advisory Group, 153 IBLA 334 (Sept. 29, 2000).

Environmental Quality
Environmental Statements

A BLM finding (based on preparation of an EA) that no significant environmental impact will occur as a result of issuing a travel management plan will be affirmed when the record shows that BLM took a hard look at the environmental consequences of its action and appellant fails to show that BLM's finding was based on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared.

Paul B. Smith and Bill Myers, The Boulder Technical Advisory Group, 153 IBLA 334 (Sept. 29, 2000).

Environmental Quality
Environmental Statements

BLM's approval of a plan of operations for open pit gold mining will be affirmed where BLM has taken a hard look in an EIS at the significant environmental consequences of mining operations and reasonable alternatives, and where the record supports BLM's conclusion that the plan, as modified, will not result in unnecessary or undue degradation of the public lands.

Legal and Safety Employer Research Inc., et al., 154 IBLA 167 (Feb. 28, 2001).

Environmental Quality
Environmental Statements

An EIS is not rendered invalid by the fact that it is prepared by consultants approved by BLM instead of by BLM personnel.

Legal and Safety Employer Research Inc., et al., 154 IBLA 167 (Feb. 28, 2001).

Environmental Quality
Environmental Statements

NEPA is primarily a procedural statute designed to insure a fully informed and well-considered decision. It requires that an agency take a "hard look" at the environmental effects of any major Federal action. An EIS must fulfill the primary mission of NEPA, which is to ensure that a Federal agency, in exercising the substantive discretion afforded it to approve or disapprove a project, is fully informed regarding the environmental consequences of such action. In deciding whether an EIS has done so, it is well settled that a rule of reason will be employed such that the question becomes whether the statement contains a reasonably thorough discussion of the significant aspects of the probable environmental consequences.

Southwest Center for Biological Diversity, 154 IBLA 231 (Apr. 2, 2001).

Environmental Quality
Environmental Statements

A BLM decision to implement a fire rehabilitation plan will be affirmed where the appellant fails to establish that BLM did not adequately consider matters of environmental concern. The party challenging a BLM decision has the burden of showing by objective proof that the determination was premised on a clear error of law or a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. Mere differences of opinion or disagreements do not suffice to establish that BLM's analysis is inadequate.

Southern Utah Wilderness Alliance, 154 IBLA 275 (Apr. 16, 2001).

Environmental Quality
Environmental Statements

A BLM decision selecting the no action alternative, rather than a county's proposed action to control a prairie dog population on public lands, which is based on an EA, will be affirmed on appeal when the record establishes that a careful review of environmental problems has been made, relevant areas of environmental concern have been identified, and the final determination to select the no action alternative is reasonable in light of the analysis.

Johnson County Weed and Pest Control Board, 155 IBLA 98 (May 18, 2001).

Environmental Quality
Environmental Statements

Compliance with the National Environmental Policy Act of 1969 requires BLM to take a hard look at the issues, identify relevant areas of environmental concern, and, where no EIS is prepared, make a convincing case that the potential environmental impacts are insignificant.

Thomas E. Smigel, Barbara W. Smigel v. Bureau of Land Management, 155 IBLA 158 (July 17, 2001).

Environmental Quality
Environmental Statements

A party challenging a decision record and finding of no significant impact, based on an underlying environmental assessment, must show that the determination was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. Mere differences of opinion provide no basis for reversal of BLM's action if it is reasonable and supported by the record on appeal.

Thomas E. Smigel, Barbara W. Smigel v. Bureau of Land Management, 155 IBLA 158 (July 17, 2001).

Environmental Quality
Environmental Statements

BLM's approval of a plan of operations for sodium solution mining will be affirmed where BLM has taken a hard look in an EIS at the significant environmental consequences of mining operations and reasonable alternatives, and where the record supports BLM's conclusion that the plan will not result in unnecessary or undue degradation of the public lands.

IMC Chemical Inc., et al., 155 IBLA 173 (July 17, 2001).

Environmental Quality
Environmental Statements

Activity planning implementing an off-highway vehicle project management plan, based upon an environmental assessment sufficient to support an informed judgment, may not be overcome by a mere difference of opinion.

Rocky Mountain Trials Association, 156 IBLA 64 (Dec. 5, 2001).

Environmental Quality
Environmental Statements

A BLM decision approving a land use authorization on the basis of an EA and FONSI will be affirmed on appeal if the decision is based on a consideration of all relevant factors and is supported by the record which establishes that a careful review of environmental problems has been made, all relevant areas of environmental concern have been identified, and the final determination is reasonable in light of the environmental analysis. A party challenging a BLM decision must show that it was premised on an error of law or fact or that the analysis failed to consider a material environmental question. Unsupported differences of opinion provide no basis for reversal.

Las Vegas Valley Action Committee et al., 156 IBLA 110 (Dec. 19, 2001).

Environmental Quality
Environmental Statements

A BLM decision approving a sand and gravel mining project may be affirmed when the environmental impact statement takes a hard look at all of the potential significant environmental consequences and reasonable alternatives, including imposition of appropriate mitigation measures.

Sierra Club, Angeles Chapter, Santa Clarita Group, et al., 156 IBLA 144 (Jan. 8, 2002)

Environmental Quality
Environmental Statements

BLM is vested with broad discretion to deny a right-of-way application in any case in which the authorized officer determines that granting the proposed right-of-way would be inconsistent with the purpose for which the affected public lands are managed; that the proposed right-of-way would not be in the public interest; or that the proposed right-of-way would otherwise be inconsistent with applicable law.

Bear River Development Corporation, et al., 157 IBLA 37 (July 19, 2002).

Environmental Quality
Environmental Statements

NEPA applies only to actions a Federal agency proposes to take and specifies procedures designed to produce relevant information concerning the environmental consequences of the Federal action proposed, before that action is taken. Departmental regulation 43 C.F.R. § 2802.4(d) mandates a completed EA in any case in which BLM determines to issue a requested right-of-way. Even when an EA is completed pursuant to 43 C.F.R. § 2802.4(d), BLM retains its discretionary authority to deny a right-of-way application.

Bear River Development Corporation, et al., 157 IBLA 37 (July 19, 2002).

Environmental Quality
Environmental Statements

Appellants bear the burden of demonstrating, by a preponderance of the evidence, that BLM committed a material error in its factual analysis or that the decision generally is not supported by a record showing that BLM gave due consideration to all relevant factors and acted on the basis of a rational connection between the facts found and the choice made.

Bear River Development Corporation, et al., 157 IBLA 37 (July 19, 2002).

Environmental Quality
Environmental Statements

Although differing right-of-way applications may have facts or issues in common, BLM retains its broad discretion to weigh the totality of facts and circumstances in each case in determining the public in terest.

Bear River Development Corporation, et al., 157 IBLA 37 (July 19, 2002).

Environmental Quality
Environmental Statements

A BLM decision to adopt an integrated management plan for controlling the spread of noxious weeds on the public lands in a BLM district will be affirmed where the record adequately supports the decision and demonstrates that BLM (in an environmental assessment tiered to a programmatic environmental impact statement) took a hard look at the potential environmental impacts of its decision and properly concluded that no significant impact not previously considered will likely result, thus complying with section 102(2) of NEPA.

Headwaters, Klamath Siskiyou Wildlands Center, 157 IBLA 139 (Aug. 14, 2002).

Environmental Quality
Environmental Statements

In determining whether a proposed action will generate significant impacts requiring the preparation of an EIS, the law is clear that the significance of an impact is related not only to its intensity, but also to its context. Thus, an impact which could be significant in isolation may be insignificant when compared to other impacts in the area of the proposed action, although the cumulative harm that may result from its contribution to existing impacts must also be a consideration.

Southern Utah Wilderness Alliance, Natural Resources Defense Council, Wilderness Society, Utah Chapter of the Sierra Club, 157 IBLA 150 (Aug. 22, 2002).

Environmental Quality
Environmental Statements

In examining the environmental impacts of a proposed action, BLM must consider alternatives that accomplish the intended purpose of the proposed action, are technically and economically feasible, and have a lesser impact than the proposed project. A “rule of reason” approach applies to both the range of alternatives and the extent to which each alternative must be addressed.

Southern Utah Wilderness Alliance, Natural Resources Defense Council, Wilderness Society, Utah Chapter of the Sierra Club, 157 IBLA 150 (Aug. 22, 2002).

Environmental Quality
Environmental Statements

The Board of Land Appeals has the authority under 43 C.F.R. § 4.403 to grant a petition for reconsideration in extraordinary circumstances for sufficient reason. A petition for reconsideration filed by BLM seeking to have the Board reconsider its determination that the agency failed to take the requisite hard look at the environmental consequences of coalbed methane extraction and development and relevant leasing alternatives before deciding to offer three parcels of land for oil and gas leasing will be denied when BLM fails to satisfy the requirements of 43 C.F.R. § 4.403.

Wyoming Outdoor Council, et al., (On Reconsideration), 157 IBLA 259 (Oct. 15, 2002).

Environmental Quality
Environmental Statements

BLM may approve a timber sale without preparing an EIS, if, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2)(C) (1994), it has taken a hard look at the environmental consequences of the timber sale and reasonable alternatives, considering all relevant matters of environmental concern, including the expected individual and cumulative impacts, and made a convincing case that no significant impact will result, or that the impacts will be reduced to insignificance by the adoption of appropriate mitigation measures. BLM’s decision not to prepare an EIS will be affirmed if an appellant does not demonstrate, with objective proof, that BLM failed to consider a substantial environmental problem of material significance, or otherwise failed to abide by the statute.

Klamath Siskiyou Wildlands Center, 157 IBLA 332 (Oct. 30, 2002).

Environmental Quality
Environmental Statements

It is proper for BLM to approve a timber sale, absent preparation of an EIS, when, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2)(C) (1994), it has taken a hard look at the environmental consequences of doing so and reasonable alternatives thereto, considering all relevant matters of environmental concern, including the expected individual and cumulative impacts to soils, water quality and quantity, and threatened or endangered species, and made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. BLM’s decision not to prepare an EIS will be affirmed if the appellant does not demonstrate, with objective proof, that BLM failed to

consider a substantial environmental problem of material significance to the proposed action, or otherwise failed to abide by the statute.

Umpqua Watersheds, Inc., et al., 158 IBLA 62 (Dec. 18, 2002).

Environmental Quality
Environmental Statements

Separate decisions approving a coal bed methane development project and a plan of development on the basis of environmental assessments and findings of no significant impact will be set aside when the record fails to show that BLM took a hard look at potential water quality issues from the production of coal bed methane.

Wyoming Outdoor Council, et al., 158 IBLA 155 (Jan. 9, 2003).

Environmental Quality
Environmental Statements

An environmental analysis of the impacts of a proposed coal bed methane project properly considers the potential cumulative impacts of the project together with other past, present, and reasonably foreseeable future actions which may interact to produce cumulatively significant impacts. It is error to fail to analyze the impacts of a reasonably foreseeable coal bed methane development project in the same watershed as the proposed project.

Wyoming Outdoor Council, et al., 158 IBLA 155 (Jan. 9, 2003).

Environmental Quality
Environmental Statements

When certain lands have been the subject of a BLM wilderness inventory and found not to be within a wilderness study area in a final decision, the fact a party disputes this finding and believes that BLM erred does not itself establish a mineral material sale on such land will have significant impact requiring preparation of an EIS.

Southern Utah Wilderness Alliance, 158 IBLA 212 (Jan. 23, 2003).

Environmental Quality
Environmental Statements

The National Environmental Policy Act requires BLM to consider a reasonable range of alternatives, including the no action alternative. Such alternatives should include reasonable alternatives to proposed action which will accomplish the intended purpose, are technically and economically feasible, and yet have a lesser impact. No error is comitted by not considering an alternative that would not achieve the purpose of the proposed action.

Southern Utah Wilderness Alliance, 158 IBLA 212 (Jan. 23, 2003).

Environmental Quality
Environmental Statements

A decision that it is not necessary to prepare an EIS before proceeding with a prescribed burn and juniper cut will be affirmed on appeal if the record demonstrates that BLM has, considering all relevant matters of environmental concern, taken a "hard look" at potential environmental impacts, and made a convincing case that no significant impact will result or that the impacts will be reduced to insignificance by the adoption of appropriate mitigation measures. An appellant seeking to set aside or overturn a decision to proceed without preparing an EIS must demonstrate, with objective proof, that BLM failed to consider a substantial environmental question of material significance to the proposed action, or that it otherwise failed to abide by section 102(2)(C) of NEPA.

Committee for Idaho's High Desert, Western Watersheds Project & Idaho Bird Hunters, 158 IBLA 322 (Mar. 27, 2003).

Environmental Quality
Environmental Statements

A BLM decision dismissing a protest challenging the approval of an oil and gas lease sale will be reversed as to the parcels for which the appellants have established standing when the decision to offer the parcels for leasing was based on existing environmental analyses which either did not contain any discussion of the unique potential impacts associated with coalbed methane extraction and development or failed to consider reasonable alternatives relevant to a pre-leasing environmental analysis.

Wyoming Outdoor Council, et al., 158 IBLA 384 (Apr. 15, 2003).

Environmental Quality
Environmental Statements

An environmental assessment addressing the impacts of a coalbed methane pilot project proposed for land adjacent to parcels included in an oil and gas lease sale, prepared after BLM issued its decision approving the oil and gas lease sale, does not cure the defects in the environmental documentation relied upon by BLM as support for the leasing decision, when that documentation did not mention coalbed methane extraction and its impacts.

Wyoming Outdoor Council, et al., 158 IBLA 384 (Apr. 15, 2003).

Environmental Quality
Environmental Statements

A BLM decision dismissing a protest of a competitive oil and gas lease sale will be affirmed to the extent the environmental documentation relied upon in the decision considered the impacts of coalbed methane production before deciding that certain lands, including those embraced by the parcel at issue, should be open to oil and gas leasing and development.

Wyoming Outdoor Council, et al., 158 IBLA 384 (Apr. 15, 2003).

Environmental Quality
Environmental Statements

When making a determination whether a proposed action will have a significant effect on the human environment, the cumulative effect of the proposed action and other actions not connected with the proposed action must be taken into consideration. A cumulative impact is one which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions and can result from individually minor but collectively significant actions taking place over time. The Board may affirm BLM's conclusion that the possible cumulative impact of a future action need not be considered significant when the reasonably foreseeable future action is speculative.

Southern Utah Wilderness Alliance, 159 IBLA 220 (June 16, 2003).

Environmental Quality
Environmental Statements

Connected actions are closely related and should be discussed in the same environmental impact statement if they include those which: (i) automatically trigger other actions which may require an EIS; (ii) cannot or will not proceed unless other actions are undertaken previously or simultaneously; or (iii) are interdependent parts of a larger action and depend on the larger action for their justification.

Southern Utah Wilderness Alliance, 159 IBLA 220 (June 16, 2003).

Environmental Quality
Environmental Statements

Section 102(2)(E) of NEPA, 42 U.S.C. § 4332 (2)(E) (2000), requires consideration of "appropriate alternatives" to a proposed action, including the no action alternative. In deciding whether BLM need not consider the "no action" alternative in an EA considering an application for permit to drill a well on a Federal oil and gas lease, the appropriate inquiry for BLM is whether the lease was issued after full environmental review and the no action alternative was already considered in a document to which the EA is tiered. The Board may affirm a finding of no significant impact where the no action alternative was considered.

Southern Utah Wilderness Alliance, 159 IBLA 220 (June 16, 2003).

Environmental Quality
Environmental Statements

BLM's approval of a mining plan of operations based on an EA and FONSI will be affirmed if the record establishes that BLM took a "hard look" at the proposed action, carefully reviewed environmental problems, identified all relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

Environmental Quality
Environmental Statements

An EA must include a brief discussion of alternatives as mandated by section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2000), which requires that every Federal agency "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." Appropriate alternatives include reasonable and feasible alternatives to the proposed action which will accomplish its intended purpose with lesser or no impact. If an alternative does not achieve the purpose of the proposed action or would not have lesser or no impact, BLM does not err in failing to consider that alternative.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

Environmental Quality
Environmental Statements

A decision to undertake an action for which a finding of no significant impact has been made will ordinarily be affirmed when the record demonstrates that BLM has considered the relevant matters of environmental concern, taken a "hard look" at potential environmental impacts, and made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. A party challenging the decision must demonstrate either an error of law or fact and that burden must be satisfied by objective evidence as mere differences of opinion will provide no basis for reversal.

Fredric L. Fleetwood, 159 IBLA 375 (July 25, 2003).

Environmental Quality
Environmental Statements

This Board has no jurisdiction over decisions made by the Forest Service. However, when BLM adopts the FEIS of another agency in lieu of performing its own environmental analysis and relies on it as the basis for an exercise of its own decisionmaking authority, this Board properly may review that FEIS to determine whether BLM's decision is supported by the record, guided by the same principles ordinarily applicable to an FEIS prepared by BLM.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

Environmental Quality
Environmental Statements

BLM is required to consider the potential cumulative impacts of a proposed action with those of any other past, present, and reasonably foreseeable future actions. 40 C.F.R. § 1508.7. Where appellant has failed to explicitly identify any cumulative impact likely to result from the interaction of oil and gas exploration and development with other projects or activities that was not addressed in the EIS, there is no violation of NEPA.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

Environmental Quality
Environmental Statements

Where BLM issued a "Letter of Review and Acceptance" by which it adopted a Forest Service FEIS and ROD and the record demonstrates that BLM actively and extensively participated in its preparation as a cooperating agency, and had also prepared two earlier EIS's considering the impacts of oil and gas leasing for an area that included the Shoshone National Forest, the Board properly may look beyond the style and format of the adoption document to consider its substantive content and effect.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

Environmental Quality
Environmental Statements

Until a public record of decision is issued, an agency is prohibited from taking an action concerning a proposal which would either have an adverse environmental impact or limit the choice of reasonable alternatives. Although BLM's Letter of Review and Acceptance had not been issued when BLM decided to offer the parcels for leasing or when the lease sales were conducted, these actions did not constitute actions which would either have an adverse environmental impact or limit the choice of reasonable alternatives.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

Environmental Quality
Environmental Statements

A BLM decision approving an amendment to a plan of operations will be affirmed where the appellant fails to show that BLM neglected to consider a reasonable alternative to the amendment. An alternative considered and rejected in the EIS to which the project-specific EA is tiered does not need to be reconsidered in the project-specific EA, absent evidence that the rationale for the EIS' rejection of the alternative no longer applies.

Western Shoshone Defense Project, 160 IBLA 32 (Aug. 21, 2003).

Environmental Quality
Environmental Statements

A BLM decision notice and finding of no significant impact approving a vegetation treatment plan and noncommercial timber sale is properly affirmed on appeal where a party challenging the finding of no significant impact has not shown that the determination was premised on a clear error of law, that there was a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. Mere differences of opinion provide no support for reversal of BLM's decision, if the decision is reasonable and supported by the record on appeal.

Native Ecosystems Council, 160 IBLA 288 (Jan. 22, 2004).

Environmental Quality
Environmental Statements

An environmental assessment may be tiered to another NEPA document which has considered particular impacts of a broader Federal action and need not restate the analysis of those impacts, but the issue must necessarily have been addressed adequately in the first document. In challenging an EA, appellant must establish by objective proof that the determination was premised on a clear error of law or a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. In cases where the BLM decision appealed from is a denial of a protest, appellant must affirmatively point out error in the decision from which it directly appeals.

In re Stratton Hog Timber Sale, 160 IBLA 329 (Jan. 23, 2004).

Environmental Quality
Environmental Statements

BLM's approval of a closure and reclamation plan for a mine based on an EA and FONSI will be affirmed if the record establishes that BLM took a "hard look" at the proposed action, carefully reviewed environmental problems, identified all relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal.

Great Basin Mine Watch et al., 160 IBLA 340 (Jan. 26, 2004).

Environmental Quality
Environmental Statements

An EA must include a brief discussion of alternatives as mandated by section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2000), which requires that every Federal agency "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." Appropriate alternatives include reasonable and feasible alternatives to the proposed action which will accomplish its intended purpose with lesser or no impact.

Great Basin Mine Watch et al., 160 IBLA 340 (Jan. 26, 2004).

Environmental Quality
Environmental Statements

BLM's approval of a mine closure and reclamation plan based on an EA does not violate the Federal Government's trust responsibility to an Indian Tribe where BLM formally consulted with the Tribe, explained the rationale for its decision, and concluded that tribal assets would not be at risk of contamination even if some groundwater migration did occur because the Tribe's reservation was located upgradient from the flow of any potential groundwater in the area.

Great Basin Mine Watch et al., 160 IBLA 340 (Jan. 26, 2004).

Environmental Quality
Environmental Statements

A BLM decision dismissing a protest challenging the approval of an oil and gas lease sale will be affirmed as to the sale parcels for which the appellant has established standing, when the Board reviews the record de novo and determines that that record, as supplemented by BLM with the submission of a new "Interim Documentation of Land Use Conformance and NEPA Adequacy" worksheet and supporting information, provides a hard look at the environmental consequences of leasing, including the impacts of exploration for and development of coalbed methane.

Wyoming Outdoor Council, 160 IBLA 387 (Feb. 19, 2004).

Environmental Quality
Environmental Statements

A BLM decision to issue a conveyance to a county under the Airport and Airways Improvement Act of 1982 will be affirmed where BLM has prepared an environmental assessment taking a "hard look" at the environmental consequences of the proposal, and reasonable alternatives thereto.

William J. & Grace Gandolfo, 161 IBLA 7 (Mar. 2, 2004).

Environmental Quality
Environmental Statements

BLM properly decides to approve issuance of a right-of-way grant authorizing commercial use and maintenance of an existing airstrip on public lands pursuant to Title V of FLPMA based on an environmental assessment, where it has taken a hard look at the potential environmental consequences of doing so and reasonable alternatives, considering all relevant matters of environmental concern, and made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. BLM's decision not to prepare an EIS will be affirmed where the appellant does not show that BLM failed to consider a substantial environmental question of material significance to the proposed action or otherwise failed to abide by the statute.

Southern Utah Wilderness Alliance, et al., 161 IBLA 15 (Mar. 9, 2004).

Environmental Quality
Environmental Statements

When BLM prepares an environmental analysis for a proposed action to issue an oil and gas lease in an area open to leasing under a governing resource management plan, it is not required to postpone leasing under its existing resource management plan in order to consider a wilderness proposal from an advocacy group. Proposed designations that would require amendment of the existing resource management plan need not be considered each time BLM decides to grant a right to undertake an activity in conformity with the existing land use plan.

Colorado Environmental Coalition the Wilderness Society, 161 IBLA 386 (June 4, 2004).

Environmental Quality
Environmental Statements

An environmental assessment of a proposal to issue an oil and gas lease which is tiered to a final environmental impact statement for a resource management plan or activity plan need not restate cumulative impacts or the no action alternative considered in the environmental impact statement to which the environmental assessment is tiered.

Colorado Environmental Coalition the Wilderness Society, 161 IBLA 386 (June 4, 2004).

Environmental Quality
Environmental Statements

The scope of the environmental impacts to be considered in an EIS for a proposed land exchange includes the indirect effects which, although later in time, are still reasonably foreseeable. Indirect effects of a land exchange may include the impacts of the proposed use of the selected lands when this land use could not occur without the exchange. A challenge to an exchange on the basis of the scope of the impacts from mining operations considered in the EIS is properly denied when the selected lands are located adjacent to an ongoing mining operation, the lands are encompassed by mining and mill site claims located by the proponent, and it appears these mining operations would be conducted under the mining law in the absence of an exchange.

Center for Biological Diversity, et al., 162 IBLA 268 (Aug. 16, 2004).

Environmental Quality
Environmental Statements

In the preparation of an EIS, BLM is obligated to assess alternatives to a proposed action including the no-action alternative and reasonable alternatives which are feasible, will accomplish the intended purpose, and will avoid or minimize the adverse impacts of the action upon the environment. A proposed land exchange will be upheld despite a failure to consider a no-mining alternative in detail when the selected lands are encumbered by mining and mill site claims and located adjacent to an ongoing

mining operation such that a no-mining alternative is based on a highly speculative assumption of the invalidity of the claims.

Center for Biological Diversity, et al., 162 IBLA 268 (Aug. 16, 2004).

Environmental Quality
Environmental Statements

A BLM decision approving the expansion of an existing sand and gravel mining operation based upon an environmental assessment will be affirmed when the record establishes that BLM has taken a hard look at the environmental consequences of the proposed action and reasonable alternates thereto, considered all relevant matters of environmental concern, and imposed mitigation measures to ensure that no significant impact upon the human environment will result. BLM's determination that it is not necessary to prepare an EIS will be affirmed on appeal if an appellant fails to tender objective proof that BLM failed to consider an environmental consequence of material significance that would result from the proposed action, or otherwise failed to abide by the applicable statute.

Mary Lee Dereske, et al., 162 IBLA 303 (Aug. 18, 2004).

Environmental Quality
Environmental Statements

BLM properly decides to approve an integrated resource management project, including timber harvesting and road building, without preparing an EIS, where, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2)(C) (2000), it has taken a hard look at the environmental consequences of doing so and reasonable alternatives thereto, considering all relevant matters of environmental concern, including the anticipated individual and cumulative impacts to soils, water quality, and threatened and endangered species, and determined that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. BLM's decision not to prepare an EIS will be affirmed where the appellant does not demonstrate, with objective proof, that BLM failed to consider a significant impact resulting from the proposed action, or otherwise failed to abide by the statute.

Friends of the Clearwater, et al., 163 IBLA 1 (Aug. 31, 2004).

Environmental Quality
Environmental Statements

BLM's determination that existing environmental documents adequately analyze the effects of the inclusion in a competitive oil and gas lease sale of parcels located on lands that have not been included in a wilderness study area or found to possess wilderness characteristics in a BLM inventory will be affirmed where the appellant bases its objection to the adequacy of those documents on the fact that the lands were determined to have wilderness characteristics in a citizens' group wilderness inventory and were included in an area proposed for wilderness designation in legislation introduced in Congress.

Southern Utah Wilderness Alliance, 163 IBLA 14 (Sept. 3, 2004).

Environmental Quality
Environmental Statements

Departmental regulations at 43 C.F.R. §§ 4.1(b)(3) and 4.410 provide a right of appeal to the Board to any party adversely affected by decisions of officers of the Bureau of Land Management, not from decisions by agencies of other Departments. On appeal, a BLM decision to grant rights-of-way on public lands for communications facilities designed to facilitate training operations at a military installation will be affirmed when, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2)(C) (2000), BLM has, in an environmental impact statement jointly prepared with the Department of the Navy, taken a hard look at the potential significant environmental impacts of anticipated jet aircraft overflights and other military activities, and the appellant has failed to demonstrate that adverse effects it has identified have a causal nexus to BLM's decision.

Rural Alliance for Military Accountability, 163 IBLA 131 (Sept. 14, 2004).

Environmental Quality
Environmental Statements

A BLM finding of no significant impact (FONSI) for a grant of public-land rights-of-way for surface facilities, access road, telephone line, and power line in connection with underground coal mining operations based on an analysis set forth in an environmental assessment will be upheld when the record reveals that BLM has taken a hard look at the environmental impacts and establishes a rational basis for the FONSI.

Southern Utah Wilderness Alliance, 163 IBLA 142 (Sept. 22, 2004).

Environmental Quality
Environmental Statements

Review of a FONSI hinges on whether BLM took a "hard look" at the environmental impacts of a project and made a convincing case either that the impact was insignificant or that potential impacts have been reduced to insignificance by changes in the project. A FONSI may be set aside when BLM fails to consider the indirect and cumulative impacts of the project disclosed in the record.

Owen Severance, Southern Utah Wilderness Alliance; Ute Mountain Ute Tribe, 163 IBLA 208 (Oct. 21, 2004).

Environmental Quality
Environmental Statements

In deciding whether to authorize the reintroduction of big game wildlife on Federal lands, using predator control deemed necessary to the optimal success of the reintroduction effort, BLM is not required to consider the alternative of going forward with reintroduction without any such control, and did not violate section 102(2)(E) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2)(E) (2000), by failing to address that alternative.

Escalante Wilderness Project, 163 IBLA 235 (Oct. 25, 2004).

Environmental Quality
Environmental Statements

A BLM decision dismissing a protest to a competitive oil and gas lease sale is properly affirmed on appeal where appellant fails to demonstrate with objective proof that BLM's decision was premised on a clear error of law or demonstrable error of fact, or that BLM's analysis failed to consider a substantial environmental question of material significance to the proposed action. BLM did not fail to consider alleged significant unique impacts associated with coalbed methane production on the North Fork Valley parcels in the Piceance Basin where no evidence was produced establishing that significant impacts had occurred or were reasonably likely to occur in connection with coalbed methane production. Evidence of asserted significant impacts associated with coalbed methane production in other basins was insufficient to establish that those impacts would occur on the North Fork Valley parcels in the Piceance Basin, absent objective proof that the conditions that exist on the North Fork Valley parcels in the Piceance Basin will result in the asserted significant impacts.

Western Slope Environmental Resource Council, et al., 163 IBLA 262 (Oct. 28, 2004).

Environmental Quality
Environmental Statements

BLM properly denies a protest of a competitive oil and gas lease sale on the basis that BLM violated the National Environmental Policy Act of 1969 when the environmental analyses demonstrate that BLM took a hard look at the potential significant environmental consequences, considering all relevant matters of environmental concern.

Southern Utah Wilderness Alliance, The Natural Resources Defense Council, 164 IBLA 1 (Nov. 10, 2004).

Environmental Quality
Environmental Statements

In preparing a programmatic environmental assessment to assess whether an environmental impact statement (EIS) is required under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2000), an agency must take a "hard look" at the proposal being addressed and identify relevant areas of environmental concern so that it can make an informed determination as to whether the environmental impact is insignificant or impacts will be reduced to insignificance by mitigation measure. A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is based on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action.

Southern Utah Wilderness Alliance, 164 IBLA 33 (Nov. 16, 2004).

Environmental Quality
Environmental Statements

A decision permitting guided vehicle tours over designated roads, ways, or trails within a wilderness study area is properly set aside when the record shows that such routes cross through and parallel to riparian/wetland zones and have caused damage to such resources, and fails to disclose what information BLM had before it when it concluded that the addition of tour traffic would have no significant impact on riparian/wetland areas on the designated travel routes.

Southern Utah Wilderness Alliance, 164 IBLA 33 (Nov. 16, 2004).

Environmental Quality
Environmental Statements

When BLM has denied a protest of the inclusion of parcels in an oil and gas lease sale, asserting that it has complied with the National Environmental Policy Act by preparing a pre-leasing environmental impact statement to which its action can be tiered, but there is no pre-leasing EIS that addresses the parcels in question, the Bureau of Land Management's decision will be reversed.

Southern Utah Wilderness Alliance, et al., 164 IBLA 118 (Nov. 30, 2004).

Environmental Quality
Environmental Statements

In challenging an environmental assessment, an appellant must establish by objective proof that the determination was premised on a clear error of law or a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared.

Edward C. Faulkner, 164 IBLA 204 (Dec. 21, 2004).

Environmental Quality
Environmental Statements

A BLM decision dismissing a protest to a competitive oil and gas lease sale is properly affirmed on appeal where the appellant fails to demonstrate with objective proof that BLM's decision was premised on a clear error of law or demonstrable error of fact, or that BLM's analysis failed to consider a substantial environmental question of material significance to the proposed action. BLM did not fail to consider alleged significant unique impacts associated with coalbed methane production in the Piceance Basin where no evidence was produced establishing that significant impacts had occurred or were reasonably likely to occur in connection with coalbed methane production. Evidence of asserted significant impacts associated with coalbed methane production in other basins is insufficient to establish that those impacts would occur on parcels in the Piceance Basin, absent objective proof that the conditions that exist in the Piceance Basin will result in the asserted significant impacts.

Western Slope Environmental Resource Council, High Country Citizens Alliance, 164 IBLA 329 (Feb. 8, 2005).

Environmental Quality
Environmental Statements

The impact of more than one timber sale may be addressed in a single environmental analysis. The Board will not set aside a timber sale based on an appellant's objections that pertain to another timber sale which had been addressed in the same environmental analysis unless those objections are tied to the cumulative effect of the action.

In re Big Deal Timber Sale, 165 IBLA 18 (Feb. 17, 2005).

Environmental Quality
Environmental Statements

A party challenging BLM's decision to proceed with construction of a fence to protect public rangeland and a finding of no significant impact has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal where the decision is reasonable and supported by the record.

Underwood Livestock, Inc., 165 IBLA 128 (Mar. 23, 2005).

Environmental Quality
Environmental Statements

A BLM decision to adopt a plan for controlling tamarisk on the public lands will be affirmed when the record adequately supports the decision and demonstrates that, in an environmental assessment tiered to a programmatic environmental impact statement, BLM took a hard look at the potential environmental impacts of its decision and properly concluded that no significant impact not previously considered would likely result, thus complying with section 102(2) of the National Environmental Policy Act, 42 U.S.C. § 4332(2) (2000).

Californians for Alternatives to Toxic, 165 IBLA 135 (Mar. 24, 2005).

Environmental Quality
Environmental Statements

The reasonableness of a FONSI will be upheld if the record establishes that BLM took a "hard look" at the proposed action, carefully reviewed environmental problems, identified all relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or that any such impacts will be reduced to insignificance by the adoption of appropriate mitigation measures. A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Where a FONSI is based on mitigation measures designed to minimize acknowledged adverse environmental impacts, analysis of the proposed mitigation measures and how effective they would be in eliminating those impacts is required. A mitigation plan must be sufficiently developed and explained to provide a convincing case that significant environmental impacts will be reduced to insignificance. A FONSI will be set aside where an appellant has shown that the proposed actions will have a significant impact to riparian resources and that BLM has failed to demonstrate that the proposed mitigation measures will reduce those impacts to insignificance.

Southern Utah Wilderness Alliance, et al., 166 IBLA 140 (July 12, 2005).

Environmental Quality
Environmental Statements

The appropriate time for considering the potential impacts of oil and gas exploration and development is when BLM proposes to lease public lands for oil and gas purposes, because leasing without no-surface-occupancy stipulations constitutes an irreversible and irretrievable commitment to permit surface-disturbing activity, in some form and to some extent.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Environmental Quality
Environmental Statements

In considering the potential impacts of oil and gas exploration and development when BLM proposes to lease public lands for oil and gas purposes, BLM may properly use "Documentation of Land Use Plan Conformance and NEPA Adequacy" worksheets (DNAs) to assess the adequacy of previous environmental review documents. Although preparation of DNAs is a valid vehicle to determine whether previous NEPA documentation adequately considered the environmental effects of proposed oil and gas leasing, DNAs are not a replacement for EAs or EISs and cannot properly be used to supplement previous EAs or EISs or to address site-specific environmental effects not previously considered in them.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Environmental Quality
Environmental Statements

When BLM has denied a protest of the inclusion of parcels in an oil and gas lease sale, asserting that it has complied with the National Environmental Policy Act by preparing pre-leasing environmental review documents, but the pre-leasing documents contain only an outdated, brief review of environmental consequences, the BLM decision denying the protest will be reversed and the case remanded. However, where those pre-leasing documents adequately address the environmental consequences of issuing oil and gas leases both with and without special protective stipulations, BLM's decision denying the protest is properly affirmed.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Environmental Quality
Environmental Statements

Where the record in an appeal from the denial of a protest of an oil and gas lease sale shows that BLM excluded some parcels from the sale when it determined that leasing them might have impacts on species that are candidates for listing as sensitive, threatened, or endangered, it follows that BLM determined that the parcels that remained in the sale would not have such impacts. In the absence of a showing to the contrary by a protestant/appellant, BLM's determination that previous environmental review was adequate to determine any effects on such species will be affirmed on appeal.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Environmental Quality
Environmental Statements

Even though existing land use plans and their associated environmental statements may not provide a separate analysis of the effects of coalbed methane (CBM) development, BLM may properly rely on those documents in support of a decision to offer a parcel of Federal land for competitive oil and gas leasing where there is no foreseeable likelihood of CBM development or where the impacts of CBM development do not differ significantly from the effects of oil and gas development already described in those documents.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Environmental Quality
Environmental Statements

The Board will ordinarily uphold a BLM determination that a proposed project, with appropriate mitigation measures, will not have a significant impact on the quality of the human environment if the record establishes that a careful review of environmental problems has been made, relevant environmental concerns have been identified, and the final determination is reasonable. A party challenging BLM's decision to approve a timber sale based on a finding of no significant impact has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal. If the appealed decision is the denial of a protest, the appellant must affirmatively point out error in the protest decision.

Bark (In re Rusty Saw Timber Sale), 167 IBLA 48 (Sept. 29, 2005).

Environmental Quality
Environmental Statements

An EA must take a hard look at the environmental consequences, as opposed to reaching bald conclusions, identify the relevant areas of environmental concern, and make a convincing case that environmental impacts are insignificant in order to support a conclusion that an EIS is not required. A party challenging a FONSI must demonstrate either an error of law or fact or that the analysis failed to consider a substantial environmental problem of material significance to the proposed action.

Lynn Canal Conservation, Inc., 167 IBLA 136 (Oct. 19, 2005).

Environmental Quality
Environmental Statements

As a general rule, the Board will affirm a finding of no significant impact with respect to a proposed action when the record discloses that a careful review of environmental impacts has been made, all relevant environmental concerns have been identified, and the final determination is reasonable. The burden of proof is on the challenging party to establish either an error of law or of fact and that burden must be satisfied by objective evidence. Mere differences of opinion provide no basis for overturning the decision.

Mona Sindelar, 167 IBLA 185 (Oct. 28, 2005).

Environmental Quality
Environmental Statements

A difference of opinion regarding the efficacy of an action proposed by BLM is not a sufficient showing to overturn a decision. Even when there is doubt whether the BLM action is necessary to achieve the cited objective, the Board will not substitute its judgment for that of the technical experts employed by BLM acting within their field of expertise in the absence of a showing of clear error.

Arizona Zoological Society, et al., 167 IBLA 347 (Jan. 25, 2006).

Environmental Quality
Environmental Statements

In determining whether preparation of an environmental impact statement is required with respect to a project, one consideration is whether the effects of the project on the quality of the human environment are highly controversial in that there is a substantial dispute as to the size, nature, or effect of an action. Disagreement regarding the efficacy of a project is properly distinguished from controversy over the impacts of the project and does not require an environmental impact statement.

Arizona Zoological Society, et al., 167 IBLA 347 (Jan. 25, 2006).

Environmental Quality
Environmental Statements

A party challenging a finding of no significant impact based on an environmental assessment has the burden of showing with objective proof that a decision is based on an error of law, demonstrable error of fact, or that the analysis failed to consider an environmental question of material significance to the proposed action. It is not sufficient to simply speculate, request more information, and express disagreement.

Arizona Zoological Society, et al., 167 IBLA 347 (Jan. 25, 2006).

Environmental Quality
Environmental Statements

An EA serves to (1) provide evidence and analysis for determining whether to prepare an EIS or a FONSI; (2) aid an agency's decisionmaking process when no EIS is necessary; and (3) facilitate preparation of an EIS when one is necessary. If the agency chooses to prepare an EA for a proposed action, but the resulting analysis projects a significant impact, the EA is insufficient and an EIS is required. To support a FONSI, and, hence, the conclusion that an EIS is not required, an EA must take a hard look at

the environmental consequences of a proposed action, identify the relevant areas of environmental concern, and make a convincing case that environmental impacts from it are insignificant. Where the EA met the first two standards of the test but failed to make a convincing case that the identified impacts were not significant, the FONSI is reversed.

Wilderness Watch, et al., 168 IBLA 16 (Feb. 17, 2006).

Environmental Quality
Environmental Statements

A decision designating an off-highway vehicle trail adjacent to a sensitive riparian area is properly affirmed where the project identifies riparian resources as critical elements of the human environment and the Decision Record/Finding of No Significant Impact concludes that, in the absence of the proposed action diverting off-highway vehicle use away from the riparian area, continued use of the riparian lands by such vehicles will cause increasing degradation.

Forest Guardian, 168 IBLA 323 (Apr. 3, 2006).

Environmental Quality
Environmental Statements

The determination of whether the public was adequately involved in BLM's National Environmental Policy Act review process assessing the potential environmental impacts of a proposed action depends on a fact-intensive inquiry made on a case-by-case basis.

Lynn Canal Conservation, Inc., 169 IBLA 1 (Apr. 20, 2006).

Environmental Quality
Environmental Statements

When the final EA, upon which the decision record and finding of no significant impact is based, predates the public comment period offered by BLM and neither the decision record nor finding of no significant impact contains any discussion, or even a reference to comments received, the comments have not been considered, and, therefore, the public has not been adequately involved in the Department's National Environmental Policy Act review process.

Lynn Canal Conservation, Inc., 169 IBLA 1 (Apr. 20, 2006).

Environmental Quality
Environmental Statements

Where BLM determines to proceed with a specific well relocation project after it has formally consulted with the FWS regarding a listed species, and FWS has issued a biological opinion concurring in the conclusion that the proposed action will not jeopardize the continued existence of the species or destroy or adversely modify its critical habitat without disapproving the proposed action as one of a number of similar projects in a geographical area or a segment of a comprehensive plan, no violation of the Endangered Species Act has been shown. A challenge to FWS' failure to disapprove the well relocation project as the impermissible segmenting of a comprehensive project plan is not within the jurisdiction of this Board.

Defenders of Wildlife, Wyoming Outdoor Council, 169 IBLA 117 (May 31, 2006).

Environmental Quality
Environmental Statements

Where in a biological opinion FWS concurs in the determination that a listed species has merely passed through a proposed well site area that contains no critical habitat on a transient basis and that the proposed well project is not likely to affect the species or its habitat, and where appellants have provided no persuasive evidence to the contrary, BLM is not prohibited from authorizing site-specific action while it updates or revises an EIS to which that action is tiered. In such circumstances, the question is whether in the EA the agency sufficiently considered those environmental effects not analyzed in the EIS. If BLM took a hard look at the potential environmental impacts of its proposed action and properly concluded that no significant impact would likely result, it has complied with section 102(2) of the NEPA, 42 U.S.C. § 4332(2) (2000).

Defenders of Wildlife, Wyoming Outdoor Council, 169 IBLA 117 (May 31, 2006).

Environmental Quality
Environmental Statements

A decision to approve an APD will be affirmed where the record shows that, in the EA and the RMP FEIS to which the EA was tiered, BLM considered the potential impacts of oil and gas drilling on a wild horse herd, and the surface stipulations for leases and COAs for APDs provide for mitigation of site specific impacts.

Colorado Environmental Coalition, The Wilderness Society, Western Colorado Congress, 169 IBLA 137 (May 31, 2006).

Environmental Quality
Environmental Statements

A party challenging BLM's decision to approve a timber sale based on a finding of no significant impact has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal. If the appealed decision is the denial of a protest, the appellant must affirmatively point out error in the protest decision.

In re North Trail Timber Sale, 169 IBLA 258 (July 13, 2006).

Environmental Quality
Environmental Statements

A party appealing the denial of a protest of a timber sale may raise an issue pertaining to the prospectus for the timber sale, dated subsequent to the environmental

assessment (EA), the finding of no significant impact, and the decision record, when there is no basis for concluding that the party should have been alerted to the issue by the scoping notice or EA.

In re North Trail Timber Sale, 169 IBLA 258 (July 13, 2006).

Environmental Quality
Environmental Statements

When an agency prepares an EA to determine whether an EIS is necessary, it must consider all relevant matters of environmental concern and take a hard look at potential environmental impacts so that it can make an informed decision about whether the environmental impacts are significant or that significant impacts can be reduced to insignificance by mitigation measures.

Biodiversity Conservation Alliance, 169 IBLA 321 (Aug. 2, 2006).

Environmental Quality
Environmental Statements

A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is based on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action.

Biodiversity Conservation Alliance, 169 IBLA 321 (Aug. 2, 2006).

Environmental Quality
Environmental Statements

When making a determination as to whether a proposed action will have a significant effect on the human environment, the cumulative effects of the proposed action and other actions not connected with the proposed activity must be taken into consideration. A cumulative impact is one which results from the incremental impact of the action when added to other past, present, and reasonably future actions and can result from individually minor but collectively significant actions taking place over time.

Biodiversity Conservation Alliance, 169 IBLA 321 (Aug. 2, 2006).

Environmental Quality
Environmental Statements

When a cumulative impacts analysis in an EA is tiered to the cumulative impact analysis contained in a project EIS that also includes the EA project wells, the EA properly summarizes the issues discussed in the EIS. A party challenging the adequacy of the EA must show that the impacts analysis as tiered does not constitute a reasonably thorough discussion of significant impacts of the probable environmental consequences of the proposed action.

Biodiversity Conservation Alliance, 169 IBLA 321 (Aug. 2, 2006).

Environmental Quality
Environmental Statements

Section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2000), requires consideration of a reasonable range of alternatives to a proposed action, including a no-action alternative. An EA which considers a range of alternatives and gives reasons for BLM's rejection of the alternatives not selected will be upheld when it appears that BLM assessed alternatives in a manner that will avoid or minimize the adverse impacts of the proposed action.

Biodiversity Conservation Alliance, 169 IBLA 321 (Aug. 2, 2006).

Environmental Quality
Environmental Statements

A BLM decision dismissing a protest to a competitive oil and gas lease sale is properly affirmed on appeal when the appellant fails to demonstrate with objective proof that BLM's decision was premised on a clear error of law or demonstrable error of fact, or that BLM's analysis failed to consider a substantial environmental question of material significance to the proposed action.

The Coalition of Concerned National Park Service Retirees, et al., 169 IBLA 366 (Aug. 22, 2006).

Environmental Quality
Environmental Statements

In considering the potential impacts of oil and gas development when BLM proposes to lease public lands for oil and gas purposes, BLM may properly use "Documentation of Land Use Plan Conformance and NEPA Adequacy" worksheets (DNAs) to assess the adequacy of previous environmental review documents. Where pre-leasing documents, including an EIS, adequately address the environmental consequences of issuing oil and gas leases both with and without special protective stipulations, BLM's decision denying the protest is properly affirmed.

The Coalition of Concerned National Park Service Retirees, et al., 169 IBLA 366 (Aug. 22, 2006).

Environmental Quality
Environmental Statements

An EIS prepared to evaluate the environmental impacts of a modification of a mining plan of operations complies with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), *as amended*, 42 U.S.C. § 4332(2)(C) (2000), when it shows that BLM has taken a "hard look" at potential environmental consequences of the proposed action and reasonable alternatives thereto, considering relevant matters of environmental concern. To successfully challenge a decision based on an EIS, an appellant must demonstrate by a preponderance of the evidence and with objective proof that BLM failed adequately to consider a substantial environmental question of material significance to the proposed action, or otherwise failed to abide by section 102(2) of NEPA.

Western Exploration Inc. & Doby George LLC, 169 IBLA 388 (Aug. 23, 2006).

Environmental Quality
Environmental Statements

In the preparation of an EIS, BLM is obligated to assess alternatives to a proposed action, including the no-action alternative and reasonable alternatives which are feasible, will accomplish the intended purpose, and will avoid or minimize the adverse impacts of the action upon the environment. A proposed modification to a mining plan of operations will be upheld where an appellant fails to identify an alternative that will accomplish the intended purpose of the proposed action, is technically and economically feasible, and has a lesser impact that BLM failed to consider.

Western Exploration Inc. & Doby George LLC, 169 IBLA 388 (Aug. 23, 2006).

Environmental Quality
Environmental Statements

A BLM decision dismissing a protest challenging the approval of a competitive oil and gas lease sale will be affirmed as to the sale parcels for which the appellant has established standing, when the record shows that existing environmental documentation provided BLM with a hard look at the environmental consequences of leasing, supporting the conclusion that the impacts from exploration and development of coalbed methane would not be significantly different from those associated with conventional oil and gas exploration and development.

Wyoming Outdoor Council, et al., 170 IBLA 130 (Sept. 21, 2006).

Environmental Quality
Environmental Statements

A BLM decision dismissing a protest challenging a competitive oil and gas lease sale will be affirmed when the record shows that existing environmental documentation provided BLM with a hard look at the environmental consequences of leasing, supporting the conclusion that the impacts from exploration and development of coalbed methane would not be significantly different than those associated with conventional oil and gas exploration and development.

Forest Guardians, 170 IBLA 253 (Sept. 29, 2006).

Environmental Quality
Environmental Statements

Section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. § 4332(2)(C) (2000), requires consideration of potential environmental impacts of a proposed action in an environmental impact statement if that action is a "major Federal action significantly affecting the quality of the human environment." The appropriate time for considering the potential impacts of oil and gas exploration and development is when BLM proposes to lease public land for oil and gas purposes, because leasing without stipulations requiring no surface occupancy constitutes an irreversible and irretrievable commitment to permit surface-disturbing activity.

Center for Native Ecosystems, 170 IBLA 331 (Nov. 22, 2006).

Environmental Quality
Environmental Statements

In considering the potential impacts of oil and gas exploration and development when BLM proposes to lease public lands for oil and gas purposes, BLM may properly use "Documentation of Land Use Plan Conformance and NEPA Adequacy" worksheets to assess the adequacy of previous NEPA documents. Although BLM may use DNAs to determine whether new NEPA documentation is required, DNAs cannot properly be used to supplement previous EAs or EISs or to address site-specific environmental effects not previously considered in them. Information developed after the last NEPA analysis may be used to determine whether supplemental analysis is required, but it cannot be used as a substitute for a NEPA analysis. When BLM decides on the basis of a DNA not to supplement an existing EIS or EA, its decision must rise or fall on the contents of previously issued NEPA documents.

Center for Native Ecosystems, 170 IBLA 331 (Nov. 22, 2006).

Environmental Quality
Environmental Statements

A finding that impacts of issuing an oil and gas lease would not be significant due to the mitigative effects of a special status species stipulation must be based on NEPA analysis. The stipulation does not provide a basis for deferring an environmental analysis in the absence of an existing NEPA statement that includes an analysis of the mitigative effects of the stipulation.

Center for Native Ecosystems, 170 IBLA 331 (Nov. 22, 2006).

Environmental Quality
Environmental Statements

BLM's decision to issue oil and gas leases without an evaluation of best management practices prior to leasing is not contrary to a BLM instruction memorandum, which was issued to guide the exercise of BLM's discretionary authority regarding whether to temporarily defer oil and gas leasing during periods when land use plans are being revised or amended.

Wyoming Outdoor Council, et al., 171 IBLA 153 (Mar. 29, 2007).

Environmental Quality
Environmental Statements

When an agency prepares an EA to determine whether an EIS is necessary, it must consider all relevant matters of environmental concern and take a hard look at potential environmental impacts so that it can make an informed decision about whether the environmental impacts will be significant or whether any significant impacts will be reduced to insignificance by mitigation measures. A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is based on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action.

Biodiversity Conservation Alliance et al., 171 IBLA 218 (Apr. 19, 2007).

Environmental Quality
Environmental Statements

When making a determination as to whether a proposed action will have a significant effect on the human environment, the cumulative effects of the proposed action and other actions not connected with the proposed activity must be taken into consideration. A cumulative impact is one which results from the incremental impact of the action when added to other past, present, and reasonably future actions and can result from individually minor but collectively significant actions taking place over time.

Biodiversity Conservation Alliance et al., 171 IBLA 218 (Apr. 19, 2007).

Environmental Quality
Environmental Statements

Section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2000), requires consideration of a reasonable range of alternatives to a proposed action, including a no-action alternative. An EA which considers a range of alternatives will be upheld when BLM has assessed alternatives in a manner that will avoid or minimize the adverse impacts of the proposed action.

Biodiversity Conservation Alliance et al., 171 IBLA 218 (Apr. 19, 2007).

Environmental Quality
Environmental Statements

A BLM decision dismissing a protest to a competitive oil and gas lease sale will be affirmed when the appellant fails to demonstrate with objective proof clear error of law or demonstrable error of fact in the decision and when the record shows that existing environmental documentation provided BLM with a hard look at the environmental consequences of the lease sale. In considering the potential impacts of an oil and gas lease sale, BLM may properly use "Documentation of Land Use Plan Conformance and NEPA Adequacy" worksheets to assess the adequacy of previous environmental review documents.

Colorado Environmental Coalition, et al., 171 IBLA 256 (May 9, 2007).

Environmental Quality
Environmental Statements

When parcels nominated for inclusion in a competitive oil and gas lease sale encompass lands that were not included in a wilderness study area, BLM may administer those lands for other purposes, including oil and gas leasing, even though the lands were asserted to have wilderness characteristics in a citizens' group wilderness proposal and were included in an area proposed for wilderness designation in legislation introduced in Congress. BLM's determination that existing environmental documents adequately analyze the effects of a competitive oil and gas lease sale for such parcels will be affirmed where the appellants base their objection to the adequacy of those documents on purported "significant new circumstances or information" but fail to establish such circumstances or information.

Colorado Environmental Coalition, et al., 171 IBLA 256 (May 9, 2007).

Environmental Quality
Environmental Statements

The approval of a proposed action in a Decision Record and Finding of No Significant Impact, following the preparation of an Environmental Assessment, does not constitute an authorization to use the public lands. BLM authorizes use of public land for grazing by issuing grazing permits or leases which specify all grazing use. Allowing cattle to graze on public land without a permit or lease and an annual grazing authorization is a prohibited act under 43 C.F.R. § 4140.1(b)(1)(I).

Badger Ranch, et al. v. Bureau of Land Management, 171 IBLA 285 (May 23, 2007).

Environmental Quality
Environmental Statements

BLM may properly rely on existing land use documents and their associated environmental statements where there is no foreseeable likelihood of CBM development or where the impacts of CBM development do not differ significantly from the effects of oil and gas development already described in existing NEPA documents. Whether more NEPA analysis based on new information is required depends on the nature of the NEPA analysis already completed, and the nature of the information available at the time of the agency action. Where an appellant asserts a failure to perform NEPA review in the context of an "RMP level" document, this argument alone is insufficient to prove a violation of NEPA. Where recent Board and judicial precedent affirm that the question of whether additional environmental analysis is required in any given case depends on whether an appellant can show that existing NEPA documents failed to analyze the likely effects of the action at hand, and an appellant fails to show why arguments expressly considered and rejected in recent precedent remain viable, the Board properly rejects such arguments.

Biodiversity Conservation Alliance, Center for Native Ecosystems, Wyoming Wilderness Association, Clark Resource Council, 171 IBLA 313 (June 26, 2007).

Environmental Quality
Environmental Statements

A determination that a proposed action will not have a significant impact on the quality of the human environment will be affirmed on appeal if the record establishes that a careful review of environmental problems has been made, relevant environmental concerns have been identified, and the final determination is reasonable in light of the environmental analysis. The party challenging the determination must show it was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed

to consider a substantial environmental question of significance to the action for which the analysis was prepared.

Missouri Coalition for the Environment, Heartwood, 172 IBLA 226 (Sept. 5, 2007).

Environmental Quality
Environmental Statements

Section 102(2)(E) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2)(E) (2000), requires consideration of a reasonable range of alternatives to a proposed action, including a no-action alternative. Appropriate alternatives are those that would accomplish the intended purpose of the proposed action, are technically and economically feasible, and will avoid or minimize adverse effects. A "rule of reason" governs the selection of alternatives, both as to which alternatives an agency must discuss and the extent to which it must discuss them.

Missouri Coalition for the Environment, Heartwood, 172 IBLA 226 (Sept. 5, 2007).

Environmental Quality
Environmental Statements

NEPA and the regulatory concepts of "cumulative effects," "connected actions" or "similar actions" do not require that an environmental assessment address the potential environmental impact of mining under any lease which might later be issued as a result of exploration. BLM may properly defer any assessment of the environmental consequences of mineral development until after discovery of a valuable mineral deposit and prior to issuance of a lease.

Missouri Coalition for the Environment, Heartwood, 172 IBLA 226 (Sept. 5, 2007).

Environmental Quality
Environmental Statements

No error is shown where a decision to approve issuance of mineral prospecting permits is based on an Environmental Assessment/ Finding of No Significant Impact that comply with NEPA and require the adoption of the stipulations and mitigation measures on which the FONSI is predicated.

Missouri Coalition for the Environment, Heartwood, 172 IBLA 226 (Sept. 5, 2007).

Environmental Quality
Environmental Statements

A BLM decision to deny a grazing privileges does not require the preparation of an Environmental Assessment. Only when an agency reaches the point in its deliberations when it is ready to approve an action that may have adverse effects on the human environment is it obligated to assess the environmental impacts of such action.

Jennifer J. Walt, Box D Ranch, 172 IBLA 300 (Sept. 21, 2007).

Environmental Quality
Environmental Statements

Where BLM chooses to exercise its discretionary authority to deny grazing privileges based upon environmental considerations presented in an Environmental Assessment which adequately assessed the impacts of four alternatives that included some form of a grazing scenario, absent objective proof of a clear error of law or demonstrable error of fact, or proof that the analysis failed to consider a substantial environmental question of significance to the proposed action, the Board properly finds that BLM's decision has a rational basis in the record and that it is not arbitrary and capricious.

Jennifer J. Walt, Box D Ranch, 172 IBLA 300 (Sept. 21, 2007).

Environmental Quality
Environmental Statements

Under section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C) (2000), the adequacy of an Environmental Assessment must be judged by whether it took a "hard look" at the potential significant environmental consequences of the proposed action, and reasonable alternatives thereto, and considered all relevant matters of environmental concern. In general, the Environmental Assessment must fulfill the primary mission of section 102(2)(C), which is to ensure that BLM, in exercising the substantive discretion afforded it to approve or disapprove an action, is fully informed regarding the environmental consequences of such action.

Shasta Coalition for the Preservation of Public Land; Sacramento River Preservation Trust, 172 IBLA 333 (Sept. 28, 2007).

Equal Access to Justice Act
Generally

In order to qualify for attorney fees and expenses under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994), an applicant must be a prevailing party in an adversary adjudication. Where an issue in a hearing on a grazing permit is remanded to BLM by an Administrative Law Judge for clarification but the decision of BLM has been substantially affirmed, the applicant is not a prevailing party.

Tim Hart v. Bureau of Land Management, Tim Hart and Darwin Hillberry v. Bureau of Land Management, 154 IBLA 260 (Apr. 9, 2001).

Equal Access to Justice Act
Generally

A party need not obtain a final decision on the merits to be considered a prevailing party for the purpose of determining the merits of awarding attorney fees if the party received some of the benefits sought when bringing the appeal and there is a clear causal connection between the appeal and the beneficial outcome attained. Where evidence and testimony indicate that the benefits obtained by the applicant were the product of negotiation and not induced by the filing of the appeal, there no causal connection demonstrated and prevailing party status has not been shown.

Tim Hart v. Bureau of Land Management, Tim Hart and Darwin Hillberry v. Bureau of Land Management, 154 IBLA 260 (Apr. 9, 2001).

Equal Access to Justice Act
Generally

A decision of this Board is an "order" under the Administrative Procedure Act and, therefore, an "adjudication"; however, it does not follow that such a decision is an adjudication under 5 U.S.C. § 554 (1994).

Tom Cox, 155 IBLA 273 (July 26, 2001).

Equal Access to Justice Act
Generally

According to the regulations governing the filing of applications for the award of fees and expenses under the Equal Access to Justice Act, such an application must be filed with the "adjudicative officer," who is defined by the regulations as "the official who presided at the adversary adjudication." 43 C.F.R. § 4.602(c). When the adversary adjudication in question is a mining claim contest hearing, the application must be filed with the Hearings Division, Office of Hearings and Appeals, and, when the application is filed with the Board of Land Appeals, it will be referred to the Hearings Division for consideration.

United States v. Curtis L. Willsie, 155 IBLA 296 (Aug. 7, 2001).

Equal Access to Justice Act
Generally

Action on an application for an award of fees and/or other expenses filed prior to final disposition of the proceeding must be stayed pending final disposition of the proceedings. Final disposition is the latter of (1) the date upon which the final Departmental decision is issued, or (2) the date of the order which finally resolves the proceeding, such as an order approving settlement or voluntary dismissal.

American Independence Mines & Minerals, 163 IBLA 192 (Sept. 29, 2004).

Equal Access to Justice Act
Adversary Adjudication

Grazing permits issued under the authority of 43 U.S.C. § 315b (1994) are "licenses" within the meaning of 5 U.S.C. § 504(b)(1)(C)(i) (1994).

William J. Thoman, 157 IBLA 95 (July 24, 2002).

Equal Access to Justice Act
Adversary Adjudication

In order to qualify for attorney fees and expenses under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994), an applicant must be a prevailing party in an adversary adjudication. Where the applicant has succeeded on a significant issue in the litigation which achieved the result it sought, and prevailed over BLM in gaining the vacation by the Board of an Administrative Law Judge order dismissing an appeal, which precluded BLM from implementing the terms of a settlement agreement that would have worked to the detriment of applicant, the applicant is a prevailing party even though it has not played the traditional role of adversary in an adjudication with the Department.

Tuledad Grazing Association v. Bureau of Land Management, 153 IBLA 25 (July 14, 2000).

Equal Access to Justice Act
Adversary Adjudication

A request for an award of costs and attorney fees under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994), will be denied where there has been no adversary adjudication within the meaning of the Act.

Tom Cox, 155 IBLA 273, 275 (July 26, 2001).

Equal Access to Justice Act
Adversary Adjudication

A challenge to the issuance of a crossing permit is a challenge to the granting of a "license" within the meaning of 5 U.S.C. § 504(b)(1)(C)(i) (1994) and, as such, is statutorily excepted under the Equal Access to Justice Act from the allowance of an award for fees and expenses incurred in pursuing the challenge.

William J. Thoman, 157 IBLA 95 (July 24, 2002).

Equal Access to Justice Act
Adversary Adjudication

A proceeding to review a Notice of Violation under section 525(a) of the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1275(a), is an adversary adjudication under the Equal Access to Justice Act, 5 U.S.C. § 504(a)(1).

Pacific Coast Coal Company v. OSM, 164 IBLA 52 (Feb. 25, 2005).

Equal Access to Justice Act
Adversary Adjudication

A challenge to the renewal of grazing permits is a challenge to the granting of a "license" within the meaning of 5 U.S.C. § 504(b)(1)(C)(i) (2000) and, as such, is statutorily excepted under the Equal Access to Justice Act from the allowance of an award for fees and expenses incurred in pursuing the challenge.

Western Watersheds Project, Idaho Bird Hunters, Idaho Wildlife Federation, Idaho Native Plant Society, 171 IBLA 304 (June 26, 2007).

Equal Access to Justice Act
Application

A request for an award of costs and attorney fees under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994), will be denied where there has been no adversary adjudication within the meaning of the Act.

Tom Cox, 155 IBLA 273 (July 26, 2001).

Equal Access to Justice Act
Application

An application for attorney fees and expenses is timely filed, under the Equal Access to Justice Act, *as amended*, 5 U.S.C. § 504 (2000), and 43 C.F.R. § 4.611, when it is filed within 30 days of a final disposition in the administrative adjudication. "Final disposition" is defined in 43 C.F.R. § 4.611(b) as the later of (1) the date on which the final Department decision is issued; or (2) the date of the order which finally resolves the proceeding. When the Board issues a decision resolving a mining claim contest in favor of the contestee, and the contestant files a timely petition for reconsideration, an Equal Access to Justice Act application filed by the contestee within 30 days of the Board's order denying the petition will be considered timely filed.

Curt L. Willsie, 163 IBLA 291 (Oct. 28, 2004).

Equal Access to Justice Act
Awards

A person who holds a permit under the Surface Mining Control and Reclamation Act and who prevails in a proceeding to review issuance of a notice of violation may apply either for fees and other expenses under the Equal Access to Justice Act, 5 U.S.C. § 504(a), or for costs and expenses, including attorney fees, under the Surface Mining Act, 30 U.S.C. § 1275(e).

Pacific Coast Coal Company v. OSM, 164 IBLA 52 (Feb. 25, 2005).

Estoppel

Estoppel will not lie when the legal consequences of an action are clearly set forth in statute and/or regulation, and when the application of estoppel would afford a right not authorized by law. Thus, there is no requirement in law or regulation compelling BLM authorities to give prior notice to a potential lessee that the lease it seeks is about to expire at the conclusion of its primary term and that a further extension of the lease term may be obtained only if a certain course is followed by the current lessee.

RMOC Holdings LLC, 152 IBLA 149 (Apr. 21, 2000).

Estoppel

A claim of estoppel against the United States will be rejected in the absence of affirmative misconduct in the nature of an erroneous statement of fact in an official written decision or if the effect of allowing the estoppel would be to grant a right not authorized by law. Reliance on incomplete or inaccurate information provided by Federal employees cannot create any rights not authorized by law.

Linmar Petroleum Co., 153 IBLA 99 (Aug. 3, 2000).

Estoppel

BLM's acceptance of a location notice for recordation and acceptance of filings and fees is not an affirmative misrepresentation or concealment of the fact that the land encompassed by a mining claim was withdrawn from mineral entry at the time of location, and will not preclude BLM from declaring the claim null and void ab initio.

Lamar & Christine Burnett, 153 IBLA 215 (Aug. 31, 2000).

Estoppel

While a lessee may have relied on a crucial misstatement in a long-standing decision, estoppel is an extraordinary remedy, especially as it relates to the public lands, and cannot be used to defeat the Department's purpose of protecting public interests. Estoppel does not lie where the effect of such action would be to grant a right not authorized by law, such as a royalty valuation less than the gross value of lease production at the point of shipment to market. MMS is not bound by prior misinterpretation of a rule or regulation, even though the error has been followed for a long time.

FMC Wyoming Corp., 154 IBLA 128 (Jan. 31, 2001).

Estoppel

Where a mining claimant submits a payment for maintenance fees that is dishonored by the bank on which it is drawn; where the claimant notifies BLM of the problem only after the statutory deadline for filing the fees; where BLM misadvises the claimant at that time that BLM may accept a replacement payment as long as the funds arrive before BLM receives notice that there was a problem with the payment; and where no replacement payment is filed until after the statutory deadline, there is no basis for estopping BLM from declaring the claims forfeited and null and void. BLM's misadvice was not in the form of a crucial misstatement in an official decision. Further, reliance on such misadvice was irrelevant, since it was not given until after the mandatory statutory deadline for making payment (when BLM was no longer authorized to accept maintenance fees) and since reliance on any misadvice may not create rights not authorized by law.

Loco Mining Company, 155 IBLA 153 (June 27, 2001).

Estoppel

Reliance on the oral misstatements of a BLM employee will not support a claim of estoppel; reliance must be predicated on a crucial misstatement in an official decision.

Carl Riddle, 155 IBLA 311 (Aug. 31, 2001).

Estoppel

Reliance on the oral misstatements of a BLM employee will not support a claim of estoppel; reliance must be predicated on a crucial misstatement in an official decision.

Mineral Hill Venture, 155 IBLA 323 (Sept. 6, 2001).

Estoppel

Reliance on imprecise notations in federal land records will not operate to divest the United States of title to land. 43 C.F.R. § 1810.3(c)).

Southern Pacific Transportation Co.; Edgar O. Rhoads, 156 IBLA 136 (Dec. 30, 2001).

Estoppel

Title to public lands is granted by patent, not by the status reflected in land records. The grantee of a patent and the successors thereof are on constructive notice of the contents of the patent. Local tax assessment records neither purport to be title nor convey it. Appellants' reliance on local tax records to establish their claim of ownership therefore is misplaced.

Beau Hickory & Patricia L. Tinnell, 160 IBLA 166 (Oct. 23, 2003).

Estoppel

When the base rate for rental of a communication site right-of-way has been approved on appeal to the Board, the doctrine of administrative finality precludes reviewing it in a subsequent appeal.

AZ Spectrum Wireless, 161 IBLA 311 (May 17, 2004).

Estoppel

A party claiming reliance upon a misrepresentation by a Department employee must be ignorant of the true facts. When a party successfully bidding at an oil and gas lease sale receives a bidder's receipt stating monies owing, the bidder cannot claim ignorance of the fact that such monies are due.

Carlyle, Inc., 164 IBLA 178 (Dec. 16, 2004).

Estoppel

Even assuming *arguendo* that appellant was informed by a BLM employee that a fence served as a public/private land boundary, such action would not estop BLM from charging him with trespass in the construction of a cabin on public land, when there is no affirmative misconduct in the nature of an erroneous statement of fact in an official written decision.

Darrell Ceciliani, 166 IBLA 316 (Aug. 31, 2005).

Estoppel

While situations may arise where the Government may be estopped because a private party, acting in reliance upon a Governmental representation, was prevented from obtaining a right which might have been obtained, the Government cannot be estopped where the effect of the estoppel is to grant someone a right which was not available in the first instance.

Darrell Ceciliani, 166 IBLA 316 (Aug. 31, 2005).

Estoppel

A necessary element of estoppel against the Federal Government in matters concerning the public lands is the existence of affirmative misconduct on the part of the Federal Government. We will not find affirmative misconduct where appellant has failed to prove that BLM has affirmatively misrepresented or concealed a material fact regarding the proper address of the BLM office for filing mining claim maintenance fee payments and, in any event, where appellant is deemed to have knowledge of the proper address by virtue of 43 C.F.R. § 1821.10(a) (2002).

F.W.A. Holdings, Inc., F.W. Aggregates, Inc., 167 IBLA 93 (Sept. 30, 2005).

Estoppel

Reliance on the oral statements of a BLM employee will not support a claim of estoppel. To successfully invoke estoppel, a party must show detrimental reliance on an offic concealment of material facts. Estoppel will not be allowed where to do so would result in a party obtaining rights to which he is not entitled by law.

Pilot Plant, Inc., et al., 168 IBLA 169 (Mar. 16, 2006).

Estoppel

An undated draft of a decision prepared by the geothermal lessee that was never adopted or issued by BLM is of no practical or legal effect and cannot either serve as a basis for granting a lease extension where no such extension is authorized by the Geothermal Steam Act, *as amended*, or estop the United States from invoking the terms of the unit agreement or requiring the lessee to comply with applicable law. Where BLM issued a decision reflecting a construction of the Act that is inconsistent with the lessee's interpretation and the lessee did not appeal it, and the lessee was aware that BLM had sought legal advice and direction in interpreting the Act, a subsequent BLM letter stating that, in the future, action would be taken to modify the earlier decision and cancel prior lease extensions does not estop the United States. The letter is not a written decision, it does not constitute a crucial misstatement and/or concealment of material facts, there is no detrimental reliance and it cannot be used to give appellant a substantive right not authorized by the Act.

Geo-Energy Partners-1983 Ltd., 170 IBLA 99 (Sept. 14, 2006).

Estoppel

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by the acquiescence of its officers or their neglect of duty, failure to act, or delays in the performance of their duties or laches.

Bookcliff Rattlers Motorcycle Club, 171 IBLA 6 (Dec. 20, 2006).

Estoppel

A statement by a BLM employee in a notice of expiration implying that a hardrock lease that has expired under applicable regulations may be renewed does not bind or estop BLM from rejecting a renewal application filed after that notice because the United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

Ron Coleman Mining, Inc., 172 IBLA 387 (Oct. 1, 2007).

Evidence
Generally

Where the Board, in a previous decision, ordered BLM to consider an applicant's "evidence that by the standards of the mining industry, a prudent person would be justified in expending labor and means to work the coal deposits on the subject land," to show commercial quantities of coal, and BLM orders submission of a final showing under its regulations, BLM's order is valid under agency regulations, notwithstanding whether the applicant avers that more drilling may support his position.

Jesse H. Knight, et al., 155 IBLA 104 (May 23, 2001).

Evidence
Generally

A mere difference of opinion will not overcome the reasoned opinions of the Secretary's technical experts. Absent evidence which rebuts the basis of the findings, the Secretary was entitled to rely on a wildlife biologist's memorandum reporting that endangered milk-vetch species were not found on the mineral material sale site.

Southern Utah Wilderness Alliance, 158 IBLA 212 (Jan. 23, 2003).

Evidence
Generally

When following a hearing in a mining claim contest, the administrative law judge bases his validity determination on his own economic analysis of mining the claim, utilizing the testimony and exhibits provided by the parties' expert witnesses, and that analysis involves choices of what evidence to rely on based on the judge's weighing of sometimes conflicting evidence, the Board has a long-standing reluctance to overturn the judge's findings. The basis for this deference is the fact that the judge who presides over a hearing has the opportunity to observe the witnesses and is in the best position to evaluate the weight to be given to conflicting testimony. Nevertheless, the Board will closely examine the judge's findings in order to ensure that they are legally sound and supported by the record.

United States v. Geoffrey J. Garcia, Charlotte M. Garcia, 161 IBLA 235 (May 5, 2004).

Evidence
Generally

Although this Board has *de novo* review authority, we ordinarily will not disturb a Judge's findings of fact based on credibility determinations where they are supported by substantial evidence. The basis for this deference is the fact that the Judge who presides over a hearing has the opportunity to observe the demeanor of the witnesses and is in the best position to judge the weight to be given to conflicting testimony.

United States v. Robert W. and Marjorie E. Miller, 165 IBLA 342 (May 9, 2005).

Evidence
Generally

While the Board generally accords substantial deference to the findings of an Administrative Law Judge with respect to conflicting evidence, such deference is not absolute, and the Board will closely examine the judge's findings in order to ensure that they are legally sound and supported by the record.

United States v. Lyle I. Thompson, et al., 168 IBLA 64 (Mar. 16, 2006).

Evidence
Generally

An appellant carries the burden of showing error in the decision being appealed, failing in which, the decision will be affirmed. Further, an appellant must show adequate reason for appeal with some particularity, and support the allegations with arguments or appropriate evidence showing error.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Evidence
Generally

No error is demonstrated by a decision to go forward with a mineral trespass action following a mining contest in which the underlying mining claim was declared invalid. Nothing legally, factually, or procedurally compels BLM to postpone action on the trespass charge until all pending or potential appellate review is concluded. The trespass charge does not depend on the validity of the underlying mining claim, because the essence of the charge is disposal of common variety mineral material without BLM's authorization to do so.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Evidence
Generally

The party appealing has the burden of showing error in the Administrative Law Judge's decision. An appellant must show adequate reason for appeal with some particularity, and support the allegations with arguments or appropriate evidence showing error.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Evidence
Generally

In reviewing an administrative law judge's decision in a mining contest, we review the record developed before the judge. Post-hearing evidence will be reviewed by this Board only to determine whether another hearing is appropriate.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Evidence
Generally

To warrant another hearing, a mining claimant whose claims have been declared invalid for lack of discovery must demonstrate that the evidence proffered on appeal could result in a changed outcome, that is, that the claims are supported by a discovery of a valuable mineral deposit.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Evidence
Generally

When an appellant attaches a copy of a communication between BLM and its attorney to a pleading filed in a pending case before the Board and BLM asserts that the document is privileged material protected from disclosure by the attorney-client communication or attorney work-product privileges, the Board will adjudicate the claim of privilege to determine if it has been properly asserted.

Wyoming Outdoor Council, et al., 169 IBLA 223 (June 28, 2006).

Evidence
Generally

A document prepared by counsel for BLM for the purpose of advising BLM is privileged material protected from disclosure by the attorney work-product privilege when it is prepared for the purpose of filing a responsive pleading in a case pending before the Board, and it contains counsel's theories of the case and legal strategy for defending the challenged BLM decision.

Wyoming Outdoor Council, et al., 169 IBLA 223 (June 28, 2006).

Evidence
Generally

In determining whether the attorney work-product privilege has been waived by an inadvertent disclosure, the Board will examine all the circumstances surrounding the disclosure, including: (1) the reasonableness of precautions taken to prevent disclosure; (2) the amount of time taken to remedy the error; (3) the scope of discovery; (4) the extent of the disclosure; and (5) the overriding issue of fairness.

Wyoming Outdoor Council, et al., 169 IBLA 223 (June 28, 2006).

Evidence
Generally

When a party attempts to use a privileged document of another party and the privilege has not been waived, the Board may issue a protective order placing the privileged document under seal and striking references to the document in pleadings.

Wyoming Outdoor Council, et al., 169 IBLA 223 (June 28, 2006).

Evidence
Generally

Although "willfulness" is basically a subjective standard of the trespasser's intent, it may be proved by objective facts. Thus, in determining whether the actions of grazing trespassers are "willful," intent sufficient to establish willfulness may be shown by evidence which objectively shows that the circumstances did not comport with the notion that the trespasser acted in good faith or innocent mistake, or that his conduct was so lacking in reasonableness or responsibility that it became reckless or negligent. A finding that a trespass was willful or knowing may be negated by a good faith belief that the requirement did not apply in the circumstances of a given case. Where a decision by an administrative law judge holds that a permittee may have had a good faith belief that it was not required to maintain or repair the fence and workings of an exclosure, and such conclusion is supported by substantial evidence in the record, his holding affirming BLM's determination that the failure to repair or maintain the site was willful negligence is properly reversed.

Tabor Creek Cattle Company v. Bureau of Land Management, 170 IBLA 1 (Aug. 29, 2006).

Evidence
Generally

BLM properly rejects an application under the Alaska Native Veterans Allotment Act, *as amended*, 43 U.S.C. § 1629*g* (2000), if it was postmarked after January 31, 2002, absent a persuasive explanation supported by satisfactory corroborating evidence, typically by a postal official.

John Jones, 170 IBLA 281 (Oct. 30, 2006).

Evidence
Generally

To successfully challenge BLM's reliance on an expert, the objecting party must prove by a preponderance of the evidence that the expert's determination is arbitrary and capricious or is based on an error in methodology, data and/or analysis. Where no error in methodology, data, or analysis was alleged, and appellant disputes only the ultimate interpretation of such data, no more than a difference of opinion has been shown. Where experts disagree, BLM may rely on the reasonable opinions of its qualified experts.

Salinas Ramblers Motorcycle Club, et al., 171 IBLA 396 (July 10, 2007).

Evidence
Generally

When, during the pendency of an appeal, the arguments raised by an appellant have been addressed in other Board decisions, or by Federal courts, whether or not the appellant was a party thereto, or in other Board adjudication to which it was a party, and the appellant fails to show that those arguments remain viable, the Board may dispose of such arguments in summary fashion.

Wyoming Outdoor Council, Biodiversity Conservation Alliance, 172 IBLA 289 (Sept. 20, 2007).

Evidence
Burden of Proof

When BLM charges in a contest complaint that portions of mining claims located for gypsum are not mineral in character on the basis that, although gypsum is present on those portions of the claims, that gypsum was not marketable at the times in question, the issue is whether, in fact, the gypsum could have been extracted and marketed at a profit.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Evidence
Burden of Proof

When BLM imposes a condition of approval to an operator's request to plug and abandon a well, in order to protect a fresh water zone from contamination by gas or saline water from deeper formations, and the operator asserts that such a condition is unnecessary, the operator must show by a preponderance of the evidence that the condition is excessive in order to prevail.

Grynberg Petroleum Co., 152 IBLA 300 (June 8, 2000).

Evidence
Burden of Proof

When, on the basis of differing interpretations of the same geological data, the operator of an oil and gas well and BLM disagree on the proper procedure to be used in plugging and abandoning an oil and gas well, the Secretary is entitled to rely on the reasoned opinions and conclusions of his technical experts in the field, absent a showing by a preponderance of the evidence that such opinions are erroneous.

Grynberg Petroleum Co., 152 IBLA 300 (June 8, 2000).

Evidence
Burden of Proof

When BLM has not notified a Color of Title Act applicant to provide an abstract of title or other documentation to establish color of title, the applicant cannot be found to have failed to bear its burden of proof and the application can be denied only if, as a matter of law, a specific deficiency precludes the applicant from qualifying.

Silverado Nevada, Inc., 152 IBLA 313 (June 22, 2000).

Evidence
Burden of Proof

A BLM decision purporting to declare mining claims forfeited by operation of law for failure to either pay the $100 maintenance fee or file a maintenance fee payment waiver certification on or before September 1, 2000, for the 2001 assessment year is properly set aside and remanded to BLM where mining claimant on appeal establishes by a preponderance of the evidence that he timely filed a maintenance fee payment waiver certification on August 28, 2000, which date was before September 1, 2000, albeit possibly incorrect identifying the serial numbers assigned by BLM to the named claims.

Terrence Timmins, 158 IBLA 318 (Mar. 26, 2003).

Evidence
Burden of Proof

In a private mining contest, the burden of proof is upon the private contestant to establish the invalidity of a claim for lack of a discovery of a valuable mineral deposit. The decision in a private mining contest, as in any case involving material issues of fact, is properly based on the preponderance of the evidence.

Moon Mining Co. v. Hecla Mining Co., 161 IBLA 334 (June 2, 2004).

Evidence
Burden of Proof

When the Government contests a mining claim based on a charge of lack of discovery of a valuable mineral deposit, it bears the initial burden of going forward to establish a prima facie case in support of that charge, whereupon the claimant has the ultimate burden of persuasion to overcome that case by a preponderance of the evidence. The burden is different, however, for the contestee when a contest is filed as the result of a patent application. In such a situation, it is well settled that the Government must make a prima facie case in support of its charges and that, upon such a showing, the claimant must establish that the claim is valid, even apart from the issues raised in the prima facie case.

United States v. Robert W. and Marjorie E. Miller, 165 IBLA 342 (May 9, 2005).

Evidence
Burden of Proof

MMS properly assesses a civil penalty when a lessee does not have the records required by 30 C.F.R. § 250.804(b) to show that safety-system devices have been inspected and tested at specified intervals.

Blue Dolphin Exploration Company, 166 IBLA 131 (July 8, 2005).

Evidence
Burden of Proof

When the Government contests a Native allotment application, it bears the burden of going forward with evidence sufficient to establish a prima facie case that the Native allotment applicant did not satisfy the use and occupancy requirements of the Act of May 17, 1906, *as amended*, 43 U.S.C. §§ 270-1 through 270-3 (1970), whereupon the ultimate burden of persuasion rests with the applicant to overcome that case by a preponderance of the evidence. In determining whether the Government has established a prima facie case, an administrative law judge may properly consider the evidence offered by the Government in its case-in-chief together with the evidence presented by a Native village corporation, which, claiming an interest in the land at issue adverse to the applicant, had properly been allowed to intervene in support of the Government's position as a full party in the proceeding.

United States v. Heirs of Pat P. Pestrikoff, 167 IBLA 361 (Feb. 2, 2006).

Evidence
Burden of Proof

An administrative law judge properly denies a Native allotment application when he correctly concludes that the evidence presented by the Government and the intervenor at a hearing into the validity of the application, considered together, established a prima facie case that the applicant had not satisfied the use and occupancy requirements of the Native Allotment Act, where the applicant, with full knowledge of the potential consequences of the decision, declines to offer any evidence rebutting that case before the close of the hearing record.

United States v. Heirs of Pat P. Pestrikoff, 167 IBLA 361 (Feb. 2, 2006).

Evidence
Burden of Proof

A decision of an administrative law judge finding that a Native allotment applicant's use and occupancy before the date of withdrawal of land from appropriation was not established by a preponderance of the evidence will be affirmed on appeal where the evidence fails to establish qualifying use and occupancy of any particular location potentially exclusive of others that was substantially continuous in nature and not intermittent. Where evidence shows that the applicant's use and occupancy, to the extent it was qualifying, began at the earliest in 1953, but the land had been withdrawn from appropriation in 1952, the contestees did not preponderate. Where the evidence failed to show that a claimant's use would put others on notice of his superior claim, but rather indicates common use by large numbers of residents, potential exclusivity is not shown.

United States v. Heirs of Harlan L. Mahle, 171 IBLA 330 (June 29, 2007).

Evidence
Burden of Proof

To successfully challenge BLM's reliance on an expert, the objecting party must prove by a preponderance of the evidence that the expert's determination is arbitrary and capricious or is based on an error in methodology, data and/or analysis. Where no error in methodology, data, or analysis was alleged, and appellant disputes only the ultimate interpretation of such data, no more than a difference of opinion has been shown. Where experts disagree, BLM may rely on the reasonable opinions of its qualified experts.

Salinas Ramblers Motorcycle Club, et al., 171 IBLA 396 (July 10, 2007).

Evidence
Burden of Proof

An appellant's argument that an administrative law judge improperly allocated the burden of proof in a hearing on the record of a proposed civil penalty under section 109 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1719 (2000), provides no basis for reversing the judge's decision where the evidence is not in equipoise and BLM preponderated on every material issue.

Grynberg Petroleum Co. v. Bureau of Land Management, 172 IBLA 167 (Aug. 23, 2007).

Evidence
Burden of Proof

FOGRMA places the burden on the operator to justify a longer abatement period by informing BLM in a timely manner of circumstances that would prevent timely abatement of a violation identified in a Notice of Incidents of Noncompliance. Where an operator did not request a longer abatement period, in a hearing on the record of a proposed civil penalty, he cannot carry his burden of showing, by a preponderance of the evidence, that the abatement period was inadequate.

Grynberg Petroleum Co. v. Bureau of Land Management, 172 IBLA 167 (Aug. 23, 2007).

Evidence
Burden of Proof

When, during the pendency of an appeal, the arguments raised by an appellant have been addressed in other Board decisions, or by Federal courts, whether or not the appellant was a party thereto, or in other Board adjudication to which it was a party, and the appellant fails to show that those arguments remain viable, the Board may dispose of such arguments in summary fashion.

Wyoming Outdoor Council, Biodiversity Conservation Alliance, 172 IBLA 289 (Sept. 20, 2007).

Evidence
Credibility

An Alaska Native Veteran Allotment application is properly rejected, as a matter of law, without the necessity for a hearing, where the applicant fails to allege, in his application or anywhere in the record, that he initiated his qualifying use and occupancy under the 1906 Act before the 1968 withdrawal of the claimed lands from entry under the 1906 Act, or that his use and occupancy was as an independent citizen acting on his own behalf, potentially exclusive of others, and not as a dependent child in the company and under the supervision of a parent.

Irving P. Sheldon, 169 IBLA 276 (July 27, 2006).

Evidence
Credibility of Witnesses

Evidence may be introduced to establish or challenge the credibility of testifying witnesses, but such evidence should be considered only in the context of testimony relevant to the facts at issue in the hearing.

Frank Robbins and High Island Ranch v. Bureau of Land Management, 170 IBLA 219 (September 26, 2006).

Evidence
Preponderance

Qualifying substantial actual possession and use of land prior to its inclusion in a national forest was established by a preponderance of recorded evidence which included a Native allotment application corroborated by other proof of use and occupancy beginning in 1901.

U.S. Department of Agriculture, Forest Service (Johnny P. Wilson), 152 IBLA 237 (May 1, 2000).

Evidence
Preponderance

A mere difference of opinion will not overcome the reasoned opinions of the Secretary's technical experts. Absent evidence which rebuts the basis of the findings, the Secretary was entitled to rely on a wildlife biologist's memorandum reporting that endangered milk-vetch species were not found on the mineral material sale site.

Southern Utah Wilderness Alliance, 158 IBLA 212 (Jan. 23, 2003).

Evidence
Preponderance

In a private mining contest, the burden of proof is upon the private contestant to establish the invalidity of a claim for lack of a discovery of a valuable mineral deposit. The decision in a private mining contest, as in any case involving material issues of fact, is properly based on the preponderance of the evidence.

Moon Mining Co. v. Hecla Mining Co., 161 IBLA 334 (June 2, 2004).

Evidence
Preponderance

A prerequisite of a valid mining claim subject to patent is a discovery of a valuable deposit of minerals of such quality and in such quantity as to justify a person of ordinary prudence in the further expenditure of his labor and capital with a reasonable prospect of success in developing a valuable mine. A finding of no discovery may be sustained despite a report reflecting relatively high grade samples when the evidence discloses problems in the sampling technique used which preclude reliance upon the samples to provide a reasonable estimate of the grade of the resource.

Moon Mining Co. v. Hecla Mining Co., 161 IBLA 334 (June 2, 2004).

Evidence
Preponderance

In a mining contest, the Government establishes a prima facie case when a mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Evidence
Preponderance

Uncontradicted evidence of absence of production from a mining claim over a period of years is sufficient, without more, to establish a prima facie case of invalidity of the claim.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Evidence
Preponderance

If the Government meets its burden of proving a prima facie case that a mining claim does not contain a discovery of a valuable mineral deposit, the ultimate burden rests with the claimant to establish by a preponderance of the evidence that a discovery exists as to those matters placed in issue by the Government. A claimant does not meet this burden if its showing of the extent, continuity, and grade of mineralization is premised on reviewing aerial photographs. A discovery cannot be predicated upon (1) an exposure of isolated bits of mineral on the surface of the claim, not connected with ore leading to substantial values, (2) mere surface indications of mineral within the limits of the claim, or (3) inferences from geological facts relating to the claim. There must be actual evidence that high values persist for a sufficient distance along the vein that there may be said to be a continuous mineralization, the quantity of which can be reasonably determined by standard geologic means.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Evidence
Preponderance

A claimant may overcome the presumption of non-marketability arising from the fact that no production took place on mining claims over a period of years by proving that he could have extracted and sold the mineral at a profit during subsequent periods but for the unavailability of the claims by virtue of a withdrawal. Where the claimant presents only speculative and conjectural evidence suggesting that the claimant could have sold the mineral by postulating that mining costs are "infinitesimally small" or non-material, and hypothesizing a milling operation for which there is no market, the claimant has not overcome the presumption of non marketability or the Government's prima facie case.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Evidence
Preponderance

To successfully challenge BLM's reliance on an expert, the objecting party must prove by a preponderance of the evidence that the expert's determination is arbitrary and capricious or is based on an error in methodology, data and/or analysis. Where no error in methodology, data, or analysis was alleged, and appellant disputes only the ultimate interpretation of such data, no more than a difference of opinion has been shown. Where experts disagree, BLM may rely on the reasonable opinions of its qualified experts.

Salinas Ramblers Motorcycle Club, et al., 171 IBLA 396 (July 10, 2007).

Evidence
Presumptions

Appellant's request to vacate BLM's decision terminating Federal oil and gas leases is properly denied when BLM records indicate the receipt of only one of three rental checks allegedly sent in the same envelope, and Appellant has failed to overcome the presumption of administrative regularity by submitting evidence that the checks were not only properly transmitted but actually received.

Forcenergy Inc., Kidd Family Partnership Ltd., 151 IBLA 3 (Oct. 15, 1999).

Evidence
Presumptions

In the absence of any evidence in the case file that a mining claim fee waiver certification was received by BLM, the legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them will support a finding that the document was not timely filed. Although the presumption is rebuttable by evidence to the contrary, a statement that a document was enclosed in the same envelope with other documents that were received by BLM must be corroborated by other evidence.

Debbee Hosko, 158 IBLA 4 (Nov. 5, 2002).

Evidence
Presumptions

A presumption of regularity supports the official acts of public officers; absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. In the absence of evidence to the contrary, it is appropriate to presume that BLM officials noted the public land records to reflect the existence of a temporary segregation on January 19, 2000, where those records indicate that such notation was made at that time.

Michael L. Carver, et al., 163 IBLA 77 (Sept. 8, 2004).

Evidence
Presumptions

In the absence of any evidence in the case file that a mining claim fee waiver certification was received by BLM, the legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them will support a finding that the document was not timely filed. Although the presumption is rebuttable by evidence to the contrary, an assertion that a waiver certification was filed with BLM is insufficient in the absence of a copy of the waiver certification and corroboration that the document was received by BLM.

Ed Sorrells, 164 IBLA 379 (Feb. 10, 2005).

Evidence
Presumptions

Where BLM's administrative record does not contain a date-stamped copy verifying that BLM timely received contestees' answer to a Government contest complaint, but the record contains substantial corroborating evidence establishing that it is more probable than not that the document was received timely, the legal presumption of regularity, which would ordinarily operate to force a conclusion that the Answer was untimely, is rebutted, and the Office of Hearings and Appeals retains jurisdiction to adjudicate the contest.

United States v. Lyle I. Thompson, et al., 168 IBLA 64 (Mar. 16, 2006).

Evidence
Prima Facie Case

Uncontradicted evidence of nonproduction of a mining claim, which has continued over a period of years, may be sufficient, without more, to establish a prima facie case of invalidity of a mining claim. However, the question of whether a prima facie case arises in such circumstances depends on what evidence is offered by the Government regarding nonproduction.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Evidence
Prima Facie Case

When BLM attempts, through the testimony of its mineral examiner, to establish a prima facie case that the mineral from contested mining claims fails to meet the marketability test, expertise by the mineral examiner as to the particular mineral in question may be demonstrated through evidence of education, training, and experience. Failure to have conducted a mineral examination of a mining claim for the same mineral in the past is not decisive.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Evidence
Prima Facie Case

The ruling by an administrative law judge that BLM could not establish a prima facie case in support of the charges in its contest complaint because the mineral examiner who testified at the hearing was not the "sole participant" in preparing the mineral report will be overturned when the mineral examiner who sampled the mining claims and prepared the draft mineral report died prior to finalization of that report, but the mineral examiner who took over the finalization of the report verified and evaluated the work conducted and prepared a market study, and no issue arose regarding the sampling or other work conducted by the deceased mineral examiner.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Evidence
Prima Facie Case

It is not unreasonable in conducting a market assessment following receipt of a patent application for a Government mineral examiner to rely on what the mining claimant has done on the claims and what the claimant has proposed in the patent application for production and marketing the mineral deposits on the claims. However, a prima facie case based on such an assessment is vulnerable to evidence presented by the contestee at a hearing on the complaint showing that a prudent man would not so limit production and marketing and could produce more mineral and market that production without increased costs for additional equipment.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Evidence
Prima Facie Case

The Board has long held that the costs of compliance with all applicable Federal and State laws, including environmental laws, are properly considered in determining whether or not the mineral deposit is presently marketable at a profit, *i.e.*, whether the mineral deposit can be deemed to be a valuable mineral deposit within the meaning of the mining laws.

United States v. Geoffrey J. Garcia, Charlotte M. Garcia, 161 IBLA 235 (May 5, 2004).

Evidence
Prima Facie Case

In a mining contest, the Government establishes a prima facie case when a mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Evidence
Prima Facie Case

Uncontradicted evidence of absence of production from a mining claim over a period of years is sufficient, without more, to establish a prima facie case of invalidity of the claim.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Evidence
Prima Facie Case

A claimant may overcome the presumption of non-marketability arising from the fact that no production took place on mining claims over a period of years by proving that he could have extracted and sold the mineral at a profit during subsequent periods but for the unavailability of the claims by virtue of a withdrawal. Where the claimant presents only speculative and conjectural evidence suggesting that the claimant could have sold the mineral by postulating that mining costs are "infinitesimally small" or non-material, and hypothesizing a milling operation for which there is no market, the claimant has not overcome the presumption of non marketability or the Government's prima facie case.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Evidence
Prima Facie Case

When the Government contests a Native allotment application, it bears the burden of going forward with evidence sufficient to establish a prima facie case that the Native allotment applicant did not satisfy the use and occupancy requirements of the Act of May 17, 1906, *as amended*, 43 U.S.C. §§ 270-1 through 270-3 (1970), whereupon the ultimate burden of persuasion rests with the applicant to overcome that case by a preponderance of the evidence. In determining whether the Government has established a prima facie case, an administrative law judge may properly consider the evidence offered by the Government in its case-in-chief together with the evidence presented by a Native village corporation, which, claiming an interest in the land at issue adverse to the applicant, had properly been allowed to intervene in support of the Government's position as a full party in the proceeding.

United States v. Heirs of Pat P. Pestrikoff, 167 IBLA 361 (Feb. 2, 2006).

Evidence
Prima Facie Case

An administrative law judge properly denies a Native allotment application when he correctly concludes that the evidence presented by the Government and the intervenor at a hearing into the validity of the application, considered together, established a prima facie case that the applicant had not satisfied the use and occupancy requirements of the Native Allotment Act, where the applicant, with full knowledge of the potential consequences of the decision, declines to offer any evidence rebutting that case before the close of the hearing record.

United States v. Heirs of Pat P. Pestrikoff, 167 IBLA 361 (Feb. 2, 2006).

Evidence
Sufficiency

When BLM cancels a Private Maintenance and Care Agreement, the adopter has the burden of establishing that BLM's action was improper.

Stefanie Lee, 151 IBLA 1 (Oct. 14, 1999).

Evidence
Sufficiency

In the absence of any evidence in the case file that a mining claim fee waiver certification was received by BLM, the legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them will support a finding that the document was not timely filed. Although the presumption is rebuttable by evidence to the contrary, a statement that a document was enclosed in the same envelope with other documents that were received by BLM must be corroborated by other evidence.

Debbee Hosko, 158 IBLA 4 (Nov. 5, 2002).

Evidence
Sufficiency

When following a hearing in a mining claim contest, the administrative law judge bases his validity determination on his own economic analysis of mining the claim, utilizing the testimony and exhibits provided by the parties' expert witnesses, and that analysis involves choices of what evidence to rely on based on the judge's weighing of sometimes conflicting evidence, the Board has a long-standing reluctance to overturn the judge's findings. The basis for this deference is the fact that the judge who presides over a hearing has the opportunity to observe the witnesses and is in the best position to evaluate the weight to be given to conflicting testimony. Nevertheless, the Board will closely examine the judge's findings in order to ensure that they are legally sound and supported by the record.

United States v. Geoffrey J. Garcia, Charlotte M. Garcia, 161 IBLA 235 (May 5, 2004).

Evidence
Sufficiency

A prerequisite of a valid mining claim subject to patent is a discovery of a valuable deposit of minerals of such quality and in such quantity as to justify a person of ordinary prudence in the further expenditure of his labor and capital with a reasonable prospect of success in developing a valuable mine. A finding of no discovery may be sustained despite a report reflecting relatively high grade samples when the evidence discloses problems in the sampling technique used which preclude reliance upon the samples to provide a reasonable estimate of the grade of the resource.

Moon Mining Co. v. Hecla Mining Co., 161 IBLA 334 (June 2, 2004).

Evidence
Sufficiency

In the absence of any evidence in the case file that a mining claim fee waiver certification was received by BLM, the legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them will support a finding that the document was not timely filed. Although the presumption is rebuttable by evidence to the contrary, an assertion that a waiver certification was filed with BLM is insufficient in the absence of a copy of the waiver certification and corroboration that the document was received by BLM.

Ed Sorrells, 164 IBLA 379 (Feb. 10, 2005).

Evidence
Sufficiency

Although this Board has *de novo* review authority, we ordinarily will not disturb a Judge's findings of fact based on credibility determinations where they are supported by substantial evidence. The basis for this deference is the fact that the Judge who presides over a hearing has the opportunity to observe the demeanor of the witnesses and is in the best position to judge the weight to be given to conflicting testimony.

United States v. Robert W. and Marjorie E. Miller, 165 IBLA 342 (May 9, 2005).

Evidence
Sufficiency

Photographic evidence or a report from a veterinarian or a BLM official will ordinarily constitute sufficient evidence of the adopter's treatment of the adopted animal.

Elizabeth Box, 166 IBLA 50 (June 14, 2005).

Evidence
Sufficiency

Credible reports by third parties regarding the condition of adopted animals may be used in conjunction with proof of the deteriorating condition of the animals to provide support to a BLM finding of substandard care.

Elizabeth Box, 166 IBLA 50 (June 14, 2005).

Evidence
Sufficiency

While the Board generally accords substantial deference to the findings of an Administrative Law Judge with respect to conflicting evidence, such deference is not absolute, and the Board will closely examine the judge's findings in order to ensure that they are legally sound and supported by the record.

United States v. Lyle I. Thompson, et al., 168 IBLA 64 (Mar. 16, 2006).

Evidence
Sufficiency

Although "willfulness" is basically a subjective standard of the trespasser's intent, it may be proved by objective facts. Thus, in determining whether the actions of grazing trespassers are "willful," intent sufficient to establish willfulness may be shown by evidence which objectively shows that the circumstances did not comport with the notion that the trespasser acted in good faith or innocent mistake, or that his conduct was so lacking in reasonableness or responsibility that it became reckless or negligent. A finding that a trespass was willful or knowing may be negated by a good faith belief that the requirement did not apply in the circumstances of a given case. Where a decision by an administrative law judge holds that a permittee may have had a good faith belief that it was not required to maintain or repair the fence and workings of an exclosure, and such conclusion is supported by substantial evidence in the record, his holding affirming BLM's determination that the failure to repair or maintain the site was willful negligence is properly reversed.

Tabor Creek Cattle Company v. Bureau of Land Management, 170 IBLA 1 (Aug. 29, 2006).

Evidence
Sufficiency

A decision of an administrative law judge finding that a Native allotment applicant's use and occupancy before the date of withdrawal of land from appropriation was not established by a preponderance of the evidence will be affirmed on appeal where the evidence fails to establish qualifying use and occupancy of any particular location potentially exclusive of others that was substantially continuous in nature and not intermittent. Where evidence shows that the applicant's use and occupancy, to the extent it was qualifying, began at the earliest in 1953, but the land had been withdrawn from appropriation in 1952, the contestees did not preponderate. Where the evidence failed to show that a claimant's use would put others on notice of his superior claim, but rather indicates common use by large numbers of residents, potential exclusivity is not shown.

United States v. Heirs of Harlan L. Mahle, 171 IBLA 330 (June 29, 2007).

Evidence
Weight

When following a hearing in a mining claim contest, the administrative law judge bases his validity determination on his own economic analysis of mining the claim, utilizing the testimony and exhibits provided by the parties' expert witnesses, and that analysis involves choices of what evidence to rely on based on the judge's weighing of sometimes conflicting evidence, the Board has a long-standing reluctance to overturn the judge's findings. The basis for this deference is the fact that the judge who presides over a hearing has the opportunity to observe the witnesses and is in the best position to evaluate the weight to be given to conflicting testimony. Nevertheless, the Board will closely examine the judge's findings in order to ensure that they are legally sound and supported by the record.

United States v. Geoffrey J. Garcia, Charlotte M. Garcia, 161 IBLA 235 (May 5, 2004).

Evidence
Weight

Although this Board has *de novo* review authority, we ordinarily will not disturb a Judge's findings of fact based on credibility determinations where they are supported by substantial evidence. The basis for this deference is the fact that the Judge who presides over a hearing has the opportunity to observe the demeanor of the witnesses and is in the best position to judge the weight to be given to conflicting testimony.

United States v. Robert W. and Marjorie E. Miller, 165 IBLA 342 (May 9, 2005).

Evidence
Weight

While the Board generally accords substantial deference to the findings of an Administrative Law Judge with respect to conflicting evidence, such deference is not absolute, and the Board will closely examine the judge's findings in order to ensure that they are legally sound and supported by the record.

United States v. Lyle I. Thompson, et al., 168 IBLA 64 (Mar. 16, 2006).

Evidence
Weight

Where a party disagrees with the weight given to the evidence but has not demonstrated that the Administrative Law Judge misunderstood the factual issues presented or otherwise committed a clear error in evaluating the evidence, the Board will not substitute its judgment on weighing the evidence for that of the Administrative Law Judge.

IMC Kalium Carlsbad, Inc., Potash Association of New Mexico; Yates Petroleum Corporation; Pogo Producing Company; Bureau of Land Management, 170 IBLA 25 (Sept. 7, 2006).

Exchanges of Land
Generally

The notation on the public land records of the Department of the Interior of a proposal to exchange lands under the Federal Land Exchange Facilitation Act of 1988, *as amended*, 43 U.S.C. § 1716 (1994), segregates the land so noted from all forms of appropriation under the mining laws for a period not to exceed 5 years.

National Cement Company of California, 156 IBLA 131 (2001).

Exchanges of Land
Generally

BLM may dispose of lands by exchange under section 206(a) of FLPMA, 43 U.S.C. § 1716(a) (1994), where it determines that the public interest will be well served by making that exchange. BLM has discretion to decide how to balance all of the statutory factors when making a public interest determination. A decision approving a land exchange will be affirmed where BLM found that the exchange will result in more logical and efficient management of the BLM lands in the area, was in accordance with existing land-use planning documents, and would provide significant benefits to the public for general recreation, wilderness management, riparian resources, and cultural resources, and where that finding is not successfully challenged on appeal. BLM's decision is properly affirmed where the loss of recreational use of the selected parcel was balanced by the gain of recreational use on the acquired lands and this loss was minimal, due to the availability of other lands near the selected parcel providing superior recreational values.

Anthony Huljev, 152 IBLA 127 (Apr. 3, 2000).

Exchanges of Land
Generally

BLM may dispose of lands by exchange under section 206(a) of FLPMA, 43 U.S.C. § 1716(a) (1994), where it determines that the public interest will be well served by making that exchange. BLM has discretion to decide how to balance all of the statutory factors when making a public interest determination. A decision approving a land

exchange will be affirmed where the exchange will result in more logical and efficient management of the BLM lands in the area and is in accordance with existing land-use planning documents.

Wade Patrick Stout, et al., 153 IBLA 13 (July 13, 2000).

Exchanges of Land
Generally

A protest against an exchange is properly denied where the protestant did not establish that the proposed exchange would be contrary to provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1716 (1994), or that the exchange will contravene the public interest. Disagreement as to what is in the public interest does not show error in BLM's determination.

Daniel E. Brown, 153 IBLA 131 (Aug. 16, 2000).

Exchanges of Land
Generally

A party challenging an appraisal determining fair market value is generally required to either show error in the methodology used in determining fair market value or, alternatively, submit his own appraisal establishing fair market value, failing in which the BLM appraisal is properly upheld.

Daniel E. Brown, 153 IBLA 131 (Aug. 16, 2000).

Exchanges of Land
Generally

The notation on the public land records of the Department of the Interior of an offer to exchange lands segregates the land so noted from all forms of appropriation under the mining laws for a period not to exceed 5 years. A mining claim located while the segregation is in effect is null and void ab initio and affords the locator no rights.

Tri-Star Holdings, Ltd., 153 IBLA 201 (Aug. 7, 2000).

Exchanges of Land
Generally

A mining claimant who locates lode mining claims on lands segregated from appropriation under the mining laws gains no rights to those lands by virtue of such a location. However, to the extent the mining claimant holds placer claims for the same lands which predate the segregation, the mining claimant may have rights to known lodes or veins in accordance with 30 U.S.C. § 37 (1994).

Tri-Star Holdings, Ltd., 153 IBLA 201 (Aug. 7, 2000).

Exchanges of Land
Generally

An appeal of a decision implementing a land exchange is properly dismissed as moot when it is filed after legal title to the land has been transferred, BLM no longer has jurisdiction over the lands transferred out of Government ownership, and appellant's requested relief cannot be afforded.

Michael v. McLucas, 154 IBLA 42 (Nov. 2, 2000).

Exchanges of Land
Generally

4BLM properly declares a lode mining claim null and void ab initio in its entirety where, at the time of location, all of the public land encompassed by the claim was segregated from mineral entry, pursuant to section 206(i)(1) of the Federal Land Policy and Management Act of 1976, *as amended*, 43 U.S.C. § 1716(i)(1) (1994), and 43 C.F.R. § 2202.1(b), by virtue of a notation on the public land records of the filing of a proposed land exchange.

William H. Shepherd, 157 IBLA 134 (Aug. 6, 2002).

Exchanges of Land
Generally

Pursuant to 43 C.F.R. § 2200.0-6(g), land acquired through a land exchange automatically becomes part of the BLM district in which it is located and is subject to management under the applicable resource management plan. BLM therefore need not amend the applicable resource management plan to specifically address the acquired land before approving a plan of operations to continue exploration within a project area that includes lands obtained pursuant to a land exchange.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

Exchanges of Land
Generally

Under 43 U.S.C. § 1711(a) (2000), the preparation and maintenance of an inventory of all public lands and their resource and other values "shall not, of itself, change or prevent change of the management or use of public lands." BLM therefore need not wait until an inventory of all the lands acquired through a land exchange has been completed before approving a mining plan of operations for an exploration project area that includes acquired lands where it is consistent with current management of a checkerboard pattern of adjacent lands on which exploration has been undertaken as part of the project.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

Exchanges of Land
Generally

In order to become a "party to a case" involving BLM's consideration of a land exchange pursuant to section 206 of FLPMA, a third party must file a timely protest of the proposed exchange as provided in 43 C.F.R. § 2201.7-1(b) following BLM's issuance of a notice of its decision. Where a party fails to do so, its appeal from a subsequent BLM decision denying timely-filed protests by other parties and proceeding with the exchange is properly dismissed for lack of standing under 43 C.F.R. § 4.410(a), as it was not a party to the case.

Committee for Idaho's High Desert, 159 IBLA 370 (July 16, 2003).

Exchanges of Land
Generally

The scope of the environmental impacts to be considered in an EIS for a proposed land exchange includes the indirect effects which, although later in time, are still reasonably foreseeable. Indirect effects of a land exchange may include the impacts of the proposed use of the selected lands when this land use could not occur without the exchange. A challenge to an exchange on the basis of the scope of the impacts from mining operations considered in the EIS is properly denied when the selected lands are located adjacent to an ongoing mining operation, the lands are encompassed by mining and mill site claims located by the proponent, and it appears these mining operations would be conducted under the mining law in the absence of an exchange.

Center for Biological Diversity, et al., 162 IBLA 268 (Aug. 16, 2004).

Exchanges of Land
Generally

In the preparation of an EIS, BLM is obligated to assess alternatives to a proposed action including the no-action alternative and reasonable alternatives which are feasible, will accomplish the intended purpose, and will avoid or minimize the adverse impacts of the action upon the environment. A proposed land exchange will be upheld despite a failure to consider a no-mining alternative in detail when the selected lands are encumbered by mining and mill site claims and located adjacent to an ongoing mining operation such that a no-mining alternative is based on a highly speculative assumption of the invalidity of the claims.

Center for Biological Diversity, et al., 162 IBLA 268 (Aug. 16, 2004).

Exchanges of Land
Generally

BLM may not properly temporarily segregate lands from entry under the mining laws under the authority of section 206(i) of the Federal Land Policy and Management Act of 1976 (FLPMA), *as amended*, 43 U.S.C. § 1716(i) (2000), and 43 C.F.R. § 2201.1-2 in the absence of a proposal to exchange Federal lands. A statement in a resource management plan to the effect that upwards of 149,000 acres of Federal lands are "available for exchange" is not a "proposal" made by BLM to exchange lands within the meaning of 43 C.F.R. Subpart 2201, as it does not identify the lands to be exchanged or the parties seeking the exchange. BLM's improper use of this temporary segregation authority effectively works a withdrawal of the lands without compliance with the procedural requirements of section 204 of FLPMA, 43 U.S.C. § 1714 (2000).

Michael L. Carver, et al., 163 IBLA 77 (Sept. 8, 2004).

Exchanges of Land
Generally

Pursuant to section 206(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1716(a) (2000), BLM may dispose of land by exchange where it determines that the public interest will be well served by making the exchange. In determining whether a proposed exchange is in the public interest, the Secretary shall consider the factors contained in section 206(a) of FLPMA and in 43 C.F.R. § 2200.0-6(b). BLM bears the responsibility of determining what is in the public interest, and has discretion in balancing the stated factors in making a public interest determination. A difference of opinion as to what is in the public interest is no basis for reversal of a BLM decision that is otherwise supported by the record.

Charles W. Nolen, 166 IBLA 197 (July 26, 2005).

Exchanges of Land
Generally

BLM has discretion in determining how to involve the public in determining whether a proposed exchange is in the public interest. There is no regulatory requirement that BLM hold a public meeting to discuss an exchange proposal in each case. Where the record on appeal evidences extensive effort by BLM to involve all segments of the public, and numerous opportunities for public involvement in the exchange process were offered, a BLM decision will not be set aside for failure to involve the public as required by section 103(d) of FLPMA, 43 U.S.C. § 1702(d) (2000).

Charles W. Nolen, 166 IBLA 197 (July 26, 2005).

Exchanges of Land
Generally

A BLM appraisal and related updates determining fair market value of selected public land and offered private land that is reviewed and approved by a non-agency appraiser to ensure impartiality is properly upheld on appeal where the party challenging the appraisal and related updates fails to show error in the methodology used by the agency appraiser in determining fair market value, or fails to submit a contrary appraisal establishing the fair market value of the selected public land and offered private land.

Charles W. Nolen, 166 IBLA 197 (July 26, 2005).

Exchanges of Land
Generally

BLM may dispose of lands by exchange under section 206(a) of FLPMA, 43 U.S.C. § 1716(a) (2000), where it determines that the public interest will be well served by making the exchange. BLM has discretion to decide how to balance all of the statutory factors when making a determination of the public interest. A decision approving a land exchange will be affirmed where the exchange will result in more logical and efficient management of the BLM lands in the area and is in accordance with existing land-use planning documents.

Shasta Coalition for the Preservation of Public Land; Sacramento River Preservation Trust, 172 IBLA 333 (Sept. 28, 2007).

Exchanges of Land
Forest Exchanges

Pursuant to 43 C.F.R. § 2202.1(b), the filing of a notice of an offer for forest exchange with the authorized officer and the notation of such proposed exchange on the public land records segregated the National Forest System lands included in the proposed exchange from appropriation, location, or entry under the general mining laws for a period not to exceed 5 years. Mining claims located on these lands while the segregative effect is operative are null and void ab initio.

Edward A. Snider, Rebecca A. Snider, 152 IBLA 309 (June 22, 2000).

Federal Employees and Officers
Authority to Bind Government

A party claiming reliance upon a misrepresentation by a Department employee must be ignorant of the true facts. When a party successfully bidding at an oil and gas lease sale receives a bidder's receipt stating monies owing, the bidder cannot claim ignorance of the fact that such monies are due.

Carlyle, Inc., 164 IBLA 178 (Dec. 16, 2004).

Federal Employees and Officers
Authority to Bind Government

A statement by a BLM employee in a notice of expiration implying that a hardrock lease that has expired under applicable regulations may be renewed does not bind or estop BLM from rejecting a renewal application filed after that notice because the United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

Ron Coleman Mining, Inc., 172 IBLA 387 (Oct. 1, 2007).

Federal Land Exchange Facilitation Act of 1988
Generally

The notation on the public land records of the Department of the Interior of a proposal to exchange lands under the Federal Land Exchange Facilitation Act of 1988, *as amended*, 43 U.S.C. § 1716 (1994), segregates the land so noted from all forms of appropriation under the mining laws for a period not to exceed 5 years.

National Cement Company of California, 156 IBLA 131 (2001).

Federal Land Policy and Management Act of 1976
Generally

Where, under the general authority of the Secretary of the Interior to regulate the use of public lands pursuant to FLPMA, BLM makes a determination to limit off-road vehicle use in a certain area of public lands, one challenging that determination must provide compelling reasons for modification or reversal. Failure to do so will result in the determination being affirmed on appeal when it is supported by the record.

Rocky Mountain Trials Association, 156 IBLA 64 (2001).

Federal Land Policy and Management Act of 1976
Generally

FLPMA establishes that BLM must manage the public lands for multiple uses by the public, including outdoor recreation. FLPMA does not contain any *per se* prohibition of particular types of off-road vehicle use; rather, BLM regulates and establishes criteria for the use and operation of such vehicles on the public lands under its regulations at 43 C.F.R. Subpart 8340. The Board will not reverse under FLPMA a BLM decision to create a jeep trail in a recreation area, and to close others in nearby sensitive environmentally protected areas, where such action was expressly envisioned in the relevant land use planning documents.

Colorado Mountain Club, et al., 161 IBLA 371 (June 4, 2004).

Federal Land Policy and Management Act of 1976
Generally

Because coalbed methane (CBM) is a fluid gas mineral, a land use planning decision that opens a planning area to oil and gas leasing opens it to CBM exploration and development as well.

National Wildlife Federation, Biodiversity Conservation Alliance, Wyoming Outdoor Council, Wyoming Wildlife Federation, 169 IBLA 146 (June 13, 2006).

Federal Land Policy and Management Act of 1976
Generally

Section 304(c) of the Federal Land Policy and Management Act of 1976, *as amended*, 43 U.S.C. § 1734(c) (2000), authorizes a refund when "any person has made a payment under any statute relating to the . . . use, or other disposition of public lands which is not required or is in excess of the amount required by applicable law and

the regulations issued by the Secretary . . . ." For lands subject to a railroad easement under the General Right-of-Way Act of March 3, 1875, the railroad obtained authority to issue rights-of-way. Where BLM compels an entity which has obtained a proper right-of-way from the railroad to obtain a right-of-way from the Department and pay annual fees to the Government for the right-of-way, and then determines the Federal right-of-way was invalid, BLM abuses its discretion by denying a refund of amounts paid for the unauthorized right-of-way.

ST Services, 169 IBLA 207 (June 27, 2006).

Federal Land Policy and Management Act of 1976
Generally

Nothing in the Federal Land Policy and Management Act or the National Environmental Policy Act, or their implementing regulations, requires the Board to conclude that BLM cannot revise its method of calculating the number of wells remaining to be drilled under a Reasonably Foreseeable Development (RFD) scenario, or that the degree of short- and long-term surface disturbance resulting from oil and gas activities is an improper reference point in ascertaining the present status of the RFD scenario.

Wyoming Outdoor Council, Wyoming Wildlife Federation, 170 IBLA 240 (Sept. 29, 2006).

Federal Land Policy and Management Act of 1976
Generally

When BLM coordinates an oil and gas lease sale with the State of Wyoming in accordance with applicable memoranda of understanding, there is no violation of section 202(c)(9) of the Federal Land Policy and Management Act of 1976, *as amended*, 43 U.S.C. § 1712(c)(9) (2000), as contended by appellants.

Wyoming Outdoor Council, et al., 171 IBLA 108 (Feb. 20, 2007).

Federal Land Policy and Management Act of 1976
Generally

BLM's decision to issue oil and gas leases subject to a timing limitation standard without also imposing the State of Wyoming's policies, plans, and guidelines does not amount to a failure to take an "action necessary to prevent unnecessary or undue degradation of the [public] lands" under section 302(b) of the Federal Land Policy and Management Act of 1976, *as amended*, 43 U.S.C. § 1732(b) (2000).

Wyoming Outdoor Council, et al., 171 IBLA 108 (Feb. 20, 2007).

Federal Land Policy and Management Act of 1976
Generally

BLM's authority to manage public lands includes discretionary authority to close public lands to protect the public. Under 43 C.F.R. § 8364.1(a), BLM may issue an order to close or restrict use of designated public lands to protect persons, property, and public lands and resources. That authority is independent of the initial designation of off-road vehicle use in the land planning process. Provided BLM has satisfied the requirements in 43 C.F.R. § 8364.1(b) relating to the period and terms of the closure or restriction and publication thereof, the Board will not disturb a decision to close public lands if it finds BLM made a reasoned analysis, considering all relevant factors, that is supported by the record, and there is otherwise no compelling reason to reverse it.

Salinas Ramblers Motorcycle Club, et al., 171 IBLA 396 (July 10, 2007).

Federal Land Policy and Management Act of 1976
Airstrips

A BLM decision to allow limited and reasonable commercial aircraft use of an airstrip on public land will be upheld on appeal absent a showing of compelling reasons for modification or reversal. Relevant factors for consideration of whether to authorize the expansion and use include the availability of other alternatives and the reasonableness of the authorized use.

Southern Utah Wilderness Alliance, 152 IBLA 216 (Apr. 28, 2000).

Federal Land Policy and Management Act of 1976
Applications
Generally

An application for a minimum impact permit to conduct filming activities on Federal land pursuant to 43 U.S.C. § 1732 (1994) and 43 C.F.R. § 2920.2-2(a) is properly granted where the proposed use is in conformance with BLM plans, policies and programs, local zoning ordinances and any other requirements, and will not cause appreciable damage or disturbance to the public lands, their resources or improvements.

Southern Utah Wilderness Alliance, 151 IBLA 237 (Dec. 16, 1999).

Federal Land Policy and Management Act of 1976
Applications
Generally

Anyone organizing an event that poses an appreciable risk of damage to public land or related water resource values must apply for and receive a special recreation permit from BLM. A not-for-profit motorcycle club promoting a competitive group event on public lands requiring a special recreation permit falls within the class of persons or groups subject to section 304(b) of FLPMA, 43 U.S.C. § 1734(b) (2000), and its implementing regulations at 43 C.F.R. § Subpart 2932, and is not entitled to a waiver of cost recovery fees pursuant to 43 C.F.R. § 2932.34.

Bookcliff Rattlers Motorcycle Club, 171 IBLA 6 (Dec. 20, 2006).

Federal Land Policy and Management Act of 1976
Applications
Generally

Section 304(b) of FLPMA, 43 U.S.C. § 1734(b) (2000), authorizes the Secretary to require a deposit that is intended to reimburse the United States for reasonable costs incurred by the Secretary in processing applications relating to the public lands. It does not require the Secretary to offset the Department's reasonable costs by expenses the applicant may have incurred in furtherance of its application, even if they in some measure benefit the general public interest or serve the public good.

Bookcliff Rattlers Motorcycle Club, 171 IBLA 6 (Dec. 20, 2006).

Federal Land Policy and Management Act of 1976
Applications
Generally

BLM may not recover management overhead costs as reasonable costs associated with applications for special recreation permits on the public lands. 43 U.S.C. § 1734(b) (2000).

Bookcliff Rattlers Motorcycle Club, 171 IBLA 6 (Dec. 20, 2006).

Federal Land Policy and Management Act of 1976
Applications
Minimum Impact Permit

An application for a minimum impact permit to conduct filming activities on Federal land pursuant to 43 U.S.C. § 1732 (1994) and 43 C.F.R. § 2920.2-2(a) is properly granted where the proposed use is in conformance with BLM plans, policies and programs, local zoning ordinances and any other requirements, and will not cause appreciable damage or disturbance to the public lands, their resources or improvements.

Southern Utah Wilderness Alliance, 151 IBLA 237 (Dec. 16, 1999).

Federal Land Policy and Management Act of 1976
Appraisals

A BLM appraisal and related updates determining fair market value of selected public land and offered private land that is reviewed and approved by a non-agency appraiser to ensure impartiality is properly upheld on appeal where the party challenging the appraisal and related updates fails to show error in the methodology used by the agency appraiser in determining fair market value, or fails to submit a contrary appraisal establishing the fair market value of the selected public land and offered private land.

Charles W. Nolen, 166 IBLA 197 (July 26, 2005).

Federal Land Policy and Management Act of 1976
Coordination with State and Local Governments

When BLM coordinates an oil and gas lease sale with the State of Wyoming in accordance with applicable memoranda of understanding, there is no violation of section 202(c)(9) of the Federal Land Policy and Management Act of 1976, *as amended*, 43 U.S.C. § 1712(c)(9) (2000), as contended by appellants.

Wyoming Outdoor Council, et al., 171 IBLA 108 (Feb. 20, 2007).

Federal Land Policy and Management Act of 1976
Coordination with State and Local Governments

BLM's decision to issue oil and gas leases subject to a timing limitation standard without also imposing the State of Wyoming's policies, plans, and guidelines does not amount to a failure to take an "action necessary to prevent unnecessary or undue degradation of the [public] lands" under section 302(b) of the Federal Land Policy and Management Act of 1976, *as amended*, 43 U.S.C. § 1732(b) (2000).

Wyoming Outdoor Council, et al., 171 IBLA 108 (Feb. 20, 2007).

Federal Land Policy and Management Act of 1976
Correction of Conveyance Documents

A homestead entry patent may be amended, pursuant to section 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (2000), when the applicant demonstrates by a preponderance of the evidence that the patent did not convey lands that the applicant and the United States mutually intended to convey by the patent. Unless otherwise shown, equity and justice favor such correction.

Ramona & Boyd Lawson, 159 IBLA 184 (June 4, 2003).

Federal Land Policy and Management Act of 1976
Correction of Conveyance Documents

Under section 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (2000), the Secretary has authority to correct errors in patents and conveyance documents where an error in fact requires correction and considerations of equity and justice favor such correction. Where an 1887 patent issued for a lode mining claim on its face did not make reference to a millsite by name, lot, survey number or description; the millsite survey number or description was not incorporated into the land description in the patent; and where Departmental records confirm that the separate mineral entry for the millsite was canceled by a final Departmental decision in 1894, BLM properly denies relief under section 316 of FLPMA. Absent proof of error in the patent or conveyancing document, this Board will affirm the decision denying relief.

Beau Hickory & Patricia L. Tinnell, 160 IBLA 166 (Oct. 23, 2003).

Federal Land Policy and Management Act of 1976
Correction of Conveyance Documents

An applicant seeking a patent correction pursuant to(non-Indian) homestead certificate under the Homestead Act o 43 U.S.C. § 1746 (2000) must establish that an error in fact was made. No error is established in the Department's issuance of a regular f 1862 to applicant's predecessor, now asserted to have been an Indian, when his entry was made after the enactment of sec. 6 of the Indian General Allotment Act of 1887, *i.e.*, when it might have been made under the general homestead law, and nothing in the predecessor's homestead record indicated his Indian status or an intent to have patent issue under the Indian Homestead Act of July 4, 1884, with restrictions on alienation, rather than under the Homestead Act of 1862, with no restrictions on alienation.

Ray M. Chavarria 165 IBLA 161 (Mar. 31, 2005).

Federal Land Policy and Management Act of 1976
Correction of Conveyance Documents

Section 6 of the Indian General Allotment Act of 1887 declared every native born Indian who had taken up residence separate and apart from his tribe and adopted the habits of civilized life to be a citizen of the United States and entitled to all the rights, privileges and immunities of such citizens, which included the privilege.

Ray M. Chavarria 165 IBLA 161 (Mar. 31, 2005).

Federal Land Policy and Management Act of 1976
Correction of Conveyance Documents

An applicant seeking to correct a patent pursuant to 43 U.S.C. § 1746 (Supp. 2003) must establish that an error in fact was made. No error is established in the President's issuance of a certificate under the Homestead Act of 1862 to the applicant's predecessor, subject to a mineral reservation to the United States, when the patentee agreed in writing to a reservation of the mineral estate. The argument of a successor in interest to a patent that the Government made mistakes in issuing the patent 70 years previously in pursuit of the desire to reform the patent for personal gain does not constitute an "error in the conveyance document" subject to correction under FLPMA section 316.

Steve H. Crooks and Era Lea Crooks, 167 IBLA 39 (Sept. 27, 2005).

Federal Land Policy and Management Act of 1976
Deposits and Forfeitures

BLM properly cancels a sale of a parcel of public land offered at a competitive sale and declares the bid deposit forfeited in accordance with 43 C.F.R. § 2711.3-1(d) where payment of the full bid price is not submitted to BLM prior to the expiration of 180 days from the date of the sale.

El Monte Bindery Systems, Inc., 164 IBLA 243 (Jan. 6, 2005).

Federal Land Policy and Management Act of 1976
Disclaimers of Interest

Section 315 of FLPMA, 43 U.S.C. § 1745 (2000), authorizes the Secretary of the Interior to issue a recordable disclaimer of interest in any lands where the disclaimer will help remove a cloud on the title of such lands and where the Secretary makes one of several determinations.

James D. and Joyce J. Brunk, James N. Smoak, et al., 158 IBLA 284 (Mar. 6, 2003).

Federal Land Policy and Management Act of 1976
Disclaimers of Interest

Applications for recordable disclaimers of interest filed by owners of lands lying to the east of the meander line of the Snake River south of the township line forming the south boundary of Grand Teton National Park are properly rejected for lands lying north of that boundary when the court judgments relied on by the land owners in support of their applications incorporated stipulations expressly excepting lands north of that township boundary from the terms of the settlement and the United States claims ownership of the lands in question.

James D. and Joyce J. Brunk, James N. Smoak, et al., 158 IBLA 284 (Mar. 6, 2003).

Federal Land Policy and Management Act of 1976
Disclaimers of Interest

Where the Secretary of the Interior determines that a record interest of the United States has terminated by operation of law or is otherwise invalid, section 315 of FLPMA, 43 U.S.C. § 1745 (2000), authorizes the Secretary of the Interior to issue a recordable disclaimer of interest in any lands where the disclaimer will help remove a cloud on the title of such lands. Where appellant filed an application for a recordable disclaimer of an interest in land it does not own and in which it has no interest, there can be no cloud on the applicant's title that could be disclaimed pursuant to section 315, and the application is properly denied.

Brooks Land & Cattle Company, LLC, 171 IBLA 118 (Mar. 15, 2007).

Federal Land Policy and Management Act of 1976
Exchanges

BLM may dispose of lands by exchange under section 206(a) of FLPMA, 43 U.S.C. § 1716(a) (1994), where it determines that the public interest will be well served by making that exchange. BLM has discretion to decide how to balance all of the statutory factors when making a public interest determination. A decision approving a land exchange will be affirmed where BLM found that the exchange will result in more logical and efficient management of the BLM lands in the area, was in accordance with existing land-use planning documents, and would provide significant benefits to the public for general recreation, wilderness management, riparian resources, and cultural

resources, and where that finding is not successfully challenged on appeal. BLM's decision is properly affirmed where the loss of recreational use of the selected parcel was balanced by the gain of recreational use on the acquired lands and this loss was minimal, due to the availability of other lands near the selected parcel providing superior recreational values.

Anthony Huljev, 152 IBLA 127 (Apr. 3, 2000).

Federal Land Policy and Management Act of 1976
Exchanges

BLM may dispose of lands by exchange under section 206(a) of FLPMA, 43 U.S.C. § 1716(a) (1994), where it determines that the public interest will be well served by making that exchange. BLM has discretion to decide how to balance all of the statutory factors when making a public interest determination. A decision approving a land exchange will be affirmed where the exchange will result in more logical and efficient management of the BLM lands in the area and is in accordance with existing land-use planning documents.

Wade Patrick Stout, et al., 153 IBLA 13 (July 13, 2000).

Federal Land Policy and Management Act of 1976
Exchanges

A protest against an exchange is properly denied where the protestant did not establish that the proposed exchange would be contrary to provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1716 (1994), or that the exchange will contravene the public interest. Disagreement as to what is in the public interest does not show error in BLM's determination.

Daniel E. Brown, 153 IBLA 131 (Aug. 16, 2000).

Federal Land Policy and Management Act of 1976
Exchanges

A party challenging an appraisal determining fair market value is generally required to either show error in the methodology used in determining fair market value or, alternatively, submit his own appraisal establishing fair market value, failing in which the BLM appraisal is properly upheld.

Daniel E. Brown, 153 IBLA 131 (Aug. 16, 2000).

Federal Land Policy and Management Act of 1976
Exchanges

BLM properly declares a lode mining claim null and void *ab initio* in its entirety where, at the time of location, all of the public land encompassed by the claim was segregated from mineral entry, pursuant to section 206(i)(1) of the Federal Land Policy and Management Act of 1976, *as amended*, 43 U.S.C. § 1716(i)(1) (1994), and 43 C.F.R. § 2202.1(b), by virtue of a notation on the public land records of the filing of a proposed land exchange.

William H. Shepherd, 157 IBLA 134 (Aug. 6, 2002).

Federal Land Policy and Management Act of 1976
Exchanges

Pursuant to 43 C.F.R. § 2200.0-6(g), land acquired through a land exchange automatically becomes part of the BLM district in which it is located and is subject to management under the applicable resource management plan. BLM therefore need not amend the applicable resource management plan to specifically address the acquired land before approving a plan of operations to continue exploration within a project area that includes lands obtained pursuant to a land exchange.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

Federal Land Policy and Management Act of 1976
Exchanges

Under 43 U.S.C. § 1711(a) (2000), the preparation and maintenance of an inventory of all public lands and their resource and other values "shall not, of itself, change or prevent change of the management or use of public lands." BLM therefore need not wait until an inventory of all the lands acquired through a land exchange has been completed before approving a mining plan of operations for an exploration project area that includes acquired lands where it is consistent with current management of a checkerboard pattern of adjacent lands on which exploration has been undertaken as part of the project.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

Federal Land Policy and Management Act of 1976
Exchanges

In order to become a "party to a case" involving BLM's consideration of a land exchange pursuant to section 206 of FLPMA, a third party must file a timely protest of the proposed exchange as provided in 43 C.F.R. § 2201.7-1(b) following BLM's issuance of a notice of its decision. Where a party fails to do so, its appeal from a subsequent BLM decision denying timely-filed protests by other parties and proceeding with the exchange is properly dismissed for lack of standing under 43 C.F.R. § 4.410(a), as it was not a party to the case.

Committee for Idaho's High Desert, 159 IBLA 370 (July 16, 2003).

Federal Land Policy and Management Act of 1976
Exchanges

The scope of the environmental impacts to be considered in an EIS for a proposed land exchange includes the indirect effects which, although later in time, are still reasonably foreseeable. Indirect effects of a land exchange may include the impacts of the proposed use of the selected lands when this land use could not occur without

the exchange. A challenge to an exchange on the basis of the scope of the impacts from mining operations considered in the EIS is properly denied when the selected lands are located adjacent to an ongoing mining operation, the lands are encompassed by mining and mill site claims located by the proponent, and it appears these mining operations would be conducted under the mining law in the absence of an exchange.

Center for Biological Diversity, et al., 162 IBLA 268 (Aug. 16, 2004).

Federal Land Policy and Management Act of 1976
Exchanges

In the preparation of an EIS, BLM is obligated to assess alternatives to a proposed action including the no-action alternative and reasonable alternatives which are feasible, will accomplish the intended purpose, and will avoid or minimize the adverse impacts of the action upon the environment. A proposed land exchange will be upheld despite a failure to consider a no-mining alternative in detail when the selected lands are encumbered by mining and mill site claims and located adjacent to an ongoing mining operation such that a no-mining alternative is based on a highly speculative assumption of the invalidity of the claims.

Center for Biological Diversity, et al., 162 IBLA 268 (Aug. 16, 2004).

Federal Land Policy and Management Act of 1976
Exchanges

BLM may not properly temporarily segregate lands from entry under the mining laws under the authority of section 206(i) of the Federal Land Policy and Management Act of 1976 (FLPMA), *as amended*, 43 U.S.C. § 1716(i) (2000), and 43 C.F.R. § 2201.1-2 in the absence of a proposal to exchange Federal lands. A statement in a resource management plan to the effect that upwards of 149,000 acres of Federal lands are "available for exchange" is not a "proposal" made by BLM to exchange lands within the meaning of 43 C.F.R. Subpart 2201, as it does not identify the lands to be exchanged or the parties seeking the exchange. BLM's improper use of this temporary segregation authority effectively works a withdrawal of the lands without compliance with the procedural requirements of section 204 of FLPMA, 43 U.S.C. § 1714 (2000).

Michael L. Carver, et al, 163 IBLA 77 (Sept. 8, 2004).

Federal Land Policy and Management Act of 1976
Exchanges

Pursuant to section 206(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1716(a) (2000), BLM may dispose of land by exchange where it determines that the public interest will be well served by making the exchange. In determining whether a proposed exchange is in the public interest, the Secretary shall consider the factors contained in section 206(a) of FLPMA and in 43 C.F.R. § 2200.0-6(b). BLM bears the responsibility of determining what is in the public interest, and has discretion in balancing the stated factors in making a public interest determination. A difference of opinion as to what is in the public interest is no basis for reversal of a BLM decision that is otherwise supported by the record.

Charles W. Nolen, 166 IBLA 197 (July 26, 2005).

Federal Land Policy and Management Act of 1976
Exchanges

BLM has discretion in determining how to involve the public in determining whether a proposed exchange is in the public interest. There is no regulatory requirement that BLM hold a public meeting to discuss an exchange proposal in each case. Where the record on appeal evidences extensive effort by BLM to involve all segments of the public, and numerous opportunities for public involvement in the exchange process were offered, a BLM decision will not be set aside for failure to involve the public as required by section 103(d) of FLPMA, 43 U.S.C. § 1702(d) (2000).

Charles W. Nolen, 166 IBLA 197 (July 26, 2005).

Federal Land Policy and Management Act of 1976
Exchanges

A BLM appraisal and related updates determining fair market value of selected public land and offered private land that is reviewed and approved by a non-agency appraiser to ensure impartiality is properly upheld on appeal where the party challenging the appraisal and related updates fails to show error in the methodology used by the agency appraiser in determining fair market value, or fails to submit a contrary appraisal establishing the fair market value of the selected public land and offered private land.

Charles W. Nolen, 166 IBLA 197 (July 26, 2005).

Federal Land Policy and Management Act of 1976
Exchanges

The segregative effect of a proposed land exchange automatically terminates 5 years from the date the segregation is noted on the public land records, but the termination does not instantly restore the lands to the operation of public land laws, including the mining laws. To effectuate the opening of lands to the operation of the public land laws requires a change in the status of the lands noted on the public land records. Lands may not be appropriated under the mining laws prior to the date and time of restoration and opening, and any such attempted appropriation vests no rights against the United States. 43 C.F.R. § 2091.1(b). An opening order may be issued at any time, but is required when the opening date is not specified in the document creating the segregation. 43 C.F.R. § 2091.07(b).

Pilot Plant, Inc., et al., 168 IBLA 169 (Mar. 16, 2006).

Federal Land Policy and Management Act of 1976
Exchanges

Under the notation rule, mining claims located at a time when BLM's records indicate that the lands on which they are located are segregated from mineral entry are void regardless of whether the underlying segregation was proper. The land is not available for entry until such time as the notation is removed and the land is restored to

entry, even if the original notation was made in error or the segregative effect is void, voidable, or has terminated or expired. 43 C.F.R. § 2091.1(b).

Pilot Plant, Inc., et al., 168 IBLA 169 (Mar. 16, 2006).

Federal Land Policy and Management Act of 1976
Exchanges

BLM may dispose of lands by exchange under section 206(a) of FLPMA, 43 U.S.C. § 1716(a) (2000), where it determines that the public interest will be well served by making the exchange. BLM has discretion to decide how to balance all of the statutory factors when making a determination of the public interest. A decision approving a land exchange will be affirmed where the exchange will result in more logical and efficient management of the BLM lands in the area and is in accordance with existing land-use planning documents.

Shasta Coalition for the Preservation of Public Land; Sacramento River Preservation Trust, 172 IBLA 333 (Sept. 28, 2007).

Federal Land Policy and Management Act of 1976
Grazing Leases and Permits

The approval of a proposed action in a Decision Record and Finding of No Significant Impact, following the preparation of an Environmental Assessment, does not constitute an authorization to use the public lands. BLM authorizes use of public land for grazing by issuing grazing permits or leases which specify all grazing use. Allowing cattle to graze on public land without a permit or lease and an annual grazing authorization is a prohibited act under 43 C.F.R. § 4140.1(b)(1)(I).

Badger Ranch, et al. v. Bureau of Land Management, 171 IBLA 285 (May 23, 2007).

Federal Land Policy and Management Act of 1976
Hearings

Departmental regulations do not guarantee every recipient of an adverse BLM decision the right to a hearing. The language of 43 U.S.C. § 1732(c) (1994), allowing for revocation or suspension of a special recreation use permit after "notice and hearing," does not require a formal hearing before an administrative law judge; a special recreation permittee's hearing rights under that section are satisfied when the permittee is given notice of BLM's adverse decision and afforded the right to appeal to the Interior Board of Land Appeals. Although a hearing may be ordered when a question of fact is presented that cannot be resolved on the basis of a written case record, as supplemented by documents or affidavits submitted on appeal, the burden of proof lies with the party requesting the hearing to show adequate evidence or offer of proof to raise adequate doubt that a hearing should be ordered.

Obsidian Services Inc., 155 IBLA 239 (July 19, 2001).

Federal Land Policy and Management Act of 1976
Inventory and Identification

Under 43 U.S.C. § 1711(a) (2000), the preparation and maintenance of an inventory of all public lands and their resource and other values "shall not, of itself, change or prevent change of the management or use of public lands." BLM therefore need not wait until an inventory of all the lands acquired through a land exchange has been completed before approving a mining plan of operations for an exploration project area that includes acquired lands where it is consistent with current management of a checkerboard pattern of adjacent lands on which exploration has been undertaken as part of the project.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

Federal Land Policy and Management Act of 1976
Inventory and Identification

BLM is not required to re-inventory lands that have not been included in a wilderness study area or found to possess wilderness characteristics in a BLM inventory for wilderness suitability even though the lands were determined to have wilderness characteristics in a citizens' group wilderness inventory and were included in an area proposed for wilderness designation in legislation introduced in Congress. The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1711(a) (2000), controls the Secretary's wilderness inventory authority and grants the Secretary the discretion to determine the manner and time of implementation of the statutory mandate to keep a current inventory of the public lands and their resources.

Southern Utah Wilderness Alliance, 163 IBLA 14 (Sept. 3, 2004).

Federal Land Policy and Management Act of 1976
Land-Use Planning

A BLM decision to adopt a range improvement maintenance plan will be affirmed on appeal if the decision is based on a consideration of all relevant factors and is supported by the record, including an environmental assessment which establishes that a careful review of environmental problems has been made, all relevant areas of environmental concern have been identified, and the final determination is reasonable in light of the environmental analysis. A party challenging the BLM decision must show that it was premised on an error of law or fact or that the analysis failed to consider a material environmental question. Unsupported differences of opinion provide no basis for reversal.

National Wildlife Federation, et al., Erik and Tina Barnes, 151 IBLA 104 (Nov. 24, 1999).

Federal Land Policy and Management Act of 1976
Land-Use Planning

A BLM decision to allow limited and reasonable vehicle use consistent with the prewilderness grazing use in a recently designated wilderness area will be upheld on appeal absent a showing of compelling reasons for modification or reversal. Relevant factors for consideration of whether to continue the motorized vehicle authorization include the availability of other alternatives and the reasonableness of the authorized use.

National Wildlife Federation, et al., Erik and Tina Barnes, 151 IBLA 104 (Nov. 24, 1999).

Federal Land Policy and Management Act of 1976
Land-Use Planning

The Secretary is required to provide such access to non-Federally owned land surrounded by public lands which have been designated as wilderness lands as is adequate to secure to the owner of the inholding the reasonable use and enjoyment thereof, in conformance with reasonable rules and regulations applicable to access across public lands.

Erik and Tina Barnes, National Wildlife Federation, et al., 151 IBLA 128 (Nov. 30, 1999).

Federal Land Policy and Management Act of 1976
Land-Use Planning

A finding of no significant impact requiring preparation of an environmental impact statement will be affirmed when the record demonstrates that BLM has considered the relevant environmental concerns, taken a hard look at potential environmental impacts, and made a convincing case that no significant environmental impact will result from the action to be implemented. The adequacy of the record to support a finding of no significant impact is evaluated on the basis of the action which BLM has decided to implement in the absence of connected actions upon which the proposed action depends for its justification or cumulative impacts from past, present, or reasonably foreseeable future actions.

Emerald Trail Riders Association, 152 IBLA 210 (Apr. 28, 2000).

Federal Land Policy and Management Act of 1976
Land-Use Planning

A BLM decision to approve expansion and commercial use of airstrip on public land, to include rights-of-way to commercial providers, will be affirmed on appeal if the decision is based on a consideration of all relevant factors and is supported by the record, including an environmental assessment which establishes that a careful review of environmental problems has been made, all relevant areas of environmental concern have been identified, and the final determination is reasonable in light of the environmental analysis. A party challenging the BLM decision must show that it was premised on an error of law or fact or that the analysis failed to consider a material environmental question. Unsupported differences of opinion provide no basis for reversal.

Southern Utah Wilderness Alliance, 152 IBLA 216 (Apr. 28, 2000).

Federal Land Policy and Management Act of 1976
Land-Use Planning

A BLM decision to allow limited and reasonable commercial aircraft use of an airstrip on public land will be upheld on appeal absent a showing of compelling reasons for modification or reversal. Relevant factors for consideration of whether to authorize the expansion and use include the availability of other alternatives and the reasonableness of the authorized use.

Southern Utah Wilderness Alliance, 152 IBLA 216 (Apr. 28, 2000).

Federal Land Policy and Management Act of 1976
Land-Use Planning

A BLM decision under 43 C.F.R. § 8341.2 to close certain public lands to off-road vehicle use in order to prevent adverse impacts on wildlife and threatened species habitat will not be disturbed on appeal when it is supported by facts of record, absent a showing of compelling reasons for modification or reversal.

Daniel T. Cooper, 154 IBLA 81 (Dec. 13, 2000).

Federal Land Policy and Management Act of 1976
Land-Use Planning

The Board has no jurisdiction to review a BLM decision that there will be fire rehabilitation when that decision was made within the context of a land use plan. Therefore, BLM need not consider a no-action alternative when it concludes that alternative is not in conformance with approved land use plans. However, the Board has jurisdiction to review a BLM decision implementing the rehabilitation plan.

Southern Utah Wilderness Alliance, 154 IBLA 275 (Apr. 16, 2001).

Federal Land Policy and Management Act of 1976
Land-Use Planning

Activity planning implementing an off-highway vehicle project management plan, based upon an environmental assessment sufficient to support an informed judgment, may not be overcome by a mere difference of opinion.

Rocky Mountain Trials Association, 156 IBLA 64 (2001).

Federal Land Policy and Management Act of 1976
Land-Use Planning

A BLM decision approving a land use authorization on the basis of an EA and FONSI will be affirmed on appeal if the decision is based on a consideration of all relevant factors and is supported by the record which establishes that a careful review of environmental problems has been made, all relevant areas of environmental concern have been identified, and the final determination is reasonable in light of the environmental analysis. A party challenging a BLM decision must show that it was premised on an error of law or fact or that the analysis failed to consider a material environmental question. Unsupported differences of opinion provide no basis for reversal.

Las Vegas Valley Action Committee et al., 156 IBLA 110 (2001).

Federal Land Policy and Management Act of 1976
Land-Use Planning

A decision rejecting an Indian Allotment application is properly affirmed where the land sought to be entered has been classified for retention in public ownership in the applicable resource management plan. The Board has no jurisdiction to review such a land-use plan or the classifications contained therein.

Jane Delorme, et al., 158 IBLA 260 (Feb. 3, 2003).

Federal Land Policy and Management Act of 1976
Land-Use Planning

When an application for grazing preferences in two allotments outside a grazing district (the majority of whose acreage had been acquired from the State by exchange) is denied by BLM on the basis that BLM is in the process of developing its long-term land use plan through the resource management planning process and continued grazing on the allotments is an issue to be addressed therein, it is error for the administrative law judge considering the appeal to expand the scope of the proceeding to engage in an initial adjudication of the present grazing preference holders' qualifications.

Virgil E. Mercer and Michael J. Mercer v. Bureau of Land Management, 159 IBLA 17 (May 8, 2003).

Federal Land Policy and Management Act of 1976
Land-Use Planning

Under 43 C.F.R. § 4.478(b), BLM enjoys broad discretion in managing and adjudicating grazing preference, and when grazing preference is adjudicated by BLM, that action may be regarded as arbitrary, capricious, or inequitable only where it is not supportable on any rational basis. That standard is properly applied when BLM denies an application for grazing preference in two allotments outside a grazing district (the majority of whose land had been acquired from the State by exchange) on the basis that BLM is in the process of developing its long-term land use plan through the resource management plan process and continued grazing on the allotments is one of the issues to be addressed therein. Under the circumstances, such a reason provides a rational basis for denial of the application.

Virgil E. Mercer and Michael J. Mercer v. Bureau of Land Management, 159 IBLA 17 (May 8, 2003).

Federal Land Policy and Management Act of 1976
Land-Use Planning

Where an analysis of a resource management plan (RMP) indicates that the location of a proposed well is within an area open to oil and gas leasing without special stipulations, and the RMP identifies an anticipated range of annual well approvals, the Board will not find that the projected number is a mandatory maximum which is violated by approval of a particular well.

Southern Utah Wilderness Alliance, 159 IBLA 220 (June 16, 2003).

Federal Land Policy and Management Act of 1976
Land-Use Planning

Where BLM approves a right-of-way for a pipeline based on an environmental assessment which discusses impacts from the pipeline on a case-by-case basis in conjunction with its consideration of associated road development, the decision to approve the pipeline right-of-way may be affirmed.

Southern Utah Wilderness Alliance, 159 IBLA 220 (June 16, 2003).

Federal Land Policy and Management Act of 1976
Land-Use Planning

Pursuant to 43 C.F.R. § 2200.0-6(g), land acquired through a land exchange automatically becomes part of the BLM district in which it is located and is subject to management under the applicable resource management plan. BLM therefore need not amend the applicable resource management plan to specifically address the acquired land before approving a plan of operations to continue exploration within a project area that includes lands obtained pursuant to a land exchange.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

Federal Land Policy and Management Act of 1976
Land-Use Planning

Under 43 U.S.C. § 1711(a) (2000), the preparation and maintenance of an inventory of all public lands and their resource and other values "shall not, of itself, change or prevent change of the management or use of public lands." BLM therefore need not wait until an inventory of all the lands acquired through a land exchange has been completed before approving a mining plan of operations for an exploration project area that includes acquired lands where it is consistent with current management of a checkerboard pattern of adjacent lands on which exploration has been undertaken as part of the project.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

Federal Land Policy and Management Act of 1976
Land-Use Planning

FLPMA establishes that BLM must manage the public lands for multiple uses by the public, including outdoor recreation. FLPMA does not contain any *per se* prohibition of particular types of off-road vehicle use; rather, BLM regulates and establishes criteria for the use and operation of such vehicles on the public lands under its regulations at 43 C.F.R. Subpart 8340. The Board will not reverse under FLPMA a BLM decision to create a jeep trail in a recreation area, and to close others in nearby sensitive environmentally protected areas, where such action was expressly envisioned in the relevant land use planning documents.

Colorado Mountain Club, et al., 161 IBLA 371 (June 4, 2004).

Federal Land Policy and Management Act of 1976
Land-Use Planning

BLM's authority to conduct wilderness reviews or establish new wilderness study areas expired on October 21, 1993, and, absent congressional authorization, BLM may not establish, manage or otherwise treat public lands, other than Congressionally designated wilderness under 43 U.S.C. § 1782 (2000), as a wilderness study area or as a wilderness under the land use planning provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1712.

Colorado Environmental Coalition, The Wilderness Society, 161 IBLA 386 (June 4, 2004).

Federal Land Policy and Management Act of 1976
Land-Use Planning

BLM has authority under the Federal Land Policy and Management Act to prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values, which may include characteristics that are associated with the concept of wilderness.

Colorado Environmental Coalition, The Wilderness Society, 161 IBLA 386 (June 4, 2004).

Federal Land Policy and Management Act of 1976
Land-Use Planning

When considering a proposal to preserve land having wilderness characteristics, BLM will continue to manage public lands according to existing land use plans. During the planning process and concluding with actions after the planning process, BLM will not manage those lands under a congressionally designated non-impairment standard, nor manage them as if they are or may become congressionally designated wilderness areas, but through the planning process BLM may manage them using special protections to protect wilderness characteristics.

Colorado Environmental Coalition, The Wilderness Society, 161 IBLA 386 (June 4, 2004).

Federal Land Policy and Management Act of 1976
Land-Use Planning

When BLM prepares an environmental analysis for a proposed action to issue an oil and gas lease in an area open to leasing under a governing resource management plan, it is not required to postpone leasing under its existing resource management plan in order to consider a wilderness proposal from an advocacy group. Proposed designations that would require amendment of the existing resource management plan need not be considered each time BLM decides to grant a right to undertake an activity in conformity with the existing land use plan.

Colorado Environmental Coalition, The Wilderness Society, 161 IBLA 386 (June 4, 2004).

Federal Land Policy and Management Act of 1976
Land-Use Planning

The language of the provisions of the Federal Land Policy and Management Act pertaining to land use plans, 43 U.S.C. § 1712 (2000), does not establish a clear duty to revise a land use plan at any date certain, and does not create a duty to cease actions allowed under an existing plan while the existing plan is being revised.

Colorado Environmental Coalition, The Wilderness Society, 161 IBLA 386 (June 4, 2004).

Federal Land Policy and Management Act of 1976
Land-Use Planning

An environmental assessment of a proposal to issue an oil and gas lease which is tiered to a final environmental impact statement for a resource management plan or activity plan need not restate cumulative impacts or the no action alternative considered in the environmental impact statement to which the environmental assessment is tiered.

Colorado Environmental Coalition, The Wilderness Society, 161 IBLA 386 (June 4, 2004).

Federal Land Policy and Management Act of 1976
Land-Use Planning

BLM's authority to conduct wilderness reviews or establish new wilderness study areas expired on October 21, 1993, and, absent Congressional authorization, BLM may not establish, manage or treat public lands, other than those designated wilderness by Congress under 43 U.S.C. § 1782 (2000), as wilderness study areas or as wilderness under the land use planning provisions of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1712 (2000). Under FLPMA, BLM has the authority to prepare and maintain an inventory of all public lands and their resources and other values, which may include characteristics that are associated with the concept of wilderness.

Colorado Environmental Coalition, The Wilderness Society, Sierra Club, 162 IBLA 293 (Aug. 17, 2004).

Federal Land Policy and Management Act of 1976
Land-Use Planning

BLM properly dismisses a protest against an oil and gas lease sale based on assertions of the wilderness character of the lands, because the final administrative determination that the land was not wilderness in character was made in the 1980's. Even where the land has been proposed for wilderness designation in pending legislation, BLM may properly administer those lands for other purposes, where the land has not been included in a wilderness study area. Because the time for taking appeals from inventory decisions has long since passed, the doctrine of administrative finality precludes appellants from challenging those decisions by filing protests

against actions taken by BLM to administer the land for other purposes.

Colorado Environmental Coalition, The Wilderness Society, Sierra Club, 162 IBLA 293 (Aug. 17, 2004).

Federal Land Policy and Management Act of 1976
Land-Use Planning

When parcels nominated for inclusion in a competitive oil and gas lease sale encompass lands that have not been included in a wilderness study area or found to possess wilderness characteristics in a BLM wilderness inventory, BLM may administer those lands for other purposes, including oil and gas leasing, even though the lands were determined to have wilderness characteristics in a citizens' group wilderness inventory and were included in an area proposed for wilderness designation in legislation introduced in Congress.

Southern Utah Wilderness Alliance, 163 IBLA 14 (Sept. 3, 2004).

Federal Land Policy and Management Act of 1976
Land-Use Planning

BLM is not required to re-inventory lands that have not been included in a wilderness study area or found to possess wilderness characteristics in a BLM inventory for wilderness suitability even though the lands were determined to have wilderness characteristics in a citizens' group wilderness inventory and were included in an area proposed for wilderness designation in legislation introduced in Congress. The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1711(a) (2000), controls the Secretary's wilderness inventory authority and grants the Secretary the discretion to determine the manner and time of implementation of the statutory mandate to keep a current inventory of the public lands and their resources.

Southern Utah Wilderness Alliance, 163 IBLA 14 (Sept. 3, 2004).

Federal Land Policy and Management Act of 1976
Land-Use Planning

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1712 (2000), does not require BLM to revise a land use plan at any specific time, nor does it require BLM to cease actions authorized under an existing land use plan, including oil and gas leasing, in order to consider a wilderness proposal from a citizens group.

Southern Utah Wilderness Alliance, 163 IBLA 14 (Sept. 3, 2004).

Federal Land Policy and Management Act of 1976
Land-Use Planning

BLM is required to designate all public lands as either open, limited, or closed to off-road vehicle (ORV) use, and approval of a resource management plan, revision, or amendment constitutes formal designation of ORV use areas. Operation of ORVs is permitted on areas and trails designated as open to ORV use, and in areas designated as "limited" in conformity with the terms and conditions of the orders designating them as limited, but is prohibited on areas and trails closed to ORV use. Although the regulations define "closed area" as "an area where off-road vehicle use is prohibited," they also provide that use of ORVs in closed areas may be allowed for certain reasons, but only with the approval of the authorized officer.

Arizona State Association of 4-Wheel Drive Clubs, Inc., 165 IBLA 153 (Mar. 29, 2005).

Federal Land Policy and Management Act of 1976
Land-Use Planning

A BLM determination concerning authorization of ORV use will be affirmed if the decision is supported by the record, absent compelling reasons for modification or reversal. When BLM found that increasing ORV use of a canyon, due to the mistaken perception that it was open to general ORV use, had caused unacceptable impacts to riparian values and appellant has provided no evidence that is sufficient to overcome this conclusion, an decision rejecting a special recreation permit for use of the canyon will be affirmed.

Arizona State Association of 4-Wheel Drive Clubs, Inc., 165 IBLA 153 (Mar. 29, 2005).

Federal Land Policy and Management Act of 1976
Land-Use Planning

Section 102(a) of Federal Land Policy Management Act of 1976 (FLPMA) imposes broad stewardship duties, including the requirement to manage land in a manner that will protect the quality of environmental values. 43 U.S.C. § 1701(a)(8) (2000). Section 302(b) of FLPMA mandates that the Secretary shall take any action necessary to prevent unnecessary or undue degradation of the land. 43 U.S.C. § 1732(b) (2000). FLPMA also provides that nothing in the Act shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act. 43 U.S.C. § 1701, note (a) (2000). FLPMA further provides that all actions by the Secretary shall be subject to valid existing rights. 43 U.S.C. § 1701, note (h) (2000).

Colorado Environmental Coalition, The Wilderness Society, 165 IBLA 221 (Apr. 8, 2005).

Federal Land Policy and Management Act of 1976
Land-Use Planning

A desert land entry application is properly rejected by BLM when the land sought has been designated for retention in Federal ownership in the applicable resource management plan.

Dona Jeanette Ong, Carie L. Nash, 165 IBLA 274 (Apr. 28, 2005).

Federal Land Policy and Management Act of 1976

Land-Use Planning

When BLM rejects a desert land entry application because the land sought has been included in an area of environmental concern (ACEC) as part of the resource management planning process and one of the management guidelines for that area is to retain it in Federal ownership, the applicant may not challenge the basis for the establishment of the ACEC in an appeal of the decision rejecting the desert land entry application. The establishment of an ACEC is a land use planning decision subject to review only by the Director, BLM.

Dona Jeanette Ong, Carie L. Nash, 165 IBLA 274 (Apr. 28, 2005).

Federal Land Policy and Management Act of 1976
Land-Use Planning

FLPMA establishes that BLM must manage the public lands for multiple uses by the public, including outdoor recreation. FLPMA does not contain any *per se* prohibition of off-road vehicle use. The Board will not reverse, as violative of FLPMA, a BLM decision to designate an off-highway vehicle trail and to close others in sensitive, environmentally protected areas, where such action was expressly envisioned in relevant land use planning documents.

Forest Guardians, 168 IBLA 323 (Apr. 3, 2006).

Federal Land Policy and Management Act of 1976
Land-Use Planning

A BLM management decision implementing a resource management plan will be affirmed if the decision adequately considers all relevant factors including environmental considerations, reflects a reasoned analysis, and is supported by the record, absent a showing of clear reasons for modification or reversal. Mere differences of opinion regarding proper management of public lands will not overcome an amply supported BLM management decision.

Rainer Huck, et al., 168 IBLA 365 (Apr. 18, 2006).

Federal Land Policy and Management Act of 1976
Land-Use Planning

Because coalbed methane (CBM) is a fluid gas mineral, a land use planning decision that opens a planning area to oil and gas leasing opens it to CBM exploration and development as well.

National Wildlife Federation, Biodiversity Conservation Alliance, Wyoming Outdoor Council, Wyoming Wildlife Federation, 169 IBLA 146 (June 13, 2006).

Federal Land Policy and Management Act of 1976
Land-Use Planning

Section 302(b) of the Federal Land Policy and Management Act of 1976 requires the Secretary to "prevent unnecessary or undue degradation of the public lands." The statutory provision does not impose a standard for treatment of private lands independent of requirements imposed by other laws, nor does it establish a cause of action by a private party for what it believes to be tortious conduct. By rule BLM defines this term "unnecessary or undue degradation" to mean, *inter alia*, "conditions, activities, or practices that . . . [f]ail to comply with . . . performance standards in [43 C.F.R. §] 3809.420, the terms and conditions of an approved plan of operations, operations described in a complete notice, and other Federal and state laws related to environmental protection and protection of cultural resources," or are not "'reasonably incident' to prospecting, mining, or processing operations as defined in 43 C.F.R. § 3715.0-5." 43 C.F.R. § 3809.5. The existence of a mining facility in a location opposed by a nearby landowner does not, *ipso facto*, constitute unnecessary or undue degradation by virtue of the fact that the opponent believes it can be relocated.

Western Exploration Inc. & Doby George LLC, 169 IBLA 388 (Aug. 23, 2006).

Federal Land Policy and Management Act of 1976
Land-Use Planning

Nothing in the Federal Land Policy and Management Act or the National Environmental Policy Act, or their implementing regulations, requires the Board to conclude that BLM cannot revise its method of calculating the number of wells remaining to be drilled under a Reasonably Foreseeable Development (RFD) scenario, or that the degree of short- and long-term surface disturbance resulting from oil and gas activities is an improper reference point in ascertaining the present status of the RFD scenario.

Wyoming Outdoor Council, Wyoming Wildlife Federation, 170 IBLA 240 (Sept. 29, 2006).

Federal Land Policy and Management Act of 1976
Land-Use Planning

An application for the transfer of lands must be rejected if they are identified for retention in Federal ownership in the applicable resource management plan.

Redding Gun Club, 171 IBLA 28 (Dec. 28, 2006).

Federal Land Policy and Management Act of 1976
Land-Use Planning

The Interior Board of Land Appeals has no jurisdiction to review a BLM decision denying a proposal to amend a resource management plan developed under 43 C.F.R. § Part 1600.

Redding Gun Club, 171 IBLA 28 (Dec. 28, 2006).

Federal Land Policy and Management Act of 1976
Land-Use Planning

When parcels nominated for inclusion in a competitive oil and gas lease sale encompass lands that were not included in a wilderness study area, BLM may administer those

lands for other purposes, including oil and gas leasing, even though the lands were asserted to have wilderness characteristics in a citizens' group wilderness proposal and were included in an area proposed for wilderness designation in legislation introduced in Congress. BLM's determination that existing environmental documents adequately analyze the effects of a competitive oil and gas lease sale for such parcels will be affirmed where the appellants base their objection to the adequacy of those documents on purported "significant new circumstances or information" but fail to establish such circumstances or information.

Colorado Environmental Coalition, et al., 171 IBLA 256 (May 9, 2007).

Federal Land Policy and Management Act of 1976
Land-Use Planning

As a general rule, the Board of Land Appeals has authority to review decisions by BLM relating to the use and disposition of the public lands. *See* 43 C.F.R. § 4.1(b)(3), 4.410(a). However, the Board does not have jurisdiction to review appeals of decisions to approve or amend a resource management plan, which is designed to guide and control future management actions.

Friends of Living Oregon Waters et al., 171 IBLA 271 (May 21, 2007).

Federal Land Policy and Management Act of 1976
Land-Use Planning

Whether the Board of Land Appeals exercises jurisdiction over a BLM action as an implementation decision depends upon the effect of that action. If it is in the nature of a direction to BLM's employees, so that an action would be required to produce an adverse effect, the Board does not have jurisdiction. Thus, a BLM decision adopting a management plan providing for guidance and direction regarding recreation activities along a wild and scenic river is not within the jurisdiction of the Board of Land Appeals because it does not implement those actions.

Friends of Living Oregon Waters et al., 171 IBLA 271 (May 21, 2007).

Federal Land Policy and Management Act of 1976
Leases

BLM's fair market value determination will be affirmed if the appellant does not demonstrate error in the appraisal method or otherwise present convincing evidence that the fair market value determination is erroneous. Where there is no showing of error in BLM's appraisal method, it normally must be rebutted by another appraisal.

Factory Homes Outlet, 153 IBLA 83 (July 28, 2000).

Federal Land Policy and Management Act of 1976
Leases

Where a lessee of a small tract lease challenges provisions in the lease renewal decision prohibiting assignments and limiting the duration of the lease to the lifetime of the lessee, the burden is upon the lessee to prove, by a preponderance of the evidence, that BLM committed a material error in its factual analysis or that the determination is contrary to the relevant laws and regulations.

Franklyn Dorhofer, Edward J. McGowan, et al., 155 IBLA 51 (May 8, 2001).

Federal Land Policy and Management Act of 1976
Leases

Section 302(b) of FLPMA, 43 U.S.C. § 1732(b) (2000), authorizes the Secretary to issue leases for various uses of the public lands. Authorized uses encompass "[a]ny use not specifically authorized by other laws or regulations and not specifically forbidden by law" and include "residential, agricultural, industrial, and commercial" uses. 43 C.F.R. § 2920.1-1. BLM has discretion to reject a proposal for use of public lands if it conflicts with BLM objectives, responsibilities, or programs for management of the public lands involved.

Nevada Pacific Consortium, 158 IBLA 108 (Dec. 31, 2002).

Federal Land Policy and Management Act of 1976
Leases

In the absence of a showing by a preponderance of the evidence that a BLM appraisal is erroneous, such an appraisal may be rebutted only by another appraisal.

David M. Stanton, 166 IBLA 234 (July 28, 2005).

Federal Land Policy and Management Act of 1976
Oil and Gas Leasing

Section 102(a) of Federal Land Policy Management Act of 1976 (FLPMA) imposes broad stewardship duties, including the requirement to manage land in a manner that will protect the quality of environmental values. 43 U.S.C. § 1701(a)(8) (2000). Section 302(b) of FLPMA mandates that the Secretary shall take any action necessary to prevent unnecessary or undue degradation of the land. 43 U.S.C. § 1732(b) (2000). FLPMA also provides that nothing in the Act shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act. 43 U.S.C. § 1701, note (a) (2000). FLPMA further provides that all actions by the Secretary shall be subject to valid existing rights. 43 U.S.C. § 1701, note (h) (2000).

Colorado Environmental Coalition, The Wilderness Society, 165 IBLA 221 (Apr. 8, 2005).

Federal Land Policy and Management Act of 1976
Oil and Gas Leasing

Under the Mineral Leasing Act, 30 U.S.C. § 226 (2000), the decision whether to issue an oil and gas lease is a matter within the discretion of the Secretary. Once issued, the holder of an oil and gas lease issued prior to the enactment of FLPMA may develop the leasehold to the extent authorized by the issuance document.

Colorado Environmental Coalition, The Wilderness Society, 165 IBLA 221 (Apr. 8, 2005).

Federal Land Policy and Management Act of 1976
Oil and Gas Leasing

A no surface occupancy (NSO) restriction in a Resource Management Plan that is by its terms to be applied to future oil and gas leases does not provide an independent basis for imposing an NSO restriction on a pre-FLPMA lease on which drilling and production had commenced before enactment of the statute.

Colorado Environmental Coalition, The Wilderness Society, 165 IBLA 221 (Apr. 8, 2005).

Federal Land Policy and Management Act of 1976
Permits

An appellant must demonstrate that, when finding that its proposed action will not result in significant adverse impact on the human environment, BLM erred in its analysis or acted contrary to any law to prevail on appeal. A BLM decision to approve amendment of a special recreation permit to authorize a jet boat race on a Federally–designated wild and scenic river will be affirmed when the record adequately supports the decision, demonstrates that BLM took a hard look at the potential environmental impacts of its decision, and makes a convincing case that no significant impact will likely result, in accordance with section 102(2) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2) (1994).

Klamath–Siskiyou Wildlands Center, 153 IBLA 110, (Aug. 7, 2000).

Federal Land Policy and Management Act of 1976
Permits

An authorized officer's exercise of discretionary authority to deny a special recreation permit should have a rational basis supported by facts of record so as not to be arbitrary, capricious, or an abuse of discretion. BLM may deny a special recreation permit if the proposed activity conflicts with BLM objectives, responsibilities, or programs for management of the public lands.

Frank Robbins, d.b.a. High Island Ranch, 154 IBLA 93 (Dec. 18, 2000).

Federal Land Policy and Management Act of 1976
Permits

A BLM trespass notice issued under 43 C.F.R. § 2920.1-2 is properly affirmed when an appellant, despite being advised numerous times of the need to apply for a land use permit, continues to use public lands for agricultural purposes without a permit issued pursuant to 43 U.S.C. § 1732(b) (1994).

Sydney Dowton, 154 IBLA 222 (Mar. 30, 2001).

Federal Land Policy and Management Act of 1976
Permits

A BLM determination of the fair market value of the use of public land, both authorized and unauthorized, will be set aside where the value is based on a rental estimate which explicitly states that an appraisal is necessary if the case is controversial and the record establishes that the matter has been controversial from the outset.

Sydney Dowton, 154 IBLA 222, (Mar. 30, 2001).

Federal Land Policy and Management Act of 1976
Permits

Departmental regulations do not guarantee every recipient of an adverse BLM decision the right to a hearing. The language of 43 U.S.C. § 1732(c) (1994), allowing for revocation or suspension of a special recreation use permit after "notice and hearing," does not require a formal hearing before an administrative law judge; a special recreation permittee's hearing rights under that section are satisfied when the permittee is given notice of BLM's adverse decision and afforded the right to appeal to the Interior Board of Land Appeals. Although a hearing may be ordered when a question of fact is presented that cannot be resolved on the basis of a written case record, as supplemented by documents or affidavits submitted on appeal, the burden of proof lies with the party requesting the hearing to show adequate evidence or offer of proof to raise adequate doubt that a hearing should be ordered.

Obsidian Services Inc., 155 IBLA 239 (July 19, 2001).

Federal Land Policy and Management Act of 1976
Permits

An appraisal of fair market value for a land use permit issued pursuant to sec. 302(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732(b) (1994), will be affirmed unless an appellant either demonstrates error in the appraisal method or presents convincing evidence that the charge is excessive. In the absence of a preponderance of the evidence that a BLM appraisal is erroneous, such an appraisal may be rebutted only by another appraisal.

Yukon River Tours, 156 IBLA 1 (Nov. 6, 2001).

Federal Land Policy and Management Act of 1976
Permits

The Board may set aside a rental decision where an appellant has not proven that the fair market rental value is excessive, but has raised sufficient doubt regarding the

method of appraising the value of permits to justify setting aside the decision and remanding for further appraisal. The Board will not set aside and remand a decision based on an appraisal where an independent review answers doubts raised by an appellant.

Yukon River Tours, 156 IBLA 1 (Nov. 6, 2001).

Federal Land Policy and Management Act of 1976
Permits

Where BLM consolidates two land use permits with different effective dates under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732 (1994), and adjusts the rental for the consolidated permit effective at the beginning of the 1998 calendar year despite the fact that one of the previous permits did not expire until September 30, 1998, BLM may subsequently appraise the land included within the permit where the permit specified and BLM advised that the rental may be changed based on fair market appraisal. The rental charges imposed from the date of the permit will not be considered retroactive in these circumstances.

Yukon River Tours, 156 IBLA 1 (Nov. 6, 2001).

Federal Land Policy and Management Act of 1976
Permits

A party engaged in "commercial use," as that term is defined in 43 C.F.R. § 8372.0-5(a) (2000), must obtain a special recreation permit. The nonprofit status of any organization under the Internal Revenue Code does not control the distinction between commercial and non-commercial use under that rule. Collection by a permittee of fees, charges, and other compensation which are not strictly a sharing of, or which are in excess of, actual expenses incurred for the purposes of a permitted use of public lands shall make the use commercial. The land user may not avoid a commercial designation by claiming that it receives fees which do not exceed actual expenses while omitting from its calculations other compensation received for the activity on public land.

Camp Redcloud, Inc., 162 IBLA 84 (June 29, 2004).

Federal Land Policy and Management Act of 1976
Permits

A party may not obtain a waiver of fees due for a special recreation permit when its use of the public lands is primarily for recreation purposes.

Camp Redcloud, Inc., 162 IBLA 84 (June 29, 2004).

Federal Land Policy and Management Act of 1976
Permits

In preparing a programmatic environmental assessment to assess whether an environmental impact statement (EIS) is required under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2000), an agency must take a "hard look" at the proposal being addressed and identify relevant areas of environmental concern so that it can make an informed determination as to whether the environmental impact is insignificant or impacts will be reduced to insignificance by mitigation measures A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is based on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action.

Southern Utah Wilderness Alliance, 164 IBLA 33 (Nov. 16, 2004).

Federal Land Policy and Management Act of 1976
Permits

A decision permitting guided vehicle tours over designated roads, ways, or trails within a wilderness study area is properly set aside when the record shows that such routes cross through and parallel to riparian/wetland zones and have caused damage to such resources, and fails to disclose what information BLM had before it when it concluded that the addition of tour traffic would have no significant impact on riparian/wetland areas on the designated travel routes.

Southern Utah Wilderness Alliance, 164 IBLA 33 (Nov. 16, 2004).

Federal Land Policy and Management Act of 1976
Permits

BLM is required to designate all public lands as either open, limited, or closed to off-road vehicle (ORV) use, and approval of a resource management plan, revision, or amendment constitutes formal designation of ORV use areas. Operation of ORVs is permitted on areas and trails designated as open to ORV use, and in areas designated as "limited" in conformity with the terms and conditions of the orders designating them as limited, but is prohibited on areas and trails closed to ORV use. Although the regulations define "closed area" as "an area where off-road vehicle use is prohibited," they also provide that use of ORVs in closed areas may be allowed for certain reasons, but only with the approval of the authorized officer.

Arizona State Association of 4-Wheel Drive Clubs, Inc., 165 IBLA 153 (Mar. 29, 2005).

Federal Land Policy and Management Act of 1976
Permits

A BLM determination concerning authorization of ORV use will be affirmed if the decision is supported by the record, absent compelling reasons for modification or reversal. When BLM found that increasing ORV use of a canyon, due to the mistaken perception that it was open to general ORV use, had caused unacceptable impacts to riparian values and appellant has provided no evidence that is sufficient to overcome this conclusion, an decision rejecting a special recreation permit for use of the canyon will be affirmed.

Arizona State Association of 4-Wheel Drive Clubs, Inc., 165 IBLA 153 (Mar. 29, 2005).

Federal Land Policy and Management Act of 1976
Permits

The sanctions for unauthorized commercial recreation use of the public lands are set forth in the regulations governing special recreation permits at 43 C.F.R. § 8372.0-7 (b) (2000). A decision applying the trespass regulation at 43 C.F.R. § 2920.1-2, which pertains to uses not authorized under any other law or regulation, to assess administrative costs, fair market value rental, and a willful trespass penalty for unauthorized commercial recreation use will be vacated.

Frank Robbins, d.b.a. High Island Ranch, 167 IBLA 239 (Nov. 30, 2005).

Federal Land Policy and Management Act of 1976
Permits

The determination of whether the public was adequately involved in BLM's National Environmental Policy Act review process assessing the potential environmental impacts of a proposed action depends on a fact-intensive inquiry made on a case-by-case basis.

Lynn Canal Conservation, Inc., 169 IBLA 1 (Apr. 20, 2006).

Federal Land Policy and Management Act of 1976
Permits

Cultural resource use permits are issued pursuant to section 302(b) of FLPMA, 43 U.S.C. § 1732(b) (2000), among other authorities. Decisions involving permits issued under that provision are committed to the discretion of the Secretary, through BLM, and the exercise of that discretion must have a rational basis. A decision refusing to renew a permit must have a rational basis and be supported by facts of record demonstrating that an action is not arbitrary, capricious, or an abuse of discretion. An appellant bears the burden of proof to show, by a preponderance of the evidence, that a challenged decision to reject a permit renewal application is in error. Where BLM has decided not to renew a cultural resource use permit because of repeated instances of unrecorded or underrecorded sites, that decision is properly affirmed where the holder of the permit has not explained why the specific sites in question were not reported or were underreported in a manner that is consistent with applicable professional standards.

Archaeological Services by Laura Michalik, 169 IBLA 90 (May 25, 2006).

Federal Land Policy and Management Act of 1976
Permits

BLM, acting on behalf of the Secretary of the Interior, has discretionary authority, in accordance with 43 C.F.R. § 2920.1-1, to authorize any use of public land not specifically authorized under other laws or regulations and not specifically forbidden by law. Residential occupancy of a mining claim is specifically authorized under 43 C.F.R. Subpart 3715, when certain conditions are met. When a mining claimant fails to comply with those conditions, the claimant may not, as an alternative, receive authorization for residential occupancy of the claim under 43 C.F.R. Part 2920.

Jason S. Day, 171 IBLA 535 (Jan. 25, 2007).

Federal Land Policy and Management Act of 1976
Plan of Operations

BLM's approval of a plan of operations for open pit gold mining will be affirmed where BLM has taken a hard look in an EIS at the significant environmental consequences of mining operations and reasonable alternatives, and where the record supports BLM's conclusion that the plan, as modified, will not result in unnecessary or undue degradation of the public lands.

Legal and Safety Employer Research Inc., et al., 154 IBLA 167 (Feb. 28, 2001).

Federal Land Policy and Management Act of 1976
Plan of Operations

A Wilderness Study Area is subject to the protection of section 603(c) of FLPMA, which authorizes "grandfathered use" exceptions to the non-impairment standard. In order to qualify under the "grandfathered use" exception, the use in question must have been in existence on October 21, 1976, and must have continued thereafter following the logical pace and progression of development.

Zenda Gold Corporation, 155 IBLA 64 (May 16, 2001).

Federal Land Policy and Management Act of 1976
Plan of Operations

BLM's approval of a plan of operations for sodium solution mining will be affirmed where BLM has taken a hard look in an EIS at the significant environmental consequences of mining operations and reasonable alternatives, and where the record supports BLM's conclusion that the plan will not result in unnecessary or undue degradation of the public lands.

IMC Chemical Inc., et al., 155 IBLA 173 (July 17, 2001).

Federal Land Policy and Management Act of 1976
Plan of Operations

Pursuant to 43 C.F.R. § 2200.0-6(g), land acquired through a land exchange automatically becomes part of the BLM district in which it is located and is subject to management under the applicable resource management plan. BLM therefore need not amend the applicable resource management plan to specifically address the acquired land before approving a plan of operations to continue exploration within a project area that includes lands obtained pursuant to a land exchange.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

Federal Land Policy and Management Act of 1976
Plan of Operations

Under 43 U.S.C. § 1711(a) (2000), the preparation and maintenance of an inventory of all public lands and their resource and other values "shall not, of itself, change or prevent change of the management or use of public lands." BLM therefore need not wait until an inventory of all the lands acquired through a land exchange has been completed before approving a mining plan of operations for an exploration project area that includes acquired lands where it is consistent with current management of a checkerboard pattern of adjacent lands on which exploration has been undertaken as part of the project.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

Federal Land Policy and Management Act of 1976
Plan of Operations

A finding that approval of a plan of operations for a phased exploration project will not cause unnecessary or undue degradation of public lands will be affirmed, even though the plan does not specify the exact location of future activities because those locations depend on the results of the initial exploration phase, where BLM compensates for the lack of specific location information by analyzing the impacts of the total acreage of approved surface disturbance anywhere in the entire project area and imposes protective stipulations for identified resources throughout the entire project area and where the appellant has not shown that the project, with the mandated stipulations, will cause unnecessary or undue degradation of the public lands.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

Federal Land Policy and Management Act of 1976
Plan of Operations

BLM's approval of a mining plan of operations based on an EA and FONSI will be affirmed if the record establishes that BLM took a "hard look" at the proposed action, carefully reviewed environmental problems, identified all relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

Federal Land Policy and Management Act of 1976
Plan of Operations

An EA must include a brief discussion of alternatives as mandated by section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2000), which requires that every Federal agency "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." Appropriate alternatives include reasonable and feasible alternatives to the proposed action which will accomplish its intended purpose with lesser or no impact. If an alternative does not achieve the purpose of the proposed action or would not have lesser or no impact, BLM does not err in failing to consider that alternative.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

Federal Land Policy and Management Act of 1976
Plan of Operations

The National Historic Preservation Act, 16 U.S.C. § 470f (2000), requires BLM to take into account an undertaking's effect on any property eligible for inclusion on the Register of Historic Places and to provide the Advisory Council on Historic Preservation the opportunity to comment. BLM's approval of a mining plan of operations will be affirmed without requiring consultation with the State Historic Preservation Officer where BLM has followed the procedures set forth in a State Protocol Agreement developed under BLM's National Programmatic Agreement for implementing the NHPA, and where the appellant has failed to show error in BLM's determination that the proposed exploration operations (with the stipulations imposed to avoid or mitigate impacts to eligible sites) will have no adverse effect on eligible cultural resources.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

Federal Land Policy and Management Act of 1976
Plan of Operations

Approval of an amendment to a plan of operations will be upheld where the record, including the EA for the amendment and the scientific reports incorporated therein, demonstrates that BLM carefully considered the amendment's potential impacts, including those affecting groundwater quality and quantity, and conditioned approval of the amendment on the performance of mitigation measures designed to prevent any unnecessary or undue environmental degradation, and the appellant has failed to show error in that determination

Western Shoshone Defense Project, 160 IBLA 32 (Aug. 21, 2003).

Federal Land Policy and Management Act of 1976
Plan of Operations

A BLM decision approving an amendment to a plan of operations will be affirmed where the appellant fails to show that BLM neglected to consider a reasonable alternative to the amendment. An alternative considered and rejected in the EIS to which the project-specific EA is tiered does not need to be reconsidered in the project-specific EA, absent evidence that the rationale for the EIS' rejection of the alternative no longer applies.

Western Shoshone Defense Project, 160 IBLA 32 (Aug. 21, 2003).

Federal Land Policy and Management Act of 1976
Plan of Operations

Pursuant to 43 C.F.R. § 3809.1-4(b)(3)(2000), an approved plan of operations is required before a mining claimant begins any operation, other than casual use, in a designated area of critical environmental concern and BLM may issue a notice of noncompliance to a mining claimant who fails to file a plan of operations for operations in an area of critical environmental concern.

Robert W. Gately, 160 IBLA 192 (Nov. 20, 2003).

Federal Land Policy and Management Act of 1976
Plan of Operations

When a mining claimant received approval from BLM to continue his present use and occupancy of a mining claim on public land for the 1-year grace period for compliance with the requirements of 43 C.F.R. Subpart 3715 afforded by 43 C.F.R. § 3715.4(b), the mining claimant's use and occupancy must satisfy the applicable requirements of 43 C.F.R. Subpart 3715 following the expiration of that grace period.

Robert W. Gately, 160 IBLA 192 (Nov. 20, 2003).

Federal Land Policy and Management Act of 1976
Plan of Operations

A BLM determination of nonconcurrence with a claimant's use and occupancy of a mining claim will be affirmed when the claimant fails to provide sufficient information about the proposed activities to show that they are reasonably incident, as required by 43 C.F.R. § 3715.2(a).

Robert W. Gately, 160 IBLA 192 (Nov. 20, 2003).

Federal Land Policy and Management Act of 1976
Plan of Operations

BLM's approval of a closure and reclamation plan for a mine based on an EA and FONSI will be affirmed if the record establishes that BLM took a "hard look" at the proposed action, carefully reviewed environmental problems, identified all relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal.

Great Basin Mine Watch et al., 160 IBLA 340 (Jan. 26, 2004).

Federal Land Policy and Management Act of 1976
Plan of Operations

An EA must include a brief discussion of alternatives as mandated by section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2000), which requires that every Federal agency "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." Appropriate alternatives include reasonable and feasible alternatives to the proposed action which will accomplish its intended purpose with lesser or no impact.

Great Basin Mine Watch et al., 160 IBLA 340 (Jan. 26, 2004).

Federal Land Policy and Management Act of 1976
Plan of Operations

A finding that approval of a mine closure and reclamation plan will not cause unnecessary or undue degradation of public lands will be affirmed where the appellant has not shown that BLM failed to adequately consider the effects of operations on other resources and land uses, including those resources and uses outside the area of operations; neglected to initiate and complete reasonable mitigation measures, including reclamation of disturbed areas; or failed to comply with applicable environmental protection statutes and regulations thereunder, and where the record demonstrates that the project, with the mandated stipulations, will not cause unnecessary or undue degradation of the public lands.

Great Basin Mine Watch et al., 160 IBLA 340 (Jan. 26, 2004).

Federal Land Policy and Management Act of 1976
Recordation of Affidavit of Assessment Work or Notice of Intention to Hold

Under the regulations governing the locating, recording, and maintaining of mining claims, mill sites, or tunnel sites, "filed" is defined at 43 C.F.R. § 3830.5 as meaning a document is received by BLM on or before the due date or is "[p]ostmarked or otherwise clearly identified as sent on or before the due date by a bona fide mail delivery service" and received by the appropriate BLM state office either within 15 calendar days after the due date or on the next business day after that date, if the 15th day is not a business day for BLM.

Hale Mining Company, 161 IBLA 260 (May 5, 2004).

Federal Land Policy and Management Act of 1976
Recordation of Affidavit of Assessment Work or Notice of Intention to Hold

An affidavit of assessment work required to be filed with BLM on or before December 30, 2003, for certain mining claims is timely filed, in accordance with 43 C.F.R. § 3830.5, when it arrives at the proper BLM office onJanuary 5, 2004, in an envelope bearing a United States Postal Service postage validation stamp of December 30, 2003.

Hale Mining Company, 161 IBLA 260 (May 5, 2004).

Federal Land Policy and Management Act of 1976
Rights-of-Way

An EA for a proposed action properly considers the indirect effects caused by the action which, although later in time or further removed, are reasonably foreseeable. Thus, the impacts of connected actions conducted by private parties which would not occur without the supporting Federal action are appropriately considered in an EA.

Defenders of Wildlife, 151 IBLA 1 (Feb. 17, 2000).

Federal Land Policy and Management Act of 1976
Rights-of-Way

A decision to issue a right-of-way for a power line to supply electricity for the reopening of an open pit mining operation on private land based on an EA and FONSI will be upheld when the record establishes a reasonable basis for the FONSI. An appeal challenging the scope of the EA for failure to consider all the impacts of the mining operation will be denied when it appears from the record that the mining operation would proceed in the absence of approval of the right-of-way.

Defenders of Wildlife, 151 IBLA 1 (Feb. 17, 2000).

Federal Land Policy and Management Act of 1976
Rights-of-Way

Pursuant to section 102(2) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2) (1994), and its implementing regulations (40 C.F.R. Chapter V), BLM is required to consider a reasonable range of alternatives to a proposed action, including a no-action alternative. An EA which considers a range of alternatives and gives reasons for BLM rejection of alternatives not selected will be upheld when it appears that BLM assessed alternatives in a manner that will avoid or minimize the adverse effects of the proposed action.

Defenders of Wildlife, 151 IBLA 1 (Feb. 17, 2000).

Federal Land Policy and Management Act of 1976
Rights-of-Way

Rights-of-way granted for electric or telephone facilities financed or eligible for financing under the Rural Electrification Act of 1936 are exempt from payment of rental under 43 U.S.C. § 1764(g) (1994), as amended by Pub. L. No. 98-300 and Pub. L. No. 104-333, and payments of rental for such rights-of-way are properly refunded.

Blue Mountain Energy, Inc., 151 IBLA 10 (Oct. 19, 1999).

Federal Land Policy and Management Act of 1976
Rights-of-Way

A right-of-way grant issued pursuant to the Federal Land Policy and Management Act of 1976 expires by its own terms when renewal is not tendered in accordance with the grant and regulations. When a grant provides for renewal, the renewal of the grant is governed by 43 C.F.R. § 2803.6-5(a). Absent an express determination of nonuse, a written request for renewal of the right-of-way grant is not necessary.

Charles E. Gibbs, 151 IBLA 98 (Nov. 23, 1999).

Federal Land Policy and Management Act of 1976
Rights-of-Way

Termination of a right-of-way grant for failure of the holder to comply with the terms and conditions thereof requires notice by BLM of the violation and a reasonable opportunity for the holder to cure the noncompliance. When a decision terminating a communications site right-of-way is based on a sheriff's sale of the equipment used on the right-of-way and the holder has taken action to redeem his ownership interest, the decision is properly set aside and remanded pending the outcome of redemption proceedings.

Arden Casper and Tel-Car, Inc., 151 IBLA 160 (Nov. 30, 1999).

Federal Land Policy and Management Act of 1976
Rights-of-Way

A right-of-way application for a road and utilities corridor project is properly rejected by a joint BLM and U.S. Forest Service decision pursuant to section 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1994), where the record shows the decision to be a reasoned analysis of the facts involved, made with due regard for the public interest.

Kirk Brown, 151 IBLA 221 (Dec. 13, 1999).

Federal Land Policy and Management Act of 1976
Rights-of-Way

The burden is on a right-of-way applicant, who appeals a BLM decision denying his application, to demonstrate by a preponderance of the evidence that BLM erred in rejecting the right-of-way. That burden is not met where the right-of-way is rejected because it would be incompatible with a national scenic trail closed to motorized traffic and where the possibility of other access exists. An applicant does not gain entitlement to a particular right-of-way because alternate access may be difficult or expensive.

Kirk Brown, 151 IBLA 221 (Dec. 13, 1999).

Federal Land Policy and Management Act of 1976
Rights-of-Way

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1994), requires the Secretary to regulate activities on lands under wilderness review to prevent impairment of their suitability for inclusion in the wilderness system. However, operations that impair wilderness suitability may be allowed if they are conducted in the same manner or degree as on October 21, 1976.

Natural Guardian LP, 152 IBLA 295 (May 31, 2000).

Federal Land Policy and Management Act of 1976
Rights-of-Way

An appellant appealing denial of an application for a right-of-way across public land must show that the decision was premised either on a clear error of law or a demonstrable error of fact.

Natural Guardian LP, 152 IBLA 295 (May 31, 2000).

Federal Land Policy and Management Act of 1976
Rights-of-Way

NEPA requires that an EIS consider alternatives to the proposed action and Federal agencies are required to use, to the fullest extent possible, the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment. Where BLM has identified and carefully assessed the reasonable alternatives, the action will be affirmed.

Northern Alaska Environmental Center, et al., 153 IBLA 253 (Sept. 18, 2000).

Federal Land Policy and Management Act of 1976
Rights-of-Way

Section 503 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1763 (1994), authorizes issuance of rights-of-way, such as roads and overhead transmission lines, in common, where practical, to minimize adverse environmental impacts and the proliferation of separate rights-of-way. It also provides for the designation of right-of-way corridors. Under 43 C.F.R. § 2806.1, the designation of rights-of-way corridors does not preclude the granting of separate rights-of-way over, upon, under or through, the public lands where the authorized officer determines that confinement to a corridor is not appropriate.

Northern Alaska Environmental Center, et al., 153 IBLA 253 (Sept. 18, 2000).

Federal Land Policy and Management Act of 1976
Rights-of-Way

BLM properly declines to approve the sale proponent's proposed access route for a mineral materials sale pursuant to the Materials Act of 1947, *as amended*, 30 U.S.C. §§ 601-604 (1994), when BLM's chosen alternative route will disturb less land and avoid the potential adverse impact on a nearby residential community from noise and air pollution, and when BLM has considered the greater cost of that route to the proponent, and the proponent fails to demonstrate that BLM acted in an arbitrary and capricious fashion, or contrary to any applicable Federal statute or regulation.

International Sand & Gravel Corp., 153 IBLA 295 (Sept. 26, 2000).

Federal Land Policy and Management Act of 1976
Rights-of-Way

An annual rental charge for a right-of-way will be affirmed where an analysis of the record establishes that the BLM decision setting the rental was in accordance with the underlying appraisal on which the new rental was based and an adequate explanation for BLM's actions is provided.

Southern California Sunbelt Developers, Inc., 154 IBLA 115 (Jan. 12, 2001).

Federal Land Policy and Management Act of 1976
Rights-of-Way

A right-of-way application for a preferred access road, or a closely related alternative, partially through an area of critical environmental concern is properly rejected and a longer alternative approved by BLM pursuant to section 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1994), where the record shows the decision to be a reasoned analysis of the facts involved, made with due regard for the public interest.

D. J. Laughlin, 154 IBLA 159 (Feb. 28, 2001).

Federal Land Policy and Management Act of 1976
Rights-of-Way

The burden is on a right-of-way applicant, who appeals a BLM decision denying his first two preferences in his right-of-way application, to demonstrate by a preponderance of the evidence that BLM erred in rejecting the preferred access routes. That burden is not met where the preferred access routes are rejected because they would be incompatible with protection of values within an ACEC through which each of the preferred routes would traverse and where the possibility of other access exists. An applicant does not gain entitlement to a particular right-of-way because alternate access may be difficult or more expensive.

D. J. Laughlin, 154 IBLA 159 (Feb. 28, 2001).

Federal Land Policy and Management Act of 1976

Rights-of-Way

Section 501(a)(6) of FLPMA, 43 U.S.C. § 1761(a)(6) (1994), grants the Secretary of the Interior the discretionary authority to issue rights-of-way over, upon, under, or through public lands for roads, trails, or other means of transportation. The Departmental regulation at 43 C.F.R. § 2802.4 lists reasons for denying an application for a right-of-way to use public lands, and this Board will affirm a BLM decision rejecting a right-of-way application if the record demonstrates that the rejection decision is based on a reasoned analysis of the facts and was made with due regard for the public interest. The mere fact that the holder of an existing right-of-way objects to the issuance of a subordinate right-of-way is not sufficient reason for rejecting a right-of-way application.

Douglas E. Noland, 156 IBLA 35 (Nov. 21, 2001).

Federal Land Policy and Management Act of 1976
Rights-of-Way

BLM properly finds that a water diversion structure has been erected in trespass on Federally-owned public lands where, even though the structure is intended to serve State water rights which predate the October 21, 1976, passage of FLPMA, no right-of- way or other authorization for the construction and maintenance of the structure has since been obtained. In these circumstances, BLM also properly holds the builder of the structure and the party on whose behalf the structure was built jointly and severally liable for the administrative costs incurred by BLM in resolving the trespass and requires that arrangements be made to remove the structure and rehabilitate the affected lands.

Dalton Wilson, Don Bowman, 156 IBLA 89 (Dec. 14, 2001).

Federal Land Policy and Management Act of 1976
Rights-of-Way

Sec. 504 of FLPMA and 43 C.F.R. § 2808.1(a) require a right-of-way applicant to reimburse the United States for reasonable administrative and other costs incurred in processing the application and in monitoring construction and operation pursuant to the right-of-way. BLM's decision assessing an application processing fee as "Category II" complies with 43 C.F.R. § 2808.2-1(a)(2) and is properly affirmed where the application is one for which (1) data necessary to comply with the National Environmental Policy Act of 1969 are available in BLM's office or from data furnished by the applicant and (2) one field examination is required to verify existing data.

John T. Alexander, 157 IBLA 1 (July 17, 2002).

Federal Land Policy and Management Act of 1976
Rights-of-Way

"*Continuous Use*." "*Public Road*." Where a party seeking to continue to use an existing road running across Federally-owned lands as an access road to his privately-owned lands makes no written showing that the road was cognizable under section 8 of R.S. § 2477 and concedes that the road is not a "public road" (a fact inconsistent with the existence of an R.S. § 2477 right-of-way), the Board should not pursue the matter on his behalf and there is no valid reason to remand the matter for consideration of the existence of an R.S. § 2477 right-of-way. "Continuous use," even if established, is insufficient to qualify a road under R.S. § 2477.

John T. Alexander, 157 IBLA 1 (July 17, 2002).

Federal Land Policy and Management Act of 1976
Rights-of-Way

By virtue of 43 C.F.R. § 2801.3(e), BLM lacks authority to issue any right-of-way under FLPMA to an applicant until trespass issues concerning the applicant are settled.

John T. Alexander, 157 IBLA 1 (July 17, 2002).

Federal Land Policy and Management Act of 1976
Rights-of-Way

Where a ROW holder providing private two-way radio service to members of the community, including businesses which serve the public good, demonstrates total loss of a business facility and equipment due to accidental fire, BLM must examine the specific financial data presented to determine whether the fair market rental charge will create an "undue hardship" on the applicant's ability to successfully operate.

Gifford Engineering, Inc., 157 IBLA 277 (Oct. 24, 2002).

Federal Land Policy and Management Act of 1976
Rights-of-Way

The holder of a ROW under FLPMA is entitled to be notified of a decision establishing a rental rate, provided a copy of the appraisal, and given an opportunity to appeal.

Gifford Engineering, Inc., 157 IBLA 277 (Oct. 24, 2002).

Federal Land Policy and Management Act of 1976
Rights-of-Way

Pursuant to 43 C.F.R. § 2803.1-2(b)(2)(ii), a reduction or waiver of rental for a communication site right-of-way may be granted when the holder provides without charge, or at a reduced rate, a valuable benefit to the public. BLM may reduce or waive rental payments for a communication site right-of-way pursuant to 43 C.F.R. § 2803.1-2(b)(2)(iv) if BLM determines that the imposition of the fair market rental value would cause undue hardship on the right-of-way holder and it is in the public interest to do so.

Lone Pine Television, Inc., 158 IBLA 86 (Dec. 26, 2002).

Federal Land Policy and Management Act of 1976
Rights-of-Way

BLM properly requires payment of an annual rental for a non-linear right-of-way for an irrigation wastewater pump, pipeline, and pond, where the right-of-way holder fails to show error in BLM's appraisal or that the annual rental is not the fair market rental value of the right-of-way.

George A. Weitz, Inc., Kurt Weitz, 158 IBLA 194 (Jan. 14, 2003).

Federal Land Policy and Management Act of 1976
Rights-of-Way

BLM properly decides to approve issuance of a right-of-way grant authorizing commercial use and maintenance of an existing airstrip on public lands pursuant to Title V of FLPMA based on an environmental assessment, where it has taken a hard look at the potential environmental consequences of doing so and reasonable alternatives, considering all relevant matters of environmental concern, and made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. BLM's decision not to prepare an EIS will be affirmed where the appellant does not show that BLM failed to consider a substantial environmental question of material significance to the proposed action or otherwise failed to abide by the statute.

Southern Utah Wilderness Alliance, et al., 161 IBLA 15 (Mar. 9, 2004).

Federal Land Policy and Management Act of 1976
Rights-of-Way

Where the term of a communications site right-of-way was defined to coincide with the expiration of a Federal Communications Commission license to operate an FM radio station and did not otherwise specify that the license must be maintained by the right-of-way grantee, and the record shows that a valid license has been in place since 1981, a BLM decision holding that the right-of-way automatically terminated will be reversed.

Dan Bradshaw, 161 IBLA 116 (Apr. 7, 2004).

Federal Land Policy and Management Act of 1976
Rights-of-Way

The phrase *subject to* when used in a conveyance means "subordinate to", "subservient to", "limited by", or "charged to", and it serves to put a purchaser on notice that he is receiving less than a fee simple. An *exception* in a deed withdraws from the description of the property conveyed the property excepted therefrom. An *exception* thus is *in esse* at the time of the conveyance, and title remains in the grantor. In contrast, a *reservation* technically is a conveyance of the grantor's entire interest in property by which an interest that did not previously exist as an independent right or interest is simultaneously created and vested in the grantor. When a patent contains a clause *excepting and reserving to* the United States certain identified rights-of-way and easements, while also conveying the patented lands *subject to* other provisions, the patent will be construed as excepting the lands within the boundaries of the rights-of-way and easements from the description of the land conveyed by the patent.

Dan Bradshaw, 161 IBLA 116 (Apr. 7, 2004).

Federal Land Policy and Management Act of 1976
Rights-of-Way

Where BLM has patented lands excepting and reserving to the United States a communication site right-of-way, BLM may not divest the United States of land thus retained without first complying with the provisions of sec. 508 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1768 (2000), by determining that retention of Federal control is no longer necessary to assure that (1) the purpose of Title V of the Act will be carried out, based on the effect on the public interest, (2) the terms and conditions of the right-of-way will be complied with, and (3) the lands affected will be protected.

Dan Bradshaw, 161 IBLA 116 (Apr. 7, 2004).

Federal Land Policy and Management Act of 1976
Rights-of-Way

When a patent conveys lands "subject to . . . all communication site and related facility rights-of-way, granted or to be granted" in accordance with documents referred to in the patent that describe areas that "will be reserved for communications site use" and state "[i]t is understood that patents issued for the above described lands will provide for continued use of the communication sites," the patent reserved an interest in lands for use as communication sites and those areas are public lands over which BLM has jurisdiction to grant rights-of-way for communication sites.

AZ Spectrum Wireless, 161 IBLA 311 (May 17, 2004).

Federal Land Policy and Management Act of 1976
Rights-of-Way

BLM properly denies a request for a refund of rental fees paid for a right-of-way where it determines that the right-of-way is not for an electric or telephone facility or an extension therefrom, and is thus not exempt from such fees under section 504(g) of the Federal Land Policy and Management Act of 1976, *as amended*, 43 U.S.C. § 1764 (g) (1994 or 2000) and implementing regulations at 43 C.F.R. § 2803.1-2(b)(1)(iii). Right-of-way grants for access roads, conveyor routes, haul roads, or railroads for the conveyance of coal do not constitute authorizations for "electric or telephone facilities"; nor do they constitute authorizations for extensions from such facilities.

Blue Mountain Energy, Inc., 162 IBLA 108 (July 2, 2004).

Federal Land Policy and Management Act of 1976
Rights-of-Way

A BLM finding of no significant impact (FONSI) for a grant of public-land rights-of-way for surface facilities, access road, telephone line, and power line in connection with underground coal mining operations based on an analysis set forth in an environmental assessment will be upheld when the record reveals that BLM has taken a hard look at the environmental impacts and establishes a rational basis for the FONSI.

Southern Utah Wilderness Alliance, 163 IBLA 142 (Sept. 22, 2004).

Federal Land Policy and Management Act of 1976
Rights-of-Way

Section 504(g) of the Federal Land Policy and Management Act of 1976 (FLPMA), *as amended*, 43 U.S.C. § 1764(g) (2000), and section 28(*l*) of the Mineral Leasing Act (MLA), *as amended*, 30 U.S.C. § 185(*l*) (2000), require a right-of-way applicant to reimburse the United States for the reasonable administrative and other costs incurred in processing the application and in related inspection and monitoring of the right-of-way. BLM regulations for FLPMA and MLA rights-of-way establish cost recovery categories based upon the expenditure of government resources in processing the applications. BLM decisions determining that applications for an access road right-of-way issued pursuant to FLPMA, and for an oil and gas pipeline right-of-way issued under the MLA, covering exactly the same ground, both fall under cost recovery Category III will be set aside and remanded where (1) BLM's decisions do not explain how BLM determined that two field examinations were required for each application, and (2) the supplementary record provided by BLM documenting the performed field examinations does not establish what examinations actually took place for each right-of-way application and/or were necessary to verify the data available in the BLM office or furnished by the applicant.

Yates Petroleum Corp., 163 IBLA 300 (Oct. 29, 2004).

Federal Land Policy and Management Act of 1976
Rights-of-Way

Under section 501(a)(6) of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1761(a)(6) (2000), a decision to issue a right-of-way is discretionary. When BLM uses its discretionary authority to reject an application for a land use authorization or impose a condition upon a land use authorization, it must provide a rational basis for its decision.

Mark Patrick Heath, 163 IBLA 381 (Nov. 10, 2004).

Federal Land Policy and Management Act of 1976
Rights-of-Way

In order to prevail on a challenge to a rental determination assessed by BLM for a communication site right-of-way and calculated pursuant to the rental schedule established in 43 C.F.R. § 2803.1-2(d), an appellant bears the burden of demonstrating that BLM used inappropriate data or erred in its calculations, or otherwise erred in applying the rental schedule to its particular right-of-way. Conclusory statements challenging BLM's rental determination that lack a factual basis do not satisfy the burden of proof which necessarily rests with an appellant.

Treasure Valley Broadcasting Company, 165 IBLA 113 (Mar. 22, 2005).

Federal Land Policy and Management Act of 1976
Rights-of-Way

BLM may reduce rental payments for a communication site right-of-way if it determines that the imposition of the fair market value rental would cause an undue hardship on the right-of-way holder or applicant, and it is in the public interest to do so.

Treasure Valley Broadcasting Company, 165 IBLA 113 (Mar. 22, 2005).

Federal Land Policy and Management Act of 1976
Rights-of-Way

BLM must ensure that a decision increasing rental for a communication site right-of-way is supported by a rational basis, set forth in the written decision and demonstrated in the administrative record accompanying the decision. Although BLM may, pursuant to its policy for implementing 43 C.F.R. § 2803.1-2(d)(2)(i), assess a higher rental schedule rate for a communication site right-of-way based upon a modification combining two or more Ranally Metro Areas published in the "Rand McNally Commercial Atlas and Marketing Guide," it is nonetheless incumbent upon BLM to develop an administrative record that provides a rational basis for doing so.

Citicasters Co., 166 IBLA 111 (June 24, 2005).

Federal Land Policy and Management Act of 1976
Rights-of-Way

The reasonableness of a FONSI will be upheld if the record establishes that BLM took a "hard look" at the proposed action, carefully reviewed environmental problems, identified all relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or that any such impacts will be reduced to insignificance by the adoption of appropriate mitigation measures. A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Where a FONSI is based on mitigation measures designed to minimize acknowledged adverse environmental impacts, analysis of the proposed mitigation measures and how effective they would be in eliminating those impacts is required. A mitigation plan must be sufficiently developed and explained to provide a convincing case that significant environmental impacts will be reduced to insignificance. A FONSI will be set aside where an appellant has shown that the proposed actions will have a significant impact to riparian resources and that BLM has failed to demonstrate that the proposed mitigation measures will reduce those impacts to insignificance.

Southern Utah Wilderness Alliance, et al., 166 IBLA 140 (July 12, 2005).

Federal Land Policy and Management Act of 1976
Rights-of-Way

Section 304(c) of the Federal Land Policy and Management Act of 1976, *as amended*, 43 U.S.C. § 1734(c) (2000), authorizes a refund when "any person has made a payment under any statute relating to the . . . use, or other disposition of public lands which is not required or is in excess of the amount required by applicable law and the regulations issued by the Secretary . . . ." For lands subject to a railroad easement under the General Right-of-Way Act of March 3, 1875, the railroad obtained authority to issue rights-of-way. Where BLM compels an entity which has obtained a proper right-of-way from the railroad to obtain a right-of-way from the Department and pay annual fees to the Government for the right-of-way, and then determines the Federal right-of-way was invalid, BLM abuses its discretion by denying a refund of amounts paid for the unauthorized right-of-way.

ST Services, 169 IBLA 207 (June 27, 2006).

Federal Land Policy and Management Act of 1976
Rights-of-Way

Under section 501(a)(6) of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1761(a)(6) (2000), a decision to issue a right-of-way is discretionary. When BLM uses its discretionary authority to reject an application for a land use authorization, it must provide a rational basis for its decision. A BLM decision rejecting a right-of-way application will be affirmed when the record shows that BLM balanced the application against resource values of concern, including preservation of the wild and scenic characteristics of the area, and concluded that the application is inconsistent with applicable land use plans.

Wiley F. & L'Marie Beaux, 171 IBLA 58 (Jan. 31, 2007).

Federal Land Policy and Management Act of 1976
Rights-of-Way

In denying a right-of-way application for the upgrading of an existing road in a wild and scenic river study area, BLM may not, according to section 12(b) of the Wild and Scenic Rivers Act, 16 U.S.C. § 1283(b) (2000), and the implementing regulations at 43 C.F.R. Subpart 8351, abrogate any existing rights of the private party without the consent of said party.

Wiley F. & L'Marie Beaux, 171 IBLA 58 (Jan. 31, 2007).

Federal Land Policy and Management Act of 1976
Rules and Regulations

FLPMA establishes that BLM must manage the public lands for multiple uses by the public, including outdoor recreation. FLPMA does not contain any *per se* prohibition of particular types of off-road vehicle use; rather, BLM regulates and establishes criteria for the use and operation of such vehicles on the public lands under its regulations at 43 C.F.R. Subpart 8340. The Board will not reverse under FLPMA a BLM decision to create a jeep trail in a recreation area, and to close others in nearby sensitive environmentally protected areas, where such action was expressly envisioned in the relevant land use planning documents.

Colorado Mountain Club, et al., 161 IBLA 371 (June 4, 2004).

Federal Land Policy and Management Act of 1976
Rules and Regulations

The sanctions for unauthorized commercial recreation use of the public lands are set forth in the regulations governing special recreation permits at 43 C.F.R. § 8372.0-7 (b) (2000). A decision applying the trespass regulation at 43 C.F.R. § 2920.1-2, which pertains to uses not authorized under any other law or regulation, to assess administrative costs, fair market value rental, and a willful trespass penalty for unauthorized commercial recreation use will be vacated.

Frank Robbins, d.b.a. High Island Ranch, 167 IBLA 239 (Nov. 30, 2005).

Federal Land Policy and Management Act of 1976
Rules and Regulations

BLM's authority to manage public lands includes discretionary authority to close public lands to protect the public. Under 43 C.F.R. § 8364.1(a), BLM may issue an order to close or restrict use of designated public lands to protect persons, property, and public lands and resources. That authority is independent of the initial designation of off-road vehicle use in the land planning process. Provided BLM has satisfied the requirements in 43 C.F.R. § 8364.1(b) relating to the period and terms of the closure or restriction and publication thereof, the Board will not disturb a decision to close public lands if it finds BLM made a reasoned analysis, considering all relevant factors, that is supported by the record, and there is otherwise no compelling reason to reverse it.

Salinas Ramblers Motorcycle Club, et al., 171 IBLA 396 (July 10, 2007).

Federal Land Policy and Management Act of 1976
Sales

The existence of an unpatented mining claim of record under section 314 of FLPMA prevents an exchange or sale of public lands pursuant to § 203 of FLPMA. BLM properly refused to consider or process an application for direct sale of public land until the unpatented mining claim was relinquished, abandoned, or declared invalid on the basis of lack of discovery in a Government contest.

Martin S. and Joann Chattman, 154 IBLA 64 (Dec. 7, 2000).

Federal Land Policy and Management Act of 1976
Sales

BLM properly cancels a sale of a parcel of public land offered at a competitive sale and declares the bid deposit forfeited in accordance with 43 C.F.R. § 2711.3-1(d) where payment of the full bid price is not submitted to BLM prior to the expiration of 180 days from the date of the sale.

El Monte Bindery Systems, Inc., 164 IBLA 243 (Jan. 6, 2005).

Federal Land Policy and Management Act of 1976
Sales

An application for the transfer of lands must be rejected if they are identified for retention in Federal ownership in the applicable resource management plan.

Redding Gun Club, 171 IBLA 28 (Dec. 28, 2006).

Federal Land Policy and Management Act of 1976
Sales

The Interior Board of Land Appeals has no jurisdiction to review a BLM decision denying a proposal to amend a resource management plan developed under 43 C.F.R. Part 1600.

Redding Gun Club, 171 IBLA 28 (Dec. 28, 2006).

Federal Land Policy and Management Act of 1976
Service Charges

Sec. 504 of FLPMA and 43 C.F.R. § 2808.1(a) require a right-of-way applicant to reimburse the United States for reasonable administrative and other costs incurred in processing the application and in monitoring construction and operation pursuant to the right-of-way. BLM's decision assessing an application processing fee as "Category II" complies with 43 C.F.R. § 2808.2-1(a)(2) and is properly affirmed where the application is one for which (1) data necessary to comply with the National Environmental Policy Act of 1969 are available in BLM's office or from data furnished by the applicant and (2) one field examination is required to verify existing data.

John T. Alexander, 157 IBLA 1 (July 17, 2002).

Federal Land Policy and Management Act of 1976
Surface Management

BLM properly issued a notice of noncompliance under 43 C.F.R. § 3809.3-2(b)(2) requiring a millsite operator to remove junked vehicles, railroad ties, tires and other debris, to clean up fuel spills, to either rehabilitate or take down and remove dilapidated millsite structures and to file a plan of operations describing the measures to be taken to prevent unnecessary and undue degradation of the public lands.

American Stone, Inc., 153 IBLA 77 (July 27, 2000).

Federal Land Policy and Management Act of 1976
Surface Management

BLM may properly issue a Notice of Noncompliance and Cessation Order pursuant to 43 C.F.R. § 3715.7-1 where an appellant's mill site claims are no longer valid and his continued occupancy is not reasonably incident to mining.

James R. McColl, 159 IBLA 167 (May 29, 2003).

Federal Land Policy and Management Act of 1976
Surface Management

The Board will not enforce an interpretation of 43 C.F.R. §§ 3715.5-1 and 5-2 that holds a current occupant liable for removal of structures and other materials from the public lands where the current occupant clearly establishes that the structures, etc., existed on site at the time his or her occupancy commenced, as a reasonably prudent prospective or current occupant could reasonably interpret the regulatory language to indicate that he or she is responsible for removing only structures and materials he or she placed there.

James R. McColl, 159 IBLA 167 (May 29, 2003).

Federal Land Policy and Management Act of 1976
Surface Management

A finding that approval of a plan of operations for a phased exploration project will not cause unnecessary or undue degradation of public lands will be affirmed, even though the plan does not specify the exact location of future activities because those locations depend on the results of the initial exploration phase, where BLM compensates for the lack of specific location information by analyzing the impacts of the total acreage of approved surface disturbance anywhere in the entire project area and imposes protective stipulations for identified resources throughout the entire project area and where the appellant has not shown that the project, with the mandated stipulations, will cause unnecessary or undue degradation of the public lands.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

Federal Land Policy and Management Act of 1976
Surface Management

Pursuant to 43 C.F.R. § 3809.1-4(b)(3)(2000), an approved plan of operations is required before a mining claimant begins any operation, other than casual use, in a designated area of critical environmental concern and BLM may issue a notice of noncompliance to a mining claimant who fails to file a plan of operations for operations in an area of critical environmental concern.

Robert W. Gately, 160 IBLA 192 (Nov. 20, 2003).

Federal Land Policy and Management Act of 1976
Surface Management

When a mining claimant received approval from BLM to continue his present use and occupancy of a mining claim on public land for the one-year grace period for compliance with the requirements of 43 C.F.R. Subpart 3715 afforded by 43 C.F.R. § 3715.4(b), the mining claimant's use and occupancy must satisfy the applicable requirements of 43 C.F.R. Subpart 3715 following the expiration of that grace period.

Robert W. Gately, 160 IBLA 192 (Nov. 20, 2003).

Federal Land Policy and Management Act of 1976
Surface Management

A BLM determination of nonconcurrence with a claimant's use and occupancy of a mining claim will be affirmed when the claimant fails to provide sufficient information about the proposed activities to show that they are reasonably incident, as required by 43 C.F.R. § 3715.2(a).

Robert W. Gately, 160 IBLA 192 (Nov. 20, 2003).

Federal Land Policy and Management Act of 1976
Surface Management

A finding that approval of a mine closure and reclamation plan will not cause unnecessary or undue degradation of public lands will be affirmed where the appellant has not shown that BLM failed to adequately consider the effects of operations on other resources and land uses, including those resources and uses outside the area of operations; neglected to initiate and complete reasonable mitigation measures, including reclamation of disturbed areas; or failed to comply with applicable environmental protection statutes and regulations thereunder, and where the record demonstrates that the project, with the mandated stipulations, will not cause unnecessary or undue degradation of the public lands.

Great Basin Mine Watch et al., 160 IBLA 340 (Jan. 26, 2004).

Federal Land Policy and Management Act of 1976
Surface Management

BLM properly decides to approve issuance of a right-of-way grant authorizing commercial use and maintenance of an existing airstrip on public lands pursuant to Title V of FLPMA based on an environmental assessment, where it has taken a hard look at the potential environmental consequences of doing so and reasonable alternatives, considering all relevant matters of environmental concern, and made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. BLM's decision not to prepare an EIS will be affirmed where the appellant does not show that BLM failed to consider a substantial environmental question of material significance to the proposed action or otherwise failed to abide by the statute.

Southern Utah Wilderness Alliance, et al., 161 IBLA 15 (Mar. 9, 2004).

Federal Land Policy and Management Act of 1976
Surface Management

Section 302(b) of the Federal Land Policy and Management Act of 1976 requires the Secretary to "prevent unnecessary or undue degradation of the public lands." The statutory provision does not impose a standard for treatment of private lands independent of requirements imposed by other laws, nor does it establish a cause of action by a private party for what it believes to be tortious conduct. By rule BLM defines this term "unnecessary or undue degradation" to mean, *inter alia*, "conditions, activities, or practices that . . . [f]ail to comply with . . . performance standards in [43 C.F.R. §] 3809.420, the terms and conditions of an approved plan of operations, operations described in a complete notice, and other Federal and state laws related to environmental protection and protection of cultural resources," or are not "'reasonably incident' to prospecting, mining, or processing operations as defined in 43 C.F.R. § 3715.0-5." 43 C.F.R. § 3809.5. The existence of a mining facility in a location opposed by a nearby landowner does not, *ipso facto*, constitute unnecessary or undue degradation by virtue of the fact that the opponent believes it can be relocated.

Western Exploration Inc. & Doby George LLC, 169 IBLA 388 (Aug. 23, 2006).

Federal Land Policy and Management Act of 1976
Surface Management

BLM, acting on behalf of the Secretary of the Interior, has discretionary authority, in accordance with 43 C.F.R. § 2920.1-1, to authorize any use of public land not specifically authorized under other laws or regulations and not specifically forbidden by law. Residential occupancy of a mining claim is specifically authorized under 43 C.F.R. Subpart 3715, when certain conditions are met. When a mining claimant fails to comply with those conditions, the claimant may not, as an alternative, receive authorization for residential occupancy of the claim under 43 C.F.R. Part 2920.

Jason S. Day, 171 IBLA 53 (Jan. 25, 2007).

Federal Land Policy and Management Act of 1976
Valid Existing Rights

Section 102(a) of Federal Land Policy Management Act of 1976 (FLPMA) imposes broad stewardship duties, including the requirement to manage land in a manner that will protect the quality of environmental values. 43 U.S.C. § 1701(a)(8) (2000). Section 302(b) of FLPMA mandates that the Secretary shall take any action necessary to prevent unnecessary or undue degradation of the land. 43 U.S.C. § 1732(b) (2000). FLPMA also provides that nothing in the Act shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act. 43 U.S.C. § 1701, note (a) (2000). FLPMA further provides that all actions by the Secretary shall be subject to valid existing rights. 43 U.S.C. § 1701, note (h) (2000).

Colorado Environmental Coalition, The Wilderness Society, 165 IBLA 221 (Apr. 8, 2005).

Federal Land Policy and Management Act of 1976
Valid Existing Rights

Under the Mineral Leasing Act, 30 U.S.C. § 226 (2000), the decision whether to issue an oil and gas lease is a matter within the discretion of the Secretary. Once issued, the holder of an oil and gas lease issued prior to the enactment of FLPMA may develop the leasehold to the extent authorized by the issuance document.

Colorado Environmental Coalition, The Wilderness Society, 165 IBLA 221 (Apr. 8, 2005).

Federal Land Policy and Management Act of 1976

Valid Existing Rights

A no surface occupancy (NSO) restriction in a Resource Management Plan that is by its terms to be applied to future oil and gas leases does not provide an independent basis for imposing an NSO restriction on a pre-FLPMA lease on which drilling and production had commenced before enactment of the statute.

Colorado Environmental Coalition, The Wilderness Society, 165 IBLA 221 (Apr. 8, 2005).

Federal Land Policy and Management Act of 1976
Wilderness

A BLM decision to allow limited and reasonable vehicle use consistent with the prewilderness grazing use in a recently designated wilderness area will be upheld on appeal absent a showing of compelling reasons for modification or reversal. Relevant factors for consideration of whether to continue the motorized vehicle authorization include the availability of other alternatives and the reasonableness of the authorized use.

National Wildlife Federation, et al., Erik and Tina Barnes, 151 IBLA 104 (Nov. 24, 1999).

Federal Land Policy and Management Act of 1976
Wilderness

The Secretary is required to provide such access to non-Federally owned land surrounded by public lands which have been designated as wilderness lands as is adequate to secure to the owner of the inholding the reasonable use and enjoyment thereof, in conformance with reasonable rules and regulations applicable to access across public lands.

Erik and Tina Barnes, National Wildlife Federation, et al., 151 IBLA 128 (Nov. 30, 1999).

Federal Land Policy and Management Act of 1976
Wilderness

Where BLM prepares an environmental assessment regarding the environmental impact of the installation of water guzzlers in an area previously inventoried but not designated as a Wilderness Study Area, it is not required to include in such assessment consideration of a subsequent inventory by a citizens' group concluding that the area possesses wilderness characteristics.

Southern Utah Wilderness Alliance, 151 IBLA 338 (Jan. 21, 2000).

Federal Land Policy and Management Act of 1976
Wilderness

A Wilderness Study Area is subject to the protection of section 603(c) of FLPMA, which authorizes "grandfathered use" exceptions to the non-impairment standard. In order to qualify under the "grandfathered use" exception, the use in question must have been in existence on October 21, 1976, and must have continued thereafter following the logical pace and progression of development.

Zenda Gold Corporation, 155 IBLA 64 (May 16, 2001).

Federal Land Policy and Management Act of 1976
Wilderness

Where BLM prepares an environmental assessment regarding the environmental impact of a proposed well to be drilled on a Federal oil and gas lease in an area inventoried for wilderness suitability but not designated as a wilderness study area, BLM is not required to reinventory the land for wilderness characteristics. The Federal Land Policy and Management Act, 43 U.S.C. § 1711(a) (2000), not the National Environmental Policy Act, controls the Secretary's wilderness inventory authority, and the Board has no supervisory authority over BLM to compel a reinventory.

Southern Utah Wilderness Alliance, 159 IBLA 220 (June 16, 2003).

Federal Land Policy and Management Act of 1976
Wilderness

The Board may not exercise supervisory authority over BLM to compel it to re-inventory land for wilderness characteristics for purposes of amending existing land use plans, prior to making a decision to go forward with a lease sale. The manner and time of implementation of the statutory mandate to keep a current inventory of the public lands and their resource values is committed to the discretion of the Secretary by section 201(a) of FLPMA. 43 U.S.C. § 1711(a) (2000).

Southern Utah Wilderness Alliance, 160 IBLA 225 (Dec. 11, 2003).

Federal Land Policy and Management Act of 1976
Wilderness

BLM's authority to conduct wilderness reviews or establish new wilderness study areas expired on October 21, 1993, and, absent congressional authorization, BLM may not establish, manage or otherwise treat public lands, other than Congressionally designated wilderness under 43 U.S.C. § 1782 (2000), as a wilderness study area or as a wilderness under the land use planning provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1712.

Colorado Environmental Coalition, The Wilderness Society, 161 IBLA 386 (June 4, 2004).

Federal Land Policy and Management Act of 1976
Wilderness

BLM has authority under the Federal Land Policy and Management Act to prepare and maintain on a continuing basis an inventory of all public lands and their resources

and other values, which may include characteristics that are associated with the concept of wilderness.

Colorado Environmental Coalition, The Wilderness Society, 161 IBLA 386 (June 4, 2004).

Federal Land Policy and Management Act of 1976
Wilderness

When considering a proposal to preserve land having wilderness characteristics, BLM will continue to manage public lands according to existing land use plans. During the planning process and concluding with actions after the planning process, BLM will not manage those lands under a congressionally designated non-impairment standard, nor manage them as if they are or may become congressionally designated wilderness areas, but through the planning process BLM may manage them using special protections to protect wilderness characteristics.

Colorado Environmental Coalition, The Wilderness Society, 161 IBLA 386 (June 4, 2004).

Federal Land Policy and Management Act of 1976
Wilderness

When BLM prepares an environmental analysis for a proposed action to issue an oil and gas lease in an area open to leasing under a governing resource management plan, it is not required to postpone leasing under its existing resource management plan in order to consider a wilderness proposal from an advocacy group. Proposed designations that would require amendment of the existing resource management plan need not be considered each time BLM decides to grant a right to undertake an activity in conformity with the existing land use plan.

Colorado Environmental Coalition, The Wilderness Society, 161 IBLA 386 (June 4, 2004).

Federal Land Policy and Management Act of 1976
Wilderness

BLM's authority to conduct wilderness reviews or establish new wilderness study areas expired on October 21, 1993, and, absent Congressional authorization, BLM may not establish, manage or treat public lands, other than those designated wilderness by Congress under 43 U.S.C. § 1782 (2000), as wilderness study areas or as wilderness under the land use planning provisions of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1712 (2000). Under FLPMA, BLM has the authority to prepare and maintain an inventory of all public lands and their resources and other values, which may include characteristics that are associated with the concept of wilderness.

Colorado Environmental Coalition, The Wilderness Society, Sierra Club, 162 IBLA 293 (Aug. 17, 2004).

Federal Land Policy and Management Act of 1976
Wilderness

BLM properly dismisses a protest against an oil and gas lease sale based on assertions of the wilderness character of the lands, because the final administrative determination that the land was not wilderness in character was made in the 1980's. Even where the land has been proposed for wilderness designation in pending legislation, BLM may properly administer those lands for other purposes, where the land has not been included in a wilderness study area. Because the time for taking appeals from inventory decisions has long since passed, the doctrine of administrative finality precludes appellants from challenging those decisions by filing protests against actions taken by BLM to administer the land for other purposes.

Colorado Environmental Coalition, The Wilderness Society, Sierra Club, 162 IBLA 293 (Aug. 17, 2004).

Federal Land Policy and Management Act of 1976
Wilderness

When parcels nominated for inclusion in a competitive oil and gas lease sale encompass lands that have not been included in a wilderness study area or found to possess wilderness characteristics in a BLM wilderness inventory, BLM may administer those lands for other purposes, including oil and gas leasing, even though the lands were determined to have wilderness characteristics in a citizens' group wilderness inventory and were included in an area proposed for wilderness designation in legislation introduced in Congress.

Southern Utah Wilderness Alliance, 163 IBLA 14 (Sept. 3, 2004).

Federal Land Policy and Management Act of 1976
Wilderness

BLM is not required to re-inventory lands that have not been included in a wilderness study area or found to possess wilderness characteristics in a BLM inventory for wilderness suitability even though the lands were determined to have wilderness characteristics in a citizens' group wilderness inventory and were included in an area proposed for wilderness designation in legislation introduced in Congress. The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1711(a) (2000), controls the Secretary's wilderness inventory authority and grants the Secretary the discretion to determine the manner and time of implementation of the statutory mandate to keep a current inventory of the public lands and their resources.

Southern Utah Wilderness Alliance, 163 IBLA 14 (Sept. 3, 2004).

Federal Land Policy and Management Act of 1976
Wilderness

When parcels nominated for inclusion in a competitive oil and gas lease sale encompass lands that were not included in a wilderness study area, BLM may administer those lands for other purposes, including oil and gas leasing, even though the lands were asserted to have wilderness characteristics in a citizens' group wilderness proposal and were included in an area proposed for wilderness designation in legislation introduced in Congress. BLM's determination that existing environmental documents adequately analyze the effects of a competitive oil and gas lease sale for such parcels will be affirmed where the appellants base their objection to the adequacy of those documents on purported "significant new circumstances or information" but fail to establish such circumstances or information.

Colorado Environmental Coalition, et al., 171 IBLA 256 (May 9, 2007).

Federal Land Policy and Management Act of 1976
Withdrawals

BLM may not properly temporarily segregate lands from entry under the mining laws under the authority of section 206(i) of the Federal Land Policy and Management Act of 1976 (FLPMA), *as amended*, 43 U.S.C. § 1716(i) (2000), and 43 C.F.R. § 2201.1-2 in the absence of a proposal to exchange Federal lands. A statement in a resource management plan to the effect that upwards of 149,000 acres of Federal lands are "available for exchange" is not a "proposal" made by BLM to exchange lands within the meaning of 43 C.F.R. Subpart 2201, as it does not identify the lands to be exchanged or the parties seeking the exchange. BLM's improper use of this temporary segregation authority effectively works a withdrawal of the lands without compliance with the procedural requirements of section 204 of FLPMA, 43 U.S.C. § 1714 (2000).

Michael L. Carver, et al, 163 IBLA 77 (Sept. 8, 2004).

Federal Land Policy and Management Act of 1976
Withdrawals

The segregative effect of a proposed land exchange automatically terminates 5 years from the date the segregation is noted on the public land records, but the termination does not instantly restore the lands to the operation of public land laws, including the mining laws. To effectuate the opening of lands to the operation of the public land laws requires a change in the status of the lands noted on the public land records. Lands may not be appropriated under the mining laws prior to the date and time of restoration and opening, and any such attempted appropriation vests no rights against the United States. 43 C.F.R. § 2091.1(b). An opening order may be issued at any time, but is required when the opening date is not specified in the document creating the segregation. 43 C.F.R. § 2091.07(b).

Pilot Plant, Inc., et al., 168 IBLA 169 (Mar. 16, 2006).

Federal Land Policy and Management Act of 1976
Withdrawals

Under the notation rule, mining claims located at a time when BLM's records indicate that the lands on which they are located are segregated from mineral entry are void regardless of whether the underlying segregation was proper. The land is not available for entry until such time as the notation is removed and the land is restored to entry, even if the original notation was made in error or the segregative effect is void, voidable, or has terminated or expired. 43 C.F.R. § 2091.1(b).

Pilot Plant, Inc., et al., 168 IBLA 169 (Mar. 16, 2006).

Federal Oil and Gas Royalty Management Act of 1982
Generally

MMS properly assesses late payment charges on underpaid escalated rental payments.

Linmar Petroleum Co., 153 IBLA 99 (Aug. 3, 2000).

Federal Oil and Gas Royalty Management Act of 1982
Civil Penalties

An appellant's argument that an administrative law judge improperly allocated the burden of proof in a hearing on the record of a proposed civil penalty under section 109 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1719 (2000), provides no basis for reversing the judge's decision where the evidence is not in equipoise and BLM preponderated on every material issue.

Grynberg Petroleum Co. v. Bureau of Land Management, 172 IBLA 167 (Aug. 23, 2007).

Federal Oil and Gas Royalty Management Act of 1982
Civil Penalties

FOGRMA places the burden on the operator to justify a longer abatement period by informing BLM in a timely manner of circumstances that would prevent timely abatement of a violation identified in a Notice of Incidents of Noncompliance. Where an operator did not request a longer abatement period, in a hearing on the record of a proposed civil penalty, he cannot carry his burden of showing, by a preponderance of the evidence, that the abatement period was inadequate.

Grynberg Petroleum Co. v. Bureau of Land Management, 172 IBLA 167 (Aug. 23, 2007).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

An order issued by the Minerals Management Service to a royalty payor is considered to be served on the date it is received at the address of record as evidenced by a certified mail return receipt card signed by any employee or agent of the payor at that address.

Apache Corporation, 152 IBLA 30 (Mar. 1, 2000).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

A decision dismissing an appeal to the Director, Minerals Management Service (or to the Commissioner of Indian Affairs with respect to Indian leases), filed more than 30 days after service of the order appealed from will be affirmed when the grace period is not applicable.

Apache Corporation, 152 IBLA 30 (Mar. 1, 2000).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

When computing the royalty due an Indian tribe for natural gas produced and sold from tribal lands the producer is required to abide by the applicable Federal regulations not inconsistent with the terms of a minerals agreement issued pursuant to the Indian Mineral Development Act of 1982, 25 U.S.C. §§ 2101–2108 (1994). Thus, not having gained prior MMS approval of a higher allowance, the producer was restricted by 30 C.F.R. § 206.158(c)(2) (1994) to a deduction of not more than two-thirds of the value of the products when valuing natural gas liquid products derived from processing natural gas for royalty computation purposes.

Harken Southwest Corp., 153 IBLA 153 (Aug. 17, 2000).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

MMS may require restructured accounting when MMS has, by sampling a portion of but not all of the producer's production records, discovered a systemic error or deficiency (whether or not amounting to a pattern of error) in the producer's royalty computations. Finding an error or deficiency would not justify restructured accounting without a showing that it is likely that the error was repeated in other months and/or other leases. A showing of a repeated error or deficiency over an extended period of time and for a number of leases establishes a systemic error or deficiency sufficient to justify restructured accounting.

Union Texas Petroleum Energy Corporation, 153 IBLA 170 (Aug. 25, 2000).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

The 6-year statute of limitations for the commencement by the United States of civil actions for money damages, found at 28 U.S.C. § 2415(a) (1994), does not limit administrative action within the Department. MMS orders to recalculate and pay additional royalty due under an Indian lease are administrative actions not subject to the statute of limitations.

Union Texas Petroleum Energy Corporation, 153 IBLA 170 (Aug. 25, 2000).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

MMS properly directs a lessee to perform dual accounting and recalculate royalties due on Indian oil and gas leases where the leases require such accounting and an MMS audit revealed instances of the lessee's failure to calculate and pay royalties utilizing that method.

Alexander Energy Corporation, 153 IBLA 238 (Aug. 31, 2000).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

The regulation at 30 C.F.R. § 206.159(c)(1) (1992) provides that prior to or at the same time as claiming a gas processing allowance on Form MMS-2014, a lessee must submit page one of the initial Form MMS-4109. The regulation at 30 C.F.R. § 206.159(d)(1) provides that failure to timely file Form MMS-4109 subjects a lessee to forfeiture of processing allowances taken on Form MMS-2014 until such time as lessee cures the failure to submit page one of Form MMS-4109.

Alexander Energy Corporation, 153 IBLA 238 (Aug. 31, 2000).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

Where payor information forms and division orders specify that the purchaser of gas is to distribute gas sales proceeds and has assumed the lessee's legal obligation to pay royalties, the obligation to perform a restructured accounting and to pay any additional royalty found to be due rests with the purchaser. If the purchaser does not perform the accounting or pay the royalty, it is the lessee's obligation to do so.

Estoril Producing Co., 154 IBLA 1 (Oct. 12, 2000).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

Appellant's lease and applicable regulations specified that royalty would be determined by major portion analysis. Even though the Department did not perform such analysis until compelled to do so years after production had occurred by agreement settling litigation in *Kauley v. Lujan*, appellant knew or should have known that its Indian lease gas production was being valued by a method other than major portion analysis, and consequently, it was on notice that it could be responsible for additional royalties.

Sanguine Limited, 155 IBLA 277 (July 26, 2001).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

Where nonpayment or underpayment of royalties by the end of the month following the month in which the production occurred is established, MMS properly assesses interest for late payment of royalties under section 111(a) of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. § 1721(a) (1994). That result is not changed when the impetus for recalculating royalties is an agreement between the Federal government and Indian lessors settling class action litigation years after the production in question had occurred.

Sanguine Limited, 155 IBLA 277 (July 26, 2001).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

Late payment charges are not a penalty; they are assessed to compensate the lessor for the time value of money owing and not timely paid.

Sanguine Limited, 155 IBLA 277 (July 26, 2001).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

A statute establishing time limitations for commencement of judicial actions for damages on behalf of the United States does not limit administrative proceedings within the Department of the Interior to determine an obligation to pay royalties, demands for additional royalty, or demands for interest on late royalty payments.

Sanguine Limited, 155 IBLA 277 (July 26, 2001).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

Gas produced from Federal leases that is subject only to dehydration and compression is properly valued under the valuation standards for unprocessed gas at 30 C.F.R. § 206.152.

J-W Operating Company Inc. et al., 159 IBLA 1 (Apr. 16, 2003).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

Gas produced from a Federal lease is not sold pursuant to an arm's length contract where 92.5 percent of the ownership interest in the buying entity is directly or indirectly owned by the lessee and the remaining 7.5 percent is owned by the lessee's brother.

J-W Operating Company Inc. et al., 159 IBLA 1 (Apr. 16, 2003).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

Gas produced from Federal leases that is subject to valuation under the standards at 30 C.F.R. § 206.152 is properly valued under 30 C.F.R. § 206.152(c) when the gas is not sold pursuant to an arm's-length contract. Under that provision, MMS values production by using the gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract. MMS' decision not to examine "benchmarks" under that provision, *viz.*, the comparability of arm's-length contracts or samples from the area, is not grounds for reversal of its decision, as MMS is required to look beyond gross proceeds via benchmark tests only where comparison to comparable sales data of like-quality gas might provide a higher value for royalty purposes.

J-W Operating Company Inc. et al., 159 IBLA 1 (Apr. 16, 2003).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

Gas produced from Federal leases that is properly valued under the standards at 30 C.F.R. § 206.152 is properly valued under 30 C.F.R. § 206.152(b) when the gas is sold pursuant to an arm's-length contract. MMS properly finds under that provision the value of gas sold under an arm's-length contract is the gross proceeds accruing to the lessee.

J-W Operating Company Inc. et al., 159 IBLA 1 (Apr. 16, 2003).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

Costs of dehydration and compression of gas produced from Federal leases must be included in gross proceeds, which, by regulatory definition include, *inter alia*, payments to the lessee for certain services such as compression and dehydration. Dehydration of gas to meet market specifications for water content and the compression of gas to the pressure required for entry into the buyer's pipeline are not deductible. The payment of rebates by the lessee and the offering of discounted prices to purchasers who perform compression and dehydration services amount to "payments to the lessee" for those services under the regulations.

J-W Operating Company Inc. et al., 159 IBLA 1 (Apr. 16, 2003).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

Nothing in 30 C.F.R. § 206.151 or its preamble suggests that MMS intended to prevent itself from looking to the subsequent arm's-length sale in determining the lessee's gross proceeds where the reselling entity was not a "marketing affiliate." Unless the reselling entity is a market affiliate, MMS is free to consider benchmarks where doing so would increase royalty value above the amount indicated by gross proceeds.

J-W Operating Company Inc. et al., 159 IBLA 1 (Apr. 16, 2003).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

43 C.F.R. § 3162.7-3 requires that all gas production be measured on the lease, with volumes subject to certain adjustments. Off-lease measurement or commingling with production from other sources prior to measurement requires approval by the authorized officer.

Byron Oil Industries, Inc., 161 IBLA 1 (Feb. 23, 2004).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

A lessee's marketing affiliate which exclusively sells gas produced by its lessee affiliate is properly distinguished from an affiliated firm which sells gas produced by several non-affiliated producers purchased under arm's-length contracts as well as gas produced by the lessee purchased under a non-arm's-length contract. Under the regulation at 30 C.F.R. § 206.152(c) (1991), gas sold to an affiliated firm which is not a marketing affiliate, pursuant to a non-arm's-length contract, is properly valued on the basis of the first applicable bench mark under the regulation.

Tom Brown, Inc., 162 IBLA 227 (July 27, 2004).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

Section 115(h), added to the Federal Oil and Gas Royalty Management Act of 1982 by section 4(a) of the Federal Oil and Gas Royalty Simplification and Fairness Act, Pub. L. No. 104-185, 110 Stat. 1700, 1709-10 (1996), *codified at* 30 U.S.C. § 1724(h) (2000), requires the Secretary of the Interior to issue a final decision on appeals from Minerals Management Service or delegated state orders to pay royalty within 33 months from the date such proceeding was commenced, barring which the Act imposes a statutory rule of decision, resolving the appeal finally for the Department, in a manner favorable to either the appellant or the Secretary, depending on the monetary amount at issue.

California State Controller, 166 IBLA 5 (May 18, 2005).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

The Board properly dismisses an appeal by a state from a decision of the Director, Minerals Management Service, granting an appeal by a lessee or its designee from an MMS order to pay royalty on production from a Federal onshore oil and gas lease, because the regulations at 43 C.F.R. Part 4, Subpart J, which implement the time limits and rule of decision of 30 U.S.C. § 1724(h) (2000), do not provide any opportunity for states to appeal from a decision of the Director, MMS, rescinding or modifying an MMS or delegated state order under 30 C.F.R. § 290.108, and because 43 C.F.R. § 4.906(b)(3) specifically provides that, in the absence of an appeal by the lessee or its designee, the MMS Director's decision constitutes the final decision of the Department, thus depriving the Board of jurisdiction to entertain the appeal.

California State Controller, 166 IBLA 5 (May 18, 2005).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

Under 30 C.F.R. § 218.50, royalty payments for Federal and Indian oil and gas leases generally are due by the end of the month following the month during which the oil and gas is produced and sold. When an appellant's lease and applicable regulations provide for use of major portion analysis in determining the value for royalty purposes and the appellant knew or should have known that its tribal lease gas production was being valued without reference to a major portion analysis, it was on notice of potential responsibility for additional royalties and the obligation to pay the additional royalties accrued on the date the royalties were due, rather than the date MMS provided appellant the major portion analysis.

Exxon Mobil Corp., 166 IBLA 226 (July 28, 2005).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

Interest charged to an oil and gas lessee as mandated by the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 1721(a) (2000), for late payment of royalty for lease production is compensation to the lessor for the time value of money lost as a result of the late payment. This obligation applies even when the late payment was not the fault of the lessee.

Exxon Mobil Corp., 166 IBLA 226 (July 28, 2005).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

Under 30 C.F.R. § 206.151, a gas purchase and sale contract will be considered an arm's-length contract for royalty valuation purposes where it "has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract." A determination by MMS that a purchase and sale contract entered into by a Federal oil and gas lessee and a marketing company in which it has a 40 percent ownership interest is non-arm's-length because the parties did not have opposing economic interests will be reversed where the lessee (1) has demonstrated that the parties did, in fact, have opposing economic interests and (2) has further shown the inapplicability of any of the exceptions to valuing gas sold under an arm's-length contract based on the gross proceeds accruing to the lessee under the contract.

Vastar Resources, Inc., 167 IBLA 17 (Sept. 26, 2005).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

The Minerals Management Service (MMS) properly directs a lessee to perform restructured accounting and recalculate royalties due on Indian oil and gas leases where the leases require such accounting and an MMS audit revealed instances of the lessee's failure to calculate and pay royalties utilizing that method.

Union Oil Company of California, 167 IBLA 263 (Dec. 28, 2005).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

The regulation applicable to an audit of Navajo Allotted leases for the January 1993 through December 1996 audit period provided that prior to or at the same time as claiming a gas processing allowance on Form MMS-2014, a lessee must submit page one of the initial Form MMS-4109. The applicable regulation provided that failure to timely file Form MMS-4109 subjects a lessee to forfeiture of processing allowances taken on Form MMS-2014 until such time as the lessee cures the failure to submit page one of Form MMS-4109. The lessee is required to file Form MMS-4109 before claiming a processing allowance in deriving a theoretical price for processed gas.

Union Oil Company of California, 167 IBLA 263 (Dec. 28, 2005).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

MMS' interpretation of the applicable regulation as requiring a lessee of Indian oil and gas leases to timely file Form MMS-4109 prior to or at the same time as claiming a processing allowance on Form MMS-2014 does not constitute the promulgation of a new rule requiring notice and comment.

Union Oil Company of California, 167 IBLA 263 (Dec. 28, 2005).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

The 6-year statute of limitations for the commencement by the United States of civil actions for money damages, found at 28 U.S.C. § 2415(a) (2000), does not limit administrative actions within the Department. Orders by MMS to recalculate and pay additional royalties due under Indian leases are administrative actions not subject to the statute of limitations.

Union Oil Company of California, 167 IBLA 263 (Dec. 28, 2005).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

When appellant timely requested a hearing on the record of the August 19, 1999, Notice of Noncompliance (NON) it received when it apparently did not comply with the Order to Perform (OTP) pursuant to the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1719 (2000), as implemented by the provisions of 30 C.F.R. Part 241, appellant was entitled to contest its underlying liability, which is predicated on its alleged failure to undertake the actions set forth in the OTP to remedy an alleged violation of a statute, regulation, rule, order, or lease or permit term within the time specified therein. Appellant's right to contest its underlying liability necessarily encompasses the right to defend the NON by showing the nature and extent of its compliance, including defenses based on flaws in the service, or in the basis and substance of the OTP that might excuse compliance. Nothing in FOGRMA or the regulations supports or provides that the scope of a hearing on the record of a NON under Part 241 can be cut off or curtailed by the failure to appeal the OTP under Part 290. The two appeal procedures are separate.

Merit Energy Company v. Minerals Management Service, 172 IBLA 137 (Aug. 3, 2007).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

In a hearing on the record of a Notice of Civil Penalty, a party can challenge only the amount of a civil penalty if it did not previously request a hearing on the record of a NON under 30 C.F.R. § 241.54. When a hearing on the record of the NON is not requested under § 241.54, the party may not contest its underlying liability for civil penalties. 30 C.F.R. § 241.56(a). Consequently, if a party is to have any opportunity to contest its underlying liability, it must do so in a timely requested hearing on the record of a NON. Because the OTP alleged violations and directed appellant to undertake corrective action and furnished the basis for issuance of the NON when appellant apparently took no corrective action within the period specified, the only failure that could finally cut off appellant's right to challenge the OTP under Part 241 would be a failure to timely request a hearing on the record of the NON.

Merit Energy Company v. Minerals Management Service, 172 IBLA 137 (Aug. 3, 2007).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

The regulation at 30 C.F.R. § 290.111(a) broadly defines "official correspondence" to include "all RMP [Royalty Management Program, Minerals Management Service] orders that are appealable." Such official correspondence is to be served on the "addressee of record," who is defined by reference to the subject matter of the correspondence. In (b)(4), the subject matter is "official correspondence in connection with reviews and audits of payor records"; in (b)(7), the subject matter is "official correspondence including orders, demands, invoices, or decisions, and other actions identified with payors reporting to the RMP Auditing and Financial System not identified above." The qualifying phrase "not identified above" refers to the six categories of addressees, which are defined solely by the subject matter of the correspondence, not the particular caption of the correspondence or action that such correspondence demands or induces. Official correspondence may take the more specific form of "orders, demands, invoices, or decisions, and other actions," but because of the definition of "official correspondence," they all in general constitute "orders" issued by RMP that are appealable under 30 C.F.R. Parts 243 and 290. More than one category can be applicable in any given situation, and service under any other applicable category is equally valid. 30 C.F.R. § 290.111(b)(8).

Merit Energy Company v. Minerals Management Service, 172 IBLA 137 (Aug. 3, 2007).

Federal Oil and Gas Royalty Management Act of 1982
Royalties

The 6-year statute of limitations for the commencement by the United States of civil actions for money damages, found at 28 U.S.C. § 2415(a) (2000), does not limit administrative actions within the Department. Orders by MMS to recalculate and pay additional royalties due under Indian leases are administrative actions not subject to

the statute of limitations.

Western Energy Company, 172 IBLA 258 (Sept. 12, 2007).

Federal Oil and Gas Royalty Simplification and Fairness Act of 1996
Generally

The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 provides that demands or orders are subject to the 33-month deadline for final decisions of administrative appeals. A "demand" is an order to pay which has a reasonable basis to conclude that the obligation in the amount of the demand is due and owing. An "order to pay" means a written order which (A) asserts a specific, definite, and quantified obligation claimed to be due, and (B) specifically identifies the obligation by lease, production month and monetary amount of such obligation claimed to be due and ordered to be paid, as well as the reason such obligation is claimed to be due, but such term does not include any other communication or action by or on behalf of the Secretary, including value determinations which do not contain mandatory or ordering language.

Marathon Oil Company, 155 IBLA 27 (May 1, 2001).

Federal Oil and Gas Royalty Simplification and Fairness Act of 1996
Rule of Decision

Section 115(h), added to the Federal Oil and Gas Royalty Management Act of 1982 by section 4(a) of the Federal Oil and Gas Royalty Simplification and Fairness Act, Pub. L. No. 104-185, 110 Stat. 1700, 1709-10 (1996), *codified at* 30 U.S.C. § 1724(h) (2000), requires the Secretary of the Interior to issue a final decision on appeals from Minerals Management Service or delegated state orders to pay royalty within 33 months from the date such proceeding was commenced, barring which the Act imposes a statutory rule of decision, resolving the appeal finally for the Department, in a manner favorable to either the appellant or the Secretary, depending on the monetary amount at issue.

California State Controller, 166 IBLA 5 (May 18, 2005).

Fees

A party engaged in "commercial use," as that term is defined in 43 C.F.R. § 8372.0-5(a) (2000), must obtain a special recreation permit. The nonprofit status of any organization under the Internal Revenue Code does not control the distinction between commercial and non-commercial use under that rule. Collection by a permittee of fees, charges, and other compensation which are not strictly a sharing of, or which are in excess of, actual expenses incurred for the purposes of a permitted use of public lands shall make the use commercial. The land user may not avoid a commercial designation by claiming that it receives fees which do not exceed actual expenses while omitting from its calculations other compensation received for the activity on public land.

Camp Redcloud, Inc., 162 IBLA 84 (June 29, 2004).

Fees

A party may not obtain a waiver of fees due for a special recreation permit when its use of the public lands is primarily for recreation purposes.

Camp Redcloud, Inc., 162 IBLA 84 (June 29, 2004).

Filing Requirements
Soldiers' and Sailors' Civil Relief Act

A mining claimant who is on active military duty is relieved, pursuant to the Soldiers' and Sailors' Civil Relief Act, of performing annual assessment work or paying claim maintenance fees while on active duty by filing a notice with BLM during the assessment year in which the claimant enters military service or, if active duty began prior to August 30, 1994, by filing the notice during the assessment year in which the claimant wishes to invoke the relief.

Eric Lundquest, 166 IBLA 1 (May 16, 2005).

Filing Requirements
Soldiers' and Sailors' Civil Relief Act

When a claimant invokes relief pursuant to the Soldiers' and Sailors' Civil Relief Act, after BLM has invalidated a mining claim for failure timely to pay the annual maintenance fee or file a waiver certification for that assessment year, BLM's decision will be set aside and the matter remanded for BLM to adjudicate the claimant's eligibility for relief under the Act.

Eric Lundquest, 166 IBLA 1 (May 16, 2005).

Fish and Wildlife Service

The Office of Hearings and Appeals does not have authority to review the merits of biological opinions issued by the FWS under section 7 of the Endangered Species Act, 16 U.S.C. § 1536 (1994). BLM properly limits activity on a private inholding in a wilderness area where the limitations imposed are directed by an FWS biological opinion in order to prevent adverse impacts on wildlife.

National Wildlife Federation, et al., Erik and Tina Barnes, 151 IBLA 104 (Nov. 24, 1999).

Fish and Wildlife Service

Under the Endangered Species Act, BLM is obligated to ensure that any authorized project is not likely to jeopardize the continued existence of any threatened or endangered species or adversely impact its habitat.

Sierra Club, Angeles Chapter, Santa Clarita Group, et al., 156 IBLA 144 (Jan. 8, 2002).

Fish and Wildlife Service

On appeal from a BLM decision authorizing a sand and gravel mining project, the Board may review whether BLM considered the potential impact to threatened and endangered species or their habitat. However, it lacks jurisdiction to review the merits of a biological opinion issued by USFWS, as a result of consultation regarding a species, which serves, in part, as a basis for BLM's decision.

Sierra Club, Angeles Chapter, Santa Clarita Group, et al., 156 IBLA 144 (Jan. 8, 2002).

Fish and Wildlife Service

Under the Endangered Species Act (ESA), BLM is obligated to ensure that an authorized action is not likely to jeopardize the continued existence of a threatened or endangered species or result in the destruction or adverse modification of its habitat. The Act imposes the same obligation for species that have been proposed for listing. Compliance with the ESA is also an element of complying with NEPA. In evaluating whether BLM took the requisite "hard look" at the environmental impacts of a proposed action that NEPA requires, the Board properly considers whether BLM considered the potential impacts on listed or proposed species or their habitat that the ESA mandates. However, the Board lacks jurisdiction to review the merits of a biological opinion issued by the U.S. Fish and Wildlife Service as a result of formal consultation regarding a species, which opinion serves, in part, as a basis for BLM's decisionmaking.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

Fish and Wildlife Service

Where BLM held an oil and gas lease sale prior to the date a species was proposed for listing under the ESA, there was no obligation to confer with USFWS before conducting the sale.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

Fish and Wildlife Service

Under the Endangered Species Act, BLM is obligated to ensure that any authorized project is not likely to jeopardize the continued existence of any threatened or endangered species or adversely affect its critical habitat. A "no effect" determination in a Biological Assessment/ Biological Evaluation does not trigger formal consultation with the U.S. Fish and Wildlife Service.

Native Ecosystems Council, 160 IBLA 288 (Jan. 22, 2004).

Geothermal Leases
Applications
Generally

A motion to dismiss as untimely an appeal from a BLM decision issuing a geothermal resources lease is properly denied where the record demonstrates that the appellant was not served with a copy of the decision; the lease thereafter terminated by operation of law; and the appeal was filed within 30 days from the date of its receipt of the Board's subsequent decision reinstating the lease.

St. James Village, Inc., et al., 154 IBLA 150 (Feb. 22, 2001).

Geothermal Leases
Applications
Generally

A BLM decision issuing a geothermal resources lease, pursuant to the Geothermal Steam Act of 1970, *as amended*, 30 U.S.C. §§ 1001-1028 (1994), will be vacated when BLM failed to prepare, prior to lease issuance, either an EIS or an EA analyzing the potential environmental impacts of leasing, including any likely exploration and development, as required by section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. § 4332(2)(C) (1994), and its implementing regulations (40 C.F.R. Chapter V).

St. James Village, Inc., et al., 154 IBLA 150 (Feb. 22, 2001).

Geothermal Leases
Applications
Generally

An applicant for a noncompetitive geothermal lease must submit at least one application form bearing an original signature. 43 C.F.R. § 3204.10. Xeroxed copies of an original handwritten signature do not qualify as an original signature. A geothermal lease issued in the absence of at least one originally signed lease application is subject to cancellation by BLM. 43 C.F.R. § 3213.23.

Lewis Katz, 163 IBLA 203 (Oct. 21, 2004).

Geothermal Leases
Applications
Generally

When BLM processes noncompetitive lease offers for geothermal resources, the determination regarding the availability of the subject lands for leasing is properly made in accordance with current public land records.

John Koldjeski, 166 IBLA 118 (July 6, 2005).

Geothermal Leases
Applications
Amendment

To withdraw a geothermal resource lease offer, an offeror must clearly inform BLM of his or her intent to withdraw the offer. 43 C.F.R. § 3204.17. The submission of a subsequent lease offer which included all the lands in a pending initial offer and added new acreage did not affirmatively demonstrate an intent to withdraw the initial lease offer.

Lewis Katz, 163 IBLA 203 (Oct. 21, 2004).

Geothermal Leases
Extensions

If a geothermal lease was eligible for a diligent efforts extension when the extension was granted, the extension was legally effective. If a first or second extension was granted before the lease was committed to a unit, the extension remains effective after commitment to the unit. A lessee need not, but may, request a diligent efforts extension after the lease has been committed to a unit, but once the diligent efforts extension is granted and the lessee fails to appeal the decision granting it, the extension is legally effective. After a lease is committed to a unit, the lessee need not, but may, request a unit commitment extension instead of a diligent efforts extension, provided the lease term is less than the unit's term and unit development has been diligently pursued.

Geo-Energy Partners-1983 Ltd., 170 IBLA 99 (Sept. 14, 2006).

Geothermal Leases
Extensions

A geothermal lease may be extended for two successive 5-year periods, provided the request is submitted 60 days before the end of the primary or extended term. *Successive* means consecutive. No provision of the Geothermal Steam Act of 1970, *as amended*, authorizes these extensions on other than a successive basis.

Geo-Energy Partners-1983 Ltd., 170 IBLA 99 (Sept. 14, 2006).

Geothermal Leases
Extensions

Where Congress provided for extension of a geothermal lease equal to the period when operations and production are suspended when it enacted the Geothermal Steam Act in 1970, but did not enact a similar provision relating to extensions for leases eliminated from units when it amended the Act in 1988, the omission properly gives rise to the inference that Congress did not intend to provide for an extension of leases so eliminated from units. When the Act contains nothing supporting an assertion that diligent efforts lease extensions are tolled or voided when committed to a unit, this Board properly rejects an interpretation of the Act that would create such a right by implication.

Geo-Energy Partners-1983 Ltd., 170 IBLA 99 (Sept. 14, 2006).

Geothermal Leases
Extensions

Any lease or portion of a lease eliminated from a unit agreement shall be eligible for an extension under 30 U.S.C. § 1005(c) or (g) (2000) if it separately meets the requirements for such an extension at the point when it is eliminated from the unit.

Geo-Energy Partners-1983 Ltd., 170 IBLA 99 (Sept. 14, 2006).

Geothermal Leases
Extensions

An undated draft of a decision prepared by the geothermal lessee that was never adopted or issued by BLM is of no practical or legal effect and cannot either serve as a basis for granting a lease extension where no such extension is authorized by the Geothermal Steam Act, *as amended*, or estop the United States from invoking the terms of the unit agreement or requiring the lessee to comply with applicable law. Where BLM issued a decision reflecting a construction of the Act that is inconsistent with the lessee's interpretation and the lessee did not appeal it, and the lessee was aware that BLM had sought legal advice and direction in interpreting the Act, a subsequent BLM letter stating that, in the future, action would be taken to modify the earlier decision and cancel prior lease extensions does not estop the United States. The letter is not a written decision, it does not constitute a crucial misstatement and/or concealment of material facts, there is no detrimental reliance and it cannot be used to give appellant a substantive right not authorized by the Act.

Geo-Energy Partners-1983 Ltd., 170 IBLA 99 (Sept. 14, 2006).

Geothermal Leases
Noncompetitive Leases

A motion to dismiss as untimely an appeal from a BLM decision issuing a geothermal resources lease is properly denied where the record demonstrates that the appellant was not served with a copy of the decision; the lease thereafter terminated by operation of law; and the appeal was filed within 30 days from the date of its receipt of the Board's subsequent decision reinstating the lease.

St. James Village, Inc., et al., 154 IBLA 150 (Feb. 22, 2001).

Geothermal Leases
Noncompetitive Leases

A BLM decision issuing a geothermal resources lease, pursuant to the Geothermal Steam Act of 1970, *as amended*, 30 U.S.C. §§ 1001-1028 (1994), will be vacated when

BLM failed to prepare, prior to lease issuance, either an EIS or an EA analyzing the potential environmental impacts of leasing, including any likely exploration and development, as required by section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. § 4332(2)(C) (1994), and its implementing regulations (40 C.F.R. Chapter V).

St. James Village, Inc., et al., 154 IBLA 150 (Feb. 22, 2001).

Geothermal Leases
Noncompetitive Leases

An applicant for a noncompetitive geothermal lease must submit at least one application form bearing an original signature. 43 C.F.R. § 3204.10. Xeroxed copies of an original handwritten signature do not qualify as an original signature. A geothermal lease issued in the absence of at least one originally signed lease application is subject to cancellation by BLM. 43 C.F.R. § 3213.23.

Lewis Katz, 163 IBLA 203 (Oct. 21, 2004).

Geothermal Leases
Noncompetitive Leases

To withdraw a geothermal resource lease offer, an offeror must clearly inform BLM of his or her intent to withdraw the offer. 43 C.F.R. § 3204.17. The submission of a subsequent lease offer which included all the lands in a pending initial offer and added new acreage did not affirmatively demonstrate an intent to withdraw the initial lease offer.

Lewis Katz, 163 IBLA 203 (Oct. 21, 2004).

Geothermal Leases
Noncompetitive Leases

A lease applicant is entitled to receive a full refund of advance rental for a lease offer if he withdraws it before BLM accepts it, or when BLM rejects the offer. 43 C.F.R. § 3204.12. Appellant was not entitled to a full refund of advance rental for an initial lease offer when he filed a second lease offer for the same acreage, while adding new acreage, and did not withdraw the initial offer.

Lewis Katz, 163 IBLA 203 (Oct. 21, 2004).

Geothermal Leases
Noncompetitive Leases

When BLM processes noncompetitive lease offers for geothermal resources, the determination regarding the availability of the subject lands for leasing is properly made in accordance with current public land records.

John Koldjeski, 166 IBLA 118 (July 6, 2005).

Geothermal Leases
Reinstatement

When lessees failed to timely pay annual rental due on a geothermal lease on which there was no well capable of producing geothermal resources in commercial quantities, the lease terminated by operation of law. Termination is not conditioned on BLM notice of rental obligations.

Future Energy Development, Inc., Geotermica Ltd., 160 IBLA 116 (Oct. 14, 2003).

Geothermal Leases
Reinstatement

A lessee seeking reinstatement of a geothermal lease must pay back rental due with the petition for reinstatement, and must also show that any failure to pay timely was justified or not based upon a lack of reasonable diligence. Lessees cannot meet this test by arguing that economic conditions for lease development were poor, where they made no effort to apply under the Geothermal Steam Act for relief from lease conditions.

Future Energy Development, Inc., Geotermica Ltd., 160 IBLA 116 (Oct. 14, 2003).

Geothermal Leases
Rentals

When lessees failed to timely pay annual rental due on a geothermal lease on which there was no well capable of producing geothermal resources in commercial quantities, the lease terminated by operation of law. Termination is not conditioned on BLM notice of rental obligations.

Future Energy Development, Inc., Geotermica Ltd., 160 IBLA 116 (Oct. 14, 2003).

Geothermal Leases
Rentals

To withdraw a geothermal resource lease offer, an offeror must clearly inform BLM of his or her intent to withdraw the offer. 43 C.F.R. § 3204.17. The submission of a subsequent lease offer which included all the lands in a pending initial offer and added new acreage did not affirmatively demonstrate an intent to withdraw the initial lease offer.

Lewis Katz, 163 IBLA 203 (Oct. 21, 2004).

Geothermal Leases
Rentals

A lease applicant is entitled to receive a full refund of advance rental for a lease offer if he withdraws it before BLM accepts it, or when BLM rejects the offer. 43 C.F.R. § 3204.12. Appellant was not entitled to a full refund of advance rental for an initial lease offer when he filed a second lease offer for the same acreage, while adding new acreage, and did not withdraw the initial offer.

Lewis Katz, 163 IBLA 203 (Oct. 21, 2004).

Geothermal Leases
Termination

When lessees failed to timely pay annual rental due on a geothermal lease on which there was no well capable of producing geothermal resources in commercial quantities, the lease terminated by operation of law. Termination is not conditioned on BLM notice of rental obligations.

Future Energy Development, Inc., Geotermica Ltd., 160 IBLA 116 (Oct. 14, 2003).

Geothermal Leases
Unit and Cooperative Agreements

If a geothermal lease was eligible for a diligent efforts extension when the extension was granted, the extension was legally effective. If a first or second extension was granted before the lease was committed to a unit, the extension remains effective after commitment to the unit. A lessee need not, but may, request a diligent efforts extension after the lease has been committed to a unit, but once the diligent efforts extension is granted and the lessee fails to appeal the decision granting it, the extension is legally effective. After a lease is committed to a unit, the lessee need not, but may, request a unit commitment extension instead of a diligent efforts extension, provided the lease term is less than the unit's term and unit development has been diligently pursued.

Geo-Energy Partners-1983 Ltd., 170 IBLA 99 (Sept. 14, 2006).

Geothermal Leases
Unit and Cooperative Agreements

A geothermal lease may be extended for two successive 5-year periods, provided the request is submitted 60 days before the end of the primary or extended term. *Successive* means consecutive. No provision of the Geothermal Steam Act of 1970, *as amended*, authorizes these extensions on other than a successive basis.

Geo-Energy Partners-1983 Ltd., 170 IBLA 99 (Sept. 14, 2006).

Geothermal Leases
Unit and Cooperative Agreements

Where Congress provided for extension of a geothermal lease equal to the period when operations and production are suspended when it enacted the Geothermal Steam Act in 1970, but did not enact a similar provision relating to extensions for leases eliminated from units when it amended the Act in 1988, the omission properly gives rise to the inference that Congress did not intend to provide for an extension of leases so eliminated from units. When the Act contains nothing supporting an assertion that diligent efforts lease extensions are tolled or voided when committed to a unit, this Board properly rejects an interpretation of the Act that would create such a right by implication.

Geo-Energy Partners-1983 Ltd., 170 IBLA 99 (Sept. 14, 2006).

Geothermal Leases
Unit and Cooperative Agreements

Any lease or portion of a lease eliminated from a unit agreement shall be eligible for an extension under 30 U.S.C. § 1005(c) or (g) (2000) if it separately meets the requirements for such an extension at the point when it is eliminated from the unit.

Geo-Energy Partners-1983 Ltd., 170 IBLA 99 (Sept. 14, 2006).

Geothermal Leases
Unit and Cooperative Agreements

An undated draft of a decision prepared by the geothermal lessee that was never adopted or issued by BLM is of no practical or legal effect and cannot either serve as a basis for granting a lease extension where no such extension is authorized by the Geothermal Steam Act, *as amended*, or estop the United States from invoking the terms of the unit agreement or requiring the lessee to comply with applicable law. Where BLM issued a decision reflecting a construction of the Act that is inconsistent with the lessee's interpretation and the lessee did not appeal it, and the lessee was aware that BLM had sought legal advice and direction in interpreting the Act, a subsequent BLM letter stating that, in the future, action would be taken to modify the earlier decision and cancel prior lease extensions does not estop the United States. The letter is not a written decision, it does not constitute a crucial misstatement and/or concealment of material facts, there is no detrimental reliance and it cannot be used to give appellant a substantive right not authorized by the Act.

Geo-Energy Partners-1983 Ltd., 170 IBLA 99 (Sept. 14, 2006).

Geothermal Resources

If a geothermal lease was eligible for a diligent efforts extension when the extension was granted, the extension was legally effective. If a first or second extension was granted before the lease was committed to a unit, the extension remains effective after commitment to the unit. A lessee need not, but may, request a diligent efforts extension after the lease has been committed to a unit, but once the diligent efforts extension is granted and the lessee fails to appeal the decision granting it, the extension

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Geothermal Resources

Any lease or portion of a lease eliminated from a unit agreement shall be eligible for an extension under 30 U.S.C. § 1005(c) or (g) (2000) if it separately meets the requirements for such an extension at the point when it is eliminated from the unit.

Geo-Energy Partners-1983 Ltd., 170 IBLA 99 (Sept. 14, 2006).

Grazing and Grazing Lands

Under section 313(a) of the Clean Water Act of 1977, *as amended*, 33 U.S.C. § 1323(a) (1994), BLM is generally required to comply with state water pollution laws when engaged in any activity which may result in the runoff of pollutants. Under Arizona law, existing water quality is required to be protected and maintained in surface water designated as a "unique water."

National Wildlife Federation, et al., 151 IBLA 66 (Oct. 28, 1999).

Grazing and Grazing Lands

A BLM decision to allow cattle grazing at a spring based on a finding of no significant impact is properly set aside and remanded when it appears from the record that a "unique water" designated under state law in which existing water quality is required to be maintained and protected includes the entire length of the stream for which the spring is the headwater and that BLM failed to consider that fact in making its finding.

National Wildlife Federation, et al., 151 IBLA 66, 75 (Oct. 28, 1999).

Grazing and Grazing Lands

When the terms and conditions of a settlement agreement do not support an interpretation of one of the parties to the agreement we will not read language into the agreement or interpret the agreement in a manner that an administrative law judge has found does not conform to the intent of the parties.

William J. Thoman v. Bureau of Land Management, 152 IBLA 97 (Mar. 30, 2000).

Grazing and Grazing Lands

When the evidence shows (1) unauthorized grazing use; (2) prior trespass; and (3) willfulness as to each, a BLM decision finding repeated, willful trespass will be upheld.

William J. Thoman v. Bureau of Land Management, 152 IBLA 97 (Mar. 30, 2000).

Grazing and Grazing Lands

Allotment management plans are incorporated into grazing permits in accordance with 43 C.F.R. § 4120.2.

William J. Thoman v. Bureau of Land Management, 152 IBLA 97 (Mar. 30, 2000).

Grazing and Grazing Lands

BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges, and a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 C.F.R. Part 4100. BLM's decision may be regarded as arbitrary, capricious, or inequitable only where it is not supported by any rational basis, and the burden is on the objecting party to show that a decision is improper.

Thomas E. Smigel, Barbara W. Smigel v. Bureau of Land Management, 155 IBLA 158 (July 17, 2001).

Grazing and Grazing Lands

When the provisions of an agreement are unambiguous, parol evidence that an obligation is a condition precedent to the other party's obligations is inadmissible.

William J. Thoman v. Bureau of Land Management (On Reconsideration), 155 IBLA 266 (July 27, 2001).

Grazing and Grazing Lands

The regulation at 43 C.F.R. § 4.470(b) is a codification of the doctrine of "administrative finality," the administrative counterpart of *res judicata*, which normally precludes reconsideration in a subsequent case of matters finally resolved for the Department in an earlier appeal. A precondition for the application of the doctrine is that the matter raised in the subsequent proceeding was one distinctly put in issue and directly determined in the earlier appeal, as reflected in the language of 43 C.F.R. § 4.470(b) providing that a party who fails to appeal a BLM final grazing decision be barred thereafter from challenging "the matters adjudicated in that final decision." Where a party failed to appeal a final BLM grazing decision rejecting his application for a grazing permit on the grounds that the permitted use he sought was not available (but not mentioning cancellation of his grazing preference), that party's successor-in-interest is not barred under 43 C.F.R. § 4.470(b) from appealing a subsequent final BLM decision declaring the party's grazing preference canceled for failure to comply with the notice requirements of 43 C.F.R. § 4110.2-3.

James G. Katsilometes v. Bureau of Land Management, 157 IBLA 230 (Oct. 4, 2002).

Grazing and Grazing Lands

A decision of an administrative law judge dismissing a grazing appeal for lack of standing is properly set aside where the party appealing is adversely affected by a BLM final grazing decision rejecting his protest.

James G. Katsilometes v. Bureau of Land Management, 157 IBLA 230 (Oct. 4, 2002).

Grazing and Grazing Lands

The regulation at 43 C.F.R. § 4110.2-3(e) provides that, if an unqualified transferee acquires rights in base property through operation of law or testamentary disposition, such transferee shall qualify under 43 C.F.R. § 4110.2-3(a) within a 2-year period after the transfer or the grazing preference "shall be subject to cancellation." However, 43 C.F.R. § 4110.2-3(a) does not require that BLM be notified within that 2-year period, and a BLM decision canceling preferences for failure to file such notice is properly reversed.

James G. Katsilometes v. Bureau of Land Management, 157 IBLA 230 (Oct. 4, 2002).

Grazing and Grazing Lands

BLM properly denies an application for permitted use in an allotment where, as the result of an approval of a transfer of grazing privileges made by BLM 19 years previous to the application, the applicant does not own base land for which grazing preference was assigned in that allotment. The applicant's ownership of base lands assigned to a different allotment does not support his application.

James G. Katsilometes v. Bureau of Land Management, 157 IBLA 230 (Oct. 4, 2002).

Grazing and Grazing Lands

A protest against BLM's yearly issuance of permits for grazing use for cattle is properly considered as a protest under 43 C.F.R. § 4.450-2. Where such protest challenges BLM's authority to issue permits for grazing cattle under the governing resource management plan, it raises an issue that is capable of repetition and is therefore not moot, even though the time is past when BLM's action can be redressed by canceling any permit improperly issued in a particular year. Where, by confessing error in a proceeding before the Hearings Division, BLM effectively denies the protest without explanation, the matter is properly remanded to BLM for further consideration.

James G. Katsilometes v. Bureau of Land Management, 157 IBLA 230 (Oct. 4, 2002).

Grazing and Grazing Lands

In the absence of a showing that a party has a legally-cognizable right to drive cattle across lands to be conveyed to a county under the the Airport and Airways Improvement Act of 1982 and in the presence of indications that there is in fact no such right, BLM is not obligated to place a reservation in the conveyance to the county guaranteeing use of a grazing corridor or stock lane

William J. & Grace Gandolfo, 161 IBLA 7 (Mar. 2, 2004).

Grazing and Grazing Lands

The purpose of the Taylor Grazing Act is to stabilize the livestock industry and protect the rights of sheep and cattle growers from interference. The specific provisions pertaining to a Section 4 permit clearly illustrate a primary Congressional intent to protect livestock and cattle grazing.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Grazing and Grazing Lands

BLM acts arbitrarily in imposing a requirement that a rancher make water available to wild horses if BLM fails to consider an important aspect of the problem such as the adverse effect of such a requirement on cattle grazing practices.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Grazing and Grazing Lands

The improvements authorized under range improvement permits are solely funded by the holder of the grazing permit or lease, and cooperative agreements are appropriate when the improvements are funded by joint public and private expenditures. The sharing of costs is a relevant factor when determining whether to authorize a particular improvement under a range improvement permit or a cooperative agreement.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Grazing and Grazing Lands

The Taylor Grazing Act expressly contemplates private ownership of water rights on public land used for grazing by giving preference in the issuance of permits to those within or near a district who are owners of water or water rights, as may be necessary to permit the proper use of lands, water or water rights owned, occupied, or leased by them. That Act should not be construed or administered in any way that would diminish or impair a right to the possession and use of water.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Grazing and Grazing Lands

When BLM uses its discretionary authority to reject an application for a land use authorization or impose a condition upon a land use authorization, it must provide a rational basis for its decision. If BLM has failed to consider a relevant factor in making a decision in the exercise of its discretionary authority, its decision will not be affirmed.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Grazing and Grazing Lands

Upon denial of an application for a range improvement permit, an applicant has a statutory right to a hearing under 43 U.S.C. § 315h (2000) that must conform to the adjudication requirements of the Administrative Procedure Act, 5 U.S.C. § 554 (2000), and the record in support of BLM's decision must be developed in accordance with those procedures. An applicant seeking relief from a grazing decision reached in the exercise of BLM's administrative discretion bears the burden of showing by a preponderance of the evidence that the decision is unreasonable or improper. It is implicit in this holding that an appellant must be provided an opportunity to introduce evidence to meet this burden.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Grazing and Grazing Lands

Departmental regulation 43 C.F.R. § 4710.4 requires that management of wild horses and burros be undertaken with the objective of limiting the animals' distribution to herd areas. Management shall be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans. Absent a factual showing that optimum levels cannot be achieved without additional resources, a policy to manage allotments by requiring ranchers to make additional resources available to wild horses cannot be reconciled with the regulatory requirement that management be kept at the minimal level necessary.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Grazing and Grazing Lands

When BLM has rejected range improvement permit applications in order to require the applicants to transfer an undivided one-half interest in the water rights to the United States and to provide water for wild horses under the terms of a cooperative agreement and BLM has not provided a rational basis for imposing such requirements, BLM's decision denying the applications for range improvement permits cannot be affirmed because such denial would be an abuse of discretion.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Grazing and Grazing Lands

A party challenging BLM's decision to proceed with construction of a fence to protect public rangeland and a finding of no significant impact has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal where the decision is reasonable and supported by the record.

Underwood Livestock, Inc., 165 IBLA 128 (Mar. 23, 2005).

Grazing and Grazing Lands

Regulation 43 C.F.R. § 4160.1(a) provides that "[p]roposed decisions" by BLM concerning authorized grazing on the public lands "shall be served on any affected applicant, permittee or lessee, and any agent and lien holder of record . . . by certified mail or personal delivery." Further, 43 C.F.R. § 4160.2 provides a right to protest such a proposed decision by any applicant, permittee, lessee, or other interested public either "in person or in writing to the authorized officer within 15 days after receipt of such decision."

Stephen Miller v. Bureau of Land Management, James G. Katsilometes v. Bureau of Land Management, 165 IBLA 386 (May 10, 2005).

Grazing and Grazing Lands

Delivery of a notice of certified mail to a person's last address of record does not establish the date of delivery of the document being sent by certified mail. It is only (1) when someone accepts delivery of the item by signing the certified mail return receipt card or (2) the certified mail is returned to BLM by the U.S. Postal Service as undeliverable, for whatever reason, that the "person will be deemed to have received the communication" within the meaning of 43 C.F.R. § 1810.2(b). When BLM sends a proposed grazing decision by certified mail to a person's last address of record, which is a post office box, the date the notice of certified mail is placed in the box does not

establish the date of receipt for purposes of 43 C.F.R. § 4160.2.

Stephen Miller v. Bureau of Land Management, James G. Katsilometes v. Bureau of Land Management, 165 IBLA 386 (May 10, 2005).

Grazing and Grazing Lands

A letter granting a party "official authorization to conduct maintenance activities on existing public land reservoirs, pits, and spreader dikes within" a grazing allotment, and requiring that party, "[p]rior to beginning construction work on any projects . . . to notify [BLM] of the location of the projects that you will be maintaining," is properly interpreted as requiring that BLM be notified and approve the construction work, where the record shows that both the party and BLM believed that the party would inform BLM in advance before commencing work. Where the party notified BLM of his intention to undertake construction on a dam/reservoir within a wilderness study area and BLM expressly notified the party not to proceed until the validity of the construction could be confirmed, the party was not authorized to proceed with the construction.

Terry Jones v. Bureau of Land Management, 170 IBLA 295 (Nov. 7, 2006).

Grazing and Grazing Lands

A party is not authorized to undertake construction activities on a dam/reservoir within a wilderness study area by virtue of a cooperative agreement authorizing and obliging its predecessor-in-interest to conduct maintenance on the dam/reservoir where BLM documentation shows that it was abandoned in 1972, where there is no reference to it in BLM's record assignments of cooperative agreements after 1970 (including assignments to the party itself), where it was not listed in a 1980 wilderness inventory, and where the party lacked knowledge of its existence.

Terry Jones v. Bureau of Land Management, 170 IBLA 295 (Nov. 7, 2006).

Grazing and Grazing Lands

"Abandonment." Abandonment of a property interest results from the failure of the holder of a right to exercise that right over an extended period, and abandonment of an interest granted by BLM may thus generally occur without BLM's knowledge. While the BLM Manual states that grazing "[r]esource improvements and treatments cannot be abandoned or removed without authorization," it provides that BLM "may require a permittee/lessee or cooperator to remove a project and rehabilitate the site," but does not require such action. Since abandonment generally occurs over a long period of time, so that BLM may not be aware that it has occurred, it may not be in a position to issue a decision authorizing the abandonment and requiring rehabilitation in every case. Even where BLM is aware of the abandonment, it may not deem it necessary to issue a decision authorizing the abandonment and requiring rehabilitation in every case, such as where abandonment in place without rehabilitation is a satisfactory conclusion to the project. BLM's failure to notify the holder of a grazing right or interest that it has been abandoned is without significance.

Terry Jones v. Bureau of Land Management, 170 IBLA 295 (Nov. 7, 2006).

Grazing and Grazing Lands

A charge of unintentional trespass is not negated because the trespasser acted on the basis of a mistaken belief. At best, acting on a mistaken belief establishes that the trespass was inadvertent or nonwillful.

Terry Jones v. Bureau of Land Management, 170 IBLA 295 (Nov. 7, 2006).

Grazing Leases
Generally

The purpose of the Taylor Grazing Act is to stabilize the livestock industry and protect the rights of sheep and cattle growers from interference. The specific provisions pertaining to a Section 4 permit clearly illustrate a primary Congressional intent to protect livestock and cattle grazing.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

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Generally

BLM acts arbitrarily in imposing a requirement that a rancher make water available to wild horses if BLM fails to consider an important aspect of the problem such as the adverse effect of such a requirement on cattle grazing practices.

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The improvements authorized under range improvement permits are solely funded by the holder of the grazing permit or lease, and cooperative agreements are appropriate when the improvements are funded by joint public and private expenditures. The sharing of costs is a relevant factor when determining whether to authorize a particular improvement under a range improvement permit or a cooperative agreement.

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Generally

The Taylor Grazing Act expressly contemplates private ownership of water rights on public land used for grazing by giving preference in the issuance of permits to those within or near a district who are owners of water or water rights, as may be necessary to permit the proper use of lands, water or water rights owned, occupied, or leased by them. That Act should not be construed or administered in any way that would diminish or impair a right to the possession and use of water.

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Grazing Leases
Generally

When BLM uses its discretionary authority to reject an application for a land use authorization or impose a condition upon a land use authorization, it must provide a rational basis for its decision. If BLM has failed to consider a relevant factor in making a decision in the exercise of its discretionary authority, its decision will not be affirmed.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Grazing Leases
Generally

Upon denial of an application for a range improvement permit, an applicant has a statutory right to a hearing under 43 U.S.C. § 315h (2000) that must conform to the adjudication requirements of the Administrative Procedure Act, 5 U.S.C. § 554 (2000), and the record in support of BLM's decision must be developed in accordance with those procedures. An applicant seeking relief from a grazing decision reached in the exercise of BLM's administrative discretion bears the burden of showing by a preponderance of the evidence that the decision is unreasonable or improper. It is implicit in this holding that an appellant must be provided an opportunity to introduce evidence to meet this burden.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

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Generally

Departmental regulation 43 C.F.R. § 4710.4 requires that management of wild horses and burros be undertaken with the objective of limiting the animals' distribution to herd areas. Management shall be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans. Absent a factual showing that optimum levels cannot be achieved without additional resources, a policy to manage allotments by requiring ranchers to make additional resources available to wild horses cannot be reconciled with the regulatory requirement that management be kept at the minimal level necessary.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Grazing Leases
Generally

The constraints on wild horse management established by 43 C.F.R. § 4710.4 make the effect of a water source on herd distribution a relevant factor that BLM is required to consider before requiring a rancher to provide water for wild horses. Because the constraints were adopted for the stated purpose of controlling herd size, the effect of sharing water with horses on the rate of herd growth is a relevant factor that must be considered before a requirement to share water with horses may be imposed. A decision to require a rancher to provide water for horses must be supported by specific evidence that the requirement would not have undue adverse effects on grazing practices and range conditions.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Grazing Leases
Generally

When BLM has rejected range improvement permit applications in order to require the applicants to transfer an undivided one-half interest in the water rights to the United States and to provide water for wild horses under the terms of a cooperative agreement and BLM has not provided a rational basis for imposing such requirements, BLM's decision denying the applications for range improvement permits cannot be affirmed because such denial would be an abuse of discretion.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Grazing Permits and Licenses
Generally

When the terms and conditions of a settlement agreement do not support an interpretation of one of the parties to the agreement we will not read language into the agreement or interpret the agreement in a manner that an administrative law judge has found does not conform to the intent of the parties.

William J. Thoman v. Bureau of Land Management, 152 IBLA 97 (Mar. 30, 2000).

Grazing Permits and Licenses
Generally

An Administrative Law Judge's decision reversing and remanding a BLM decision to the extent BLM found that the former grazing preference holder had been compensated for range improvements placed on the allotment after 1986 will be affirmed where the record establishes that BLM issued permits for the range improvements after 1986 and the current grazing preference holder has not shown error in the Administrative Law Judge's decision to remand the matter to BLM for determinations of use, ownership, and valuation or removal of those improvements.

Jerry Kelly v. Bureau of Land Management, Sheldon W. Lamb, 155 IBLA 58 (May 9, 2001).

Grazing Permits and Licenses
Generally

When the provisions of an agreement are unambiguous, parol evidence that an obligation is a condition precedent to the other party's obligations is inadmissible.

William J. Thoman v. Bureau of Land Management (On Reconsideration), 155 IBLA 266 (July 27, 2001).

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The regulation at 43 C.F.R. § 4.470(b) is a codification of the doctrine of "administrative finality," the administrative counterpart of *res judicata*, which normally precludes reconsideration in a subsequent case of matters finally resolved for the Department in an earlier appeal. A precondition for the application of the doctrine is that the matter raised in the subsequent proceeding was one distinctly put in issue and directly determined in the earlier appeal, as reflected in the language of 43 C.F.R. § 4.470(b) providing that a party who fails to appeal a BLM final grazing decision be barred thereafter from challenging "the matters adjudicated in that final decision." Where a party failed to appeal a final BLM grazing decision rejecting his application for a grazing permit on the grounds that the permitted use he sought was not available (but not mentioning cancellation of his grazing preference), that party's successor-in-interest is not barred under 43 C.F.R. § 4.470(b) from appealing a subsequent final BLM decision declaring the party's grazing preference canceled for failure to comply with the notice requirements of 43 C.F.R. § 4110.2-3.

James G. Katsilometes v. Bureau of Land Management, 157 IBLA 230 (Oct. 4, 2002).

Grazing Permits and Licenses
Generally

A decision of an administrative law judge dismissing a grazing appeal for lack of standing is properly set aside where the party appealing is adversely affected by a BLM final grazing decision rejecting his protest.

James G. Katsilometes v. Bureau of Land Management, 157 IBLA 230 (Oct. 4, 2002).

Grazing Permits and Licenses
Generally

The regulation at 43 C.F.R. § 4110.2-3(e) provides that, if an unqualified transferee acquires rights in base property through operation of law or testamentary disposition, such transferee shall qualify under 43 C.F.R. § 4110.2-3(a) within a 2-year period after the transfer or the grazing preference "shall be subject to cancellation." However, 43 C.F.R. § 4110.2-3(a) does not require that BLM be notified within that 2-year period, and a BLM decision canceling preferences for failure to file such notice is properly reversed.

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BLM properly denies an application for permitted use in an allotment where, as the result of an approval of a transfer of grazing privileges made by BLM 19 years previous to the application, the applicant does not own base land for which grazing preference was assigned in that allotment. The applicant's ownership of base lands assigned to a different allotment does not support his application.

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A protest against BLM's yearly issuance of permits for grazing use for cattle is properly considered as a protest under 43 C.F.R. § 4.450-2. Where such protest challenges BLM's authority to issue permits for grazing cattle under the governing resource management plan, it raises an issue that is capable of repetition and is therefore not moot, even though the time is past when BLM's action can be redressed by canceling any permit improperly issued in a particular year. Where, by confessing error in a proceeding before the Hearings Division, BLM effectively denies the protest without explanation, the matter is properly remanded to BLM for further consideration.

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Generally

The purpose of the Taylor Grazing Act is to stabilize the livestock industry and protect the rights of sheep and cattle growers from interference. The specific provisions pertaining to a Section 4 permit clearly illustrate a primary Congressional intent to protect livestock and cattle grazing.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Grazing Permits and Licenses
Generally

BLM acts arbitrarily in imposing a requirement that a rancher make water available to wild horses if BLM fails to consider an important aspect of the problem such as the adverse effect of such a requirement on cattle grazing practices.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Grazing Permits and Licenses
Generally

The improvements authorized under range improvement permits are solely funded by the holder of the grazing permit or lease, and cooperative agreements are appropriate when the improvements are funded by joint public and private expenditures. The sharing of costs is a relevant factor when determining whether to authorize a particular improvement under a range improvement permit or a cooperative agreement.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Grazing Permits and Licences
Generally

The Taylor Grazing Act expressly contemplates private ownership of water rights on public land used for grazing by giving preference in the issuance of permits to those within or near a district who are owners of water or water rights, as may be necessary to permit the proper use of lands, water or water rights owned, occupied, or leased by them. That Act should not be construed or administered in any way that would diminish or impair a right to the possession and use of water.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Grazing Permits and Licenses
Generally

When BLM uses its discretionary authority to reject an application for a land use authorization or impose a condition upon a land use authorization, it must provide a rational basis for its decision. If BLM has failed to consider a relevant factor in making a decision in the exercise of its discretionary authority, its decision will not be affirmed.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Grazing Permits and Licenses
Generally

Upon denial of an application for a range improvement permit, an applicant has a statutory right to a hearing under 43 U.S.C. § 315h (2000) that must conform to the adjudication requirements of the Administrative Procedure Act, 5 U.S.C. § 554 (2000), and the record in support of BLM's decision must be developed in accordance with those procedures. An applicant seeking relief from a grazing decision reached in the exercise of BLM's administrative discretion bears the burden of showing by a preponderance of the evidence that the decision is unreasonable or improper. It is implicit in this holding that an appellant must be provided an opportunity to introduce evidence to meet this burden.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Grazing Permits and Licenses
Generally

Departmental regulation 43 C.F.R. § 4710.4 requires that management of wild horses and burros be undertaken with the objective of limiting the animals' distribution to herd areas. Management shall be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans. Absent a factual showing that optimum levels cannot be achieved without additional resources, a policy to manage allotments by requiring ranchers to make additional resources available to wild horses cannot be reconciled with the regulatory requirement that management be kept at the minimal level necessary.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Grazing Permits and Licenses
Generally

The constraints on wild horse management established by 43 C.F.R. § 4710.4 make the effect of a water source on herd distribution a relevant factor that BLM is required to consider before requiring a rancher to provide water for wild horses. Because the constraints were adopted for the stated purpose of controlling herd size, the effect of sharing water with horses on the rate of herd growth is a relevant factor that must be considered before a requirement to share water with horses may be imposed. A decision to require a rancher to provide water for horses must be supported by specific evidence that the requirement would not have undue adverse effects on grazing practices and range conditions.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Grazing Permits and Licenses
Generally

When BLM has rejected range improvement permit applications in order to require the applicants to transfer an undivided one-half interest in the water rights to the United States and to provide water for wild horses under the terms of a cooperative agreement and BLM has not provided a rational basis for imposing such requirements, BLM's decision denying the applications for range improvement permits cannot be affirmed because such denial would be an abuse of discretion.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Grazing Permits and Licenses
Adjudication

The Department has provided that an adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with Departmental grazing regulations found at 43 C.F.R. Part 4100. 43 C.F.R. § 4.478(b). In this manner, the Department has considerably narrowed the scope of review of BLM grazing decisions by an Administrative Law Judge and by this Board.

Kay Kayser-Meyring v. Bureau of Land Management, 152 IBLA 39 (Mar. 1, 2000).

Grazing Permits and Licenses
Adjudication

Where BLM notifies prospective applicants for grazing use and preference that, if leased property is offered as base property to qualify for grazing use, the term of the lease must be for 3 years, as set forth in a BLM state Range Administration Policy, and an applicant offers base property land leased for less than 3 years, the Administrative Law Judge's decision finding that the applicant failed to qualify for grazing use and that BLM improperly awarded grazing use to the applicant will be affirmed.

Kay Kayser-Meyring v. Bureau of Land Management, 152 IBLA 39 (Mar. 1, 2000).

Grazing Permits and Licenses
Adjudication

BLM enjoys broad discretion to determine how to adjudicate and manage grazing privileges, and a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations. A BLM decision may be regarded as arbitrary, capricious, or inequitable only where it is not supported by any rational basis, and the burden is on the objecting party to show that a decision is improper. The determination establishing a grazing allotment's carrying capacity will not be disturbed in the absence of positive evidence of error. Where a party offers no contrary analysis of the carrying capacity of the public lands to demonstrate that BLM's method of determining the carrying capacity is in error, BLM's determination is properly adopted. The determination to issue a 100-percent public land use permit rather than a percentage public land use permit will be affirmed where the record supports BLM's determination and no rebuttal is presented.

James Ross v. Bureau of Land Management, 152 IBLA 273 (May 26, 2000).

Grazing Permits and Licenses
Adjudication

Where a private landowner asserts that he is being damaged by another party's unauthorized grazing on his land, his remedy lies in State court, and the Department is without authority to intervene in the matter. A finding that issuance of a grazing permit by BLM for Federally-owned lands aggravated or exacerbated unauthorized use of neighboring private lands by the permittee will be vacated where unsupported by evidence of record.

James Ross v. Bureau of Land Management, 152 IBLA 273 (May 26, 2000).

Grazing Permits and Licenses
Adjudication

In order to qualify for attorney fees and expenses under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994), an applicant must be a prevailing party in an adversary adjudication. Where the applicant has succeeded on a significant issue in the litigation which achieved the result it sought, and prevailed over BLM in gaining the vacation by the Board of an Administrative Law Judge order dismissing an appeal, which precluded BLM from implementing the terms of a settlement agreement that would have worked to the detriment of applicant, the applicant is a prevailing party even though it has not played the traditional role of adversary in an adjudication with the Department.

Tuledad Grazing Association v. Bureau of Land Management, 153 IBLA 25 (July 14, 2000).

Grazing Permits and Licenses
Adjudication

The relevant regulations governing grazing administration at 43 C.F.R. Subpart 4160 provide that proposed decisions shall be served on any permittee who is "affected" by the proposed actions, terms or conditions, or modifications relating to the permit. Any person whose interest is adversely affected by a final BLM decision under this part may appeal the decision for the purpose of a hearing before an administrative law judge. A decision denying a grazing permittee the right, pursuant to 43 C.F.R. Subpart 4160, to protest and appeal a BLM decision to construct fencing on a riparian pasture in an allotment to exclude livestock from a critical source of water on the ground the permittee was not affected by the decision is properly reversed and the case will be referred for a hearing.

Esperanza Grazing Association, 154 IBLA 47 (Nov. 9, 2000).

Grazing Permits and Licenses
Adjudication

BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges, and a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 C.F.R. § Part 4100. BLM's decision may be regarded as arbitrary, capricious, or inequitable only where it is not supported by any rational basis, and the burden is on the objecting party to show that a decision is improper.

Thomas E. Smigel, Barbara W. Smigel v. Bureau of Land Management 155 IBLA 158 (July 17, 2001).

Grazing Permits and Licenses
Adjudication

Grazing permits issued under the authority of 43 U.S.C. §§ 315b (1994) are "licenses" within the meaning of 5 U.S.C. § 504(b)(1)(C)(i) (1994).

William J. Thoman, 157 IBLA 95 (July 24, 2002).

Grazing Permits and Licenses
Adjudication

A challenge to the issuance of a crossing permit is a challenge to the granting of a "license" within the meaning of 5 U.S.C. § 504(b)(1)(C)(i) (1994) and, as such, is statutorily excepted under the Equal Access to Justice Act from the allowance of an award for fees and expenses incurred in pursuing the challenge.

William J. Thoman, 157 IBLA 95 (July 24, 2002).

Grazing Permits and Licenses
Adjudication

The regulation at 43 C.F.R. § 4.470(b) is a codification of the doctrine of "administrative finality," the administrative counterpart of *res judicata*, which normally precludes reconsideration in a subsequent case of matters finally resolved for the Department in an earlier appeal. A precondition for the application of the doctrine is that the matter raised in the subsequent proceeding was one distinctly put in issue and directly determined in the earlier appeal, as reflected in the language of 43 C.F.R. § 4.470(b) providing that a party who fails to appeal a BLM final grazing decision be barred thereafter from challenging "the matters adjudicated in that final decision." Where a party failed to appeal a final BLM grazing decision rejecting his application for a grazing permit on the grounds that the permitted use he sought was not available (but not mentioning cancellation of his grazing preference), that party's successor-in-interest is not barred under 43 C.F.R. § 4.470(b) from appealing a subsequent final BLM decision declaring the party's grazing preference canceled for failure to comply with the notice requirements of 43 C.F.R. § 4110.2-3.

James G. Katsilometes v. Bureau of Land Management, 157 IBLA 230 (Oct. 4, 2002).

Grazing Permits and Licenses
Adjudication

A decision of an administrative law judge dismissing a grazing appeal for lack of standing is properly set aside where the party appealing is adversely affected by a BLM final grazing decision rejecting his protest.

James G. Katsilometes v. Bureau of Land Management, 157 IBLA 230 (Oct. 4, 2002).

Grazing Permits and Licenses
Adjudication

When an application for grazing preferences in two allotments outside a grazing district (the majority of whose acreage had been acquired from the State by exchange) is denied by BLM on the basis that BLM is in the process of developing its long-term land use plan through the resource management planning process and continued grazing on the allotments is an issue to be addressed therein, it is error for the administrative law judge considering the appeal to expand the scope of the proceeding to engage in an initial adjudication of the present grazing preference holders' qualifications.

Virgil E. Mercer and Michael J. Mercer v. Bureau of Land Management, 159 IBLA 17 (May 8, 2003).

Grazing Permits and Licenses
Adjudication

Under 43 C.F.R. § 4.478(b), BLM enjoys broad discretion in managing and adjudicating grazing preference, and when grazing preference is adjudicated by BLM, that action may be regarded as arbitrary, capricious, or inequitable only where it is not supportable on any rational basis. That standard is properly applied when BLM denies an application for grazing preference in two allotments outside a grazing district (the majority of whose land had been acquired from the State by exchange) on the basis that BLM is in the process of developing its long-term land use plan through the resource management plan process and continued grazing on the allotments is one of the issues to be addressed therein. Under the circumstances, such a reason provides a rational basis for denial of the application.

Virgil E. Mercer and Michael J. Mercer v. Bureau of Land Management, 159 IBLA 17 (May 8, 2003).

Grazing Permits and Licenses
Adjudication

BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges, and a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations. A BLM decision affecting the grazing privileges of a livestock permittee may be regarded as arbitrary, capricious, or inequitable only if it is not supported by any rational basis, and the burden is on the objecting party to show by a preponderance of the evidence that the decision is unreasonable or improper.

Granite Trust Organization v. Bureau of Land Management, 169 IBLA 237 (June 30, 2006).

Grazing Permits and Licenses
Adjudication

BLM enjoys broad discretion in determining how to manage and adjudicate grazing privileges. BLM's adjudication of a grazing trespass will be upheld on appeal if it appears reasonable and substantially complies with the provisions of 43 C.F.R. § Part 4100. Reversal of a grazing decision by an administrative law judge or the Board of Land Appeals as arbitrary, capricious, or inequitable is proper only if the decision is not supportable on any rational basis, and the burden is on the objecting party to show by a preponderance of the evidence that the decision was improper. A BLM holding that a cooperative agreement required the grazer to repair and maintain fencing and works making up an exclosure and that failure to maintain and repair constituted grazing trespass will be affirmed on appeal where BLM had a rational factual basis for its decision.

Tabor Creek Cattle Company v. Bureau of Land Management, 170 IBLA 1 (Aug. 29, 2006).

Grazing Permits and Licenses
Adjudication

BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges. When BLM issues a decision taking actions affecting the grazing privileges of a livestock permittee, those actions may be regarded as arbitrary, capricious, or inequitable only if they are not supportable on any rational basis, and an appellant seeking relief from such a decision has the burden to establish by a preponderance of the evidence that the decision is unreasonable or improper.

Gino Foianini v. Bureau of Land Management, 171 IBLA 244 (May 7, 2007).

Grazing Permits and Licenses
Adjudication

A challenge to the renewal of grazing permits is a challenge to the granting of a "license" within the meaning of 5 U.S.C. § 504(b)(1)(C)(i) (2000) and, as such, is statutorily excepted under the Equal Access to Justice Act from the allowance of an award for fees and expenses incurred in pursuing the challenge.

Western Watersheds Project, Idaho Bird Hunters, Idaho Wildlife Federation, Idaho Native Plant Society, 171 IBLA 304, (June 26, 2007).

Grazing Permits and Licenses
Adjudication

BLM enjoys broad discretion in determining how to manage and adjudicate grazing privileges, and its adjudication of an application for grazing privileges will be upheld on appeal if it reasonably and substantially complies with the provisions of 43 C.F.R. Part 4100. Reversal of a grazing decision by an administrative law judge or the Board of Land Appeals as arbitrary, capricious, or inequitable is proper only if the decision is not supportable on any rational basis. The burden is on the objecting party to show by a preponderance of the evidence that the decision was improper.

Jennifer J. Walt, Box D Ranch, 172 IBLA 300 (Sept. 21, 2007).

Grazing Permits and Licenses
Administrative Law Judge

BLM enjoys broad discretion to determine how to adjudicate and manage grazing privileges, and a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations. A BLM decision may be regarded as arbitrary, capricious, or inequitable only where it is not supported by any rational basis, and the burden is on the objecting party to show that a decision is improper. The determination establishing a grazing allotment's carrying capacity will not be disturbed in the absence of positive evidence of error. Where a party offers no contrary analysis of the carrying capacity of the public lands to demonstrate that BLM's method of determining the carrying capacity is in error, BLM's determination is properly adopted. The determination to issue a 100-percent public land use permit rather than a percentage public land use permit will be affirmed where the record supports BLM's determination and no rebuttal is presented.

James Ross v. Bureau of Land Management, 152 IBLA 273 (May 26, 2000).

Grazing Permits and Licenses
Administrative Law Judge

BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges, and a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations. A BLM decision affecting the grazing privileges of a livestock permittee may be regarded as arbitrary, capricious, or inequitable only if it is not supported by any rational basis, and the burden is on the objecting party to show by a preponderance of the evidence that the decision is unreasonable or improper.

Granite Trust Organization v. Bureau of Land Management, 169 IBLA 237 (June 30, 2006).

Grazing Permits and Licenses
Administrative Law Judge

BLM enjoys broad discretion in determining how to manage and adjudicate grazing privileges. BLM's adjudication of a grazing trespass will be upheld on appeal if it appears reasonable and substantially complies with the provisions of 43 C.F.R. § Part 4100. Reversal of a grazing decision by an administrative law judge or the Board of Land Appeals as arbitrary, capricious, or inequitable is proper only if the decision is not supportable on any rational basis, and the burden is on the objecting party to show by a preponderance of the evidence that the decision was improper. A BLM holding that a cooperative agreement required the grazer to repair and maintain fencing and works making up an exclosure and that failure to maintain and repair constituted grazing trespass will be affirmed on appeal where BLM had a rational factual basis for its decision.

Tabor Creek Cattle Company v. Bureau of Land Management, 170 IBLA 1 (Aug. 29, 2006).

Grazing Permits and Licenses
Administrative Law Judge

BLM enjoys broad discretion in determining how to manage and adjudicate grazing privileges, and its adjudication of an application for grazing privileges will be upheld on appeal if it reasonably and substantially complies with the provisions of 43 C.F.R. Part 4100. Reversal of a grazing decision by an administrative law judge or the Board of Land Appeals as arbitrary, capricious, or inequitable is proper only if the decision is not supportable on any rational basis. The burden is on the objecting party to show by a preponderance of the evidence that the decision was improper.

Jennifer J. Walt, Box D Ranch, 172 IBLA 300 (Sept. 21, 2007).

Grazing Permits and Licenses
Appeals

The Department has provided that an adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with Departmental grazing regulations found at 43 C.F.R. Part 4100. 43 C.F.R. § 4.478(b). In this manner, the Department has considerably narrowed the scope of review of BLM grazing decisions by an Administrative Law Judge and by this Board.

Kay Kayser-Meyring v. Bureau of Land Management, 152 IBLA 39 (Mar. 1, 2000).

Grazing Permits and Licenses
Appeals

Where BLM notifies prospective applicants for grazing use and preference that, if leased property is offered as base property to qualify for grazing use, the term of the lease must be for 3 years, as set forth in a BLM state Range Administration Policy, and an applicant offers base property land leased for less than 3 years, the Administrative Law Judge's decision finding that the applicant failed to qualify for grazing use and that BLM improperly awarded grazing use to the applicant will be affirmed.

Kay Kayser-Meyring v. Bureau of Land Management, 152 IBLA 39 (Mar. 1, 2000).

Grazing Permits and Licenses
Appeals

BLM enjoys broad discretion to determine how to adjudicate and manage grazing privileges, and a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations. A BLM decision may be regarded as arbitrary, capricious, or inequitable only where it is not supported by any rational basis, and the burden is on the objecting party to show that a decision is improper. The determination establishing a grazing allotment's carrying capacity will not be disturbed in the absence of positive evidence of error. Where a party offers no contrary analysis of the carrying capacity of the public lands to demonstrate that BLM's method of determining the carrying capacity is in error, BLM's determination is properly adopted. The determination to issue a 100-percent public land use permit rather than a percentage public land use permit will be affirmed where the record supports BLM's determination and no rebuttal is presented.

James Ross v. Bureau of Land Management, 152 IBLA 273 (May 26, 2000).

Grazing Permits and Licenses
Appeals

Where a private landowner asserts that he is being damaged by another party's unauthorized grazing on his land, his remedy lies in State court, and the Department is without authority to intervene in the matter. A finding that issuance of a grazing permit by BLM for Federally-owned lands aggravated or exacerbated unauthorized use of neighboring private lands by the permittee will be vacated where unsupported by evidence of record.

James Ross v. Bureau of Land Management, 152 IBLA 273 (May 26, 2000).

Grazing Permits and Licenses
Appeals

The relevant regulations governing grazing administration at 43 C.F.R. Subpart 4160 provide that proposed decisions shall be served on any permittee who is "affected" by the proposed actions, terms or conditions, or modifications relating to the permit. Any person whose interest is adversely affected by a final BLM decision under this part may appeal the decision for the purpose of a hearing before an administrative law judge. A decision denying a grazing permittee the right, pursuant to 43 C.F.R. Subpart 4160, to protest and appeal a BLM decision to construct fencing on a riparian pasture in an allotment to exclude livestock from a critical source of water on the ground the permittee was not affected by the decision is properly reversed and the case will be referred for a hearing.

Esperanza Grazing Association, 154 IBLA 47 (Nov. 9, 2000).

Grazing Permits and Licenses
Appeals

BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges, and a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 C.F.R. § Part 4100. BLM's decision may be regarded as arbitrary, capricious, or inequitable only where it is not supported by any rational basis, and the burden is on the objecting party to show that a decision is improper.

Thomas E. Smigel, Barbara W. Smigel v. Bureau of Land Management 155 IBLA 158 (July 17, 2001).

Grazing Permits and Licenses
Appeals

When an application for grazing preferences in two allotments outside a grazing district (the majority of whose acreage had been acquired from the State by exchange) is denied by BLM on the basis that BLM is in the process of developing its long-term land use plan through the resource management planning process and continued grazing on the allotments is an issue to be addressed therein, it is error for the administrative law judge considering the appeal to expand the scope of the proceeding to engage in an initial adjudication of the present grazing preference holders' qualifications.

Virgil E. Mercer and Michael J. Mercer v. Bureau of Land Management, 159 IBLA 17 (May 8, 2003).

Grazing Permits and Licenses
Appeals

Under 43 C.F.R. § 4.478(b), BLM enjoys broad discretion in managing and adjudicating grazing preference, and when grazing preference is adjudicated by BLM, that action may be regarded as arbitrary, capricious, or inequitable only where it is not supportable on any rational basis. That standard is properly applied when BLM denies an application for grazing preference in two allotments outside a grazing district (the majority of whose land had been acquired from the State by exchange) on the basis that BLM is in the process of developing its long-term land use plan through the resource management plan process and continued grazing on the allotments is one of the issues to be addressed therein. Under the circumstances, such a reason provides a rational basis for denial of the application.

Virgil E. Mercer and Michael J. Mercer v. Bureau of Land Management, 159 IBLA 17 (May 8, 2003).

Grazing Permits and Licenses
Appeals

The Board will dismiss an appeal, filed pursuant to 43 C.F.R. § 4.478(a), from an order of an administrative law judge granting or denying a petition for a stay of the effect of a BLM grazing decision when the appellant challenging the stay order fails to comply with the general appeal regulations of the Board that require an appeal from a decision of an administrative law judge to be filed within 30 days following the date of service of the decision on the appellant. In such circumstances, the Board is deprived of jurisdiction to adjudicate the appeal.

Western Watersheds Project v. Bureau of Land Management, 166 IBLA 30 (June 9, 2005).

Grazing Permits and Licenses

Appeals

BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges, and a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations. A BLM decision affecting the grazing privileges of a livestock permittee may be regarded as arbitrary, capricious, or inequitable only if it is not supported by any rational basis, and the burden is on the objecting party to show by a preponderance of the evidence that the decision is unreasonable or improper.

Granite Trust Organization v. Bureau of Land Management, 169 IBLA 237 (June 30, 2006).

Grazing Permits and Licenses
Appeals

BLM enjoys broad discretion in determining how to manage and adjudicate grazing privileges. BLM's adjudication of a grazing trespass will be upheld on appeal if it appears reasonable and substantially complies with the provisions of 43 C.F.R. Part 4100. Reversal of a grazing decision by an administrative law judge or the Board of Land Appeals as arbitrary, capricious, or inequitable is proper only if the decision is not supportable on any rational basis, and the burden is on the objecting party to show by a preponderance of the evidence that the decision was improper. A BLM holding that a cooperative agreement required the grazer to repair and maintain fencing and works making up an exclosure and that failure to maintain and repair constituted grazing trespass will be affirmed on appeal where BLM had a rational factual basis for its decision.

Tabor Creek Cattle Company v. Bureau of Land Management, 170 IBLA 1 (Aug. 29, 2006).

Grazing Permits and Licenses
Appeals

BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges. When BLM issues a decision taking actions affecting the grazing privileges of a livestock permittee, those actions may be regarded as arbitrary, capricious, or inequitable only if they are not supportable on any rational basis, and an appellant seeking relief from such a decision has the burden to establish by a preponderance of the evidence that the decision is unreasonable or improper.

Gino Foianini v. Bureau of Land Management, 171 IBLA 244 (May 7, 2007).

Grazing Permits and Licenses
Appeals

BLM enjoys broad discretion in determining how to manage and adjudicate grazing privileges, and its adjudication of an application for grazing privileges will be upheld on appeal if it reasonably and substantially complies with the provisions of 43 C.F.R. Part 4100. Reversal of a grazing decision by an administrative law judge or the Board of Land Appeals as arbitrary, capricious, or inequitable is proper only if the decision is not supportable on any rational basis. The burden is on the objecting party to show by a preponderance of the evidence that the decision was improper.

Jennifer J. Walt, Box D Ranch, 172 IBLA 300 (Sept. 21, 2007).

Grazing Permits and Licenses
Appeals

Where BLM chooses to exercise its discretionary authority to deny grazing privileges based upon environmental considerations presented in an Environmental Assessment which adequately assessed the impacts of four alternatives that included some form of a grazing scenario, absent objective proof of a clear error of law or demonstrable error of fact, or proof that the analysis failed to consider a substantial environmental question of significance to the proposed action, the Board properly finds that BLM's decision has a rational basis in the record and that it is not arbitrary and capricious.

Jennifer J. Walt, Box D Ranch, 172 IBLA 300 (Sept. 21, 2007).

Grazing Permits and Licences
Base Property (Water)

The Taylor Grazing Act expressly contemplates private ownership of water rights on public land used for grazing by giving preference in the issuance of permits to those within or near a district who are owners of water or water rights, as may be necessary to permit the proper use of lands, water or water rights owned, occupied, or leased by them. That Act should not be construed or administered in any way that would diminish or impair a right to the possession and use of water.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Grazing Permits and Licenses
Cancellation or Reduction

In determining whether grazing trespasses are "willful," intent sufficient to establish willfulness may be shown by evidence which objectively shows that the circumstances did not comport with the notion that the trespasser acted in good faith or by innocent mistake, or that his conduct was so lacking in reasonableness or responsibility that it became reckless or negligent.

Granite Trust Organization v. Bureau of Land Management, 169 IBLA 237 (June 30, 2006).

Grazing Permits and Licenses
Cancellation or Reduction

The BLM properly penalizes a grazing permittee for unauthorized grazing on public lands. In determining the severity of a reduction in grazing privileges, the reduction must be gauged in terms of the impact on all of the grazing use authorized under a particular grazing permit. The objective is to reform a permittee's grazing practices by curtailing all or part of the permittee's authorized use in the affected area. The reduction of a permittee's grazing privileges is a proper exercise of BLM's discretion when finding that the permittee has engaged in willful and repeated trespass.

Granite Trust Organization v. Bureau of Land Management, 169 IBLA 237 (June 30, 2006).

Grazing Permits and Licenses
Cancellation or Reduction

The BLM properly cancels a permittee's grazing privileges when the permittee has engaged in willful and repeated trespass during four prior consecutive grazing seasons, and the permittee has offered no evidence to show that BLM's findings were in error.

Granite Trust Organization v. Bureau of Land Management, 169 IBLA 237 (June 30, 2006).

Grazing Permits and Licenses
Cancellation or Reduction

Although "willfulness" is basically a subjective standard of the trespasser's intent, it may be proved by objective facts. Thus, in determining whether the actions of grazing trespassers are "willful," intent sufficient to establish willfulness may be shown by evidence which objectively shows that the circumstances did not comport with the notion that the trespasser acted in good faith or innocent mistake, or that his conduct was so lacking in reasonableness or responsibility that it became reckless or negligent. A finding that a trespass was willful or knowing may be negated by a good faith belief that the requirement did not apply in the circumstances of a given case. Where a decision by an administrative law judge holds that a permittee may have had a good faith belief that it was not required to maintain or repair the fence and workings of an exclosure, and such conclusion is supported by substantial evidence in the record, his holding affirming BLM's determination that the failure to repair or maintain the site was willful negligence is properly reversed.

Tabor Creek Cattle Company v. Bureau of Land Management, 170 IBLA 1 (Aug. 29, 2006).

Grazing Permits and Licenses
Cancellation or Reduction

BLM may reduce permitted grazing use when monitoring or field observations demonstrate, among other things, that grazing use is causing an unacceptable level or pattern of utilization. Where resources on an allotment require immediate protection because of conditions such as drought, fire, flood, insect infestation, or when continued grazing use poses an imminent likelihood of significant resource damage, BLM may close grazing allotments, or portions thereof, by full force and effect decision making, after consulting or reasonably attempting to consult with affected permittees.

Gino Foianini v. Bureau of Land Management, 171 IBLA 244 (May 7, 2007).

Grazing Permits and Licenses
Cancellation or Reduction

Where the administrative record demonstrates that severe drought conditions existed on a grazing allotment over a period of several years, and utilization on riparian areas, which were either functioning-at-risk or non-functional, had reached maximum levels in the final pasture to be grazed under the existing allotment grazing plan, BLM does not abuse its discretion in closing the allotment to grazing prior to the date scheduled, even though some areas of the pasture had not been grazed to maximum utilization levels.

Gino Foianini v. Bureau of Land Management, 171 IBLA 244 (May 7, 2007).

Grazing Permits and Licenses
Filing Requirements

Allotment management plans are incorporated into grazing permits in accordance with 43 C.F.R. § 4120.2.

William J. Thoman v. Bureau of Land Management, 152 IBLA 97 (Mar. 30, 2000).

Grazing Permits and Licenses
Hearings

The Department has provided that an adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with Departmental grazing regulations found at 43 C.F.R. Part 4100. 43 C.F.R. § 4.478(b). In this manner, the Department has considerably narrowed the scope of review of BLM grazing decisions by an Administrative Law Judge and by this Board.

Kay Kayser-Meyring v. Bureau of Land Management, 152 IBLA 39 (Mar. 1, 2000).

Grazing Permits and Licenses
Hearings

Where BLM notifies prospective applicants for grazing use and preference that, if leased property is offered as base property to qualify for grazing use, the term of the lease must be for 3 years, as set forth in a BLM state Range Administration Policy, and an applicant offers base property land leased for less than 3 years, the Administrative Law Judge's decision finding that the applicant failed to qualify for grazing use and that BLM improperly awarded grazing use to the applicant will be affirmed.

Kay Kayser-Meyring v. Bureau of Land Management, 152 IBLA 39 (Mar. 1, 2000).

Grazing Permits and Licenses
Hearings

The relevant regulations governing grazing administration at 43 C.F.R. Subpart 4160 provide that proposed decisions shall be served on any permittee who is "affected" by the proposed actions, terms or conditions, or modifications relating to the permit. Any person whose interest is adversely affected by a final BLM decision under this part

may appeal the decision for the purpose of a hearing before an administrative law judge. A decision denying a grazing permittee the right, pursuant to 43 C.F.R. Subpart 4160, to protest and appeal a BLM decision to construct fencing on a riparian pasture in an allotment to exclude livestock from a critical source of water on the ground the permittee was not affected by the decision is properly reversed and the case will be referred for a hearing.

Esperanza Grazing Association, 154 IBLA 47 (Nov. 9, 2000).

Grazing Permits and Licenses
Hearings

Upon denial of an application for a range improvement permit, an applicant has a statutory right to a hearing under 43 U.S.C. § 315h (2000) that must conform to the adjudication requirements of the Administrative Procedure Act, 5 U.S.C. § 554 (2000), and the record in support of BLM's decision must be developed in accordance with those procedures. An applicant seeking relief from a grazing decision reached in the exercise of BLM's administrative discretion bears the burden of showing by a preponderance of the evidence that the decision is unreasonable or improper. It is implicit in this holding that an appellant must be provided an opportunity to introduce evidence to meet this burden.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Grazing Permits and Licenses
Hearings

An Administrative Law Judge has no authority to invalidate an otherwise valid BLM grazing trespass decision based on proof of improper motive on the part of a BLM official or employee involved in the development or issuance of the decision.

Frank Robbins and High Island Ranch v. Bureau of Land Management, 170 IBLA 219 (Sept. 26, 2006).

Grazing Permits and Licenses
Hearings

BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges. When BLM issues a decision taking actions affecting the grazing privileges of a livestock permittee, those actions may be regarded as arbitrary, capricious, or inequitable only if they are not supportable on any rational basis, and an appellant seeking relief from such a decision has the burden to establish by a preponderance of the evidence that the decision is unreasonable or improper.

Gino Foianini v. Bureau of Land Management, 171 IBLA 244 (May 7, 2007).

Grazing Permits and Licenses
Trespass

When the evidence shows (1) unauthorized grazing use; (2) prior trespass; and (3) willfulness as to each, a BLM decision finding repeated, willful trespass will be upheld.

William J. Thoman v. Bureau of Land Management, 152 IBLA 97 (Mar. 30, 2000).

Grazing Permits and Licenses
Trespass

The BLM properly penalizes a grazing permittee for unauthorized grazing on public lands. In determining the severity of a reduction in grazing privileges, the reduction must be gauged in terms of the impact on all of the grazing use authorized under a particular grazing permit. The objective is to reform a permittee's grazing practices by curtailing all or part of the permittee's authorized use in the affected area. The reduction of a permittee's grazing privileges is a proper exercise of BLM's discretion when finding that the permittee has engaged in willful and repeated trespass.

Granite Trust Organization v. Bureau of Land Management, 169 IBLA 237 (June 30, 2006).

Grazing Permits and Licenses
Trespass

The BLM properly cancels a permittee's grazing privileges when the permittee has engaged in willful and repeated trespass during four prior consecutive grazing seasons, and the permittee has offered no evidence to show that BLM's findings were in error.

Granite Trust Organization v. Bureau of Land Management, 169 IBLA 237 (June 30, 2006).

Grazing Permits and Licenses
Trespass

Although "willfulness" is basically a subjective standard of the trespasser's intent, it may be proved by objective facts. Thus, in determining whether the actions of grazing trespassers are "willful," intent sufficient to establish willfulness may be shown by evidence which objectively shows that the circumstances did not comport with the notion that the trespasser acted in good faith or innocent mistake, or that his conduct was so lacking in reasonableness or responsibility that it became reckless or negligent. A finding that a trespass was willful or knowing may be negated by a good faith belief that the requirement did not apply in the circumstances of a given case. Where a decision by an administrative law judge holds that a permittee may have had a good faith belief that it was not required to maintain or repair the fence and workings of an exclosure, and such conclusion is supported by substantial evidence in the record, his holding affirming BLM's determination that the failure to repair or maintain the site was willful negligence is properly reversed.

Tabor Creek Cattle Company v. Bureau of Land Management, 170 IBLA 1 (Aug. 29, 2006).

Grazing Permits and Licenses
Trespass

An Administrative Law Judge has no authority to invalidate an otherwise valid BLM grazing trespass decision based on proof of improper motive on the part of a BLM official or employee involved in the development or issuance of the decision.

Frank Robbins and High Island Ranch v. Bureau of Land Management, 170 IBLA 219 (Sept. 26, 2006).

Grazing Permits and Licenses
Trespass

The approval of a proposed action in a Decision Record and Finding of No Significant Impact, following the preparation of an Environmental Assessment, does not constitute an authorization to use the public lands. BLM authorizes use of public land for grazing by issuing grazing permits or leases which specify all grazing use. Allowing cattle to graze on public land without a permit or lease and an annual grazing authorization is a prohibited act under 43 C.F.R. § 4140.1(b)(1)(I).

Badger Ranch, et al. v. Bureau of Land Management, 171 IBLA 285 (May 23, 2007).

Grazing Permits and Licenses
Trespass

In determining whether grazing trespasses are "willful," intent sufficient to establish willfulness may be shown by evidence which objectively shows that the circumstances did not comport with the notion that the trespasser acted in good faith or by innocent mistake, or that his conduct was so lacking in reasonableness or responsibility that it became reckless or negligent.

Granite Trust Organization v. Bureau of Land Management, 169 IBLA 237 (June 30, 2006).

Hearings

A BLM decision assessing fees and damages for the unauthorized use of public land will be set aside and referred for a hearing where the record contains significant unresolved factual and legal issues concerning whether the subject land was created by accretion or avulsion and who has title to the land.

Sydney Dowton, 154 IBLA 291 (Apr. 19, 2001).

Hearings

When the record before the Board on appeal discloses the existence of material issues of fact unresolved by the record, the decision is properly set aside and the case referred to an administrative law judge for an evidentiary hearing.

Samedan Oil Corp.Aera Energy LLC., 163 IBLA 63 (Sept. 7, 2004).

Hearings

When the record before the Board on appeal discloses the existence of material issues of fact unresolved by the record, the decision is properly set aside and the case referred to an administrative law judge for an evidentiary hearing.

Mark Patrick Heath, 163 IBLA 381 (Nov. 10, 2004).

Hearings

Although the Board has discretionary authority to order a hearing before an administrative law judge, it normally will order a hearing when an appellant presents an issue of material fact requiring resolution through the introduction of testimony and other evidence not readily obtainable through ordinary appeals procedures. Where an appellant seeks to elicit testimony which could not be probative of whether lands constituted the "smallest practicable tract . . . enclosing land actually used in connection with the administration of [a] Federal installation," within the meaning of ANCSA section 3(e), the Board will not order a hearing to determine whether the lands were public lands withdrawn for Native village selection under ANCSA section 11(a)(1). 43 U.S.C. §§ 1602(e) and 1610(a)(1) (2000).

Kawerak, Inc., 165 IBLA 94 (Mar. 18, 2005).

Hearings

Although there is no right to a hearing before an administrative law judge on a protest against a survey, a BLM decision dismissing a protest against a survey of an island will be set aside and referred for a hearing where the record discloses significant unresolved factual issues as to whether the island was actually in existence at the time of the admission to the Union of the state within which the island is situated.

State of South Dakota, 166 IBLA 210 (July 27, 2005).

Homesteads (Ordinary)
Generally

A homestead entry patent may be amended, pursuant to section 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (2000), when the applicant demonstrates by a preponderance of the evidence that the patent did not convey lands that the applicant and the United States mutually intended to convey by the patent. Unless otherwise shown, equity and justice favor such correction.

Ramona & Boyd Lawson, 159 IBLA 184 (June 4, 2003).

Indian Leases
Generally

When appellant timely requested a hearing on the record of the August 19, 1999, Notice of Noncompliance (NON) it received when it apparently did not comply with the Order to Perform (OTP) pursuant to the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1719 (2000), as implemented by the provisions of 30 C.F.R. Part 241, appellant was entitled to contest its underlying liability, which is predicated on its alleged failure to undertake the actions set forth in the OTP to remedy an alleged violation of a statute, regulation, rule, order, or lease or permit term within the time specified therein. Appellant's right to contest its underlying liability necessarily encompasses the right to defend the NON by showing the nature and extent of its compliance, including defenses based on flaws in the service, or in the basis and substance of the OTP that might excuse compliance. Nothing in FOGRMA or the regulations supports or provides that the scope of a hearing on the record of a NON under Part 241 can be cut off or curtailed by the failure to appeal the OTP under Part 290. The two appeal procedures are separate.

Merit Energy Company v. Minerals Management Service, 172 IBLA 137 (Aug. 3, 2007).

Indian Leases
Generally

In a hearing on the record of a Notice of Civil Penalty, a party can challenge only the amount of a civil penalty if it did not previously request a hearing on the record of a NON under 30 C.F.R. § 241.54. When a hearing on the record of the NON is not requested under § 241.54, the party may not contest its underlying liability for civil penalties. 30 C.F.R. § 241.56(a). Consequently, if a party is to have any opportunity to contest its underlying liability, it must do so in a timely requested hearing on the record of a NON. Because the OTP alleged violations and directed appellant to undertake corrective action and furnished the basis for issuance of the NON when appellant apparently took no corrective action within the period specified, the only failure that could finally cut off appellant's right to challenge the OTP under Part 241 would be a failure to timely request a hearing on the record of the NON.

Merit Energy Company v. Minerals Management Service, 172 IBLA 137 (Aug. 3, 2007).

Indian Leases
Generally

The regulation at 30 C.F.R. § 290.111(a) broadly defines "official correspondence" to include "all RMP [Royalty Management Program, Minerals Management Service] orders that are appealable." Such official correspondence is to be served on the "addressee of record," who is defined by reference to the subject matter of the correspondence. In (b)(4), the subject matter is "official correspondence in connection with reviews and audits of payor records"; in (b)(7), the subject matter is "official correspondence including orders, demands, invoices, or decisions, and other actions identified with payors reporting to the RMP Auditing and Financial System not identified above." The qualifying phrase "not identified above" refers to the six categories of addressees, which are defined solely by the subject matter of the correspondence, not the particular caption of the correspondence or action that such correspondence demands or induces. Official correspondence may take the more specific form of "orders, demands, invoices, or decisions, and other actions," but because of the definition of "official correspondence," they all in general constitute "orders" issued by RMP that are appealable under 30 C.F.R. Parts 243 and 290. More than one category can be applicable in any given situation, and service under any other applicable category is equally valid. 30 C.F.R. § 290.111(b)(8).

Merit Energy Company v. Minerals Management Service, 172 IBLA 137 (Aug. 3, 2007).

Indians
Generally

Section 11 of the Act of December 22, 1974, 25 U.S.C. § 640d-10 (1994), as amended by sec. 4 of Public Law 96-305, the Navajo and Hopi Indian Relocation Amendments Act of 1980, and sec. 105(b) of Public Law 98-603, the San Juan Basin Wilderness Protection Act of 1984, does not authorize the Navajo Tribe or the Office of Navajo and Hopi Indian Relocation to "de-select" lands selected by the Tribe in 1986 and "re-select" other lands in 1996.

San Juan Coal Co., 155 IBLA 389 (Nov. 6, 2001).

Indians
Lands
Allotments on Public Domain
Classification

A decision rejecting an Indian Allotment application is properly affirmed where the land sought to be entered has been classified for retention in public ownership in the applicable resource management plan. The Board has no jurisdiction to review such a land-use plan or the classifications contained therein.

Jane Delorme, et al, 158 IBLA 260 (Feb. 3, 2003).

Indians
Lands
Allotments on Public Domain
Lands Subject To

A decision rejecting an Indian Allotment application is properly affirmed where the land sought to be entered has been classified for retention in public ownership in the applicable resource management plan. The Board has no jurisdiction to review such a land-use plan or the classifications contained therein.

Jane Delorme, et al., 158 IBLA 260 (Feb. 3, 2003).

Indians
Leases and Permits
Generally

When MMS issues an order to pay additional royalty, indicating that it is subject to immediate appeal, but places the order and bill for collection on hold pending additional review, the appeal period for the order does not begin to run until MMS notifies the appellant that the hold has been lifted, and an MMS decision dismissing as untimely an appeal to the Commissioner of Indian Affairs timely filed within 30 days of receipt of the notice of the lifting of the hold will be reversed and the case remanded for adjudication of the merits of the appeal.

American Petroleum Energy Company, 160 IBLA 59 (Aug. 28, 2003).

Indians
Leases and Permits
Generally

The assignee of an Indian oil and gas lease, upon approval of an assignment, becomes the lessee and is responsible for compliance with the lease terms.

Marlin Oil Corporation, 158 IBLA 362 (Apr. 10, 2003).

Indians
Leases and Permits
Generally

A lessee of an Indian lease may relinquish a lease or a legal subdivision of the leased area. Abandonment of a wellbore does not transfer ownership of the well to the lessor.

Marlin Oil Corporation, 158 IBLA 362 (Apr. 10, 2003).

Indians
Leases and Permits
Rental Rates

In interpreting lease provisions, the Board attempts to determine and give effect to the intent of the parties to the lease as manifested by the language used therein. Where the escalated rental schedule incorporated into allotted Indian oil and gas leases does not specify that rentals freeze as of the date of first production but simply states that "the procedures covering the payment of such fees and the due date thereof shall operate in accordance with past practices," MMS properly requires the lessee to calculate rentals based on the escalated rates.

Linmar Petroleum Co., 153 IBLA 99 (Aug. 3, 2000).

Indians
Leases and Permits
Rental Rates

A claim of estoppel against the United States will be rejected in the absence of affirmative misconduct in the nature of an erroneous statement of fact in an official written decision or if the effect of allowing the estoppel would be to grant a right not authorized by law. Reliance on incomplete or inaccurate information provided by Federal employees cannot create any rights not authorized by law.

Linmar Petroleum Co., 153 IBLA 99 (Aug. 3, 2000).

Indians
Leases and Permits
Rental Rates

MMS properly assesses late payment charges on underpaid escalated rental payments.

Linmar Petroleum Co., 153 IBLA 99 (Aug. 3, 2000).

Indians
Mineral Resources
Generally

Where a lessee fails to offer independent indicia establishing that its nonarm's-length, net smelter return contract price is one fairly derived from the marketplace, MMS properly establishes royalty on copper concentrates based on an arm's-length, net smelter return contract pursuant to applicable regulations.

Asarco Inc., 152 IBLA 20 (Feb. 29, 2000).

Indians
Mineral Resources
Mining
Royalties

Where the lessee of an Indian coal lease fails to pay additional royalty resulting from an increase in the cost-based sales price it received for production owing to royalty readjustment of a related lease, MMS is entitled to assess late payment charges. Such charges are properly computed from the date of readjustment to the date that the lessee made a lump-sum payment of that royalty. The fact that the readjustment was appealed and the appeal was later settled, resulting in less of an increase in the sales price, does not alter the fact that additional royalty became due each month following the month of production for the subject lease. Failure to pay properly results in the assessment of late payment charges.

Peabody Coal Co, 155 IBLA 83 (May 18, 2001).

Indians
Mineral Resources
Oil and Gas
Generally

The assignee of an Indian oil and gas lease, upon approval of an assignment, becomes the lessee and is responsible for compliance with the lease terms.

Marlin Oil Corporation, 158 IBLA 362 (Apr. 10, 2003).

Indians
Mineral Resources
Oil and Gas
Generally

A lessee of an Indian lease may relinquish a lease or a legal subdivision of the leased area. Abandonment of a wellbore does not transfer ownership of the well to the lessor.

Marlin Oil Corporation, 158 IBLA 362 (Apr. 10, 2003).

Indians
Mineral Resources
Oil and Gas
Allotted Lands

In interpreting lease provisions, the Board attempts to determine and give effect to the intent of the parties to the lease as manifested by the language used therein. Where the escalated rental schedule incorporated into allotted Indian oil and gas leases does not specify that rentals freeze as of the date of first production but simply states that "the procedures covering the payment of such fees and the due date thereof shall operate in accordance with past practices," MMS properly requires the lessee to calculate rentals based on the escalated rates.

Linmar Petroleum Co., 153 IBLA 99 (Aug. 3, 2000).

Indians
Mineral Resources
Oil and Gas
Allotted Lands

A claim of estoppel against the United States will be rejected in the absence of affirmative misconduct in the nature of an erroneous statement of fact in an official written decision or if the effect of allowing the estoppel would be to grant a right not authorized by law. Reliance on incomplete or inaccurate information provided by Federal employees cannot create any rights not authorized by law.

Linmar Petroleum Co., 153 IBLA 99 (Aug. 3, 2000).

Indians
Mineral Resources
Oil and Gas
Allotted Lands

MMS properly assesses late payment charges on underpaid escalated rental payments.

Linmar Petroleum Co., 153 IBLA 99 (Aug. 3, 2000).

Indians
Mineral Resources
Oil and Gas
Royalties

Where a lessee fails to offer independent indicia establishing that its nonarm's-length, net smelter return contract price is one fairly derived from the marketplace, MMS properly establishes royalty on copper concentrates based on an arm's-length, net smelter return contract pursuant to applicable regulations.

Asarco Inc., 152 IBLA 20 (Feb. 29, 2000).

Indians
Mineral Resources
Oil and Gas
Royalties

When computing the royalty due an Indian tribe for natural gas produced and sold from tribal lands the producer is required to abide by the applicable Federal regulations not inconsistent with the terms of a minerals agreement issued pursuant to the Indian Mineral Development Act of 1982, 25 U.S.C. §§ 2101–2108 (1994). Thus, not having gained prior MMS approval of a higher allowance, the producer was restricted by 30 C.F.R. § 206.158(c)(2) (1994) to a deduction of not more than two-thirds of the value of the products when valuing natural gas liquid products derived from processing natural gas for royalty computation purposes.

Harken Southwest Corp., 153 IBLA 153 (Aug. 17, 2000).

Indians
Mineral Resources
Oil and Gas
Royalties

MMS may require restructured accounting when MMS has, by sampling a portion of but not all of the producer's production records, discovered a systemic error or deficiency (whether or not amounting to a pattern of error) in the producer's royalty computations. Finding an error or deficiency would not justify restructured accounting without a showing that it is likely that the error was repeated in other months and/or other leases. A showing of a repeated error or deficiency over an extended period of time and for a number of leases establishes a systemic error or deficiency sufficient to justify restructured accounting.

Union Texas Petroleum Energy Corporation, 153 IBLA 170 (Aug. 25, 2000).

Indians
Mineral Resources
Oil and Gas
Royalties

The 6-year statute of limitations for the commencement by the United States of civil actions for money damages, found at 28 U.S.C. § 2415(a) (1994), does not limit administrative action within the Department. MMS orders to recalculate and pay additional royalty due under an Indian lease are administrative actions not subject to the statute of limitations.

Union Texas Petroleum Energy Corporation, 153 IBLA 170 (Aug. 25, 2000).

Indians
Mineral Resources
Oil and Gas
Royalties

MMS properly directs a lessee to perform dual accounting and recalculate royalties due on Indian oil and gas leases where the leases require such accounting and an MMS audit revealed instances of the lessee's failure to calculate and pay royalties utilizing that method.

Alexander Energy Corporation, 153 IBLA 238 (Aug. 31, 2000).

Indians
Mineral Resources
Oil and Gas
Royalties

The regulation at 30 C.F.R. § 206.159(c)(1) (1992) provides that prior to or at the same time as claiming a gas processing allowance on Form MMS-2014, a lessee must submit page one of the initial Form MMS-4109. The regulation at 30 C.F.R. § 206.159(d)(1) provides that failure to timely file Form MMS-4109 subjects a lessee to forfeiture of processing allowances taken on Form MMS-2014 until such time as lessee cures the failure to submit page one of Form MMS-4109.

Alexander Energy Corporation, 153 IBLA 238 (Aug. 31, 2000).

Indians
Mineral Resources
Oil and Gas
Royalties

Where payor information forms and division orders specify that the purchaser of gas is to distribute gas sales proceeds and has assumed the lessee's legal obligation to pay royalties, the obligation to perform a restructured accounting and to pay any additional royalty found to be due rests with the purchaser. If the purchaser does not perform the accounting or pay the royalty, it is the lessee's obligation to do so.

Estoril Producing Co., 154 IBLA 1 (Oct. 12, 2000).

Indians
Mineral Resources
Oil and Gas
Royalties

When MMS issues an order to pay additional royalty, indicating that it is subject to immediate appeal, but places the order and bill for collection on hold pending additional review, the appeal period for the order does not begin to run until MMS notifies the appellant that the hold has been lifted, and an MMS decision dismissing as untimely an appeal to the Commissioner of Indian Affairs timely filed within 30 days of receipt of the notice of the lifting of the hold will be reversed and the case remanded for adjudication of the merits of the appeal.

American Petroleum Energy Company, 160 IBLA 59 (Aug. 28, 2003).

Indians
Mineral Resources
Oil and Gas
Royalties

43 C.F.R. § 3162.7-3 requires that all gas production be measured on the lease, with volumes subject to certain adjustments. Off-lease measurement or commingling with production from other sources prior to measurement requires approval by the authorized officer.

Byron Oil Industries, Inc., 161 IBLA 1 (Feb. 23, 2004).

Indians
Mineral Resources
Oil and Gas
Royalties

The Minerals Management Service (MMS) properly directs a lessee to perform restructured accounting and recalculate royalties due on Indian oil and gas leases where the leases require such accounting and an MMS audit revealed instances of the lessee's failure to calculate and pay royalties utilizing that method.

Union Oil Company of California, 167 IBLA 263 (Dec. 28, 2005).

Indians
Mineral Resources
Oil and Gas
Royalties

The regulation applicable to an audit of Navajo Allotted leases for the January 1993 through December 1996 audit period provided that prior to or at the same time as claiming a gas processing allowance on Form MMS-2014, a lessee must submit page one of the initial Form MMS-4109. The applicable regulation provided that failure to timely file Form MMS-4109 subjects a lessee to forfeiture of processing allowances taken on Form MMS-2014 until such time as the lessee cures the failure to submit page one of Form MMS-4109. The lessee is required to file Form MMS-4109 before claiming a processing allowance in deriving a theoretical price for processed gas.

Union Oil Company of California, 167 IBLA 263 (Dec. 28, 2005).

Indians
Mineral Resources
Oil and Gas
Royalties

MMS' interpretation of the applicable regulation as requiring a lessee of Indian oil and gas leases to timely file Form MMS-4109 prior to or at the same time as claiming a processing allowance on Form MMS-2014 does not constitute the promulgation of a new rule requiring notice and comment.

Union Oil Company of California, 167 IBLA 263 (Dec. 28, 2005).

Indians
Mineral Resources
Oil and Gas
Royalties

The 6-year statute of limitations for the commencement by the United States of civil actions for money damages, found at 28 U.S.C. § 2415(a) (2000), does not limit administrative actions within the Department. Orders by MMS to recalculate and pay additional royalties due under Indian leases are administrative actions not subject to the statute of limitations.

Union Oil Company of California, 167 IBLA 263 (Dec. 28, 2005).

Indians
Mineral Resources
Oil and Gas
Royalties

The 6-year statute of limitations for the commencement by the United States of civil actions for money damages, found at 28 U.S.C. § 2415(a) (2000), does not limit administrative actions within the Department. Orders by MMS to recalculate and pay additional royalties due under Indian leases are administrative actions not subject to the statute of limitations.

Western Energy Company, 172 IBLA 258 (Sept. 12, 2007).

Indians
Mineral Resources
Oil and Gas
Tribal Leases

Statutes of limitations directed at "any action to recover penalties" (30 U.S.C. § 1755 (1994)), or any "action for money damages" (28 U.S.C. § 2415 (a)(1994)) establishing time limits for commencement of judicial actions, initiated by the filing of a complaint in a court of competent jurisdiction, do not limit administrative proceedings within the Department of the Interior.

Williams Production Company, 154 IBLA 283 (Apr. 19, 2001).

Indians
Mineral Resources
Oil and Gas
Tribal Leases

Settlement Agreement barred lessor's recovery of amounts offset by lessee to balance overpayment of advance rentals where lessee was gas purchaser under a gas purchasing agreement, and where the Settlement Agreement unequivocally resolved this issue because the offset lessee had executed was as a gas purchaser under the gas purchasing agreement, not as a royalty payor or lessee, and these gas purchase issues were settled without question under the Settlement Agreement.

Williams Production Company, 154 IBLA 283 (Apr. 19, 2001).

Indians
Mineral Resources
Oil and Gas
Tribal Leases

Tribal Resolution No. 79-55 and Payor Handbook requiring Tribal oil and gas lessee to seek refunds of advanced minimum royalties (rentals) from Tribe during periods when Tribe elected to take its royalty gas in-kind, did not preclude lessee from effecting offset of refund monies due lessee with monies due Tribe under Royalty Gas Gathering and Exchange Agreement.

Williams Production Company, 154 IBLA 283 (Apr. 19, 2001).

Indians
Mineral Resources
Oil and Gas
Tribal Lands

Appellant's lease and applicable regulations specified that royalty would be determined by major portion analysis. Even though the Department did not perform such analysis until compelled to do so years after production had occurred by agreement settling litigation in *Kauley v. Lujan*, appellant knew or should have known that its Indian lease gas production was being valued by a method other than major portion analysis, and consequently, it was on notice that it could be responsible for additional royalties.

Sanguine Limited, 155 IBLA 277 (July 26, 2001).

Indians
Mineral Resources
Oil and Gas
Tribal Lands

Where nonpayment or underpayment of royalties by the end of the month following the month in which the production occurred is established, MMS properly assesses interest for late payment of royalties under section 111(a) of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. § 1721(a) (1994). That result is not changed when the impetus for recalculating royalties is an agreement between the Federal government and Indian lessors settling class action litigation years after the production in question had occurred.

Sanguine Limited, 155 IBLA 277 (July 26, 2001).

Indians
Mineral Resources
Oil and Gas
Tribal Lands

Under 30 C.F.R. § 218.50, royalty payments for Federal and Indian oil and gas leases generally are due by the end of the month following the month during which the oil and gas is produced and sold. When an appellant's lease and applicable regulations provide for use of major portion analysis in determining the value for royalty purposes and the appellant knew or should have known that its tribal lease gas production was being valued without reference to a major portion analysis, it was on notice of potential responsibility for additional royalties and the obligation to pay the additional royalties accrued on the date the royalties were due, rather than the date MMS provided appellant the major portion analysis.

Exxon Mobil Corp., 166 IBLA 226 (July 28, 2005).

Indians
Mineral Resources
Oil and Gas
Tribal Lands

Interest charged to an oil and gas lessee as mandated by the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 1721(a) (2000), for late payment of royalty for lease production is compensation to the lessor for the time value of money lost as a result of the late payment. This obligation applies even when the late payment was not the fault of the lessee.

Exxon Mobil Corp., 166 IBLA 226 (July 28, 2005).

Indians
Trust Responsibility

BLM's approval of a mine closure and reclamation plan based on an EA does not violate the Federal Government's trust responsibility to an Indian Tribe where BLM formally consulted with the Tribe, explained the rationale for its decision, and concluded that tribal assets would not be at risk of contamination even if some groundwater migration did occur because the Tribe's reservation was located upgradient from the flow of any potential groundwater in the area.

Great Basin Mine Watch et al., 160 IBLA 340 (Jan. 26, 2004).

Internal Memoranda

BLM Instruction Memoranda are not binding on the Interior Board of Land Appeals.

Union Oil Company of California, 158 IBLA 265 (Feb. 21, 2003).

Intervention

Any person having an interest which is or may be adversely affected by a notice or order or by any modification, vacation, or termination of such notice or order, may petition for review of the order within thirty days of receipt or within thirty days of its modification, vacation, or termination. When the petitioner 1) had a statutory right to initiate the proceeding in which he or she wishes to intervene, or 2) has an interest which is or may be adversely affected by the outcome of the proceeding, the person has the right to intervene.

Citizens Coal Council, 155 IBLA 331 (Sept. 6, 2001).

Intervention

An organization with a member whose interests could be adversely affected by the outcome of a proceeding to review a notice of violation issued under the Surface Mining Act is entitled to intervene in the proceeding.

Citizens Coal Council, 155 IBLA 331 (Sept. 6, 2001).

Judicial Review

Subject to Secretarial review, a decision by the Interior Board of Land Appeals is final for the Department. If the Board's decision is appealed to Federal court, the Board must be able to certify that the record it submits to the court is the complete record that it reviewed and upon which its decision was based.

Silverado Nevada, Inc., 152 IBLA 313 (June 22, 2000).

Laches

Where an applicant submits no explanation for a 100-year delay in applying for a patent pursuant to the Transportation Act of 1940, and where the land has long been devoted to a particular public purpose, such as inclusion in a forest reserve, BLM properly denies the patent application in accordance with the doctrine of laches.

Southern Pacific Transportation Co.; Edgar O. Rhoads, 156 IBLA 136 (2001).

Lieu Selections

Section 11 of the Act of December 22, 1974, 25 U.S.C. 640d-10 (1994), as amended by sec. 4 of Public Law 96-305, the Navajo and Hopi Indian Relocation Amendments Act of 1980, and sec. 105(b) of Public Law 98-603, the San Juan Basin Wilderness Protection Act of 1984, does not authorize the Navajo Tribe or the Office of Navajo and Hopi Indian Relocation to "de-select" lands selected by the Tribe in 1986 and "re-select" other lands in 1996.

San Juan Coal Co., 155 IBLA 389 (Nov. 6, 2001).

Materials Act

Under the Materials Act of 1947, *as amended*, 30 U.S.C. §§ 601-604 (1994), and its implementing regulations, 43 C.F.R. Part 3600, BLM has considerable discretion to dispose, by sale or other means, of mineral materials from the public lands. A BLM decision, made in the exercise of its discretionary authority, generally will be overturned by the Board only when it is arbitrary and capricious, and thus not supported on any rational basis.

Echo Bay Resort, 151 IBLA 277 (Dec. 27, 1999).

Materials Act

Where BLM denies a request to remove rock from sites on public land because mining and blasting rock from the sites would have impacts that could not be mitigated on an adjacent spring, a sensitive plant species, and a scenic byway, the decision will be affirmed if the appellant fails to demonstrate, by a preponderance of the evidence, that BLM committed a material error in its factual analysis or that the decision generally is not supported by the record.

Echo Bay Resort, 151 IBLA 277 (Dec. 27, 1999).

Materials Act

When the record supports a finding that the purchaser under a mineral materials sale contract committed a willful trespass by removing sand and gravel in excess of the volume limitation in the contract, a BLM levy of trespass damages determined in accordance with applicable state law will be affirmed.

M. L. Petersen, 151 IBLA 379 (Feb. 8, 2000).

Materials Act

Removal of boulders beyond the amounts authorized by contract and after expiration thereof is intentional trespass when there is evidence of a reckless disregard for the expiration date and quantity limits of the contract.

El Rancho Pistachio, 152 IBLA 87 (Mar. 29, 2000).

Materials Act

An appraisal will not be set aside unless an appellant shows error in the method of appraisal or shows by convincing evidence that the value is excessive. Where BLM attempts to implement the comparable use method of valuation by using a master appraisal, the Board will uphold the BLM decision where the record contains sufficient detail to show that the specific material at issue matches the representative material.

El Rancho Pistachio, 152 IBLA 87 (Mar. 29, 2000).

Materials Act

BLM properly declines to approve the sale proponent's proposed access route for a mineral materials sale pursuant to the Materials Act of 1947, *as amended*, 30 U.S.C. §§ 601-604 (1994), when BLM's chosen alternative route will disturb less land and avoid the potential adverse impact on a nearby residential community from noise and air

pollution, and when BLM has considered the greater cost of that route to the proponent, and the proponent fails to demonstrate that BLM acted in an arbitrary and capricious fashion, or contrary to any applicable Federal statute or regulation.

International Sand & Gravel Corp., 153 IBLA 295 (Sept. 26, 2000).

Materials Act

BLM must support a charge of nonwillful trespass for removing mineral material from public lands with evidence that the charged party actually committed a trespass by removing mineral materials from public lands, or by directing or acquiescing in such removal without authority. A lessor is not liable for the trespass of his lessee when the trespass is committed on lands other than those leased and where there is no evidence that the lessor extracted and/or removed or directed the extraction and/or removal of materials in trespass.

Kenneth Snow, Richard Halliburton, 153 IBLA 371 (Oct. 5, 2000).

Materials Act

Under 43 C.F.R. § 9239.0-7, the unauthorized extraction and/or removal of mineral materials from public lands is an act of trespass. When a party extracts and removes mineral materials from public lands without prior authorization from BLM, a finding of trespass is properly affirmed. However, when the record shows that one or more parties, in addition to the party charged, operated on the site and may have contributed to the trespass, the case will be remanded for BLM to determine whether trespass damages should be properly apportioned among several parties.

Kenneth Snow, Richard Halliburton, 153 IBLA 371 (Oct. 5, 2000).

Materials Act

Under the Materials Act of 1947, *as amended*, 30 U.S.C. §§ 601-604 (1994), and its implementing regulations, 43 C.F.R. Part 3600, BLM has considerable discretion to dispose, by sale or other means, of mineral materials from the public lands. BLM must, in the exercise of its discretionary authority, refuse to authorize the sale where it is "detrimental to the public interest." 30 U.S.C. § 601 (1994).

Melluzzo Stone Company, Inc., Wayne Melluzzo, President, 154 IBLA 23 (Oct. 19, 2000).

Materials Act

In challenging the denial of a mineral material sale request, the appellant must show, by a preponderance of the evidence, that BLM committed a material error in its factual analysis or that the decision generally is not supported by a record showing that BLM gave due consideration to all relevant factors, including less stringent alternatives to the decision, and acted on the basis of a rational connection between the facts found and the choice made.

Melluzzo Stone Company, Inc., Wayne Melluzzo, President, 154 IBLA 23 (Oct. 19, 2000).

Materials Act

When removal of mineral materials from a site on a lease issued under the Mineral Leasing Act of 1920 is not necessary in the process of extracting the mineral under lease, a materials sales contract under the Materials Act is required.

Mississippi Potash, Inc., 158 IBLA 9 (Nov. 25, 2002).

Materials Act

When certain lands have been the subject of a BLM wilderness inventory and found not to be within a wilderness study area in a final decision, the fact a party disputes this finding and believes that BLM erred does not itself establish a mineral material sale on such land will have significant impact requiring preparation of an EIS.

Southern Utah Wilderness Alliance, 158 IBLA 212 (Jan. 23, 2003).

Materials Act

A mere difference of opinion will not overcome the reasoned opinions of the Secretary's technical experts. Absent evidence which rebuts the basis of the findings, the Secretary was entitled to rely on a wildlife biologist's memorandum reporting that endangered milk-vetch species were not found on the mineral material sale site.

Southern Utah Wilderness Alliance, 158 IBLA 212 (Jan. 23, 2003).

Materials Act

The National Environmental Policy Act requires BLM to consider a reasonable range of alternatives, including the no action alternative. Such alternatives should include reasonable alternatives to proposed action which will accomplish the intended purpose, are technically and economically feasible, and yet have a lesser impact. No error is committed by not considering an alternative that would not achieve the purpose of the proposed action.

Southern Utah Wilderness Alliance, 158 IBLA 212 (Jan. 23, 2003).

Materials Act

Under the Materials Act of 1947, *as amended*, 30 U.S.C. §§ 601-604 (1994), and its implementing regulations, 43 C.F.R. § Part 3600, BLM has considerable discretion to dispose, by sale or other means, of mineral materials from the public lands. A BLM decision, made in the exercise of its discretionary authority, generally will not be overturned by the Board unless it is arbitrary and capricious, and thus not supported on any rational basis.

Moffat County Road Department, 158 IBLA 221 (Jan. 24, 2003).

Materials Act

When a species is not listed as threatened or endangered under the Endangered Species Act, 16 U.S.C. §§ 1531-44 (1994), but is listed as a "state threatened species" under Colorado law, recognizing Colorado law as authority for including a stipulation providing for time limitations on sand and gravel operations in a free use permit for the protection of that species is a proper exercise of BLM's discretion.

Moffat County Road Department, 158 IBLA 221 (Jan. 24, 2003).

Materials Act

Where the record of decision for the governing resource management plan supports the restriction of resource development activities on critical raptor nest buffer zones from February 1 through July 30, a stipulation in a free use permit limiting, *inter alia*, removal of rock between April 1 and July 30, for purposes of protecting western burrowing owl nesting habitat, will be affirmed.

Moffat County Road Department, 158 IBLA 221 (Jan. 24, 2003).

Materials Act

Where BLM holds a purchaser of materials under a materials sale contract in trespass for removing materials in excess of his authorization and failing to pay for them, the purchaser does not sufficiently rebut the trespass by refusing to provide its sale and haul records demanded by BLM or by demanding that BLM investigate other material sales contracts. Where a purchaser refuses to rebut evidence that it removed materials in excess of its authorization to do so and refuses to pay or settle payment demands for the excess material served on it by certified mail, BLM may properly suspend further sales and require the purchaser to remove its equipment from the site.

MSVR Equipment Rentals Ltd., 160 IBLA 95 (Oct. 3, 2003).

Materials Act

Departmental regulation 43 C.F.R. § 3604.1(b) (2000) formerly provided that "the designation of a community pit constitutes a superior right to remove material as against any subsequent claim or entry of the lands." A community pit designation does not exclude or preclude the subsequent location of mining claims for uncommon variety building stone within the pit area. When there is a genuine controversy concerning whether the stone is a common or uncommon variety, BLM may not permit removal the stone pursuant to the Common Varieties Act, 30 U.S.C. § 611 (2000), before conducting a validity examination to determine whether in fact the stone is common or uncommon.

Cambrillic Natural Stone Unique Minerals, Inc., 161 IBLA 288 (May 13, 2004).

Materials Act

The agency-wide procedure of requiring reasonable amounts of sales proceeds to be deposited in escrow pending the outcome of a validity examination to determine whether a building stone is a common or uncommon variety will be upheld as a means of protecting both the right of the Government to receive the proceeds of sales of mineral material and the claimants' due process right to have the legal status of minerals on their claims fully and fairly adjudicated.

Cambrillic Natural Stone Unique Minerals, Inc., 161 IBLA 288 (May 13, 2004).

Materials Act

When BLM determines that "it is impossible to obtain competition" because, among other things, the purchaser holds an exclusive right to the only reasonable means of access to the sales area and any potential competitor would be unable to compete due to the prohibitive costs and environmental consequences of establishing independent access to the sales area, it is proper for BLM to sell more than 200,000 cubic yards of mineral material to a purchaser over a 12 month period without competitive bids.

Mary Lee Dereske, et al., 162 IBLA 303 (Aug. 18, 2004).

Materials Act

Where a mineral materials sales contract contains two provisions, one allowing the purchaser 30 days after the expiration of the time for extraction and removal of minerals to remove his/her equipment, improvements, or other personal property from Government lands and a second allowing 60 days from expiration to remove equipment, improvements, and other personal property, the contract is properly interpreted to allow the purchaser 60 days to do so. A decision by BLM unilaterally changing that time limit is properly vacated as unauthorized.

Quality Earth Materials, LLC., 164 IBLA 160 (Sept. 23, 2004).

Materials Act

The purchaser under a mineral materials sales contract commits occupancy trespass when it allows stockpiles of raw mineral material to remain on the lands and conducts substantial processing operations there beyond the expiration date of the contract. However, where neither the contract nor the regulations provided for any measure of damages for such occupancy trespass, any damages should be assessed under 43 C.F.R. § 9239.0-8 and would be limited to the value of use of the surface of the lands covered by the stockpiles and processing equipment; the damages are accordingly not related to the value of any mineral material stockpiled on the claim during the term of the contract and subsequently removed.

Quality Earth Materials, LLC, 164 IBLA 160 (Sept. 23, 2004).

Materials Act

Where the purchaser under a mineral materials sales contract pays in advance for 10,000 tons of mineral material and extracts only 7,000 tons of mineral material from the ground (placing it in stockpiles) prior to the expiration date of the sales contract, it has not committed mineral trespass. Nor is it mineral trespass where the purchaser continues to process the previously-mined and stockpiled materials into sand products after expiration of the sales contract, as, by so doing, the purchaser is not taking more mineral materials than it is entitled to under the contract, but is instead merely moving the stockpiles, which were its personal property, as required by the terms of the contract.

Quality Earth Materials, LLC, 164 IBLA 160 (Sept. 23, 2004).

Materials Act

Where petitioner's mining claim was located for the same building stone which is to be disposed of as a common variety mineral material pursuant to a sales contract issued under the Materials Act, *as amended*, 30 U.S.C. §§ 601-604 (2000), and the sale tract is within petitioner's mining claim, petitioner is a party to the case and adversely affected by BLM's decision, and therefore has standing to appeal the material sale.

Cambrillic Natural Stone Unique Minerals, Inc. (On Reconsideration), 165 IBLA 140 (Mar. 28, 2005).

Materials Act

The Materials Act excludes deposits of common variety materials from appropriation under the Mining Law of 1872, *as amended*, 30 U.S.C. §§ 21-47 (2000). Section 3 of the Common Varieties Act of 1955, *as amended*, 30 U.S.C. § 611 (2000), expressly prohibits disposal under the Materials Act of deposits of materials which are valuable because the deposit has some property giving it distinct and special value. Those materials continue to be subject to location and patent under the 1872 Mining Law.

Cambrillic Natural Stone Unique Minerals, Inc. (On Reconsideration), 165 IBLA 140 (Mar. 28, 2005).

Materials Act

A community pit designation does not authorize BLM to dispose of uncommon varieties of minerals by sale. Where the mineral sale area is within the boundaries of their mining claims and the claimants come forward with evidence to show that the mineral to be sold is an uncommon variety of stone subject to the mining laws, the Board properly remands the case to BLM to adjudicate the question.

Cambrillic Natural Stone Unique Minerals, Inc. (On Reconsideration), 165 IBLA 140 (Mar. 28, 2005).

Materials Act

BLM is barred from issuing a free use permit to a government entity, pursuant to the Materials Act of 1947, *as amended,* 30 U.S.C. §§ 601-604 (2000), where the record demonstrates that the entity intends to use mineral materials obtained from public lands for commercial or industrial purposes or for resale.

City of Sparks, 166 IBLA 21 (May 31, 2005).

Materials Act

BLM properly denies a request for a free use permit, pursuant to section 1 of the Materials Act of 1947, *as amended*, 30 U.S.C. § 601 (2000), by a municipality which demonstrates that it intends to provide the mineral materials from public lands to a private party for use in a proposed residential/commercial development project, in exchange for that party's agreement not to remove similar materials from other property the private entity owns and proposes to dedicate to the municipality for a proposed public facility because such an exchange constitutes a use of mineral materials for commercial or industrial purposes, within the meaning of 43 C.F.R. § 3604.12 (a).

City of Sparks, 166 IBLA 21 (May 31, 2005).

Materials Act

BLM properly denies a request for a free use permit, pursuant to section 1 of the Materials Act of 1947, *as amended*, 30 U.S.C. § 601 (2000), by a municipality which demonstrates that it intends to provide the mineral materials from public lands to a private party for use in a proposed residential/commercial development project, in exchange for that party's agreement not to remove similar materials from other property the private entity owns and proposes to dedicate to the municipality for a proposed public facility because such an exchange constitutes a sale or barter of mineral materials within the meaning of 43 C.F.R. § 3604.22(a).

City of Sparks, 166 IBLA 21 (May 31, 2005).

Materials Act

Salable minerals subject to disposal under the Materials Act of 1947 are properly distinguished from locatable minerals subject to location under the Mining Law of 1872. Mining claims located subsequent to enactment of section 3 of the Surface Resources Act of July 23, 1955, vest no rights in deposits of common varieties of sand on the claim which are subject to disposal under the Materials Act.

John Steen, 166 IBLA 187 (July 19, 2005).

Materials Act

Salable minerals, including common varieties of sand, subject to disposition under the Materials Act of 1947, may be sold at a noncompetitive sale only when BLM determines it is in the public interest and finds it is impracticable to obtain competition. A BLM decision rejecting an application for a noncompetitive material sale for a common variety sand deposit will be upheld when BLM finds that there is competitive interest in sale of the sand.

John Steen, 166 IBLA 187 (July 19, 2005).

Materials Act

That a stone deposit on a mining claim can be profitably marketed is not enough by itself to validate a claim located for uncommon building stone. The claimant must still establish that the deposit is not a common variety of building stone.

United States v. Lyle I. Thompson, et al., 168 IBLA 64 (Mar. 16, 2006).

Materials Act

Where the evidence, when considered as a whole, including photographs and rock samples entered into evidence by contestees, establishes that a deposit of micaceous quartzite does not produce stone of consistent uncommon quality, the deposit cannot be considered to have unique properties giving it distinct and special value.

United States v. Lyle I. Thompson, et al., 168 IBLA 64 (Mar. 16, 2006).

Materials Act

An attribute in a deposit of uncommon building stone that imparts a distinct and special value reflected by either a higher price for the product or reduced costs of production resulting in a higher profit must be inherent in the deposit itself and cannot be predicated on extrinsic factors. Where profits inuring from the sale of building stone resulted primarily from the nature of commercial arrangements, and not from any unique property intrinsic to the deposit, mining claims located for uncommon building stone are properly declared null and void.

United States v. Lyle I. Thompson, et al., 168 IBLA 64 (Mar. 16, 2006).

Materials Act

That a mining claimant can identify a use for limestone that commands a higher price than a use that all parties concede requires only a common variety of stone is not enough, by itself, to demonstrate that the limestone is an uncommon variety. The claimant must also establish that the deposit has a unique property that gives the deposit a distinct and special value. Evidence of a higher price available in the market can supply proof that a deposit has unique value, but it must be evidence of the higher price the *deposit* commands, not evidence of a higher price purchasers will pay for material from a deposit of a common variety of limestone.

United States v. Pitkin Iron Corporation, et al., 170 IBLA 352 (Nov. 29, 2006).

Materials Act

The distinct and special value making a deposit of stone uncommon must be reflected by attributes inherent in the deposit itself and cannot be predicated on extrinsic factors. Where a mining claimant is able to provide better service, or undercut a competitor's prices because it fails to include the costs it incurred in mining stockpiled material in its price, or provides superior screening of crushed stone, such circumstances constitute value factors extrinsic to the deposit.

United States v. Pitkin Iron Corporation, et al., 170 IBLA 352 (Nov. 29, 2006).

Materials Act

Where limestone is used for the same purpose that a common variety of limestone would be used for, a claimant may show that its limestone is nonetheless an uncommon variety of stone by showing that the mineral deposit in question has a unique property, and that the unique property gives the deposit a distinct and special value for such use. Where the Government submits evidence that the limestone at issue is found throughout the State of Colorado and is actively mined at 51 quarries, and avers that limestone of the quality found on the mining claims at issue, even as identified by the claimant, is found in inexhaustible quantities throughout the State, the claimant fails to rebut this proof by comparing its limestone to other such materials generally at its peril.

United States v. Pitkin Iron Corporation, et al., 170 IBLA 352 (Nov. 29, 2006).

Materials Act

Section 1 of the Materials Act of 1947, *as amended*, 30 U.S.C. §§ 601 through 615 (2000), and 43 C.F.R. § 3603.10 authorize BLM to make "mineral material sales under permit from" mineral deposits it designates for that purpose as "community pit sites." The regulations expressly state that "BLM's designation of a community pit site, when noted on the appropriate BLM records or posted on the ground, establishes a right to remove the material superior to any subsequent claim or entry of the lands." 43 C.F.R. § 3603.11. Where BLM has designated a deposit of building stone as a community pit and noted that designation on its records, a mining claim located after the designation creates no right to remove the material, and BLM properly rejects a mining plan of operations proposing to do so.

Tim K. Smith, 171 IBLA 135 (Feb. 27, 2007).

Materials Act

Extraction and removal of common varieties of rock from mining claims located after passage of section 3 of the Multiple Use Mining Act of 1955, 30 U.S.C. § 611 (2000), must be authorized by BLM under the Materials Act of 1947, *as amended*, 30 U.S.C. §§ 601-604 (2000), and its implementing regulations in 43 C.F.R. Part 3600.

Ronald W. Byrd, 171 IBLA 202 (Apr. 11, 2007).

Materials Act

The owner of a mining claim located prior to passage of section 3 of the Multiple Use Mining Act of 1955, 30 U.S.C. § 611 (2000), is not required to seek authorization from BLM under the Materials Act of 1947, *as amended*, 30 U.S.C. §§ 601-604 (2000), and its implementing regulations in 43 C.F.R. § Part 3600, prior to extraction and removal of rock from the claim, if the rock in question was, at the time of passage of the Multiple Use Mining Act of 1955, a valuable mining law mineral.

Ronald W. Byrd, 171 IBLA 202 (Apr. 11, 2007).

Millsites
Generally

Notwithstanding a Solicitor's Opinion concluding that the General Mining Law of 1872 authorizes the patenting of no more than one 5-acre dependent mill site per lode or placer mining claim, Congress has declared that, in accordance with provisions of the Bureau of Land Management's Handbook for Mineral Examiners and the Forest Service's Manual, neither the Department of the Interior nor the Department of Agriculture shall limit the number and acreage of mill sites.

The Wilderness Society, Great Bear Foundation, 151 IBLA 346 (Jan. 28, 2000).

Millsites
Generally

BLM properly issued a notice of noncompliance under 43 C.F.R. § 3809.3-2(b)(2) requiring a millsite operator to remove junked vehicles, railroad ties, tires and other debris, to clean up fuel spills, to either rehabilitate or take down and remove dilapidated millsite structures and to file a plan of operations describing the measures to be taken to prevent unnecessary and undue degradation of the public lands.

American Stone, Inc., 153 IBLA 77 (July 27, 2000).

Millsites
Generally

Where the Board of Land Appeals has affirmed a determination that various millsites are null and void, BLM correctly takes action to enforce that decision by ordering the cessation of any occupancy of those millsites, absent a decision or order of a Federal court to the contrary.

Robert C. Lefaivre, 155 IBLA 137 (June 20, 2001).

Millsites
Generally

When the United States contests a mining claim, it bears the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint. That burden is discharged in a contest challenging the validity of two millsites when the Government examiners possess sufficient training and experience to qualify as expert witnesses, and both testify that they personally inspected the millsites and found nothing which would indicate that they are being occupied for uses that are reasonably incident to, or necessary for, prospecting, mining, or processing operations.

United States v. James L. Pence, d.b.a. Shooter Mining Co., and Milton Embry, 157 IBLA 124 (July 31, 2002).

Millsites
Generally

The essence of the statutory grant allowing the appropriation of the public lands for millsites is actual use and occupancy for mining and milling purposes. The Surface Resources Act of July 23, 1955, 30 U.S.C. § 612(a) (1994), further clarifies that use and occupancy shall be for the purposes of prospecting, mining, or processing and uses reasonably incident thereto. The mining claimant must stand ready to prove the validity of the millsite at any time before patent issues, by demonstrating that he uses and occupies the land for such purposes.

United States v. James L. Pence, d.b.a. Shooter Mining Co., and Milton Embry, 157 IBLA 124 (July 31, 2002).

Millsites
Generally

Where a contestee chose not to retain counsel, despite ample opportunity and urging to do so, and chose not to put on a case on his own behalf, the Government's prima facie case is unrebutted. In such circumstances, the Board properly affirms the Administrative Law Judge's decision declaring the millsites null and void.

United States v. James L. Pence, D.b.a. Shooter Mining Co., and Milton Embry, 157 IBLA 124 (July 31, 2002).

Millsites
Generally

Section 4(a) of the Surface Resources Act, 30 U.S.C. § 612(a) (2000), bars 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." Under the authority of 43 C.F.R. § 3715.7-1(c), BLM properly issues a notice of noncompliance requiring the removal of all personal property from a millsite claim where no minerals are being beneficiated on the site and no observable work is taking place.

Jay H. Friel, 159 IBLA 150 (May 29, 2003).

Millsites
Generally

The use and occupancy regulations at 43 C.F.R. Subpart 3715 authorize the issuance of a temporary or permanent cessation order when there is a failure to comply timely with a notice of noncompliance issued under 43 C.F.R. § 3715.7-1(c). BLM properly issues a cessation order pursuant to 43 C.F.R. § 3715.7-1(b)(ii) where the claimant has failed to comply with a previous notice of noncompliance requiring him to remove property from a millsite and reclaim the land because his use and occupancy are not reasonably incident to mining or processing operations.

Jay H. Friel, 159 IBLA 150 (May 29, 2003).

Millsites
Generally

BLM may properly issue a Notice of Noncompliance and Cessation Order pursuant to 43 C.F.R. § 3715.7-1 where an appellant's mill site claims are no longer valid and his continued occupancy is not reasonably incident to mining.

James R. McColl, 159 IBLA 167 (May 29, 2003).

Millsites
Generally

The Board will not enforce an interpretation of 43 C.F.R. §§ 3715.5-1 and 5-2 that holds a current occupant liable for removal of structures and other materials from the public lands where the current occupant clearly establishes that the structures, etc., existed on site at the time his or her occupancy commenced, as a reasonably prudent prospective or current occupant could reasonably interpret the regulatory language to indicate that he or she is responsible for removing only structures and materials he or she placed there.

James R. McColl, 159 IBLA 167 (May 29, 2003).

Millsites
Generally

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." To justify occupancy of the public lands, the regulations at 43 C.F.R. Subpart 3715 require that the activities be reasonably incident to mining, milling, or processing operations; constitute substantially regular work; be reasonably calculated to lead to the extraction and beneficiation of minerals; involve observable on-the-ground activity that BLM may verify by inspection; and use appropriate equipment that is presently operable. 43 C.F.R. § 3715.2. The regulations also mandate that occupancy must involve either protecting exposed, concentrated or otherwise accessible minerals from loss or theft; protecting appropriate, regularly used, and not readily portable operable equipment from theft or loss; protecting the public from such equipment which, if unattended, creates a hazard to public safety; protecting the public from surface uses, workings, or improvements which, if left unattended, create a hazard to public safety; or being located in an area so isolated or lacking in physical access as to require the claimant, operator, or workers to remain on the site in order to work a customary full 8-hour shift. 43 C.F.R. § 3715.2-1.

Pilot Plant, Inc., 168 IBLA 201 (Mar. 16, 2006).

Millsites
Generally

A BLM notice of noncompliance finding that occupancy of a mill site does not meet the requirements of 43 C.F.R. Subpart 3715 will be affirmed where the operator has not shown that the current level of occupancy is commensurate with the magnitude of mining and milling operations occurring on the site or that the schedule for the removal of various items is unreasonable or otherwise erroneous.

Pilot Plant, Inc., 168 IBLA 201 (Mar. 16, 2006).

Millsites
Generally

In addition to meeting the criteria for an occupancy prescribed in 43 C.F.R. § 3715.2 and 3715.2-1, a claimant who asserts the need for a caretaker or watchman must show that the need is reasonably incident and continual and that occupancy by a caretaker or watchman is needed whenever the operation is not active or whenever the claimant or the claimant's workers are not present on site. 43 C.F.R. § 3715.2-2. In the absence of a need to protect exposed valuable minerals from theft or loss; to protect operable equipment that is not readily portable from theft or loss; to avoid creating a hazard to the public from unattended equipment, surface uses, workings, or improvements; or a location in an isolated or physically inaccessible area, a caretaker or watchman cannot be justified under the regulations.

Pilot Plant, Inc., 168 IBLA 201 (Mar. 16, 2006).

Millsites
Dependent

A statutory moratorium on the processing of applications for patent for a mill site claim imposed by section 314 of the Department of the Interior and Related Agencies Appropriations Act of 1998, Pub. L. No. 105-83, 111 Stat. 1543, 1591 (1997), precludes BLM from adjudicating a mineral patent application for a dependent mill site claim for the duration of the moratorium. Accordingly, a decision rejecting a mill site patent application will be vacated and the case remanded to BLM pending lifting of the moratorium.

Ulf T. Teigen, Mona A. Teigen, 153 IBLA 273 (Sept. 21, 2000).

Millsites
Dependent

When the United States contests a mining claim, it bears the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint. That burden is discharged in a contest challenging the validity of two millsites when the Government examiners possess sufficient training and experience to qualify as expert witnesses, and both testify that they personally inspected the millsites and found nothing which would indicate that they are being occupied for uses that are reasonably incident to, or necessary for, prospecting, mining, or processing operations.

United States v. James L. Pence, d.b.a. Shooter Mining Co., and Milton Embry, 157 IBLA 124 (July 31, 2002).

Millsites
Dependent

The essence of the statutory grant allowing the appropriation of the public lands for millsites is actual use and occupancy for mining and milling purposes. The Surface Resources Act of July 23, 1955, 30 U.S.C. § 612(a) (1994), further clarifies that use and occupancy shall be for the purposes of prospecting, mining, or processing and uses reasonably incident thereto. The mining claimant must stand ready to prove the validity of the millsite at any time before patent issues, by demonstrating that he uses and occupies the land for such purposes.

United States v. James L. Pence, d.b.a. Shooter Mining Co., and Milton Embry, 157 IBLA 124 (July 31, 2002) .

Millsites
Dependent

Where a contestee chose not to retain counsel, despite ample opportunity and urging to do so, and chose not to put on a case on his own behalf, the Government's prima facie case is unrebutted. In such circumstances, the Board properly affirms the Administrative Law Judge's decision declaring the millsites null and void.

United States v. James L. Pence, d.b.a. Shooter Mining Co., and Milton Embry, 157 IBLA 124 (July 31, 2002).

Millsites
Dependent

A mineral patent application for a dependent mill site claim will be rejected if it is not associated with a lode claim which has already been patented or will be patented simultaneously with the mill site claim.

Ulf T. Teigen, Mona A. Teigen (On Reconsideration), 159 IBLA 142 (May 27, 2003).

Millsites
Determination of Validity

Where the Board of Land Appeals has affirmed a determination that various millsites are null and void, BLM correctly takes action to enforce that decision by ordering the cessation of any occupancy of those millsites, absent a decision or order of a Federal court to the contrary.

Robert C. Lefaivre, 155 IBLA 137 (June 20, 2001).

Millsites
Determination of Validity

When the United States contests a mining claim, it bears the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint. That burden is discharged in a contest challenging the validity of two millsites when the Government examiners possess sufficient training and experience to qualify as expert witnesses, and both testify that they personally inspected the millsites and found nothing which would indicate that they are being occupied for uses that are reasonably incident to, or necessary for, prospecting, mining, or processing operations.

United States v. James L. Pence, d.b.a. Shooter Mining Co., and Milton Embry, 157 IBLA 124 (July 31, 2002) .

Millsites
Determination of Validity

The essence of the statutory grant allowing the appropriation of the public lands for millsites is actual use and occupancy for mining and milling purposes. The Surface Resources Act of July 23, 1955, 30 U.S.C. § 612(a) (1994), further clarifies that use and occupancy shall be for the purposes of prospecting, mining, or processing and uses reasonably incident thereto. The mining claimant must stand ready to prove the validity of the millsite at any time before patent issues, by demonstrating that he uses and occupies the land for such purposes.

United States v. James L. Pence, d.b.a. Shooter Mining Co., and Milton Embry, 157 IBLA 124 (July 31, 2002) .

Millsites
Determination of Validity

Where a contestee chose not to retain counsel, despite ample opportunity and urging to do so, and chose not to put on a case on his own behalf, the Government's prima facie case is unrebutted. In such circumstances, the Board properly affirms the Administrative Law Judge's decision declaring the millsites null and void.

United States v. James L. Pence, d.b.a. Shooter Mining Co., and Milton Embry, 157 IBLA 124 (July 31, 2002) .

Millsites
Patents

A statutory moratorium on the processing of applications for patent for a mill site claim imposed by section 314 of the Department of the Interior and Related Agencies Appropriations Act of 1998, Pub. L. No. 105-83, 111 Stat. 1543, 1591 (1997), precludes BLM from adjudicating a mineral patent application for a dependent mill site claim for the duration of the moratorium. Accordingly, a decision rejecting a mill site patent application will be vacated and the case remanded to BLM pending lifting of the moratorium.

Ulf T. Teigen, Mona A. Teigen, 153 IBLA 273 (Sept. 21, 2000).

Millsites
Patents

A mineral patent application for a dependent mill site claim will be rejected if it is not associated with a lode claim which has already been patented or will be patented simultaneously with the mill site claim.

Ulf T. Teigen, Mona A. Teigen (On Reconsideration), 159 IBLA 142 (May 27, 2003).

Mineral Lands
Determination of Character of

When BLM charges in a contest complaint that portions of mining claims located for gypsum are not mineral in character on the basis that, although gypsum is present on those portions of the claims, that gypsum was not marketable at the times in question, the issue is whether, in fact, the gypsum could have been extracted and marketed at a profit.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Mineral Lands
Environment

No error is shown where a decision to approve issuance of mineral prospecting permits is based on an Environmental Assessment/ Finding of No Significant Impact that comply with NEPA and require the adoption of the stipulations and mitigation measures on which the FONSI is predicated.

Missouri Coalition for the Environment Heartwood, 172 IBLA 226 (Sept. 5, 2007).

Mineral Lands
Leases

When BLM receives a proposed mining plan of operations for a quartz crystal lease located on lands within a National Forest, under 43 C.F.R. § 3592.1 BLM must consult with the Forest Service and promptly approve the plan or advise the lessee of what is necessary to conform to governing requirements. If the Forest Service objects to the plan, BLM must reach an independent judgment regarding rights granted by the lease and its obligations to manage the lease under applicable authority.

Ron Coleman Mining, Inc., 168 IBLA 252 (Mar. 30, 2006).

Mineral Lands
Mineral Reservation

Sand and gravel are covered by the reservation of "oil, gas, and all other mineral deposits" in patents granted under the Small Tract Act, 43 U.S.C. § 682a (1970). Removal of sand and gravel from land patented under that Act for commercial purposes constitutes a trespass.

New West Materials, 164 IBLA 126 (Dec. 2, 2004).

Mineral Leasing Act
Generally

When removal of mineral materials from a site on a lease issued under the Mineral Leasing Act of 1920 is not necessary in the process of extracting the mineral under lease, a materials sales contract under the Materials Act is required.

Mississippi Potash, Inc., 158 IBLA 9 (Nov. 25, 2002).

Mineral Leasing Act
Generally

The authority to issue an oil and gas lease for any given tract is within the discretion of the Secretary of the Interior. An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to it. A noncompetitive lease offer does not compel the Secretary to hold a competitive lease sale for the lands subject to the offer.

Richard D. Sawyer, 160 IBLA 158 (Oct. 22, 2003).

Mineral Leasing Act
Generally

BLM has authority to eliminate specific parcels from leasing even where they had been designated in a Resource Management Plan as generally suitable for leasing.

Richard D. Sawyer, 160 IBLA 158 (Oct. 22, 2003).

Mineral Leasing Act
Generally

A suspension of operations and production granted under sec. 39 of the Mineral Leasing Act, *as amended*, 30 U.S.C. § 209 (2000), "in the interest of conservation" suspends the requirement of sec. 7(a) and (b) of the Mineral Leasing Act, *as amended*, 30 U.S.C. § 207(a) and (b) (2000), that diligent development of the lease occur within 10 years of the date of issuance of a Federal coal lease. A BLM decision denying an extension of a previously granted suspension of operations and production and a *force majeure* suspension will be affirmed where the lessee has not shown error in that decision. BLM properly refuses to grant a second suspension of operations and production in the interest of conservation where the applicant does not show how the suspension would further the interests of conservation.

Carbon Tech Fuels, Inc., 161 IBLA 147 (Apr. 13, 2004).

Mineral Leasing Act
Generally

Section 504(*g*) of the Federal Land Policy and Management Act of 1976 (FLPMA), *as amended*, 43 U.S.C. § 1764(g) (2000), and section 28(*l*) of the Mineral Leasing Act (MLA), *as amended*, 30 U.S.C. § 185(*l*) (2000), require a right-of-way applicant to reimburse the United States for the reasonable administrative and other costs incurred in processing the application and in related inspection and monitoring of the right-of-way. BLM regulations for FLPMA and MLA rights-of-way establish cost recovery categories based upon the expenditure of government resources in processing the applications. BLM decisions determining that applications for an access road right-of-way issued pursuant to FLPMA, and for an oil and gas pipeline right-of-way issued under the MLA, covering exactly the same ground, both fall under cost recovery Category III will be set aside and remanded where (1) BLM's decisions do not explain how BLM determined that two field examinations were required for each application, and (2) the supplementary record provided by BLM documenting the performed field examinations does not establish what examinations actually took place for each right-of-way application and/or were necessary to verify the data available in the BLM office or furnished by the applicant.

Yates Petroleum Corp., 163 IBLA 300 (Oct. 29, 2004).

Mineral Leasing Act
Generally

BLM erred in assessing rentals based on its Calendar Year 2003 Communication Uses Rental Schedule (BLM Information Bulletin No. 2003-005) for communi-cation sites which are defined as "related facilities" by the Agreement and Grant of Right-of-Way for the Trans-Alaska Pipeline System (TAPS Agreement), or by a related Grant of Right-of-Way for Communication Site expressly made subject to the TAPS Agreement, which were issued pursuant to section 28 of the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 185 (2000), and section 203(b) and (c) of the Trans-Alaska Pipeline Authorization Act of 1973, 43 U.S.C. § 1652(b) and (c) (2000). Such communication sites are exempt from the nationwide rental schedules established by BLM (*see* 43 C.F.R. § 2803.1-2(d)(1)), and rental for such communi-cation sites should be assessed at fair market rental value in accordance with Section 8 of the TAPS Agreement and 43 C.F.R. § 2803.1-2(a), rather than based upon nationwide rental schedules established by BLM.

Alyeska Pipeline Service Company, 167 IBLA 298 (Dec. 29, 2005).

Mineral Leasing Act
Generally

A deficiency in a coal prospecting permit application related to evidence of qualifications of the applicant under the Mineral Leasing Act is a curable defect. When a party challenges the response to a request for additional information made by BLM 35 years ago in adjudicating the prospecting permit application, a presumption of regularity pertaining to the actions of BLM officials supports a finding that the information was provided to the satisfaction of BLM and a challenge to the validity of the prospecting permit is properly denied.

Ark Land Company, et al., 168 IBLA 235 (Mar. 23, 2006).

Mineral Leasing Act
Generally

The limitation on issuance of coal prospecting permits under the Mineral Leasing Act to "unclaimed, undeveloped" lands was intended to protect the rights of entrymen with a vested adverse claim to purchase the lands which predated the filing of the prospecting permit application.

Ark Land Company, et al., 168 IBLA 235 (Mar. 23, 2006).

Mineral Leasing Act
Generally

Under the former preference right coal leasing provisions of the Mineral Leasing Act, 30 U.S.C. § 201(b) (1970), governing public lands for which prospecting or exploratory work is necessary to determine the existence or workability of coal deposits, the holder of a prospecting permit is entitled to a preference coal lease if he shows within the term of the prospecting permit that the land contains coal in commercial quantities. This requires a showing that the mineral deposit is of such quality and quantity that a prudent person would be justified in the further expenditure of his labor and capital with a reasonable prospect of success in developing a mine. The permittee must show a reasonable expectation that revenue from the sale of coal will exceed the costs of developing the mine, including costs of environmental protection and reclamation, and extracting, removing, and marketing the coal.

Ark Land Company, et al., 168 IBLA 235 (Mar. 23, 2006).

Mineral Leasing Act
Generally

In determining commercial quantities when adjudicating a coal preference right lease application, prices and costs are not considered to be frozen at the time the application is filed, and the Department may consider changes in the prices of coal and costs occurring before a final Departmental decision is made, as well as expected prices and costs over the life of the deposit.

Ark Land Company, et al., 168 IBLA 235 (Mar. 23, 2006).

Mineral Leasing Act
Generally

When the applicable regulations require that an application for renewal of a hardrock lease be filed at least 90 days prior to the expiration of the lease term and that the lease will expire on the last day of the lease term if no renewal application has been filed, BLM properly rejects a lease renewal application filed after expiration of the lease.

Ron Coleman Mining, Inc., 172 IBLA 387 (Oct. 1, 2007).

Mineral Leasing Act
Generally

A statement by a BLM employee in a notice of expiration implying that a hardrock lease that has expired under applicable regulations may be renewed does not bind or estop BLM from rejecting a renewal application filed after that notice because the United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

Ron Coleman Mining, Inc., 172 IBLA 387 (Oct. 1, 2007).

Mineral Leasing Act
Environment

This Board has no jurisdiction over decisions made by the Forest Service. However, when BLM adopts the FEIS of another agency in lieu of performing its own environmental analysis and relies on it as the basis for an exercise of its own decisionmaking authority, this Board properly may review that FEIS to determine whether BLM's decision is supported by the record, guided by the same principles ordinarily applicable to an FEIS prepared by BLM.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

Mineral Leasing Act
Environment

BLM is required to consider the potential cumulative impacts of a proposed action with those of any other past, present, and reasonably foreseeable future actions. 40 C.F.R. § 1508.7. Where appellant has failed to explicitly identify any cumulative impact likely to result from the interaction of oil and gas exploration and development with other projects or activities that was not addressed in the EIS, there is no violation of NEPA.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

Mineral Leasing Act
Environment

Where BLM issued a "Letter of Review and Acceptance" by which it adopted a Forest Service FEIS and ROD and the record demonstrates that BLM actively and extensively participated in its preparation as a cooperating agency, and had also prepared two earlier EIS's considering the impacts of oil and gas leasing for an area that included the Shoshone National Forest, the Board properly may look beyond the style and format of the adoption document to consider its substantive content and effect.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

Mineral Leasing Act
Environment

Until a public record of decision is issued, an agency is prohibited from taking an action concerning a proposal which would either have an adverse environmental impact or limit the choice of reasonable alternatives. Although BLM's Letter of Review and Acceptance had not been issued when BLM decided to offer the parcels for leasing or when the lease sales were conducted, these actions did not constitute actions which would either have an adverse environmental impact or limit the choice of reasonable alternatives.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

Mineral Leasing Act
Environment

The appropriate time for considering the potential impacts of oil and gas exploration and development is when BLM proposes to lease public lands for oil and gas purposes, because leasing without no-surface-occupancy stipulations constitutes an irreversible and irretrievable commitment to permit surface-disturbing activity, in some form and to some extent.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Mineral Leasing Act
Environment

In considering the potential impacts of oil and gas exploration and development when BLM proposes to lease public lands for oil and gas purposes, BLM may properly use "Documentation of Land Use Plan Conformance and NEPA Adequacy" worksheets (DNAs) to assess the adequacy of previous environmental review documents. Although preparation of DNAs is a valid vehicle to determine whether previous NEPA documentation adequately considered the environmental effects of proposed oil and gas leasing, DNAs are not a replacement for EAs or EISs and cannot properly be used to supplement previous EAs or EISs or to address site-specific environmental effects not previously considered in them.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Mineral Leasing Act
Environment

When BLM has denied a protest of the inclusion of parcels in an oil and gas lease sale, asserting that it has complied with the National Environmental Policy Act by preparing pre-leasing environmental review documents, but the pre-leasing documents contain only an outdated, brief review of environmental consequences, the BLM decision denying the protest will be reversed and the case remanded. However, where those pre-leasing documents adequately address the environmental consequences of issuing oil and gas leases both with and without special protective stipulations, BLM's decision denying the protest is properly affirmed.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Mineral Leasing Act
Environment

Where the record in an appeal from the denial of a protest of an oil and gas lease sale shows that BLM excluded some parcels from the sale when it determined that leasing them might have impacts on species that are candidates for listing as sensitive, threatened, or endangered, it follows that BLM determined that the parcels that remained in the sale would not have such impacts. In the absence of a showing to the contrary by a protestant/appellant, BLM's determination that previous environmental review was adequate to determine any effects on such species will be affirmed on appeal.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Mineral Leasing Act
Environment

Even though existing land use plans and their associated environmental statements may not provide a separate analysis of the effects of coalbed methane (CBM) development, BLM may properly rely on those documents in support of a decision to offer a parcel of Federal land for competitive oil and gas leasing where there is no foreseeable likelihood of CBM development or where the impacts of CBM development do not differ significantly from the effects of oil and gas development already described in those documents.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Mineral Leasing Act
Environment

Section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. § 4332(2)(C) (2000), requires consideration of potential environmental impacts of a proposed action in an environmental impact statement if that action is a "major Federal action significantly affecting the quality of the human environment." The appropriate time for considering the potential impacts of oil and gas exploration and development is when BLM proposes to lease public land for oil and gas purposes, because leasing without stipulations requiring no surface occupancy constitutes an irreversible and irretrievable commitment to permit surface-disturbing activity.

Center for Native Ecosystems, 170 IBLA 331 (Nov. 22, 2006).

Mineral Leasing Act
Environment

In considering the potential impacts of oil and gas exploration and development when BLM proposes to lease public lands for oil and gas purposes, BLM may properly use "Documentation of Land Use Plan Conformance and NEPA Adequacy" worksheets to assess the adequacy of previous NEPA documents. Although BLM may use DNAs to determine whether new NEPA documentation is required, DNAs cannot properly be used to supplement previous EAs or EISs or to address site-specific environmental effects not previously considered in them. Information developed after the last NEPA analysis may be used to determine whether supplemental analysis is required, but it cannot be used as a substitute for a NEPA analysis. When BLM decides on the basis of a DNA not to supplement an existing EIS or EA, its decision must rise or fall on the contents of previously issued NEPA documents.

Center for Native Ecosystems, 170 IBLA 331 (Nov. 22, 2006).

Mineral Leasing Act
Environment

A finding that impacts of issuing an oil and gas lease would not be significant due to the mitigative effects of a special status species stipulation must be based on NEPA analysis. The stipulation does not provide a basis for deferring an environmental analysis in the absence of an existing NEPA statement that includes an analysis of the mitigative effects of the stipulation.

Center for Native Ecosystems, 170 IBLA 331 (Nov. 22, 2006).

Mineral Leasing Act
Environment

BLM may properly rely on existing land use documents and their associated environmental statements where there is no foreseeable likelihood of CBM development or where the impacts of CBM development do not differ significantly from the effects of oil and gas development already described in existing NEPA documents. Whether more NEPA analysis based on new information is required depends on the nature of the NEPA analysis already completed, and the nature of the information available at the time of the agency action. Where an appellant asserts a failure to perform NEPA review in the context of an "RMP level" document, this argument alone is insufficient to prove a violation of NEPA. Where recent Board and judicial precedent affirm that the question of whether additional environmental analysis is required in any given case depends on whether an appellant can show that existing NEPA documents failed to analyze the likely effects of the action at hand, and an appellant fails to show why arguments expressly considered and rejected in recent precedent remain viable, the Board properly rejects such arguments.

Biodiversity Conservation Alliance, Center for Native Ecosystems, Wyoming Wilderness Association, Clark Resource Council, 171 IBLA 313 (June 26, 2007).

Mineral Leasing Act
Environment

No error is shown where a decision to approve issuance of mineral prospecting permits is based on an Environmental Assessment/Finding of No Significant Impact that comply with NEPA and require the adoption of the stipulations and mitigation measures on which the FONSI is predicated.

Missouri Coalition for the Environment, Heartwood, 172 IBLA 226 (Sept. 5, 2007).

Mineral Leasing Act
Rentals

A BLM appraisal of the fair market rental value of a right-of-way for a petroleum byproducts removal plant site will be affirmed where the appraisal was based on a market survey of comparable rentals and the right-of-way holder has neither demonstrated error in that methodology nor shown that the resulting rental charges are excessive.

Wesfrac, Inc., 153 IBLA 164 (Aug. 22, 2000).

Mineral Leasing Act
Rentals

Departmental regulation 43 C.F.R. § 3511.25 provides that BLM will "notify" lessees of solid minerals other than coal or oil shale of proposed readjusted lease terms before the end of each 20-year period of the lease, and further provides: "If we do not timely notify you of readjusted terms, those leases continue for another 20-year period under the same terms and conditions." Where a lessee received the terms of a phosphate lease readjustment 5 days after the 20-year term of the lease had expired, BLM failed to "timely notify" the lessee of the readjusted terms, and the lease is properly administered for another 20-year period under the same terms and conditions, even though BLM *transmitted* the terms of the readjustment prior to the end of the lease term.

Melvin E. Leslie, 161 IBLA 110 (Mar. 17, 2004).

Mineral Leasing Act
Rentals

Letter Decisions determining rental for a pipeline right-of-way issued pursuant to sec. 28 of the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 185 (2000), based upon an appraisal of fair market rental value, will be set aside and remanded where the administrative record does not adequately support the appraisal method and result.

Alyeska Pipeline Service Company, 167 IBLA 112 (Oct. 13, 2005).

Mineral Leasing Act
Rentals

Letter Decisions based upon an appraisal prepared by an outside contractor jointly for BLM and the State of Alaska for the Trans-Alaska Pipeline System will be set aside and remanded when the outside contractor accepted a special instruction from BLM and the State dictating that rental be calculated using an "encumbrance of rights" factor of 100 percent, and the administrative record does not provide a rational basis for the special instruction.

Alyeska Pipeline Service Company, 167 IBLA 112 (Oct. 13, 2005).

Mineral Leasing Act
Rentals

BLM erred in assessing rentals based on its Calendar Year 2003 Communication Uses Rental Schedule (BLM Information Bulletin No. 2003-005) for communication sites which are defined as "related facilities" by the Agreement and Grant of Right-of-Way for the Trans-Alaska Pipeline System (TAPS Agreement), or by a related Grant of Right-of-Way for Communication Site expressly made subject to the TAPS Agreement, which were issued pursuant to section 28 of the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 185 (2000), and section 203(b) and (c) of the Trans-Alaska Pipeline Authorization Act of 1973, 43 U.S.C. § 1652(b) and (c) (2000). Such communication sites are exempt from the nationwide rental schedules established by BLM (*see* 43 C.F.R. § 2803.1-2(d)(1)), and rental for such communication sites should be assessed at fair market rental value in accordance with Section 8 of the TAPS Agreement and 43 C.F.R. § 2803.1-2(a), rather than based upon nationwide rental schedules established by BLM.

Alyeska Pipeline Service Company, 167 IBLA 298 (Dec. 29, 2005).

Mineral Leasing Act
Royalties

The royalty rate for products mined and disposed of under sodium leases must be imposed on the "gross value of the sodium compounds and other related products at the point of shipment to market," which means the gross value of a "secondary product" for sale in an established market is based, where the primary product from which it is derived is not sold, on the contract unit price of the secondary product less deductions allowed for the purchase price of reagents which are chemically combined with the primary product.

FMC Wyoming Corp., 154 IBLA 128, (Jan. 31, 2001).

Mineral Leasing Act
Royalties

A management fee paid by buyers to their agent for coal procurement need not be included as part of "gross proceeds accruing to the lessee," for royalty valuation purposes, pursuant to 30 C.F.R. § 206.257(c) (1995). Such a fee may be excluded from gross proceeds when the lessee demonstrates, by a preponderance of the evidence, that the management fee is not part of the total consideration paid for the coal, in accordance with 30 C.F.R. § 206.257(b)(5) (1995).

Dry Fork Coal Company, 154 IBLA 207 (Mar. 27, 2001).

Mineral Leasing Act
Royalties

Under 30 C.F.R. § 206.256(d), coal that is produced before the effective date of the readjustment of a federal coal lease but sold more than 30 days after that date is properly subject to the royalty rate in the readjusted lease.

Plateau Mining Company, 156 IBLA 177 (Jan. 23, 2002).

Mineral Leasing Act:
Royalties

The authority conferred by 30 U.S.C. § 209 (2000), enables BLM to exercise discretionary authority to grant or deny an application for royalty rate reductions. In order to grant such a reduction, BLM must determine that either (i) the reduction is necessary to promote development, or (ii) the lease cannot be successfully operated without the reduction. Granting a royalty rate reduction under MLA section 39's "necessary to promote development" provision is appropriate if doing so would encourage the greatest ultimate recovery of oil and gas in the interest of conservation of natural resources, and if prudent business judgment indicates that the reduction would be in the interest of the United States.

Union Oil Company of California, 158 IBLA 265 (Feb. 21, 2003).

Mineral Leasing Act
Royalties

The pre-Mar. 1, 1989, regulations governing valuation of coal for royalty purposes prohibit the deduction of the costs of loading from gross value in determining value for Federal royalty purposes. Where the coal purchasers pay fees for loading coal, MMS properly requires the lessee to add those fees to the sales price of the coal to determine value for Federal royalty purposes.

ExxonMobil Coal and Minerals Company, 159 IBLA 106 (May 21, 2003).

Mineral Leasing Act
Royalties

The coal valuation regulations effective March 1, 1989, provide that the term "gross proceeds" for royalty purposes includes payments for certain services, including loading coal, to the extent that the lessee is obligated to perform them at no cost to the lessor.

ExxonMobil Coal and Minerals Company, 159 IBLA 106 (May 21, 2003).

Mineral Leasing Act
Royalties

Departmental regulation 43 C.F.R. § 3511.25 provides that BLM will "notify" lessees of solid minerals other than coal or oil shale of proposed readjusted lease terms before the end of each 20-year period of the lease, and further provides: "If we do not timely notify you of readjusted terms, those leases continue for another 20-year period under the same terms and conditions." Where a lessee received the terms of a phosphate lease readjustment 5 days after the 20-year term of the lease had expired, BLM failed to "timely notify" the lessee of the readjusted terms, and the lease is properly administered for another 20-year period under the same terms and conditions, even though BLM *transmitted* the terms of the readjustment prior to the end of the lease term.

Melvin E. Leslie, 161 IBLA 110 (Mar. 17, 2004).

Mineral Leasing Act
Royalties

Section 115(h), added to the Federal Oil and Gas Royalty Management Act of 1982 by section 4(a) of the Federal Oil and Gas Royalty Simplification and Fairness Act, Pub. L. No. 104-185, 110 Stat. 1700, 1709-10 (1996), *codified at* 30 U.S.C. § 1724(h) (2000), requires the Secretary of the Interior to issue a final decision on appeals from Minerals Management Service or delegated state orders to pay royalty within 33 months from the date such proceeding was commenced, barring which the Act imposes a statutory rule of decision, resolving the appeal finally for the Department, in a manner favorable to either the appellant or the Secretary, depending on the monetary amount at issue.

California State Controller, 166 IBLA 5 (May 18, 2005).

Mineral Leasing Act
Royalties

The Board properly dismisses an appeal by a state from a decision of the Director, Minerals Management Service, granting an appeal by a lessee or its designee from an MMS order to pay royalty on production from a Federal onshore oil and gas lease, because the regulations at 43 C.F.R. Part 4, Subpart J, which implement the time limits and rule of decision of 30 U.S.C. § 1724(h) (2000), do not provide any opportunity for states to appeal from a decision of the Director, MMS, rescinding or modifying an MMS or delegated state order under 30 C.F.R. § 290.108, and because 43 C.F.R. § 4.906(b)(3) specifically provides that, in the absence of an appeal by the lessee or its designee, the MMS Director's decision constitutes the final decision of the Department, thus depriving the Board of jurisdiction to entertain the appeal.

California State Controller, 166 IBLA 5 (May 18, 2005).

Mineral Leasing Act
Royalties

The Secretarial Order requires that potash enclaves be identified based on existing economics, but since the record fails to demonstrate how (if at all) royalties and royalty rate reductions were considered by BLM in identifying potash enclaves, BLM must determine on remand whether and, if so, how best to consider royalties and royalty reductions in its enclave decisionmaking under the Secretarial Order.

Imc Kalium Carlsbad, Inc., Potash Association of New Mexico; Yates Petroleum Corporation; Pogo Producing Company; Bureau of Land Management, 170 IBLA 25 (Sept. 7, 2006).

Mineral Leasing Act

Royalties

A contract for the sale of coal from one affiliate to another, when the affiliates are under common control and do not have opposing economic interests, is not arm's-length under either the pre-1989 regulation, 30 C.F.R. § 203.250(g), or the current regulation, 30 C.F.R. § 206.251.

Decker Coal Company, 172 IBLA 1 (July 17, 2007).

Mineral Leasing Act
Royalties

Under the pre-1989 regulation governing coal valuation, 30 C.F.R. § 203.250(g), MMS may accept non-arm's-length contract prices when the lessee demonstrates independent indicia establishing that the contract price is one fairly derived from the marketplace. However, when the totality of the circumstances shows that the non-arm's-length contract prices result from an arrangement between affiliates and that the ultimate purchaser actually pays and reports substantially more for the coal in accordance with the contract, MMS properly values the coal at the prices actually paid for that coal.

Decker Coal Company, 172 IBLA 1 (July 17, 2007).

Mineral Leasing Act
Royalties

In valuing coal for royalty purposes under a non-arm's- length contract, MMS properly applies the criteria of 30 C.F.R. § 206.257(c)(2)(i)-(iv) and determines coal value based upon the first applicable criterion. When MMS determines that the first three criteria of 30 C.F.R. § 206.257(c)(2) do not apply, it properly considers "[o]ther relevant matters" under subsection 206.257(c)(2)(iv), including information showing that the value of the coal claimed by the lessee was substantially less than what the ultimate purchaser actually paid for the same coal.

Decker Coal Company, 172 IBLA 1 (July 17, 2007).

Minerals Management Service
Appeals to Director

Since 30 C.F.R. Part 290 gives the Board jurisdiction only over appeals of decisions of the Director, MMS, a direct appeal to the Board of a decision of an MMS official will be dismissed for lack of jurisdiction where the appellant has not first obtained review of the decision by the Director, MMS.

KMF Mineral Resources, Inc., 151 IBLA 35 (Oct. 21, 1999).

Minerals Management Service
Appeals to Director

A decision dismissing an appeal of an invoice issued by Minerals Management Service as untimely is properly reversed when the invoice was not accompanied by an order in mandatory terms explaining the payor's obligation and providing notice of the right of appeal.

Xanadu Exploration Company, 157 IBLA 183 (Sept. 3, 2002).

Minerals Management Service
Appeals to Director

When MMS issues an order to pay additional royalty, indicating that it is subject to immediate appeal, but places the order and bill for collection on hold pending additional review, the appeal period for the order does not begin to run until MMS notifies the appellant that the hold has been lifted, and an MMS decision dismissing as untimely an appeal to the Commissioner of Indian Affairs timely filed within 30 days of receipt of the notice of the lifting of the hold will be reversed and the case remanded for adjudication of the merits of the appeal.

American Petroleum Energy Company, 160 IBLA 59 (Aug. 28, 2003).

Minerals Management Service
Appeals to Director

Parties to agency decisions are given the right to appeal in appropriate circumstances by regulation; failure to include an appeals paragraph in an agency decision does not alter that right.

Devon Energy, et al., 171 IBLA 43 (Jan. 24, 2007).

Minerals Management Service
Appeals to Director

A "Dear Reporter Letter" issued by MMS to numerous Federal and Indian oil and gas lessees is not an appealable "order" under 30 C.F.R. § Part 290, where the letter, although occasionally cast in mandatory terms, does not "contain mandatory or ordering language" because it does not require immediate and specific action and does not address any specific leases, gas volumes, treatment costs, or additional royalties due. The letter is properly seen only as generalized guidance on how Federal and Indian lessees nationwide are expected to proceed concerning royalty due on coalbed methane. Unless and until MMS issues specific orders containing specific instructions to specific lessees governing how they must compute, report, and/or pay royalty, among other actions, no appealable order has been issued under 30 C.F.R. Part 290.

Devon Energy, et al., 171 IBLA 43 (Jan. 24, 2007).

Mining and Reclamation Plan
Generally

In approving a mining and reclamation plan, BLM must comply with section 106 of the National Historic Preservation Act of 1966 on both Federal and non-Federal lands involved in the project. However, it was not error for BLM to consult with the plan applicant instead of the current owner of lands containing an historic site regarding measures to protect the site where it was contemplated that ownership of those lands would be transferred to the applicant, and where mining near the site would not proceed if the lands were not in fact transferred.

Legal and Safety Employer Research Inc., et al., 154 IBLA 167 (Feb. 28, 2001).

Mining Claims
Generally

While failure to record a mining claim with a County recorder within 30 days of the date of location may not, in and of itself, render the claim invalid under Utah State law, a withdrawal or classification of the land by the United States, prior to any corrective action by the claimant, operates as an adverse right rendering the claim invalid. Where a mining claim is staked and notice is posted on September 4, 1996, but notice of location of the claim is not filed with the County recorder until November 26, 1996, and where the land on which the claim is located is withdrawn from operation of the mining laws on September 18, 1996, the claim is properly declared null and void ab initio. This is because, owing to the failure to record within 30 days as required by State law, there was no valid "location" of the claim under 43 C.F.R. § 3831.1 at the time of the segregation, rendering the claim null and void ab initio.

N. C. Rice, Jr., 153 IBLA 185 (Aug. 25, 2000).

Mining Claims
Generally

The failure to post a reclamation bond as required by the authorized officer under the authority of 43 C.F.R. § 3809.1-9(b) (1996), which bond is based on the claimant's own estimate of the costs of removing existing structures and reclaiming the land, fully supports issuance of a notice of noncompliance.

Nevada Mineral Processing, 157 IBLA 223 (Oct. 3, 2002).

Mining Claims
Generally

Under the provisions of 43 C.F.R. § 3809.505 (2001), all persons conducting operations o a mining claim or millsite under a plan of operations must submit a financial guarantee (bond) to guarantee reclamation of the claim or millsite.

Nevada Mineral Processing, 157 IBLA 223 (Oct. 3, 2002).

Mining Claims
Generally

The notation on public records of a request for withdrawal has a segregative effect on land contained within the boundaries of a previously located mining claim. While the notation does not preclude the taking of samples of pre-existing discoveries to demonstrate validity of the claims, it does prevent activity that constitutes further exploration to expose a valuable mineral deposit not exposed prior to segregation or withdrawal. A segregation does not grant a mining claimant a perpetual right to explore within the boundaries of its mining claims.

United States v. E. K. Lehmann & Associates of Montana, Inc., et al., 161 IBLA 40 (Mar. 16, 2004).

Mining Claims
Generally

Departmental regulation 43 C.F.R. § 3604.1(b) (2000) formerly provided that "the designation of a community pit constitutes a superior right to remove material as against any subsequent claim or entry of the lands." A community pit designation does not exclude or preclude the subsequent location of mining claims for uncommon variety building stone within the pit area. When there is a genuine controversy concerning whether the stone is a common or uncommon variety, BLM may not permit removal the stone pursuant to the Common Varieties Act, 30 U.S.C. § 611 (2000), before conducting a validity examination to determine whether in fact the stone is common or uncommon.

Cambrillic Natural Stone, Unique Minerals, Inc., 161 IBLA 288 (May 13, 2004).

Mining Claims
Generally

The agency-wide procedure of requiring reasonable amounts of sales proceeds to be deposited in escrow pending the outcome of a validity examination to determine whether a building stone is a common or uncommon variety will be upheld as a means of protecting both the right of the Government to receive the proceeds of sales of mineral material and the claimants' due process right to have the legal status of minerals on their claims fully and fairly adjudicated.

Cambrillic Natural Stone, Unique Minerals, Inc., 161 IBLA 288 (May 13, 2004).

Mining Claims
Generally

When land on which a mining claim is located is withdrawn from mineral entry, the claimant may enter the claims to verify pre-existing discoveries to demonstrate validity of the claims, but may not engage in activity that constitutes further exploration to expose a valuable mineral deposit not exposed prior to withdrawal.

United States v. Steve Hicks, 164 IBLA 73 (June 29, 2004).

Mining Claims

Generally

The authority to adjudicate the status of mining claims arises from the authority Congress vested in the Secretary of the Interior or such officer as he or she may designate to "perform all executive duties appertaining to the surveying and sale of the public lands of the United States, or in anywise respecting such public lands, and, also, such as relate to private claims of land, and the issuing of patents for all grants of land under the authority of Government." 43 U.S.C. § 2 (2000). That authority extends to Indian Reservation lands as well.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VII), 163 IBLA 310 (Nov. 2, 2004).

Mining Claims
Generally

Lands set aside for an Indian Reservation cease to be part of the public domain, and a mining claim located on Indian lands that are not open to mineral entry is null and void *ab initio*.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VII), 163 IBLA 310 (Nov. 2, 2004).

Mining Claims
Generally

Only the United States, acting through the Secretary of the Interior, has the authority to determine administratively what lands constitute public lands. That duty and authority necessarily includes the power to determine administratively that a mining claim is located on land *not* owned by the United States. The question of whether the United States has title is justiciable before the Department, and when the Department determines that the United States has no title in lands, it may properly declare mining claims located on such lands null and void *ab initio* as a matter of Federal law.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VII), 163 IBLA 310 (Nov. 2, 2004).

Mining Claims
Generally

Where appellant's oil shale "mining claims" were located on lands that were patented to third parties without a mineral reservation to the United States, no interest appellant may have with respect thereto can be raised or pursued as a mining claim initiated and maintained under Federal mining law. Those interests in the patented portions of the claims, whatever they may be, are properly declared null and void *ab initio*, since no Federal mining claim can arise on private or State lands.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VII), 163 IBLA 310 (Nov. 2, 2004).

Mining Claims
Generally

A mining claim located on lands withdrawn from mineral entry at the time of location is null and void *ab initio*. Where claimants argue that their claim predates the effective date of the withdrawal, they must establish that they are the successors to an interest in a mining claim that was located on this land before its withdrawal from mineral entry; to do so, they must show an unbroken chain of title to a valid claim located prior to the withdrawal of the land and, further, if a new notice of location is filed after the effective date of the withdrawal, the claim had to be an "amended location" rather than a "relocation." A new notice of location filed after a claim has been declared abandoned and void for failure to meet Federal recording and/or rental or fee requirements is a relocation, since such failure extinguishes the prior claim. Where a claim that is located prior to the effective date of a withdrawal is abandoned and void by operation of law for failure to comply with the rental or fee requirements, a subsequent claim located for the same land is a relocation and does not relate back to the location date of the previous claim. Where the subsequent claim is located on lands segregated from mineral entry by the filing of an application for withdrawal, the claim is properly declared null and void *ab initio*.

Douglas and Jane Weldy, 164 IBLA 166 (December 8, 2004).

Mining Claims
Generally

Where petitioner's mining claim was located for the same building stone which is to be disposed of as a common variety mineral material pursuant to a sales contract issued under the Materials Act, *as amended*, 30 U.S.C. §§ 601-604 (2000), and the sale tract is within petitioner's mining claim, petitioner is a party to the case and adversely affected by BLM's decision, and therefore has standing to appeal the material sale.

Cambrillic Natural Stone, Unique Minerals, Inc. (On Reconsideration), 165 IBLA 140 (Mar. 28, 2005).

Mining Claims
Generally

The Materials Act excludes deposits of common variety materials from appropriation under the Mining Law of 1872, *as amended*, 30 U.S.C. §§ 21-47 (2000). Section 3 of the Common Varieties Act of 1955, *as amended*, 30 U.S.C. § 611 (2000), expressly prohibits disposal under the Materials Act of deposits of materials which are valuable because the deposit has some property giving it distinct and special value. Those materials continue to be subject to location and patent under the 1872 Mining Law.

Cambrillic Natural Stone, Unique Minerals, Inc. (On Reconsideration), 165 IBLA 140 (Mar. 28, 2005).

Mining Claims
Generally

A community pit designation does not authorize BLM to dispose of uncommon varieties of minerals by sale. Where the mineral sale area is within the boundaries of their mining claims and the claimants come forward with evidence to show that the mineral to be sold is an uncommon variety of stone subject to the mining laws, the Board properly remands the case to BLM to adjudicate the question.

Cambrillic Natural Stone Unique Minerals, Inc. (On Reconsideration), 165 IBLA 140 (Mar. 28, 2005).

Mining Claims
Generally

When the decision of an administrative law judge declaring placer mining claims invalid was not stayed during the pendency of the appeal, there were no mining claims on which mining operations could be conducted, and thus nothing to which a mining plan of operations could pertain. In these circumstances, a BLM decision revoking the plans of operations for the invalid mining claims will be upheld. When the revocation of a plan of operations for an invalid mining claim is affirmed on appeal, an appeal of an earlier BLM decision finding that operations exceeded the scope of the approved plan of operations and requiring the submission of a new plan of operations is properly declared moot, and the appeal of that decision is properly dismissed as moot.

Pass Minerals, Inc., K. Ian Matheson, Kiminco, Inc., 168 IBLA 164 (Mar. 16, 2006).

Mining Claims
Generally

A BLM decision establishing the amount of the financial guarantee (reclamation bond) required to extend a mining notice for a mill site will be affirmed where the operator fails to establish error in BLM's determination of the bond amount or to show that his bond estimate more accurately reflects the costs of reclaiming the site.

Pilot Plant, Inc., 168 IBLA 193 (Mar. 16, 2006).

Mining Claims
Generally

Transfers of mining claims are governed by State law. Under California law a quitclaim deed transferring an interest in a mining claim is effective to transfer the interest in the property upon the date the writing is delivered, and delivery is presumed to have taken place on the date the writing is executed.

United States v. Gerald E. Hobbs, 170 IBLA 200 (Sept. 26, 2006).

Mining Claims
Generally

Where a claimant asserts that a filing with BLM was meant to constitute an amended notice of location, or several of them, such an intent will be discounted where the filing does not conform to state and Federal requirements for an amended location.

Rock Solid Inc. and Mining, 170 IBLA 312 (Nov. 9, 2006).

Mining Claims
Generally

Section 1 of the Materials Act of 1947, *as amended*, 30 U.S.C. §§ 601 through 615 (2000), and 43 C.F.R. § 3603.10 authorize BLM to make "mineral material sales under permit from" mineral deposits it designates for that purpose as "community pit sites." The regulations expressly state that "BLM's designation of a community pit site, when noted on the appropriate BLM records or posted on the ground, establishes a right to remove the material superior to any subsequent claim or entry of the lands." 43 C.F.R. § 3603.11. Where BLM has designated a deposit of building stone as a community pit and noted that designation on its records, a mining claim located after the designation creates no right to remove the material, and BLM properly rejects a mining plan of operations proposing to do so.

Tim K. Smith, 171 IBLA 135 (Feb. 27, 2007).

Mining Claims
Generally

A BLM decision establishing the amount of the financial guarantee (reclamation bond) required to extend the mining notice for operations on certain lode mining claims will be affirmed where the operator fails to demonstrate error in BLM's reclamation cost estimate, including the type of equipment to be used for reclamation.

Ferrell Anderson, 171 IBLA 289 (May 25, 2007).

Mining Claims
Generally

The regulations at 43 C.F.R. Subpart 3809, which require BLM to prevent unnecessary or undue degradation to the public lands and allow BLM to enter into agreements with the states to regulate mining activity, authorize BLM to require operators seeking an extension of a mining notice to provide BLM with copies of any required state permits as a condition of the extension of the notice.

Ferrell Anderson, 171 IBLA 289 (May 25, 2007).

Mining Claims
Generally

The contestant in a private mining contest has the burden of establishing its case by a preponderance of evidence without the burden shifting that takes place in a government contest. The standard for determining whether there has been a discovery of a valuable mineral deposit in a private mining contest is the same as that used in government contests, *i.e.*, the prudent man-marketability test.

Clark County v. Nevada Pacific Company, Inc., 172 IBLA 316 (Sept. 27, 2007).

Mining Claims
Abandonment

A BLM decision declaring an unpatented mining claim situated within a unit of the National Park System forfeited and void by operation of law, pursuant to section 10104 of the Omnibus Budget Reconciliation Act of 1993, 30 U.S.C. § 28i (1994), will be affirmed where the claimant failed to either pay the maintenance fee, obtain NPS approval of the assessment work referenced in his small miner maintenance fee waiver certification, or file a petition for deferral of such work.

Stephen Dwyer, 151 IBLA 92 (Nov. 8, 1999).

Mining Claims
Abandonment

Responsibility for satisfying the rental fee requirement of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, Pub. L. No. 102-381, 106 Stat. 1374, 1378-79 (1992), resides with the owner of the unpatented mining claim, mill site, or tunnel site, as Congress has mandated that failure to make the annual payment of the claim rental fee as required by the Act shall conclusively constitute an abandonment of the unpatented mining claim, mill site, or tunnel site. Failure to pay the fee in accordance with the Act and implementing regulations results in a conclusive presumption of abandonment. Neither the claimant's lack of actual knowledge of the statutory requirement to pay rental fees nor BLM's failure to advise the claimant of that statutory requirement excuses the claimant's lack of compliance with the rental fee requirement, since all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Sandra E. Garrand, 152 IBLA 139 (Apr. 3, 2000).

Mining Claims
Abandonment

A claimant who files a small miner waiver must perform assessment work and file the affidavit of assessment work with the proper BLM office on or before December 30 immediately following the August 31 by which the small miner filed for a waiver of payment of the maintenance fee, and failure to do so shall conclusively constitute forfeiture of the mining claim or site. The option of filing a notice of intention to hold the claims is not contemplated under 43 C.F.R. § 3833.1-7, the regulation which sets forth the filing requirements for the maintenance fee waiver.

Cheryl Jong, 154 IBLA 71 (Dec. 12, 2000).

Mining Claims
Abandonment

As enacted by Congress, the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312, originally required mining claimants to pay claim maintenance fees on or before August 31 of each year for the years 1994 through 1998, and regulations implementing this legislation provided that the requirement to pay a claim maintenance fee did not apply to any claim located after September 29, 1998. However, on October 21, 1998, Congress passed the Omnibus Consolidated and Emergency Supplemental Appropriations Act for 1999 which contained a provision requiring payment of the maintenance fee of $100 per claim on or before September 1 of each year for the years 1999 through 2001 and that statute made clear that the maintenance fee was required for each claim whether located *before* or *after* October 21, 1998.

Flynn C. Johnson, 155 IBLA 24 (May 1, 2001).

Mining Claims
Abandonment

Where a mining claimant tenders payment of the fees via a check that is later dishonored by its bank, the effect is the same as if the maintenance fees are not paid. The claims are properly declared forfeited and null and void if the mining claimant did not apply for a small miner exemption from the maintenance fee requirement.

Loco Mining Company, 155 IBLA 153 (June 27, 2001).

Mining Claims
Abandonment

Where a mining claimant submits a payment for maintenance fees that is dishonored by the bank on which it is drawn; where the claimant notifies BLM of the problem only after the statutory deadline for filing the fees; where BLM misadvises the claimant at that time that BLM may accept a replacement payment as long as the funds arrive before BLM receives notice that there was a problem with the payment; and where no replacement payment is filed until after the statutory deadline, there is no basis for estopping BLM from declaring the claims forfeited and null and void. BLM's misadvice was not in the form of a crucial misstatement in an official decision. Further, reliance on such misadvice was irrelevant, since it was not given until after the mandatory statutory deadline for making payment (when BLM was no longer authorized to accept maintenance fees) and since reliance on any misadvice may not create rights not authorized by law.

Loco Mining Company, 155 IBLA 153 (June 27, 2001).

Mining Claims
Abandonment

A mining claimant seeking a waiver of the requirement to pay the annual mining claim maintenance fee must file an annual certification of his qualifications for a waiver on the date payment is due. The refiling of a photocopy of a certification of qualifications previously executed by claimants and filed for a different assessment year does not constitute a timely-filed certification of qualifications for a waiver and the claim is properly held to be forfeited and void.

Thomas L. Carufel, Dorothea L. Johnson, 155 IBLA 340 (Sept. 21, 2001).

Mining Claims
Abandonment

The purpose of the "postmark" rule for determining whether a document received within the regulatory grace period was mailed prior to the statutory deadline for filing, and thus was timely filed, is to make it unnecessary to resolve disputes regarding when a document was mailed. When the envelope in which such a document was received has been lost by BLM, the record is insufficient to support a finding that the document was not timely filed and a decision declaring the mining claim forfeited and

void will be reversed.

L. R. Church, 155 IBLA 367 (Oct. 10, 2001).

Mining Claims
Abandonment

A claimant who files a small miner waiver certification must perform assessment work for the same assessment year for which that waiver was filed, and then file evidence of assessment work with the proper BLM office on or before December 30 following the end of that assessment year in accordance with annual filing requirements found in sec. 314(a) of FLPMA. This evidence of assessment work is in addition to whatever was filed the previous year to comply with the waiver requirements. Failure to file the required evidence of assessment work will result in abandonment of the mining claim.

Audrey Bradbury, 160 IBLA 269 (Dec. 30, 2003).

Mining Claims
Abandonment

Where the 90-day period allowed by 43 U.S.C. § 1744(b) (2000) and 43 C.F.R. § 3833.1-2(a) to record copies of the certificates of location of newly-located mining claims "bridges" the September 1 annual deadline for filing mining claim maintenance fees under 43 C.F.R. § 3833.1-5, the claimant (1) must file a $100 fee for each claim located for the assessment year in which the claim was located (the initial maintenance fee) and (2) may either file a second $100 fee for each claim for the succeeding assessment year *or* may establish entitlement to a fee waiver for its claims for the succeeding assessment year and pay no fee. If the requisite payment and/or filings are made with BLM within the 90-day filing period allowed for new claims, the claimant has complied. Where the claimant makes two filings (one paying requisite filing fees and the initial maintenance fees and another presenting a maintenance fee payment waiver certification for the claims for the succeeding assessment year) within the 90-day period, a BLM decision declaring its claims forfeited will be reversed.

Bear Creek Mining Company, 160 IBLA 308 (Jan. 22, 2004).

Mining Claims
Abandonment

Under the regulations governing the locating, recording, and maintaining of mining claims, mill sites, or tunnel sites, "filed" is defined at 43 C.F.R. § 3830.5 as meaning a document is received by BLM on or before the due date or is "[p]ostmarked or otherwise clearly identified as sent on or before the due date by a bona fide mail delivery service" and received by the appropriate BLM state office either within 15 calendar days after the due date or on the next business day after that date, if the 15th day is not a business day for BLM.

Hale Mining Company, 161 IBLA 260 (May 5, 2004).

Mining Claims
Abandonment

An affidavit of assessment work required to be filed with BLM on or before December 30, 2003, for certain mining claims is timely filed, in accordance with 43 C.F.R. § 3830.5, when it arrives at the proper BLM office on January 5, 2004, in an envelope bearing a United States Postal Service postage validation stamp of December 30, 2003.

Hale Mining Company, 161 IBLA 260 (May 5, 2004).

Mining Claims
Abandonment

A mining claim located on lands withdrawn from mineral entry at the time of location is null and void *ab initio*. Where claimants argue that their claim predates the effective date of the withdrawal, they must establish that they are the successors to an interest in a mining claim that was located on this land before its withdrawal from mineral entry; to do so, they must show an unbroken chain of title to a valid claim located prior to the withdrawal of the land and, further, if a new notice of location is filed after the effective date of the withdrawal, the claim had to be an "amended location" rather than a "relocation." A new notice of location filed after a claim has been declared abandoned and void for failure to meet Federal recording and/or rental or fee requirements is a relocation, since such failure extinguishes the prior claim. Where a claim that is located prior to the effective date of a withdrawal is abandoned and void by operation of law for failure to comply with the rental or fee requirements, a subsequent claim located for the same land is a relocation and does not relate back to the location date of the previous claim. Where the subsequent claim is located on lands segregated from mineral entry by the filing of an application for withdrawal, the claim is properly declared null and void *ab initio*.

Douglas and Jane Weldy, 164 IBLA 166 (December 8, 2004).

Mining Claims
Abandonment

The obligation to file evidence of required assessment work by December 30 following the filing of a waiver certification stems from the assessment work requirements of the Mining Law of 1872 and the filing requirements of sec. 314 of the Federal Land Policy and Management Act of 1976 and not from the fact a waiver certification was filed by the previous September 1.

Earl Riggs, et al., 165 IBLA 36 (Feb. 17, 2005).

Mining Claims
Abandonment

The general rule is that for every assessment year either the maintenance fee must be paid in advance, or a small miner waiver certification filed in advance and assessment work performed during that assessment year, with evidence of assessment work filed with BLM under the filing requirements of sec. 314 of the Federal Land Policy and Management Act of 1976 by December 30 following the end of the assessment year.

Earl Riggs, et al., 165 IBLA 36 (Feb. 17, 2005).

Mining Claims
Abandonment

When a maintenance fee waiver certification contains a handwritten statement that the claimant intends to relinquish any interest in any mining claim he might have, BLM erroneously relies on such a statement to close the files for claims included in the certification when other evidence shows that the statement was intended to relate only to any interest the claimant may have held in any claims other than those listed. In order to have a valid relinquishment of a mining claim, and thus an abandonment thereof, it must be demonstrated that the claimant actually intended to abandon the claim on or before the filing of his certification.

Andy D. Delcomte, 165 IBLA 247 (Apr. 21, 2005).

Mining Claims
Assessment Work

30 U.S.C. § 28 (1994) calls for the expenditure of $100 in assessment work on or for the benefit of a mining claim each year until patent. Before patent can be obtained the claimant must have made improvements valued at $500 or more (30 U.S.C. § 29 (1994)), but the expenditure of $500 does not terminate the ongoing requirement in 30 U.S.C. § 28 (1994), for expenditure of $100 each assessment year.

United States v. Tosco Corporation, Exxon Corporation, 153 IBLA 205 (Aug. 31, 2000).

Mining Claims
Assessment Work

The United States is the beneficiary of oil shale mining claims invalidated for failure to substantially satisfy the requirements of 30 U.S.C. § 28 (1994), and the Department has jurisdiction to challenge the validity of a mining claim for failure to substantially comply with the assessment work requirement.

United States v. Tosco Corporation, Exxon Corporation, 153 IBLA 205 (Aug. 31, 2000).

Mining Claims
Assessment Work

Where a mining claimant resumes performance of assessment work after a period of nonperformance of assessment work, he generally may revive the claim. However, where a third party right attaches during the period of inactivity, the claimant is precluded from regaining his claim by resuming work. In the case of oil shale mining claims invalidated for failure to substantially satisfy the requirements of 30 U.S.C. § 28 (1994), the United States is the intervening third party and the resumption doctrine does not apply to oil shale claims.

United States v. Tosco Corporation, Exxon Corporation, 153 IBLA 205 (Aug. 31, 2000).

Mining Claims
Assessment Work

Under 43 C.F.R. § 3833.1-6(e) (1997), payment of mining claim maintenance fees may be deferred for the period during which a deferment of assessment work has been granted, but a mining claimant who has not filed a petition for deferment of assessment work does not qualify for a deferment of the maintenance fees.

Cheryl Jong, 154 IBLA 71 (Dec. 12, 2000).

Mining Claims
Assessment Work

Under 43 C.F.R. § 3833.1-6(e) (2001), payment of mining claim maintenance fees may be deferred until the authorized officer has acted upon a petition for deferment and, if the petition is granted, the fees may be deferred for the upcoming assessment year. A mining claimant who has not filed a petition for deferment of assessment work on or before September 1 for a given year does not qualify for a deferment of the maintenance fees.

Carl A. Parker, Sr., 165 IBLA 300 (Apr. 28, 2005).

Mining Claims
Bonds

The failure to post a reclamation bond as required by the authorized officer under the authority of 43 C.F.R. § 3809.1-9(b) (1996), which bond is based on the claimant's own estimate of the costs of removing existing structures and reclaiming the land, fully supports issuance of a notice of noncompliance.

Nevada Mineral Processing, 157 IBLA 223 (Oct. 3, 2002).

Mining Claims
Common Varieties of Minerals
Generally

Departmental regulation 43 C.F.R. § 3604.1(b) (2000) formerly provided that "the designation of a community pit constitutes a superior right to remove material as against any subsequent claim or entry of the lands." A community pit designation does not exclude or preclude the subsequent location of mining claims for uncommon variety building stone within the pit area. When there is a genuine controversy concerning whether the stone is a common or uncommon variety, BLM may not permit removal the stone pursuant to the Common Varieties Act, 30 U.S.C. § 611 (2000), before conducting a validity examination to determine whether in fact the stone is common or uncommon.

Cambrillic Natural Stone Unique Minerals, Inc., 161 IBLA 288 (May 13, 2004).

Mining Claims
Common Varieties of Minerals
Generally

The agency-wide procedure of requiring reasonable amounts of sales proceeds to be deposited in escrow pending the outcome of a validity examination to determine whether a building stone is a common or uncommon variety will be upheld as a means of protecting both the right of the Government to receive the proceeds of sales of mineral material and the claimants' due process right to have the legal status of minerals on their claims fully and fairly adjudicated.

Cambrillic Natural Stone Unique Minerals, Inc., 161 IBLA 288 (May 13, 2004).

Mining Claims
Common Varieties of Minerals
Generally

Where petitioner's mining claim was located for the same building stone which is to be disposed of as a common variety mineral material pursuant to a sales contract issued under the Materials Act, *as amended*, 30 U.S.C. §§ 601-604 (2000), and the sale tract is within petitioner's mining claim, petitioner is a party to the case and adversely affected by BLM's decision, and therefore has standing to appeal the material sale.

Cambrillic Natural Stone Unique Minerals, Inc. (On Reconsideration), 165 IBLA 140 (Mar. 28, 2005).

Mining Claims
Common Varieties of Minerals
Generally

The Materials Act excludes deposits of common variety materials from appropriation under the Mining Law of 1872, *as amended*, 30 U.S.C. §§ 21-47 (2000). Section 3 of the Common Varieties Act of 1955, *as amended*, 30 U.S.C. § 611 (2000), expressly prohibits disposal under the Materials Act of deposits of materials which are valuable because the deposit has some property giving it distinct and special value. Those materials continue to be subject to location and patent under the 1872 Mining Law.

Cambrillic Natural Stone Unique Minerals, Inc. (On Reconsideration), 165 IBLA 140 (Mar. 28, 2005).

Mining Claims
Common Varieties of Minerals
Generally

A community pit designation does not authorize BLM to dispose of uncommon varieties of minerals by sale. Where the mineral sale area is within the boundaries of their mining claims and the claimants come forward with evidence to show that the mineral to be sold is an uncommon variety of stone subject to the mining laws, the Board properly remands the case to BLM to adjudicate the question.

Cambrillic Natural Stone Unique Minerals, Inc. (On Reconsideration), 165 IBLA 140 (Mar. 28, 2005).

Mining Claims
Common Varieties of Minerals
Generally

In order to establish that a deposit of building stone is an uncommon variety locatable under the Common Varieties Act, (1) there must be a comparison of the mineral deposit with other deposits of such minerals generally; (2) the mineral deposit at issue must have a unique property; (3) the unique property must give the deposit a distinct and special value; (4) if the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use; and (5) the distinct and special value must be reflected by the higher price which the material commands in the market or reduced cost of production resulting in greater profit.

United States v. Lyle I. Thompson, et al., 168 IBLA 64 (Mar. 16, 2006).

Mining Claims
Common Varieties of Minerals
Generally

While the Board generally accords substantial deference to the findings of an Administrative Law Judge with respect to conflicting evidence, such deference is not absolute, and the Board will closely examine the judge's findings in order to ensure that they are legally sound and supported by the record.

United States v. Lyle I. Thompson, et al., 168 IBLA 64 (Mar. 16, 2006).

Mining Claims
Common Varieties of Minerals
Generally

That a stone deposit on a mining claim can be profitably marketed is not enough by itself to validate a claim located for uncommon building stone. The claimant must still establish that the deposit is not a common variety of building stone.

United States v. Lyle I. Thompson, et al., 168 IBLA 64 (Mar. 16, 2006).

Mining Claims

Common Varieties of Minerals
Generally

In order to establish that a deposit of building stone is an uncommon variety locatable under the Common Varieties Act, the *McClarty* test requires that (1) there must be a comparison of the mineral deposit with other deposits of such minerals generally; (2) the mineral deposit at issue must have a unique property; (3) the unique property must give the deposit a distinct and special value; (4) if the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use; and (5) the distinct and special value must be reflected by the higher price which the material commands on the market or reduced cost of production resulting in substantially greater profit.

United States v. Roland G. & Frances W. Knipe, 170 IBLA 161 (Sept. 25, 2006).

Mining Claims
Common Varieties of Minerals
Generally

When the Government alleges that a mining claim is invalid because it was located for a common variety of decorative stone, the Government must present sufficient evidence to establish a prima facie case that the mineral deposit does not possess a unique property giving it a distinct and special value. When the Government's prima facie case has been made, the claimant has the ultimate burden of persuasion to show by a preponderance of the evidence that the mineral deposit in question is an uncommon variety, and therefore locatable. When the claimant fails to satisfy that burden, the claim is properly declared null and void.

United States v. Roland G. & Frances W. Knipe, 170 IBLA 161 (Sept. 25, 2006).

Mining Claims
Common Varieties of Minerals
Generally

Limestone of chemical or metallurgical grade, or that is suitable for making cement, is subject to location under the mining laws of the United States. 43 C.F.R. § 3830.12 (d). The test for concluding whether any other deposit of limestone is an uncommon variety locatable under the Common Varieties Act requires the following analyses: (1) comparing the deposit with other deposits of such minerals generally; (2) determining whether the deposit has a unique property; (3) determining whether the unique property gives the deposit a distinct and special value; (4) if the special value is for uses to which ordinary varieties of the mineral are put, determining whether the deposit has distinct and special value for such use; and (5) determining whether the distinct and special value is reflected by a higher price that the material commands on the market.

United States v. Pitkin Iron Corporation, et al., 170 IBLA 352 (Nov. 29, 2006).

Mining Claims
Common Varieties of Minerals
Generally

When the Government alleges that a mining claim is invalid because it was located for a common variety of stone, the Government must present sufficient evidence to establish a prima facie case that the deposit does not possess a unique property giving it a distinct and special value. When the Government's prima facie case has been made, the claimant bears the ultimate burden of persuasion to show by a preponderance of the evidence that the deposit in question is an uncommon variety, and therefore locatable.

United States v. Pitkin Iron Corporation, et al., 170 IBLA 352 (Nov. 29, 2006).

Mining Claims
Common Varieties of Minerals
Generally

That a mining claimant can identify a use for limestone that commands a higher price than a use that all parties concede requires only a common variety of stone is not enough, by itself, to demonstrate that the limestone is an uncommon variety. The claimant must also establish that the deposit has a unique property that gives the deposit a distinct and special value. Evidence of a higher price available in the market can supply proof that a deposit has unique value, but it must be evidence of the higher price the *deposit* commands, not evidence of a higher price purchasers will pay for material from a deposit of a common variety of limestone.

United States v. Pitkin Iron Corporation, et al., 170 IBLA 352 (Nov. 29, 2006).

Mining Claims
Common Varieties of Minerals
Generally

The distinct and special value making a deposit of stone uncommon must be reflected by attributes inherent in the deposit itself and cannot be predicated on extrinsic factors. Where a mining claimant is able to provide better service, or undercut a competitor's prices because it fails to include the costs it incurred in mining stockpiled material in its price, or provides superior screening of crushed stone, such circumstances constitute value factors extrinsic to the deposit.

United States v. Pitkin Iron Corporation, et al., 170 IBLA 352 (Nov. 29, 2006).

Mining Claims
Common Varieties of Minerals
Generally

Where limestone is used for the same purpose that a common variety of limestone would be used for, a claimant may show that its limestone is nonetheless an uncommon variety of stone by showing that the mineral deposit in question has a unique property, and that the unique property gives the deposit a distinct and special value for such use. Where the Government submits evidence that the limestone at issue is found throughout the State of Colorado and is actively mined at 51 quarries, and avers that limestone of the quality found on the mining claims at issue, even as identified by the claimant, is found in inexhaustible quantities throughout the State, the claimant fails to rebut this proof by comparing its limestone to other such materials generally at its peril.

United States v. Pitkin Iron Corporation, et al., 170 IBLA 352 (Nov. 29, 2006).

Mining Claims
Common Varieties of Minerals
Generally

Section 1 of the Materials Act of 1947, *as amended*, 30 U.S.C. §§ 601 through 615 (2000), and 43 C.F.R. § 3603.10 authorize BLM to make "mineral material sales under permit from" mineral deposits it designates for that purpose as "community pit sites." The regulations expressly state that "BLM's designation of a community pit site, when noted on the appropriate BLM records or posted on the ground, establishes a right to remove the material superior to any subsequent claim or entry of the lands." 43 C.F.R. § 3603.11. Where BLM has designated a deposit of building stone as a community pit and noted that designation on its records, a mining claim located after the designation creates no right to remove the material, and BLM properly rejects a mining plan of operations proposing to do so.

Tim K. Smith, 171 IBLA 135 (Feb. 27, 2007).

Mining Claims
Common Varieties of Minerals
Generally

In order to establish that a deposit of building stone is uncommon variety and locatable under the mining laws under the Departmental guidelines identified in *McClarty v. Secretary of the Interior*, 408 F.2d 907, 908 (9th Cir. 1969), codified at 43 C.F.R. § 3830.12(b): (1) there must be a comparison of the mineral deposit with other deposits of such mineral generally; (2) the mineral deposit at issue must have a unique property; (3) the unique property must give the deposit a distinct and special value; (4) if the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use; and (5) the distinct and special value must be reflected by the higher price which the material commands in the market place.

United States v. J. Dennis Stacey and Pelham L. Jackson, 171 IBLA 170 (Mar. 28, 2007).

Mining Claims
Common Varieties of Minerals
Generally

Where a mining claimant establishes that its deposit has a unique property which enables it to produce building stone at a reduced cost resulting in substantially greater profits than other, similar deposits, the claimant's deposit will be deemed to have a distinct and special value and be locatable under the mining laws when that unique property is intrinsic to the deposit. Where a claimant fails to demonstrate that its reduced costs and higher profits are attributable to an intrinsic, unique property of the deposit, however, the claimant will be deemed not to have preponderated against the Government's prima facie showing that the deposit is not locatable.

United States v. J. Dennis Stacey and Pelham L. Jackson, 171 IBLA 170 (Mar. 28, 2007).

Mining Claims
Common Varieties of Minerals
Generally

Extraction and removal of common varieties of rock from mining claims located after passage of section 3 of the Multiple Use Mining Act of 1955, 30 U.S.C. § 611 (2000), must be authorized by BLM under the Materials Act of 1947, *as amended*, 30 U.S.C. §§ 601-604 (2000), and its implementing regulations in 43 C.F.R. § Part 3600.

Ronald W. Byrd, 171 IBLA 202 (Apr. 11, 2007).

Mining Claims
Common Varieties of Minerals
Generally

The owner of a mining claim located prior to passage of section 3 of the Multiple Use Mining Act of 1955, 30 U.S.C. § 611 (2000), is not required to seek authorization from BLM under the Materials Act of 1947, *as amended*, 30 U.S.C. §§ 601-604 (2000), and its implementing regulations in 43 C.F.R. Part 3600, prior to extraction and removal of rock from the claim, if the rock in question was, at the time of passage of the Multiple Use Mining Act of 1955, a valuable mining law mineral.

Ronald W. Byrd, 171 IBLA 202 (Apr. 11, 2007).

Mining Claims
Common Varieties of Minerals
Generally

Operations to extract and remove rock that constitutes a valuable mining law mineral from a mining claim located prior to passage of section 3 of the Multiple Use Mining Act of 1955, 30 U.S.C. § 611 (2000), must comply with the requirements of 43 C.F.R. Subpart 3809.

Ronald W. Byrd, 171 IBLA 202 (Apr. 11, 2007).

Mining Claims
Common Varieties of Minerals
Generally

To satisfy the requirement of discovery on a placer claim located for sand and gravel on or before July 23, 1955, it must be shown that the sand and gravel were exposed prior to that date and are of a quality acceptable for the work being done in the area, that the extent of the deposit is such that it would be profitable to extract it, and that there is a present demand for the sand and gravel.

Clark County v. Nevada Pacific Company, Inc., 172 IBLA 316 (Sept. 27, 2007).

Mining Claims
Common Varieties of Minerals
Generally

Where expert testimony establishes that sand and gravel deposits in the region are highly variable, multiple exposures of sand and gravel are necessary to show that values on the claim are high and relatively consistent before geologic interference can be applied to determine the full extent of the deposit.

Clark County v. Nevada Pacific Company, Inc., 172 IBLA 316 (Sept. 27, 2007).

Mining Claims
Common Variety of Minerals
Generally

Where the evidence demonstrates that the extent or quality of common variety sand and gravel within a mining claim was not established on or before July 23, 1955, the Administrative Law Judge did not err in finding it unnecessary to reach the issue of marketability, including the hypothetical market.

Clark County v. Nevada Pacific Company, Inc., 172 IBLA 316 (Sept. 27, 2007).

Mining Claims
Common Varieties of Minerals
Special Value

Where the evidence, when considered as a whole, including photographs and rock samples entered into evidence by contestees, establishes that a deposit of micaceous quartzite does not produce stone of consistent uncommon quality, the deposit cannot be considered to have unique properties giving it distinct and special value.

United States v. Lyle I. Thompson, et al., 168 IBLA 64 (Mar. 16, 2006).

Mining Claims
Common Varieties of Minerals
Special Value

An attribute in a deposit of uncommon building stone that imparts a distinct and special value reflected by either a higher price for the product or reduced costs of production resulting in a higher profit must be inherent in the deposit itself and cannot be predicated on extrinsic factors. Where profits inuring from the sale of building stone resulted primarily from the nature of commercial arrangements, and not from any unique property intrinsic to the deposit, mining claims located for uncommon building stone are properly declared null and void.

United States v. Lyle I. Thompson, et al., 168 IBLA 64 (Mar. 16, 2006).

Mining Claims
Common Varieties of Minerals
Special Value

That a mining claimant can identify a use for limestone that commands a higher price than a use that all parties concede requires only a common variety of stone is not enough, by itself, to demonstrate that the limestone is an uncommon variety. The claimant must also establish that the deposit has a unique property that gives the deposit a distinct and special value. Evidence of a higher price available in the market can supply proof that a deposit has unique value, but it must be evidence of the higher price the *deposit* commands, not evidence of a higher price purchasers will pay for material from a deposit of a common variety of limestone.

United States v. Pitkin Iron Corporation, et al., 170 IBLA 352 (Nov. 29, 2006).

Mining Claims
Common Varieties of Minerals
Special Value

The distinct and special value making a deposit of stone uncommon must be reflected by attributes inherent in the deposit itself and cannot be predicated on extrinsic factors. Where a mining claimant is able to provide better service, or undercut a competitor's prices because it fails to include the costs it incurred in mining stockpiled material in its price, or provides superior screening of crushed stone, such circumstances constitute value factors extrinsic to the deposit.

United States v. Pitkin Iron Corporation, et al., 170 IBLA 352 (Nov. 29, 2006).

Mining Claims
Common Varieties of Minerals
Special Value

In order to establish that a deposit of building stone is uncommon variety and locatable under the mining laws under the Departmental guidelines identified in *McClarty v. Secretary of the Interior*, 408 F.2d 907, 908 (9th Cir. 1969), codified at 43 C.F.R. § 3830.12(b): (1) there must be a comparison of the mineral deposit with other deposits of such mineral generally; (2) the mineral deposit at issue must have a unique property; (3) the unique property must give the deposit a distinct and special value; (4) if the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use; and (5) the distinct and special value must be reflected by the higher price which the material commands in the market place.

United States v. J. Dennis Stacey and Pelham L. Jackson, 171 IBLA 170 (Mar. 28, 2007).

Mining Claims
Common Varieties of Minerals

Special Value

Where a mining claimant establishes that its deposit has a unique property which enables it to produce building stone at a reduced cost resulting in substantially greater profits than other, similar deposits, the claimant's deposit will be deemed to have a distinct and special value and be locatable under the mining laws when that unique property is intrinsic to the deposit. Where a claimant fails to demonstrate that its reduced costs and higher profits are attributable to an intrinsic, unique property of the deposit, however, the claimant will be deemed not to have preponderated against the Government's prima facie showing that the deposit is not locatable.

United States v. J. Dennis Stacey and Pelham L. Jackson, 171 IBLA 170 (Mar. 28, 2007).

Mining Claims
Common Varieties of Minerals
Unique Property

An attribute in a deposit of uncommon building stone that imparts a distinct and special value reflected by either a higher price for the product or reduced costs of production resulting in a higher profit must be inherent in the deposit itself and cannot be predicated on extrinsic factors. Where profits inuring from the sale of building stone resulted primarily from the nature of commercial arrangements, and not from any unique property intrinsic to the deposit, mining claims located for uncommon building stone are properly declared null and void.

United States v. Lyle I. Thompson, et al., 168 IBLA 64 (Mar. 16, 2006).

Mining Claims
Common Varieties of Minerals
Unique Property

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United States v. Pitkin Iron Corporation, et al., 170 IBLA 352 (Nov. 29, 2006).

Mining Claims
Common Varieties of Minerals
Unique Property

The distinct and special value making a deposit of stone uncommon must be reflected by attributes inherent in the deposit itself and cannot be predicated on extrinsic factors. Where a mining claimant is able to provide better service, or undercut a competitor's prices because it fails to include the costs it incurred in mining stockpiled material in its price, or provides superior screening of crushed stone, such circumstances constitute value factors extrinsic to the deposit.

United States v. Pitkin Iron Corporation, et al., 170 IBLA 352 (Nov. 29, 2006).

Mining Claims
Common Varieties of Minerals
Unique Property

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Mining Claims
Common Varieties of Minerals
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United States v. J. Dennis Stacey and Pelham L. Jackson, 171 IBLA 170 (Mar. 28, 2007).

Mining Claims
Contests

Uncontradicted evidence of nonproduction of a mining claim, which has continued over a period of years, may be sufficient, without more, to establish a prima facie case of invalidity of a mining claim. However, the question of whether a prima facie case arises in such circumstances depends on what evidence is offered by the Government regarding nonproduction.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Mining Claims
Contests

When BLM attempts, through the testimony of its mineral examiner, to establish a prima facie case that the mineral from contested mining claims fails to meet the marketability test, expertise by the mineral examiner as to the particular mineral in question may be demonstrated through evidence of education, training, and experience. Failure to have conducted a mineral examination of a mining claim for the same mineral in the past is not decisive.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Mining Claims
Contests

The ruling by an administrative law judge that BLM could not establish a prima facie case in support of the charges in its contest complaint because the mineral examiner who testified at the hearing was not the "sole participant" in preparing the mineral report will be overturned when the mineral examiner who sampled the mining claims and prepared the draft mineral report died prior to finalization of that report, but the mineral examiner who took over the finalization of the report verified and evaluated the work conducted and prepared a market study, and no issue arose regarding the sampling or other work conducted by the deceased mineral examiner.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Mining Claims
Contests

When BLM charges in a contest complaint that portions of mining claims located for gypsum are not mineral in character on the basis that, although gypsum is present on those portions of the claims, that gypsum was not marketable at the times in question, the issue is whether, in fact, the gypsum could have been extracted and marketed at a profit.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Mining Claims
Contests

The determination of whether or not the Government has presented a prima facie case of invalidity in the contest of a mining claim is made solely on the basis of the evidence introduced in the Government's case-in-chief, which includes testimony elicited in cross-examination. If, upon the completion of the Government's presentation, the evidence is such that, were it to remain unrebutted, a finding of invalidity would properly issue, a prima facie case has been presented and the burden devolves on the claimant to overcome this showing by a preponderance of the evidence.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Mining Claims
Contests

When an administrative law judge has erred in determining that the Government failed to present a prima facie case in support of the charges in a mining claim contest and both parties have presented their cases at the hearing on the complaint, the Board may exercise its de novo review authority and proceed to review all the evidence to decide whether the contestee overcame the Government's prima facie case by a preponderance of the evidence.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Mining Claims
Contests

It is not unreasonable in conducting a market assessment following receipt of a patent application for a Government mineral examiner to rely on what the mining claimant has done on the claims and what the claimant has proposed in the patent application for production and marketing the mineral deposits on the claims. However, a prima facie case based on such an assessment is vulnerable to evidence presented by the contestee at a hearing on the complaint showing that a prudent man would not so limit production and marketing and could produce more mineral and market that production without increased costs for additional equipment.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Mining Claims
Contests

Approval or disapproval of a mining plan of operations is not a wholly discretionary action. While the mere pendency of a mining claim validity examination, without more, generally is not a proper basis for suspending consideration of a plan of operations, BLM properly may suspend consideration of a proposed plan during the pendency of a mining contest.

Mount Royal Joint Venture, 153 IBLA 90 (July 31, 2000).

Mining Claims
Contests

When the Government challenges the validity of a mining claim, it has the burden of establishing a prima facie case that the claim is invalid. Once a prima facie case has been established, the burden shifts to the contestee to overcome that case by a preponderance of evidence. At the end of the Government's case a claimant may move the presiding administrative law judge to dismiss the contest for failure to present a prima facie case. However, if evidence and testimony is presented by the contestee, the Administrative Law Judge may consider both the Government's evidence and that presented by the claimant. Even where the Government has failed to present a prima facie case, evidence tendered by a contestee may be considered for the purpose of determining whether this evidence, considered with all other evidence of record, affirmatively establishes that the claims are invalid.

United States v. Kent Bush, 157 IBLA 359 (Oct. 31, 2002).

Mining Claims
Contests

A petition for reconsideration of a Board decision declaring a mining claim invalid for lack of discovery of a valuable mineral deposit is properly denied, when the petitioner merely asserts that the Board erred in its economic analysis by using the percentage of wages offered by BLM as labor overhead costs, because those costs do not reflect the expenses for a self-employed miner, but fails to offer any evidence of what his labor overhead costs, as a self-employed miner, will be. The burden is not on an administrative law judge or this Board to select a percentage of labor overhead expenses for the self-employed miner in such a situation.

United States v. Davy Lee Waters et al. (On Reconsideration), 159 IBLA 248 (June 17, 2003).

Mining Claims
Contests

In a mining contest, the Government establishes a prima facie case when a mineral examiner testifies that he has examined a claim and found mineral values insufficient to support a finding of discovery. In proper circumstances the Government may establish a prima facie case even though its witnesses were not physically present on the mining claims. The Government's prima facie case is not defeated by a claimant's assertion that the mineral examiner did not physically visit the claim, when the claimant fails to submit evidence that a site visit would have affected the outcome of a mineral report which was based on evidence derived from sampling during a field examination of the claims in question by another mineral examiner.
United States of America v. Barbara Winkley, 160 IBLA 126 (Oct. 15, 2003).

Mining Claims
Contests

The Government may revisit conclusions in a mineral report prior to the time a patent issues, and is not estopped from reconsidering a claim's validity by a prior conclusion favorable to a mining claimant. The Government is not bound by a prior conclusion that a mining claim is valid where the initial analysis was based on isolated, high value samples and mineral prices which did not properly reflect the existing market.

United States of America v. Barbara Winkley, 160 IBLA 126 (Oct. 15, 2003).

Mining Claims
Contests

Where a Government contest complaint against a mining claim contains charges which, if proven, would render the claim invalid, and the contestee fails to file a timely answer to the complaint, the allegations of the complaint will be taken as admitted by the contestee and the claim is properly declared null and void under the Department's regulations governing such contests, which allow no exception for appellant's alleged reasons of inadvertence and excusable neglect.

Eric E. Wieler, *et al.*, 160 IBLA 284 (Jan. 20, 2004).

Mining Claims
Contests

After a hearing considering a mining claim contest complaint, the Board may review the decision of the administrative law judge to determine whether it is consistent with law and whether conclusions regarding the evidence are consistent with the facts of record. If not, the Board may exercise its de novo review authority to review and consider the evidence of record and issue a decision consistent with applicable law.

United States v. E. K. Lehmann & Associates of Montana, Inc., et al., 161 IBLA 40 (Mar. 16, 2004).

Mining Claims
Contests

In a mining contest, the Government establishes a prima facie case when a mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery. The determination of whether or not the Government has presented a prima facie case is to be made solely on the evidence adduced during the Government's case-in-chief. When the Government presents a prima facie case, the burden shifts to the contestee to rebut that case by a preponderance of the evidence. Where the issue is the validity of a mining claim, and not a patent, a contestee must preponderate on the matters placed at issue by the Government's case.

United States v. E. K. Lehmann & Associates of Montana, Inc., et al., 161 IBLA 40 (Mar. 16, 2004).

Mining Claims
Contests

The Board has long held that the costs of compliance with all applicable Federal and State laws, including environmental laws, are properly considered in determining whether or not the mineral deposit is presently marketable at a profit, *i.e.*, whether the mineral deposit can be deemed to be a valuable mineral deposit within the meaning of the mining laws.

United States v. Geoffrey J. Garcia Charlotte M. Garcia, 161 IBLA 235 (May 5, 2004).

Mining Claims
Contests

The Board has long held that the costs of compliance with all applicable Federal and State laws, including environmental laws, are properly considered in determining whether or not the mineral deposit is presently marketable at a profit, *i.e.*, whether the mineral deposit can be deemed to be a valuable mineral deposit within the meaning of the mining laws.

United States v. Geoffrey J. Garcia Charlotte M. Garcia, 161 IBLA 235 (May 5, 2004).

Mining Claims
Contests

In a private mining contest, the burden of proof is upon the private contestant to establish the invalidity of a claim for lack of a discovery of a valuable mineral deposit. The decision in a private mining contest, as in any case involving material issues of fact, is properly based on the preponderance of the evidence.

Moon Mining Co. v. Hecla Mining Co., 161 IBLA 334 (June 2, 2004).

Mining Claims
Contests

The Government's prima facie case in a mining claim contest is not defeated by a claimant's assertion that the mineral examiner did not use heavy equipment to expose a valuable mineral deposit because the Government has no obligation to do the discovery work for the mining claimant.

United States v. Steve Hicks, 164 IBLA 73 (June 29, 2004).

Mining Claims
Contests

If BLM is not satisfied with the evidence of discovery submitted by a mineral patent applicant, it may request further information. However, where a patent applicant presents an application that is correct as to form and contains information supporting the substantive question of whether a discovery has been made, and where BLM disputes that conclusion as a matter of fact by concluding that the information presented is insufficient to support a discovery, BLM may not summarily reject the patent application but must instead initiate a contest proceeding.

American Colloid Company, 162 IBLA 158 (July 12, 2004).

Mining Claims
Contests

When the Government contests a mining claim based on a charge of lack of discovery of a valuable mineral deposit, it bears the initial burden of going forward to establish a prima facie case in support of that charge, whereupon the claimant has the ultimate burden of persuasion to overcome that case by a preponderance of the evidence. The burden is different, however, for the contestee when a contest is filed as the result of a patent application. In such a situation, it is well settled that the Government must make a prima facie case in support of its charges and that, upon such a showing, the claimant must establish that the claim is valid, even apart from the issues raised in the prima facie case.

United States v. Robert W. and Marjorie E. Miller, 165 IBLA 342 (May 9, 2005).

Mining Claims
Contests

In a mining contest, the Government establishes a prima facie case when a mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Contests

Uncontradicted evidence of absence of production from a mining claim over a period of years is sufficient, without more, to establish a prima facie case of invalidity of the claim.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Contests

A claimant may overcome the presumption of non-marketability arising from the fact that no production took place on mining claims over a period of years by proving that he could have extracted and sold the mineral at a profit during subsequent periods but for the unavailability of the claims by virtue of a withdrawal. Where the claimant presents only speculative and conjectural evidence suggesting that the claimant could have sold the mineral by postulating that mining costs are "infinitesimally small" or non-material, and hypothesizing a milling operation for which there is no market, the claimant has not overcome the presumption of non marketability or the Government's prima facie case.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Contests

The Government is precluded from declaring a mining claim void for lack of a discovery when it is shown that the Government prevented the claimant from entering his claim to gather information necessary to prove the existence of a discovery. Where the Government invited a claimant to examine and sample prior exposures, and to accompany the Government during its own investigation and sampling program, the claimant was not denied access to his claims to rehabilitate prior discovery points. A claimant does not show that he was prevented from access to prove the existence of a prior discovery where he demanded to drill his mining claims to explore them for minerals. Following the withdrawal of land from mineral entry, a claimant may enter the claims to gather evidence that a discovery existed on the date of withdrawal, but

may not engage in activity that constitutes further exploration to disclose a deposit not previously exposed.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Contests

A claimant's assertion that he was prevented from using "heavy equipment" to expose a valuable mineral deposit does not insulate him from a finding of claim invalidity where the claimant was allowed access to his claims to rehabilitate prior discovery points by other means; where the Government had statutory and regulatory authority to manage the surface; and where the claimant rejected authorized means to examine prior discovery points.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Contests

Where the Government discouraged a claimant from reopening an adit that may have caved during the time of a court-ordered injunction, thereby preventing the claimant from entering the claim to rehabilitate a prior discovery point, and where the evidence is susceptible of the interpretation that the claimant accepted the Government's advice in writing on the assumption that his claim would be found to be valid, the Government is foreclosed from declaring the mining claim in question invalid until such time as the claimant is offered the opportunity, by means authorized by law and regulation, to reopen the specific adit potentially affected by the injunction.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Contests

Where BLM's administrative record does not contain a date-stamped copy verifying that BLM timely received contestees' answer to a Government contest complaint, but the record contains substantial corroborating evidence establishing that it is more probable than not that the document was received timely, the legal presumption of regularity, which would ordinarily operate to force a conclusion that the Answer was untimely, is rebutted, and the Office of Hearings and Appeals retains jurisdiction to adjudicate the contest.

United States v. Lyle I. Thompson, et al., 168 IBLA 64 (Mar. 16, 2006).

Mining Claims
Contests

To be valid, a mining claim must contain, within its boundaries, a "valuable mineral deposit." The "prudent man" test determines whether a discovery of a valuable mineral deposit has been made. A discovery has been made when minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a paying mine. Assumptions regarding a prudent person are based on objective standards related to the nature of the mineral deposit disclosed on the claim, and not on the attributes or circumstances of the claimant. A mining claimant must show, as an objective matter and as a present fact, considering historic price and cost factors and assuming they will continue, that there is a reasonable likelihood that a paying mine can be developed.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Mining Claims
Contests

When land embracing the contested mining claims has been segregated for inclusion in a land exchange, a mining claimant acquires rights which cannot be cancelled by the segregation only if the claim is perfected, including discovery, on the date of segregation. The deposit must be physically exposed as of the date of segregation, and the discovery must be based upon showings of mineral value from the mineral deposit that was exposed as of the segregation date. Once a discovery has been made, it must be maintained. A discovery must exist and present marketability must be shown as of the date of the segregation and as of the date of the hearing, and no further exploration to physically expose valuable minerals of sufficient quality and quantity to constitute discovery can be permitted after the date of segregation.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Mining Claims
Contests

To warrant another hearing, a mining claimant whose claims have been declared invalid for lack of discovery must demonstrate that the evidence proffered on appeal could result in a changed outcome, that is, that the claims are supported by a discovery of a valuable mineral deposit.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Mining Claims
Contests

When the Government alleges that a mining claim is invalid because it was located for a common variety of decorative stone, the Government must present sufficient evidence to establish a prima facie case that the mineral deposit does not possess a unique property giving it a distinct and special value. When the Government's prima facie case has been made, the claimant has the ultimate burden of persuasion to show by a preponderance of the evidence that the mineral deposit in question is an uncommon variety, and therefore locatable. When the claimant fails to satisfy that burden, the claim is properly declared null and void.

United States v. Roland G. & Frances W. Knipe, 170 IBLA 161 (Sept. 25, 2006).

Mining Claims
Contests

A valid deed of conveyance requires a grantee in existence who is legally capable of accepting the deed and of taking and holding title to the property at the time of the conveyance. The rule that a deed is void that names a fictitious person as grantee applies only when the named grantee does not in fact exist and does not apply to the situation where a person in existence is described by a fictitious or assumed name. Where a quitclaim deed granted an interest in a mining claim to a business name assumed by an individual in existence at the time, the deed is effective to transfer to him a legal interest in the claim for the purpose of participation in a mining contest brought by the Government.

United States v. Gerald E. Hobbs, 170 IBLA 200 (Sept. 26, 2006).

Mining Claims
Contests

When the Government alleges that a mining claim is invalid because it was located for a common variety of stone, the Government must present sufficient evidence to establish a prima facie case that the deposit does not possess a unique property giving it a distinct and special value. When the Government's prima facie case has been made, the claimant bears the ultimate burden of persuasion to show by a preponderance of the evidence that the deposit in question is an uncommon variety, and therefore locatable.

United States v. Pitkin Iron Corporation, et al., 170 IBLA 352 (Nov. 29, 2006).

Mining Claims
Contests

After a hearing considering a mining claim contest complaint, the Board may review the decision of the Administrative Law Judge to determine whether it is consistent with law and whether conclusions regarding the evidence are consistent with the facts of record. If the Board concludes that the Judge improperly dismissed the contest for the Government's failure to present a prima facie case, and the parties have submitted their entire cases at a hearing, the Board may exercise its de novo review authority to consider the evidence of record and issue a decision consistent with applicable law.

United States v. Pitkin Iron Corporation, et al., 170 IBLA 352 (Nov. 29, 2006).

Mining Claims
Contests

Where the evidence demonstrates that the extent or quality of common variety sand and gravel within a mining claim was not established on or before July 23, 1955, the Administrative Law Judge did not err in finding it unnecessary to reach the issue of marketability, including the hypothetical market.

Clark County v. Nevada Pacific Company, Inc., 172 IBLA 316 (Sept. 27, 2007).

Mining Claims
Conveyances

A valid deed of conveyance requires a grantee in existence who is legally capable of accepting the deed and of taking and holding title to the property at the time of the conveyance. The rule that a deed is void that names a fictitious person as grantee applies only when the named grantee does not in fact exist and does not apply to the situation where a person in existence is described by a fictitious or assumed name. Where a quitclaim deed granted an interest in a mining claim to a business name assumed by an individual in existence at the time, the deed is effective to transfer to him a legal interest in the claim for the purpose of participation in a mining contest brought by the Government.

United States v. Gerald E. Hobbs, 170 IBLA 200 (Sept. 26, 2006).

Mining Claims
Determination of Validity

In order to establish that a deposit of building stone is an uncommon variety locatable under the Common Varieties Act, the *McClarty* test requires that (1) there must be a comparison of the mineral deposit with other deposits of such minerals generally; (2) the mineral deposit at issue must have a unique property; (3) the unique property must give the deposit a distinct and special value; (4) if the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use; and (5) the distinct and special value must be reflected by the higher price which the material commands on the market or reduced cost of production resulting in substantially greater profit.

United States v. Roland G. & Frances W. Knipe, 170 IBLA 161 (Sept. 25, 2006).

Mining Claims
Determination of Validity

The determination of whether or not the Government has presented a prima facie case of invalidity in the contest of a mining claim is made solely on the basis of the evidence introduced in the Government's case-in-chief, which includes testimony elicited in cross-examination. If, upon the completion of the Government's presentation, the evidence is such that, were it to remain unrebutted, a finding of invalidity would properly issue, a prima facie case has been presented and the burden devolves on the claimant to overcome this showing by a preponderance of the evidence.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Mining Claims
Determination of Validity

It is not unreasonable in conducting a market assessment following receipt of a patent application for a Government mineral examiner to rely on what the mining claimant

has done on the claims and what the claimant has proposed in the patent application for production and marketing the mineral deposits on the claims. However, a prima facie case based on such an assessment is vulnerable to evidence presented by the contestee at a hearing on the complaint showing that a prudent man would not so limit production and marketing and could produce more mineral and market that production without increased costs for additional equipment.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Mining Claims
Determination of Validity

Approval or disapproval of a mining plan of operations is not a wholly discretionary action. While the mere pendency of a mining claim validity examination, without more, generally is not a proper basis for suspending consideration of a plan of operations, BLM properly may suspend consideration of a proposed plan during the pendency of a mining contest.

Mount Royal Joint Venture, 153 IBLA 90 (July 31, 2000).

Mining Claims
Determination of Validity

Where BLM has determined mining claims to be valid, it has the authority to establish reasonable conditions under which mining activities are to be conducted. BLM can preclude mining altogether by rejecting a plan of operations only upon a showing that the proposed mining activity constitutes unnecessary or undue degradation – that is, that the proposed activity will result in surface disturbance greater than that which would normally be expected when the activity is accomplished by a prudent operator conducting usual, customary, and proficient operations of similar character, with due regard for the effects of operations on other resources and land uses, including those outside the area of operations. 43 C.F.R. § 3809.0-5(k).

Mount Royal Joint Venture, 153 IBLA 90 (July 31, 2000).

Mining Claims
Determination of Validity

While failure to record a mining claim with a County recorder within 30 days of the date of location may not, in and of itself, render the claim invalid under Utah State law, a withdrawal or classification of the land by the United States, prior to any corrective action by the claimant, operates as an adverse right rendering the claim invalid. Where a mining claim is staked and notice is posted on September 4, 1996, but notice of location of the claim is not filed with the County recorder until November 26, 1996, and where the land on which the claim is located is withdrawn from operation of the mining laws on September 18, 1996, the claim is properly declared null and void ab initio. This is because, owing to the failure to record within 30 days as required by State law, there was no valid "location" of the claim under 43 C.F.R. § 3831.1 at the time of the segregation, rendering the claim null and void ab initio.

N. C. Rice, Jr., 153 IBLA 185 (Aug. 25, 2000).

Mining Claims
Determination of Validity

The United States is the beneficiary of oil shale mining claims invalidated for failure to substantially satisfy the requirements of 30 U.S.C. § 28 (1994), and the Department has jurisdiction to challenge the validity of a mining claim for failure to substantially comply with the assessment work requirement.

United States v. Tosco Corporation, Exxon Corporation, 153 IBLA 205 (Aug. 31, 2000).

Mining Claims
Determination of Validity

Where a mining claimant resumes performance of assessment work after a period of nonperformance of assessment work, he generally may revive the claim. However, where a third party right attaches during the period of inactivity, the claimant is precluded from regaining his claim by resuming work. In the case of oil shale mining claims invalidated for failure to substantially satisfy the requirements of 30 U.S.C. § 28 (1994), the United States is the intervening third party and the resumption doctrine does not apply to oil shale claims.

United States v. Tosco Corporation, Exxon Corporation, 153 IBLA 205 (Aug. 31, 2000).

Mining Claims
Determination of Validity

To be valid, a mining claim must be supported by the discovery of a valuable mineral deposit. To establish a discovery, there must be exposed within the limits of a claim a mineral deposit of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a paying mine.

United States v. Kent Bush, 157 IBLA 359 (Oct. 31, 2002).

Mining Claims
Determination of Validity

When the Government challenges the validity of a mining claim, it has the burden of establishing a prima facie case that the claim is invalid. Once a prima facie case has been established, the burden shifts to the contestee to overcome that case by a preponderance of evidence. At the end of the Government's case a claimant may move the presiding administrative law judge to dismiss the contest for failure to present a prima facie case. However, if evidence and testimony is presented by the contestee, the Administrative Law Judge may consider both the Government's evidence and that presented by the claimant. Even where the Government has failed to present a prima facie case, evidence tendered by a contestee may be considered for the purpose of determining whether this evidence, considered with all other evidence of record, affirmatively establishes that the claims are invalid.

United States v. Kent Bush, 157 IBLA 359 (Oct. 31, 2002).

Mining Claims
Contests

Where a Government contest complaint against a mining claim contains charges which, if proven, would render the claim invalid, and the contestee fails to file a timely answer to the complaint, the allegations of the complaint will be taken as admitted by the contestee and the claim is properly declared null and void under the Department's regulations governing such contests.

Robert W. Gossum, 158 IBLA 1 (Oct. 31, 2002).

Mining Claims
Determination of Validity

A petition for reconsideration of a Board decision declaring a mining claim invalid for lack of discovery of a valuable mineral deposit is properly denied, when the petitioner merely asserts that the Board erred in its economic analysis by using the percentage of wages offered by BLM as labor overhead costs, because those costs do not reflect the expenses for a self-employed miner, but fails to offer any evidence of what his labor overhead costs, as a self-employed miner, will be. The burden is not on an administrative law judge or this Board to select a percentage of labor overhead expenses for the self-employed miner in such a situation.

United States v. Davy Lee Waters et al. (On Reconsideration), 159 IBLA 248 (June 17, 2003).

Mining Claims
Determination of Validity

To be valid, a mining claim must be supported by the discovery of a valuable mineral deposit within its boundaries. The existence of a discovery is a question of fact to be determined by the trier of fact. Cutoff grades may be relevant to a party's factual presentation in a mining contest hearing, but a cutoff grade minimum does not substitute for the statutory requirement of discovery as a matter of law.

United States v. E. K. Lehmann & Associates of Montana, Inc., et al., 161 IBLA 40 (Mar. 16, 2004).

Mining Claims
Determination of Validity

The Board has long held that the costs of compliance with all applicable Federal and State laws, including environmental laws, are properly considered in determining whether or not the mineral deposit is presently marketable at a profit, i.e., whether the mineral deposit can be deemed to be a valuable mineral deposit within the meaning of the mining laws.

United States v. Geoffrey J. Garcia, Charlotte M. Garcia, 161 IBLA 235 (May 5, 2004).

Mining Claims
Determination of Validity

The Board has long held that the costs of compliance with all applicable Federal and State laws, including environmental laws, are properly considered in determining whether or not the mineral deposit is presently marketable at a profit, i.e., whether the mineral deposit can be deemed to be a valuable mineral deposit within the meaning of the mining laws.

United States v. Geoffrey J. Garcia, Charlotte M. Garcia, 161 IBLA 235 (May 5, 2004).

Mining Claims
Determination of Validity

When sample values have been high and relatively consistent, geologic inference may be used to infer a sufficient quantity of similar quality mineralization beyond the exposed areas, such that a prudent man would be justified in expending his labor and capital with a reasonable prospect of success in developing a valuable mine. In the absence of a showing of good reason, geologic inference will not establish a basis to infer a mineable deposit when a significant number of samples do not show those values.

Moon Mining Co. v. Hecla Mining Co., 161 IBLA 334 (June 2, 2004).

Mining Claims
Determination of Validity

The Government's prima facie case in a mining claim contest is not defeated by a claimant's assertion that the mineral examiner did not use heavy equipment to expose a valuable mineral deposit because the Government has no obligation to do the discovery work for the mining claimant.

United States v. Steve Hicks, 164 IBLA 73 (June 29, 2004).

Mining Claims
Determination of Validity

When the Government contests a mining claim based on a charge of lack of discovery of a valuable mineral deposit, it bears the initial burden of going forward to establish a prima facie case in support of that charge, whereupon the claimant has the ultimate burden of persuasion to overcome that case by a preponderance of the evidence. The burden is different, however, for the contestee when a contest is filed as the result of a patent application. In such a situation, it is well settled that the Government must make a prima facie case in support of its charges and that, upon such a showing, the claimant must establish that the claim is valid, even apart from the issues raised in the prima facie case.

United States v. Robert W. and Marjorie E. Miller, 165 IBLA 342 (May 9, 2005).

Mining Claims
Determination of Validity

For a mining claim to be valid, it must contain an exposure of mineralization representing a mineable mineral deposit presently marketable at a profit. This means that the evidence must show, as a present fact,considering historic price and cost factors and assuming they will continue, that there is a reasonable likelihood of success that a paying mine can be developed. Where an appellant presents no evidence that prices will return to high, historic "optimum" or "break-even" levels, he does not undermine the Government's prima facie case by arguing that the Government failed to utilize such higher prices in its market analysis.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Determination of Validity

If the Government meets its burden of proving a prima facie case that a mining claim does not contain a discovery of a valuable mineral deposit, the ultimate burden rests with the claimant to establish by a preponderance of the evidence that a discovery exists as to those matters placed in issue by the Government. A claimant does not meet this burden if its showing of the extent, continuity, and grade of mineralization is premised on reviewing aerial photographs. A discovery cannot be predicated upon (1) an exposure of isolated bits of mineral on the surface of the claim, not connected with ore leading to substantial values, (2) mere surface indications of mineral within the limits of the claim, or (3) inferences from geological facts relating to the claim. There must be actual evidence that high values persist for a sufficient distance along the vein that there may be said to be a continuous mineralization, the quantity of which can be reasonably determined by standard geologic means.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Determination of Validity

A claimant may overcome the presumption of non-marketability arising from the fact that no production took place on mining claims over a period of years by proving that he could have extracted and sold the mineral at a profit during subsequent periods but for the unavailability of the claims by virtue of a withdrawal. Where the claimant presents only speculative and conjectural evidence suggesting that the claimant could have sold the mineral by postulating that mining costs are "infinitesimally small" or non-material, and hypothesizing a milling operation for which there is no market, the claimant has not overcome the presumption of non marketability or the Government's prima facie case.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Determination of Validity

The Government is precluded from declaring a mining claim void for lack of a discovery when it is shown that the Government prevented the claimant from entering his claim to gather information necessary to prove the existence of a discovery. Where the Government invited a claimant to examine and sample prior exposures, and to accompany the Government during its own investigation and sampling program, the claimant was not denied access to his claims to rehabilitate prior discovery points. A claimant does not show that he was prevented from access to prove the existence of a prior discovery where he demanded to drill his mining claims to explore them for minerals. Following the withdrawal of land from mineral entry, a claimant may enter the claims to gather evidence that a discovery existed on the date of withdrawal, but may not engage in activity that constitutes further exploration to disclose a deposit not previously exposed.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Determination of Validity

A claimant's assertion that he was prevented from using "heavy equipment" to expose a valuable mineral deposit does not insulate him from a finding of claim invalidity where the claimant was allowed access to his claims to rehabilitate prior discovery points by other means; where the Government had statutory and regulatory authority to manage the surface; and where the claimant rejected authorized means to examine prior discovery points.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Determination of Validity

Where the Government discouraged a claimant from reopening an adit that may have caved during the time of a court-ordered injunction, thereby preventing the claimant from entering the claim to rehabilitate a prior discovery point, and where the evidence is susceptible of the interpretation that the claimant accepted the Government's advice in writing on the assumption that his claim would be found to be valid, the Government is foreclosed from declaring the mining claim in question invalid until such time as the claimant is offered the opportunity, by means authorized by law and regulation, to reopen the specific adit potentially affected by the injunction.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Determination of Validity

In order to establish that a deposit of building stone is an uncommon variety locatable under the Common Varieties Act, (1) there must be a comparison of the mineral deposit with other deposits of such minerals generally; (2) the mineral deposit at issue must have a unique property; (3) the unique property must give the deposit a distinct and special value; (4) if the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use; and (5) the distinct and special value must be reflected by the higher price which the material commands in the market or reduced cost of production resulting in greater profit.

United States v. Lyle I. Thompson, et al., 168 IBLA 64 (Mar. 16, 2006).

Mining Claims
Determination of Validity

To be valid, a mining claim must contain, within its boundaries, a "valuable mineral deposit." The "prudent man" test determines whether a discovery of a valuable mineral deposit has been made. A discovery has been made when minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a paying mine. Assumptions regarding a prudent person are based on objective standards related to the nature of the mineral deposit disclosed on the claim, and not on the attributes or circumstances of the claimant. A mining claimant must show, as an objective matter and as a present fact, considering historic price and cost factors and assuming they will continue, that there is a reasonable likelihood that a paying mine can be developed.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Mining Claims
Determination of Validity

The test of discovery includes a "marketability test." The "prudent man test" and the "marketability test" are not distinct standards; the latter is a refinement of the former. Evidence of a claimant's willingness to develop a claim does not establish the existence of a discovery. Instead, the claimant must show that there is a reasonable prospect that the commercial value of the deposit will exceed the cost of extracting, processing, transporting, and marketing the mineral.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Mining Claims
Determination of Validity

When land embracing the contested mining claims has been segregated for inclusion in a land exchange, a mining claimant acquires rights which cannot be cancelled by the segregation only if the claim is perfected, including discovery, on the date of segregation. The deposit must be physically exposed as of the date of segregation, and the discovery must be based upon showings of mineral value from the mineral deposit that was exposed as of the segregation date. Once a discovery has been made, it must be maintained. A discovery must exist and present marketability must be shown as of the date of the segregation and as of the date of the hearing, and no further exploration to physically expose valuable minerals of sufficient quality and quantity to constitute discovery can be permitted after the date of segregation.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Mining Claims
Determination of Validity

To warrant another hearing, a mining claimant whose claims have been declared invalid for lack of discovery must demonstrate that the evidence proffered on appeal could result in a changed outcome, that is, that the claims are supported by a discovery of a valuable mineral deposit.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Mining Claims
Determination of Validity

Limestone of chemical or metallurgical grade, or that is suitable for making cement, is subject to location under the mining laws of the United States. 43 C.F.R. § 3830.12 (d). The test for concluding whether any other deposit of limestone is an uncommon variety locatable under the Common Varieties Act requires the following analyses: (1) comparing the deposit with other deposits of such minerals generally; (2) determining whether the deposit has a unique property; (3) determining whether the unique property gives the deposit a distinct and special value; (4) if the special value is for uses to which ordinary varieties of the mineral are put, determining whether the deposit has distinct and special value for such use; and (5) determining whether the distinct and special value is reflected by a higher price that the material commands on the market.

United States v. Pitkin Iron Corporation, et al., 170 IBLA 352 (Nov. 29, 2006).

Mining Claims
Determination of Validity

In order to establish that a deposit of building stone is uncommon variety and locatable under the mining laws under the Departmental guidelines identified in *McClarty v. Secretary of the Interior*, 408 F.2d 907, 908 (9th Cir. 1969), codified at43 C.F.R. § 3830.12(b): (1) there must be a comparison of the mineral deposit with other deposits of such mineral generally; (2) the mineral deposit at issue must have a unique property; (3) the unique property must give the deposit a distinct and special value; (4) if the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use; and (5) the distinct and special value must be reflected by the higher price which the material commands in the market place.

United States v. J. Dennis Stacey and Pelham L. Jackson, 171 IBLA 170 (Mar. 28, 2007).

Mining Claims
Determination of Validity

Where a mining claimant establishes that its deposit has a unique property which enables it to produce building stone at a reduced cost resulting in substantially greater profits than other, similar deposits, the claimant's deposit will be deemed to have a distinct and special value and be locatable under the mining laws when that unique property is intrinsic to the deposit. Where a claimant fails to demonstrate that its reduced costs and higher profits are attributable to an intrinsic, unique property of the deposit, however, the claimant will be deemed not to have preponderated against the Government's prima facie showing that the deposit is not locatable.

United States v. J. Dennis Stacey and Pelham L. Jackson, 171 IBLA 170 (Mar. 28, 2007).

Mining Claims
Determination of Validity

To satisfy the requirement of discovery on a placer claim located for sand and gravel on or before July 23, 1955, it must be shown that the sand and gravel were exposed prior to that date and are of a quality acceptable for the work being done in the area, that the extent of the deposit is such that it would be profitable to extract it, and that there is a present demand for the sand and gravel.

Clark County v. Nevada Pacific Company, Inc., 172 IBLA 316 (Sept. 27, 2007).

Mining Claims
Determination of Validity

Where expert testimony establishes that sand and gravel deposits in the region are highly variable, multiple exposures of sand and gravel are necessary to show that values on the claim are high and relatively consistent before geologic interference can be applied to determine the full extent of the deposit.

Clark County v. Nevada Pacific Company, Inc.,, 172 IBLA 316 (Sept. 27, 2007).

Mining Claims
Determination of Validity

Where the evidence demonstrates that the extent or quality of common variety sand and gravel within a mining claim was not established on or before July 23, 1955, the Administrative Law Judge did not err in finding it unnecessary to reach the issue of marketability, including the hypothetical market.

Clark County v. Nevada Pacific Company, Inc., 172 IBLA 316 (Sept. 27, 2007).

Mining Claims
Discovery
Generally

Uncontradicted evidence of nonproduction of a mining claim, which has continued over a period of years, may be sufficient, without more, to establish a prima facie case of invalidity of a mining claim. However, the question of whether a prima facie case arises in such circumstances depends on what evidence is offered by the Government regarding nonproduction.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Mining Claims
Discovery
Generally

To be valid, a mining claim must be supported by the discovery of a valuable mineral deposit. To establish a discovery, there must be exposed within the limits of a claim a mineral deposit of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a paying mine.

United States v. Kent Bush, 157 IBLA 359 (Oct. 31, 2002).

Mining Claims
Discovery
Generally

To be valid, a mining claim must be supported by the discovery of a valuable mineral deposit within its boundaries. The existence of a discovery is a question of fact to be determined by the trier of fact. Cutoff grades may be relevant to a party's factual presentation in a mining contest hearing, but a cutoff grade minimum does not substitute for the statutory requirement of discovery as a matter of law.

United States v. E. K. Lehmann & Associates of Montana, Inc., et al., 161 IBLA 40 (Mar. 16, 2004).

Mining Claims
Discovery
Generally

When following a hearing in a mining claim contest, the administrative law judge bases his validity determination on his own economic analysis of mining the claim, utilizing the testimony and exhibits provided by the parties' expert witnesses, and that analysis involves choices of what evidence to rely on based on the judge's weighing of sometimes conflicting evidence, the Board has a long-standing reluctance to overturn the judge's findings. The basis for this deference is the fact that the judge who presides over a hearing has the opportunity to observe the witnesses and is in the best position to evaluate the weight to be given to conflicting testimony. Nevertheless, the Board will closely examine the judge's findings in order to ensure that they are legally sound and supported by the record.

United States v. Geoffrey J. Garcia, Charlotte M. Garcia, 161 IBLA 235 (May 5, 2004).

Mining Claims
Discovery
Generally

When the Government contests a mining claim based on a charge of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient

evidence to establish a prima facie case. Once a prima facie case has been established, the contestee has the burden of overcoming the prima facie case by a preponderance of the evidence.

United States v. Geoffrey J. Garcia, Charlotte M. Garcia, 161 IBLA 235 (May 5, 2004).

Mining Claims
Discovery
Generally

The Board has long held that the costs of compliance with all applicable Federal and State laws, including environmental laws, are properly considered in determining whether or not the mineral deposit is presently marketable at a profit, *i.e.*, whether the mineral deposit can be deemed to be a valuable mineral deposit within the meaning of the mining laws.

United States v. Geoffrey J. Garcia, Charlotte M. Garcia, 161 IBLA 235 (May 5, 2004).

Mining Claims
Discovery
Generally

In a private mining contest, the burden of proof is upon the private contestant to establish the invalidity of a claim for lack of a discovery of a valuable mineral deposit. The decision in a private mining contest, as in any case involving material issues of fact, is properly based on the preponderance of the evidence.

Moon Mining Co. v. Hecla Mining Co., 161 IBLA 334 (June 2, 2004).

Mining Claims
Discovery
Generally

A prerequisite of a valid mining claim subject to patent is a discovery of a valuable deposit of minerals of such quality and in such quantity as to justify a person of ordinary prudence in the further expenditure of his labor and capital with a reasonable prospect of success in developing a valuable mine. A finding of no discovery may be sustained despite a report reflecting relatively high grade samples when the evidence discloses problems in the sampling technique used which preclude reliance upon the samples to provide a reasonable estimate of the grade of the resource.

Moon Mining Co. v. Hecla Mining Co., 161 IBLA 334 (June 2, 2004).

Mining Claims
Discovery
Generally

The Government's prima facie case in a mining claim contest is not defeated by a claimant's assertion that the mineral examiner did not use heavy equipment to expose a valuable mineral deposit because the Government has no obligation to do the discovery work for the mining claimant.

United States v. Steve Hicks, 164 IBLA 73 (June 29, 2004).

Mining Claims
Discovery
Generally

When the Government contests a mining claim based on a charge of lack of discovery of a valuable mineral deposit, it bears the initial burden of going forward to establish a prima facie case in support of that charge, whereupon the claimant has the ultimate burden of persuasion to overcome that case by a preponderance of the evidence. The burden is different, however, for the contestee when a contest is filed as the result of a patent application. In such a situation, it is well settled that the Government must make a prima facie case in support of its charges and that, upon such a showing, the claimant must establish that the claim is valid, even apart from the issues raised in the prima facie case.

United States v. Robert W. and Marjorie E. Miller, 165 IBLA 342 (May 9, 2005).

Mining Claims
Discovery
Generally

If the Government meets its burden of proving a prima facie case that a mining claim does not contain a discovery of a valuable mineral deposit, the ultimate burden rests with the claimant to establish by a preponderance of the evidence that a discovery exists as to those matters placed in issue by the Government. A claimant does not meet this burden if its showing of the extent, continuity, and grade of mineralization is premised on reviewing aerial photographs. A discovery cannot be predicated upon (1) an exposure of isolated bits of mineral on the surface of the claim, not connected with ore leading to substantial values, (2) mere surface indications of mineral within the limits of the claim, or (3) inferences from geological facts relating to the claim. There must be actual evidence that high values persist for a sufficient distance along the vein that there may be said to be a continuous mineralization, the quantity of which can be reasonably determined by standard geologic means.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Discovery
Generally

The Government is precluded from declaring a mining claim void for lack of a discovery when it is shown that the Government prevented the claimant from entering his claim to gather information necessary to prove the existence of a discovery. Where the Government invited a claimant to examine and sample prior exposures, and to

accompany the Government during its own investigation and sampling program, the claimant was not denied access to his claims to rehabilitate prior discovery points. A claimant does not show that he was prevented from access to prove the existence of a prior discovery where he demanded to drill his mining claims to explore them for minerals. Following the withdrawal of land from mineral entry, a claimant may enter the claims to gather evidence that a discovery existed on the date of withdrawal, but may not engage in activity that constitutes further exploration to disclose a deposit not previously exposed.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Discovery
Generally

The Government is precluded from declaring a mining claim void for lack of a discovery when it is shown that the Government prevented the claimant from entering his claim to gather information necessary to prove the existence of a discovery. Where the Government invited a claimant to examine and sample prior exposures, and to accompany the Government during its own investigation and sampling program, the claimant was not denied access to his claims to rehabilitate prior discovery points. A claimant does not show that he was prevented from access to prove the existence of a prior discovery where he demanded to drill his mining claims to explore them for minerals. Following the withdrawal of land from mineral entry, a claimant may enter the claims to gather evidence that a discovery existed on the date of withdrawal, but may not engage in activity that constitutes further exploration to disclose a deposit not previously exposed.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Discovery
Generally

A claimant's assertion that he was prevented from using "heavy equipment" to expose a valuable mineral deposit does not insulate him from a finding of claim invalidity where the claimant was allowed access to his claims to rehabilitate prior discovery points by other means; where the Government had statutory and regulatory authority to manage the surface; and where the claimant rejected authorized means to examine prior discovery points.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Discovery
Generally

Where the Government discouraged a claimant from reopening an adit that may have caved during the time of a court-ordered injunction, thereby preventing the claimant from entering the claim to rehabilitate a prior discovery point, and where the evidence is susceptible of the interpretation that the claimant accepted the Government's advice in writing on the assumption that his claim would be found to be valid, the Government is foreclosed from declaring the mining claim in question invalid until such time as the claimant is offered the opportunity, by means authorized by law and regulation, to reopen the specific adit potentially affected by the injunction.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Discovery
Generally

To be valid, a mining claim must contain, within its boundaries, a "valuable mineral deposit." The "prudent man" test determines whether a discovery of a valuable mineral deposit has been made. A discovery has been made when minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a paying mine. Assumptions regarding a prudent person are based on objective standards related to the nature of the mineral deposit disclosed on the claim, and not on the attributes or circumstances of the claimant. A mining claimant must show, as an objective matter and as a present fact, considering historic price and cost factors and assuming they will continue, that there is a reasonable likelihood that a paying mine can be developed.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Mining Claims
Discovery
Generally

The test of discovery includes a "marketability test." The "prudent man test" and the "marketability test" are not distinct standards; the latter is a refinement of the former. Evidence of a claimant's willingness to develop a claim does not establish the existence of a discovery. Instead, the claimant must show that there is a reasonable prospect that the commercial value of the deposit will exceed the cost of extracting, processing, transporting, and marketing the mineral.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Mining Claims
Discovery
Generally

When land embracing the contested mining claims has been segregated for inclusion in a land exchange, a mining claimant acquires rights which cannot be cancelled by the segregation only if the claim is perfected, including discovery, on the date of segregation. The deposit must be physically exposed as of the date of segregation, and the discovery must be based upon showings of mineral value from the mineral deposit that was exposed as of the segregation date. Once a discovery has been made, it must be maintained. A discovery must exist and present marketability must be shown as of the date of the segregation and as of the date of the hearing, and no further exploration to physically expose valuable minerals of sufficient quality and quantity to constitute discovery can be permitted after the date of segregation.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Mining Claims
Discovery
Generally

When the Government contests a mining claim based on a charge of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case. A prima facie case is made when, on the basis of probative evidence of the character, quality and extent of the mineralization, a Government mineral examiner offers his expert opinion that a discovery of a valuable mineral deposit has not been made within the boundaries of a contested claim. Once a prima facie case has been established, the Contestee has the burden of overcoming the prima facie case by a preponderance of the evidence.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Mining Claims
Discovery
Generally

The contestant in a private mining contest has the burden of establishing its case by a preponderance of evidence without the burden shifting that takes place in a government contest. The standard for determining whether there has been a discovery of a valuable mineral deposit in a private mining contest is the same as that used in government contests, *i.e.*, the prudent man-marketability test.

Clark County v. Nevada Pacific Company, Inc., 172 IBLA 316 (Sept. 27, 2007).

Mining Claims
Discovery
Generally

To satisfy the requirement of discovery on a placer claim located for sand and gravel on or before July 23, 1955, it must be shown that the sand and gravel were exposed prior to that date and are of a quality acceptable for the work being done in the area, that the extent of the deposit is such that it would be profitable to extract it, and that there is a present demand for the sand and gravel.

Clark County v. Nevada Pacific Company, Inc., 172 IBLA 316 (Sept. 27, 2007).

Mining Claims
Discovery
Geologic Inference

When sample values have been high and relatively consistent, geologic inference may be used to infer a sufficient quantity of similar quality mineralization beyond the exposed areas, such that a prudent man would be justified in expending his labor and capital with a reasonable prospect of success in developing a valuable mine. In the absence of a showing of good reason, geologic inference will not establish a basis to infer a mineable deposit when a significant number of samples do not show those values.

Moon Mining Co. v. Hecla Mining Co., 161 IBLA 334 (June 2, 2004).

Mining Claims
Discovery
Geologic Inference

If the Government meets its burden of proving a prima facie case that a mining claim does not contain a discovery of a valuable mineral deposit, the ultimate burden rests with the claimant to establish by a preponderance of the evidence that a discovery exists as to those matters placed in issue by the Government. A claimant does not meet this burden if its showing of the extent, continuity, and grade of mineralization is premised on reviewing aerial photographs. A discovery cannot be predicated upon (1) an exposure of isolated bits of mineral on the surface of the claim, not connected with ore leading to substantial values, (2) mere surface indications of mineral within the limits of the claim, or (3) inferences from geological facts relating to the claim. There must be actual evidence that high values persist for a sufficient distance along the vein that there may be said to be a continuous mineralization, the quantity of which can be reasonably determined by standard geologic means.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Discovery
Geologic Inference

The sine qua non of a discovery is an exposure of a valuable mineral deposit on a claim. The existence of a valuable mineral on a claim, based solely on geologic inference, cannot serve as a predicate for a finding of quantity and quality sufficient to support a discovery. Assay results from samples taken from a stockpile are not probative of the existence of a valuable mineral deposit in place within the boundaries of the claim. Random assays from a mining claim or selective showings of the best mineralization are not conclusive evidence of the continuity and quality of a mineral deposit. Geologic inference cannot be used as a substitute for evidence which sufficiently shows the existence of an ore body or bodies necessary to warrant a prudent man to develop a valuable mine. A mineable body of ore may not be inferred merely because mineralization has been found in an outcrop of a purported vein.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Discovery
Geologic Inference

Where expert testimony establishes that sand and gravel deposits in the region are highly variable, multiple exposures of sand and gravel are necessary to show that values on the claim are high and relatively consistent before geologic interference can be applied to determine the full extent of the deposit.

Clark County v. Nevada Pacific Company, Inc., 172 IBLA 316 (Sept. 27, 2007).

Mining Claims
Discovery
Marketability

A petition for reconsideration of a Board decision declaring a mining claim invalid for lack of discovery of a valuable mineral deposit is properly denied, when the petitioner merely asserts that the Board erred in its economic analysis by using the percentage of wages offered by BLM as labor overhead costs, because those costs do not reflect the expenses for a self-employed miner, but fails to offer any evidence of what his labor overhead costs, as a self-employed miner, will be. The burden is not on an administrative law judge or this Board to select a percentage of labor overhead expenses for the self-employed miner in such a situation.

United States v. Davy Lee Waters et al. (On Reconsideration), 159 IBLA 248 (June 17, 2003).

Mining Claims
Discovery
Marketability

The prudent man standard of discovery has been supplemented by the marketability test involving the potential that a mineral deposit can be extracted, removed, and marketed at a profit. Evidence of the costs and profits of mining a claim may be properly considered in determining whether a person of ordinary prudence would be justified in the further expenditure of his labor and capital with a reasonable prospect of success in developing a valuable mine.

Moon Mining Co. v. Hecla Mining Co., 161 IBLA 334 (June 2, 2004).

Mining Claims
Discovery
Marketability

In applying the reasonable prudent man standard of discovery, consideration is properly given to costs of compliance with relevant requirements imposed under such regulatory statutes as the Clean Water Act and the Endangered Species Act.

Moon Mining Co. v. Hecla Mining Co. 161 IBLA 334 (June 2, 2004).

Mining Claims
Discovery
Marketability

Uncontradicted evidence of absence of production from a mining claim over a period of years is sufficient, without more, to establish a prima facie case of invalidity of the claim.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Discovery
Marketability

For a mining claim to be valid, it must contain an exposure of mineralization representing a mineable mineral deposit presently marketable at a profit. This means that the evidence must show, as a present fact,considering historic price and cost factors and assuming they will continue, that there is a reasonable likelihood of success that a paying mine can be developed. Where an appellant presents no evidence that prices will return to high, historic “optimum” or “break-even” levels, he does not undermine the Government’s prima facie case by arguing that the Government failed to utilize such higher prices in its market analysis.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Discovery
Marketability

Where the evidence demonstrates that the extent or quality of common variety sand and gravel within a mining claim was not established on or before July 23, 1955, the Administrative Law Judge did not err in finding it unnecessary to reach the issue of marketability, including the hypothetical market.

Clark County v. Nevada Pacific Company, Inc., 172 IBLA 316 (Sept. 27, 2007).

Mining Claims
Lands Subject To

A placer mining claim located on land patented without a mineral reservation to the United States is properly declared null and void ab initio to the extent it includes such land. When the exact situs of the claim on the ground is unclear from the record and the claim may actually embrace land open to mineral entry, a decision finding the claim null and void ab initio will be set aside and the case remanded to BLM pending a determination of the actual position of the claim on the ground.

Wallace E. Mieras, 151 IBLA 274 (Dec. 22, 1999).

Mining Claims
Lands Subject to

Land which has been conveyed to a state without a reservation of minerals to the United States is not available for the location of mining claims, and a mining claim located on such land after it is so conveyed is null and void ab initio. The locator of a lode mining claim partly located on school grant lands acquires no surface or mineral rights for that portion of the claims. However, where the record is unclear as to the exact situs of the claim on the ground and the claim may partially cover land which is open to mineral entry, the case will be remanded to BLM to first determine the location of the claim and then to adjudicate the claim accordingly.

Ed Nazelrod, 151 IBLA 374 (Feb. 4, 2000).

Mining Claims
Lands Subject to

The validity of a lode mining claim located partially on school grant lands depends on whether the discovery point is on land open to mineral location.

Ed Nazelrod, 151 IBLA 374 (Feb. 4, 2000).

Mining Claims
Lands Subject to

Public lands designated by Congress as a wilderness area in 1994 are withdrawn from mineral entry and mining claims located on the land in 1996 are properly declared null and void ab initio.

G. Robert Carlson, 152 IBLA 35 (Mar. 1, 2000).

Mining Claims
Lands Subject to

When the exact situs of the claim on the ground is unclear from the record and the claim may actually embrace land open to mineral entry, a decision finding the claim null and void ab initio will be set aside and the case remanded to BLM pending a determination of the actual position of the claim on the ground.

G. Robert Carlson, 152 IBLA 35 (Mar. 1, 2000).

Mining Claims
Lands Subject to

Pursuant to 43 C.F.R. § 2202.1(b), the filing of a notice of an offer for forest exchange with the authorized officer and the notation of such proposed exchange on the public land records segregated the National Forest System lands included in the proposed exchange from appropriation, location, or entry under the general mining laws for a period not to exceed 5 years. Mining claims located on these lands while the segregative effect is operative are null and void ab initio.

Edward A. Snider, Rebecca A. Snider, 152 IBLA 309 (June 22, 2000).

Mining Claims
Lands Subject to

The notation on the public land records of the Department of the Interior of an offer to exchange lands segregates the land so noted from all forms of appropriation under the mining laws for a period not to exceed 5 years. A mining claim located while the segregation is in effect is null and void ab initio and affords the locator no rights.

Tri-Star Holdings, Ltd., 153 IBLA 201 (Aug. 7, 2000).

Mining Claims
Lands Subject to

A mining claimant who locates lode mining claims on lands segregated from appropriation under the mining laws gains no rights to those lands by virtue of such a location. However, to the extent the mining claimant holds placer claims for the same lands which predate the segregation, the mining claimant may have rights to known lodes or veins in accordance with 30 U.S.C. § 37 (1994).

Tri-Star Holdings, Ltd., 153 IBLA 201 (Aug. 7, 2000).

Mining Claims
Lands Subject To

When an association of claimants, who have acquired title to all or part of contiguous 20-acre placer mining claims attempt to consolidate the claimed land into a single association placer location, the association claim constitutes a new location, and the date of location does not relate back to the original dates of location.

Lamar & Christine Burnett, 153 IBLA 215 (Aug. 31, 2000).

Mining Claims
Lands Subject To

It is proper for BLM to declare null and void ab initio that portion of a placer mining claim encompassing land which was, at the time of location, withdrawn from mineral entry pursuant to section 9(b) of the Wild and Scenic Rivers Act, *as amended*, 16 U.S.C. § 1280(b) (1994).

Lamar & Christine Burnett, 153 IBLA 215 (Aug. 31, 2000).

Mining Claims
Lands Subject to

A BLM decision declaring mining claims null and void ab initio on the basis that they conflict with previously-issued material site rights-of-way will be affirmed where the record contains information showing the extent of the rights-of-way and confirming the conflicts with the mining claims, and where the claimant fails to substantiate his assertion that one of the claims is a relocation of a claim predating the issuance of the conflicting right-of-way either on appeal or before BLM.

Madison D. Locke, 154 IBLA 298 (Apr. 26, 2001).

Mining Claims
Lands Subject To

BLM properly declares lode mining claims null and void ab initio where they were located entirely on lands which were not open to entry under the United States mining laws at the time of location either because they had been patented as mining claims or granted to the State of Idaho as part of grants of school sections. The fact that the State may have, on a date following the putative location of the claims, applied for other lands in lieu of lands within the section is irrelevant where such application was subsequently rejected and withdrawn, since the aborted lieu selection process did not, in the absence of publication and clear-listing, result in any waiver by the State of its rights in the lands in the section or in any lands being returned to the ownership of the United States.

Aberdeen Idaho Mining Co., 155 IBLA 358 (Oct. 1, 2001).

Mining Claims
Lands Subject to

The notation on the public land records of the Department of the Interior of a proposal to exchange lands under the Federal Land Exchange Facilitation Act of 1988, *as amended*, 43 U.S.C. § 1716 (1994), segregates the land so noted from all forms of appropriation under the mining laws for a period not to exceed 5 years.

National Cement Company of California, 156 IBLA 131 (Dec. 31, 2001).

Mining Claims
Lands Subject To

4BLM properly declares a lode mining claim null and void ab initio in its entirety where, at the time of location, all of the public land encompassed by the claim was segregated from mineral entry, pursuant to section 206(i)(1) of the Federal Land Policy and Management Act of 1976, *as amended*, 43 U.S.C. § 1716(i)(1) (1994), and 43 C.F.R. § 2202.1(b), by virtue of a notation on the public land records of the filing of a proposed land exchange.

William H. Shepherd, 157 IBLA 134 (Aug. 6, 2002).

Mining Claims
Lands Subject to

Where public land records have been noted to show that a parcel of land is not open to entry under the public land laws, the parcel is not available for entry until such time as the notation is removed and the land restored to entry, even if the original notation was made in error.

William Dunn, 157 IBLA 347 (Oct. 30, 2002).

Mining Claims
Lands Subject to

Rights acquired under relocations of lode mining claims declared to be forfeited by operation of law for failure to timely file the claim maintenance fee do not relate back to the date of the locations of the original claims but only to the date of the relocations. When such claims are located totally on land withdrawn from entry under the mining laws, BLM properly declares those claims null and void ab initio. When only part of such claims lies on with- drawn land, BLM properly notifies the claimants that they have not acquired any surface rights to the portion of the claims overlapping the withdrawn land; that mining and mining-related activities on those lands would constitute a trespass; and that, depending on the circumstances, they may or may not have any mineral rights in the subsurface of such land.

Devon Britton, et al, 158 IBLA 279 (Feb. 24, 2003).

Mining Claims
Lands Subject To

It is proper for BLM to declare null and void ab initio a placer mining claim encompassing land which was, at the time of location, withdrawn from mineral entry pursuant to section 9(b) of the Wild and Scenic Rivers Act, *as amended*, 16 U.S.C. § 1280(b) (1994).

Robert B. Hoke, *et al.*, 160 IBLA 220 (Dec. 3, 2003).

Mining Claims
Lands Subject To

Lands patented without a mineral reservation which are subsequently acquired by the United States by deed which is accepted by the Secretary of Agriculture for inclusion in a national forest are not subject to the location of mining claims in the absence of a legislative provision authorizing mineral entry. A decision declaring mining claims located on such acquired lands null and void ab initio is properly affirmed.

Northern Nevada Natural Mining, et al., 161 IBLA 318 (May 19, 2004).

Mining Claims
Lands Subject to

BLM may not properly temporarily segregate lands from entry under the mining laws under the authority of section 206(i) of the Federal Land Policy and Management Act of 1976 (FLPMA), *as amended*, 43 U.S.C. § 1716(i) (2000), and 43 C.F.R. § 2201.1-2 in the absence of a proposal to exchange Federal lands. A statement in a resource management plan to the effect that upwards of 149,000 acres of Federal lands are "available for exchange" is not a "proposal" made by BLM to exchange lands within the meaning of 43 C.F.R. Subpart 2201, as it does not identify the lands to be exchanged or the parties seeking the exchange. BLM's improper use of this temporary segregation authority effectively works a withdrawal of the lands without compliance with the procedural requirements of section 204 of FLPMA, 43 U.S.C. § 1714 (2000).

Michael L. Carver, et al., 163 IBLA 77 (Sept. 8, 2004).

Mining Claims
Lands Subject to

The notation rule directs that mining claims located at a time when BLM's records indicate that the lands on which they are located are segregated from mineral entry are void regardless of whether the underlying segregation was proper. Where public land records have been noted to show that a parcel of land is not open to entry under the public land laws, the parcel is not available for entry until such time as the notation is removed and the land is restored to entry, even if the original notation was made in error or the segregative effect is void, voidable, or has terminated or expired.

Michael L Carver, et al., 163 IBLA 77 (Sept. 8, 2004).

Mining Claims
Lands Subject to

The authority to adjudicate the status of mining claims arises from the authority Congress vested in the Secretary of the Interior or such officer as he or she may designate to "perform all executive duties appertaining to the surveying and sale of the public lands of the United States, or in anywise respecting such public lands, and, also, such as relate to private claims of land, and the issuing of patents for all grants of land under the authority of Government." 43 U.S.C. § 2 (2000). That authority extends to Indian Reservation lands as well.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VII), 163 IBLA 310 (Nov. 2, 2004).

Mining Claims
Lands Subject to

Lands set aside for an Indian Reservation cease to be part of the public domain, and a mining claim located on Indian lands that are not open to mineral entry is null and void *ab initio*.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VII), 163 IBLA 310 (Nov. 2, 2004).

Mining Claims
Lands Subject to

Only the United States, acting through the Secretary of the Interior, has the authority to determine administratively what lands constitute public lands. That duty and authority necessarily includes the power to determine administratively that a mining claim is located on land not owned by the United States. The question of whether the United States has title is justiciable before the Department, and when the Department determines that the United States has no title in lands, it may properly declare mining claims located on such lands null and void *ab initio* as a matter of Federal law.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VII), 163 IBLA 310 (Nov. 2, 2004).

Mining Claims
Lands Subject to

Where appellant's oil shale "mining claims" were located on lands that were patented to third parties without a mineral reservation to the United States, no interest appellant may have with respect thereto can be raised or pursued as a mining claim initiated and maintained under Federal mining law. Those interests in the patented portions of the claims, whatever they may be, are properly declared null and void *ab initio*, since no Federal mining claim can arise on private or State lands.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VII), 163 IBLA 310 (Nov. 2, 2004).

Mining Claims
Lands Subject to

A mining claim located on lands withdrawn from mineral entry at the time of location is null and void *ab initio*. Where claimants argue that their claim predates the effective date of the withdrawal, they must establish that they are the successors to an interest in a mining claim that was located on this land before its withdrawal from mineral entry; to do so, they must show an unbroken chain of title to a valid claim located prior to the withdrawal of the land and, further, if a new notice of location is filed after the effective date of the withdrawal, the claim had to be an "amended location" rather than a "relocation." A new notice of location filed after a claim has been declared abandoned and void for failure to meet Federal recording and/or rental or fee requirements is a relocation, since such failure extinguishes the prior claim. Where a claim that is located prior to the effective date of a withdrawal is abandoned and void by operation of law for failure to comply with the rental or fee requirements, a subsequent claim located for the same land is a relocation and does not relate back to the location date of the previous claim. Where the subsequent claim is located on lands segregated from mineral entry by the filing of an application for withdrawal, the claim is properly declared null and void *ab initio*.

Douglas and Jane Weldy, 164 IBLA 166 (December 8, 2004).

Mining Claims
Lands Subject to

Under 43 C.F.R. § 2310.2(a), the filing by the Forest Service of an application for withdrawal of Federally-owned lands segregates the lands described in the application from settlement, sale, location or entry under the public land laws, including the mining laws for 2 years from the date of publication in the *Federal Register* of notice of the filing of the application. Under 43 C.F.R. § 2310.2-1(c), where the Forest Service subsequently cancels its application for withdrawal, the effective date of the termination of such segregation is the date specified in the notice of cancellation published in the *Federal Register*. Where a mining claim is located on lands covered by an application for withdrawal filed by the Forest Service at a time following publication of notice of the application in the *Federal Register*, BLM properly declares the claim null and void

ab initio, as the lands are segregated from mineral entry at that time. It is irrelevant that the Forest Service subsequently cancels its application for withdrawal, where notice of such cancellation is not published in the *Federal Register* until long after the date of location of the claim, as revocation of the withdrawal subsequent to the date of the location does not restore or validate the claim.

James Aubert, 164 IBLA 297 (Jan. 24, 2005).

Mining Claims
Lands Subject to

When land embracing the contested mining claims has been segregated for inclusion in a land exchange, a mining claimant acquires rights which cannot be cancelled by the segregation only if the claim is perfected, including discovery, on the date of segregation. The deposit must be physically exposed as of the date of segregation, and the discovery must be based upon showings of mineral value from the mineral deposit that was exposed as of the segregation date. Once a discovery has been made, it must be maintained. A discovery must exist and present marketability must be shown as of the date of the segregation and as of the date of the hearing, and no further exploration to physically expose valuable minerals of sufficient quality and quantity to constitute discovery can be permitted after the date of segregation.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Mining Claims
Lands Subject to

The validity of the segregation of lands embracing contested mining claims for purposes of a land exchange is not justiciable. Even if the segregation was justiciable, under the notation rule, no rights incompatible with the use so noted in BLM's land records can attach until the record is changed to show that the land is no longer segregated.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Mining Claims
Lands Subject to

The segregative effect of a proposed land exchange automatically terminates 5 years from the date the segregation is noted on the public land records, but the termination does not instantly restore the lands to the operation of public land laws, including the mining laws. To effectuate the opening of lands to the operation of the public land laws requires a change in the status of the lands noted on the public land records. Lands may not be appropriated under the mining laws prior to the date and time of restoration and opening, and any such attempted appropriation vests no rights against the United States. 43 C.F.R. § 2091.1(b). An opening order may be issued at any time, but is required when the opening date is not specified in the document creating the segregation. 43 C.F.R. § 2091.07(b).

Pilot Plant, Inc., et al., 168 IBLA 169 (Mar. 16, 2006).

Mining Claims
Lands Subject to

Under the notation rule, mining claims located at a time when BLM's records indicate that the lands on which they are located are segregated from mineral entry are void regardless of whether the underlying segregation was proper. The land is not available for entry until such time as the notation is removed and the land is restored to entry, even if the original notation was made in error or the segregative effect is void, voidable, or has terminated or expired. 43 C.F.R. § 2091.1(b).

Pilot Plant, Inc., et al., 168 IBLA 169 (Mar. 16, 2006).

Mining Claims
Lands Subject to

To the extent placer mining claims are located on land that has been patented without a reservation of minerals to the United States, the claims are properly declared null and void *ab initio*.

Western Aggregates, LLC., 169 IBLA 64 (May 17, 2006).

Mining Claims
Lands Subject to

Section 21 of the Act of March 1, 1893, 27 Stat. 507 (Caminetti Act), authorized the Secretary of the Interior to withdraw lands requested by the California Debris Commission "from sale or entry under the laws of the United States." Withdrawals made under that authority withdrew lands from sale or entry under the mining laws of the United States, including the General Mining Law of 1872. Lands included in a withdrawal remain withdrawn until the withdrawal is revoked, modified, or terminated by appropriate official action, and it is immaterial whether the purpose of the withdrawal is still being served as of the date of location.

Western Aggregates, LLC., 169 IBLA 64 (May 17, 2006).

Mining Claims
Lands Subject to

The Secretary of the Interior has both the authority and the duty to consider and determine what lands are public lands of the United States, including a determination of navigability of a river to ascertain whether title to the land underlying the river is in the United States or whether title passed to a state upon its admission into the Union. The bed of a non-navigable river is usually deemed to be the property of the adjoining landowners; under the "equal footing doctrine," title to land beneath navigable waters passed to the State upon its admission into the Union. Where the record shows that a portion of a river is non-navigable, and the State of California has treated it as non-navigable by statute, BLM did not err in deciding that the lands in the bed of that non-navigable river remained under the ownership of the United States at the time of California Statehood, provided that their uplands were owned by the United States.

Western Aggregates, LLC., 169 IBLA 64 (May 17, 2006).

Mining Claims

Lands Subject to

Land which, following survey, has accreted to land owned by the United States takes the status of the Federal land to which it has accreted. If the Federal lands were withdrawn from entry under the mining laws of the United States, any lands accreting to those Federal lands were also withdrawn.

Western Aggregates, LLC., 169 IBLA 64 (May 17, 2006).

Mining Claims
Lands Subject to

By withdrawing upland lots along the banks of a non-navigable river from entry under the laws of the United States, the Department also withdrew all Federally-owned lands within the riverbed to the thread of the river. The withdrawal attached to the lands in the bed of the non-navigable river deemed to be owned by the United States in conjunction with its ownership of each of the upland lots. The fact that the lots were depicted on contemporary plats as extending only to the meander lines of the river is not controlling.

Western Aggregates, LLC., 169 IBLA 64 (May 17, 2006).

Mining Claims
Lands Subject to

No placer location shall include more than 20 acres for each individual claimant.

Rock Solid Inc. and Mining, 170 IBLA 312 (Nov. 9, 2006).

Mining Claims
Lands Subject to

Under the notation rule, a mining claim located at a time when BLM's official public land records indicate that the lands on which the claim is located is segregated from mineral entry is void regardless of whether the underlying segregation was proper. The land is not available for entry until such time as the notation is removed and the land is restored to entry, even if the original notation was made in error, or the segregative effect is void or voidable, or has terminated or expired.

Joe R. Young, 171 IBLA 142 (Feb. 27, 2007).

Mining Claims
Lands Subject to

A mining claim located on lands withdrawn from mineral entry at the time of location is null and void *ab initio*. Where claimants argue that their claim predates the effective date of the withdrawal, they must establish that they are the successors to an interest in a mining claim that was located on this land before its withdrawal from mineral entry; to do so, they must show an unbroken chain of title to a valid claim located prior to the withdrawal of the land and, further, if a new notice of location is filed after the effective date of the withdrawal, the claim had to be an "amended location" rather than a "relocation." A new notice of location filed after a claim has been declared abandoned and void for failure to meet Federal recording and/or rental or fee requirements is a relocation, since such failure extinguishes the prior claim. Where a claim that is located prior to the effective date of a withdrawal is abandoned and void by operation of law for failure to comply with the rental or fee requirements, a subsequent claim located for the same land is a relocation and does not relate back to the location date of the previous claim. Where the subsequent claim is located on lands segregated from mineral entry by the filing of an application for withdrawal, the claim is properly declared null and void *ab initio*.

Douglas and Jane Weldy, 164 IBLA 166 (Dec. 8, 2004).

Mining Claims
Lands Subject to

Where public land records have been noted to show that a parcel of land is not open to entry under the public land laws, the parcel is not available for entry until such time as the notation is removed and the land restored to entry, even if the original notation was made in error.

William Dunn, 157 IBLA 347 (Oct. 30, 2002).

Mining Claims
Lands Subject To

Under the "notation" or "tract book" rule, where BLM's official records have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach pursuant to any subsequent entry or application until the record has been changed to reflect that the land is no longer segregated. Therefore the notation on BLM's master title plat that the lands were included in a wilderness served to close the lands to mineral entry, where lands within the wilderness are not subject to mineral entry, and a mill site claim located on such lands is null and void ab initio.

D. Stone Davis d.b.a Daisy Trading Company, 155 IBLA 133 (May 18, 2001).

Mining Claims
Location

A placer mining claim located on land patented without a mineral reservation to the United States is properly declared null and void ab initio to the extent it includes such land. When the exact situs of the claim on the ground is unclear from the record and the claim may actually embrace land open to mineral entry, a decision finding the claim null and void ab initio will be set aside and the case remanded to BLM pending a determination of the actual position of the claim on the ground.

Wallace E. Mieras, 151 IBLA 274 (Dec. 22, 1999).

Mining Claims
Location

Public lands designated by Congress as a wilderness area in 1994 are withdrawn from mineral entry and mining claims located on the land in 1996 are properly declared null and void ab initio.

G. Robert Carlson, 152 IBLA 35 (Mar. 1, 2000).

Mining Claims
Location

When the exact situs of the claim on the ground is unclear from the record and the claim may actually embrace land open to mineral entry, a decision finding the claim null and void ab initio will be set aside and the case remanded to BLM pending a determination of the actual position of the claim on the ground.

G. Robert Carlson, 152 IBLA 35 (Mar. 1, 2000).

Mining Claims
Location

When a mining claimant has located mining claims embracing mineral deposits of such quantity that only a portion of those deposits is presently marketable at a profit, the remaining mineral deposits have been characterized by the Department as "excess reserves."

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Mining Claims
Location

The Board will affirm a BLM decision declaring a placer mining claim null and void where the claimants, despite notice from BLM, failed to amend or relocate the claim so as to bring it into compliance with the requirements of 30 U.S.C. § 35 (1994) and 43 C.F.R. § 3842.1-2, to conform the claim as near as practicable to the United States system of public-land surveys and to encompass not more than 20 acres per claimant. Where the appellant fails to contravene evidence in the record that the claim was located for more than 40 acres by the two individuals named in the location notice recorded with BLM, and where, though practicable, the claim did not encompass regular subdivisions of that system, the claim will be declared null and void.

Allen C. Kroeze, 153 IBLA 140 (Aug. 16, 2000).

Mining Claims
Location

While failure to record a mining claim with a County recorder within 30 days of the date of location may not, in and of itself, render the claim invalid under Utah State law, a withdrawal or classification of the land by the United States, prior to any corrective action by the claimant, operates as an adverse right rendering the claim invalid. Where a mining claim is staked and notice is posted on September 4, 1996, but notice of location of the claim is not filed with the County recorder until November 26, 1996, and where the land on which the claim is located is withdrawn from operation of the mining laws on September 18, 1996, the claim is properly declared null and void ab initio. This is because, owing to the failure to record within 30 days as required by State law, there was no valid "location" of the claim under 43 C.F.R. § 3831.1 at the time of the segregation, rendering the claim null and void ab initio.

N. C. Rice, Jr., 153 IBLA 185 (Aug. 25, 2000).

Mining Claims
Location

When an association of claimants, who have acquired title to all or part of contiguous 20-acre placer mining claims attempt to consolidate the claimed land into a single association placer location, the association claim constitutes a new location, and the date of location does not relate back to the original dates of location.

Lamar & Christine Burnett, 153 IBLA 215 (Aug. 31, 2000).

Mining Claims
Location

It is proper for BLM to declare null and void ab initio that portion of a placer mining claim encompassing land which was, at the time of location, withdrawn from mineral entry pursuant to section 9(b) of the Wild and Scenic Rivers Act, *as amended*, 16 U.S.C. § 1280(b) (1994).

Lamar & Christine Burnett, 153 IBLA 215 (Aug. 31, 2000).

Mining Claims
Location

BLM's acceptance of a location notice for recordation and acceptance of filings and fees is not an affirmative misrepresentation or concealment of the fact that the land encompassed by a mining claim was withdrawn from mineral entry at the time of location, and will not preclude BLM from declaring the claim null and void ab initio.

Lamar & Christine Burnett, 153 IBLA 215 (Aug. 31, 2000).

Mining Claims

Location

On or after October 13, 1993, mining claims cannot be located on lands patented under the Stock Raising Homestead Act, *as amended*, until a person who intends to enter such lands to explore for or locate a mining claim has first filed a notice of intent to locate with the proper BLM state office and served a copy of that notice upon the surface owners of record.

American Colloid Co. Bentonite Corp., 154 IBLA 7 (Oct. 16, 2000).

Mining Claims
Location

Even where a mining association is formed before any mining claims have been located, nothing prevents an agent from acting on behalf of the association. There is no statutory or regulatory provision which prohibits the location of a mining claim or the doing of any acts required to complete the appropriation by an agent, and the fact that the locator acted through an agent in such matters does not invalidate the location. Thus, 43 C.F.R. § 3832.1 expressly provides that agents may make locations for qualified locators.

American Colloid Co. Bentonite Corp., 154 IBLA 7 (Oct. 16, 2000).

Mining Claims
Location

BLM properly declares lode mining claims null and void ab initio where they were located entirely on lands which were not open to entry under the United States mining laws at the time of location either because they had been patented as mining claims or granted to the State of Idaho as part of grants of school sections. The fact that the State may have, on a date following the putative location of the claims, applied for other lands in lieu of lands within the section is irrelevant where such application was subsequently rejected and withdrawn, since the aborted lieu selection process did not, in the absence of publication and clear-listing, result in any waiver by the State of its rights in the lands in the section or in any lands being returned to the ownership of the United States.

Aberdeen Idaho Mining Co., 155 IBLA 358 (Oct. 1, 2001).

Mining Claims
Location

When lands are segregated from entry under the mining laws, such a segregation attaches to the mineral estate of lands patented under the Stock Raising Homestead Act, which are included within the lands described in the segregation, and although it has no effect on mining claims covering part of that mineral estate, if those claims are forfeited by operation of law for failure to pay the maintenance fees while the segregation is still effective, the segregation automatically becomes effective, *eo instanti*, as to the mineral estate covered by those claims, thus closing it to future mineral entry for the period of the segregation. A notice of intent to locate mining claims on such mineral lands, filed while the segregation is still effective, must be rejected.

National Cement Company of California, 156 IBLA 131 (Dec. 31, 2001).

Mining Claims
Location

As a general rule, a mining claimant must file with BLM a copy of his notice or certificate of location, including a description of the location of the mining claim sufficient to locate the claimed lands. A mining claimant bears the burden of showing that the mining claim is positioned as asserted.

Melvin Helit, 157 IBLA 111 (July 25, 2002).

Mining Claims
Location

Where an association of eight individual claimants locates a placer mining claim in excess of 160 acres and declines to amend the location, the inclusion of excess acreage may be construed as intentional and the claim may be declared null and void *ab initio*.

Melvin Helit, 157 IBLA 111 (July 25, 2002).

Mining Claims
Location

Association placer mining claims are properly declared null and void ab initio where topographic maps accompanying the notices of location for the claims depict them as covering vastly more than 20 acres per person and where the gross oversizing of the claims is confirmed by post-location efforts to sell portions of one of the claims in excess of the maximum acreage.

Matthew Helit Melvin Helit, 160 IBLA 15 (July 29, 2003).

Mining Claims
Location

The boundary of a placer mining claim may be retracted prior to patenting only where excess land has been inadvertently or unintentionally included and where proportionately small amounts of excess land are involved. The opportunity to retract is not available where the record shows that claimants intentionally located claims vastly larger than authorized by law for purposes unrelated to mining.

Matthew Helit Melvin Helit, 160 IBLA 15 (July 29, 2003).

Mining Claims
Location

It is proper for BLM to declare null and void ab initio a placer mining claim encompassing land which was, at the time of location, withdrawn from mineral entry pursuant to section 9(b) of the Wild and Scenic Rivers Act, *as amended*, 16 U.S.C. § 1280(b) (1994).

Robert B. Hoke, *et al.,* 160 IBLA 220 (Dec. 3, 2003).

Mining Claims
Location

The authority to adjudicate the status of mining claims arises from the authority Congress vested in the Secretary of the Interior or such officer as he or she may designate to "perform all executive duties appertaining to the surveying and sale of the public lands of the United States, or in anywise respecting such public lands, and, also, such as relate to private claims of land, and the issuing of patents for all grants of land under the authority of Government." 43 U.S.C. § 2 (2000). That authority extends to Indian Reservation lands as well.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VII), 163 IBLA 310 (Nov. 2, 2004).

Mining Claims
Location

Lands set aside for an Indian Reservation cease to be part of the public domain, and a mining claim located on Indian lands that are not open to mineral entry is null and void *ab initio*.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VII), 163 IBLA 310 (Nov. 2, 2004).

Mining Claims
Location

Only the United States, acting through the Secretary of the Interior, has the authority to determine administratively what lands constitute public lands. That duty and authority necessarily includes the power to determine administratively that a mining claim is located on land *not* owned by the United States. The question of whether the United States has title is justiciable before the Department, and when the Department determines that the United States has no title in lands, it may properly declare mining claims located on such lands null and void *ab initio* as a matter of Federal law.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VII), 163 IBLA 310 (Nov. 2, 2004).

Mining Claims
Location

Where appellant's oil shale "mining claims" were located on lands that were patented to third parties without a mineral reservation to the United States, no interest appellant may have with respect thereto can be raised or pursued as a mining claim initiated and maintained under Federal mining law. Those interests in the patented portions of the claims, whatever they may be, are properly declared null and void *ab initio*, since no Federal mining claim can arise on private or State lands.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VII), 163 IBLA 310 (Nov. 2, 2004).

Mining Claims
Location

Under 30 U.S.C. § 35 (2000), all placer mining claims located after the 10th day of May 1872 shall conform as near as practicable with the United States system of public land surveys, and the rectangular subdivisions of such surveys. Even where it is not practicable to strictly conform to the system of surveys, BLM will not approve claims that are long narrow strips or grossly irregular or fantastically shaped tracts.

Matthew (Mattew) Helit, 166 IBLA 69 (June 20, 2005).

Mining Claims
Lode Claims

4BLM properly declares a lode mining claim null and void ab initio in its entirety where, at the time of location, all of the public land encompassed by the claim was segregated from mineral entry, pursuant to section 206(i)(1) of the Federal Land Policy and Management Act of 1976, *as amended*, 43 U.S.C. § 1716(i)(1) (1994), and 43 C.F.R. § 2202.1(b), by virtue of a notation on the public land records of the filing of a proposed land exchange.

William H. Shepherd, 157 IBLA 134 (Aug. 6, 2002).

Mining Claims
Lode Claims

Public lands designated by Congress as a wilderness area in 1994 are withdrawn from mineral entry and mining claims located on the land in 1996 are properly declared null and void ab initio.

G. Robert Carlson, 152 IBLA 35 (Mar. 1, 2000).

Mining Claims

Lode Claims

Rights acquired under relocations of lode mining claims declared to be forfeited by operation of law for failure to timely file the claim maintenance fee do not relate back to the date of the locations of the original claims but only to the date of the relocations. When such claims are located totally on land withdrawn from entry under the mining laws, BLM properly declares those claims null and void ab initio. When only part of such claims lies on with- drawn land, BLM properly notifies the claimants that they have not acquired any surface rights to the portion of the claims overlapping the withdrawn land; that mining and mining-related activities on those lands would constitute a trespass; and that, depending on the circumstances, they may or may not have any mineral rights in the subsurface of such land.

Devon Britton, et al., 158 IBLA 279 (Feb. 24, 2003).

Mining Claims
Lode Claims

To be valid, a mining claim must be supported by the discovery of a valuable mineral deposit within its boundaries. The existence of a discovery is a question of fact to be determined by the trier of fact. Cutoff grades may be relevant to a party's factual presentation in a mining contest hearing, but a cutoff grade minimum does not substitute for the statutory requirement of discovery as a matter of law.

United States v . E. K. Lehmann & Associates of Montana, Inc., et al., 161 IBLA 40 (Mar. 16, 2004).

Mining Claims
Lode Claims

The Government's prima facie case in a mining claim contest is not defeated by a claimant's assertion that the mineral examiner did not use heavy equipment to expose a valuable mineral deposit because the Government has no obligation to do the discovery work for the mining claimant.

United States v. Steve Hicks, 164 IBLA 73 (June 29, 2004).

Mining Claims
Lode Claims

A claimant's assertion that he was prevented from using "heavy equipment" to expose a valuable mineral deposit does not insulate him from a finding of claim invalidity where the claimant was allowed access to his claims to rehabilitate prior discovery points by other means; where the Government had statutory and regulatory authority to manage the surface; and where the claimant rejected authorized means to examine prior discovery points.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Lode Sites

A BLM decision establishing the amount of the financial guarantee (reclamation bond) required to extend the mining notice for operations on certain lode mining claims will be affirmed where the operator fails to demonstrate error in BLM's reclamation cost estimate, including the type of equipment to be used for reclamation.

Ferrell Anderson, 171 IBLA 289 (May 25, 2007).

Mining Claims
Lode Sites

The regulations at 43 C.F.R. Subpart 3809, which require BLM to prevent unnecessary or undue degradation to the public lands and allow BLM to enter into agreements with the states to regulate mining activity, authorize BLM to require operators seeking an extension of a mining notice to provide BLM with copies of any required state permits as a condition of the extension of the notice.

Ferrell Anderson, 171 IBLA 289 (May 25, 2007).

Mining Claims
Marketability

Uncontradicted evidence of nonproduction of a mining claim, which has continued over a period of years, may be sufficient, without more, to establish a prima facie case of invalidity of a mining claim. However, the question of whether a prima facie case arises in such circumstances depends on what evidence is offered by the Government regarding nonproduction.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Mining Claims
Marketability

When BLM attempts, through the testimony of its mineral examiner, to establish a prima facie case that the mineral from contested mining claims fails to meet the marketability test, expertise by the mineral examiner as to the particular mineral in question may be demonstrated through evidence of education, training, and experience. Failure to have conducted a mineral examination of a mining claim for the same mineral in the past is not decisive.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Mining Claims
Marketability

The ruling by an administrative law judge that BLM could not establish a prima facie case in support of the charges in its contest complaint because the mineral examiner who testified at the hearing was not the "sole participant" in preparing the mineral report will be overturned when the mineral examiner who sampled the mining claims and prepared the draft mineral report died prior to finalization of that report, but the mineral examiner who took over the finalization of the report verified and evaluated the work conducted and prepared a market study, and no issue arose regarding the sampling or other work conducted by the deceased mineral examiner.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Mining Claims
Marketability

When a mining claimant has located mining claims embracing mineral deposits of such quantity that only a portion of those deposits is presently marketable at a profit, the remaining mineral deposits have been characterized by the Department as "excess reserves."

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Mining Claims
Marketability

When BLM charges in a contest complaint that portions of mining claims located for gypsum are not mineral in character on the basis that, although gypsum is present on those portions of the claims, that gypsum was not marketable at the times in question, the issue is whether, in fact, the gypsum could have been extracted and marketed at a profit.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Mining Claims
Marketability

It is not unreasonable in conducting a market assessment following receipt of a patent application for a Government mineral examiner to rely on what the mining claimant has done on the claims and what the claimant has proposed in the patent application for production and marketing the mineral deposits on the claims. However, a prima facie case based on such an assessment is vulnerable to evidence presented by the contestee at a hearing on the complaint showing that a prudent man would not so limit production and marketing and could produce more mineral and market that production without increased costs for additional equipment.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Mining Claims
Marketability

A prerequisite of a valid mining claim subject to patent is a discovery of a valuable deposit of minerals of such quality and in such quantity as to justify a person of ordinary prudence in the further expenditure of his labor and capital with a reasonable prospect of success in developing a valuable mine. A finding of no discovery may be sustained despite a report reflecting relatively high grade samples when the evidence discloses problems in the sampling technique used which preclude reliance upon the samples to provide a reasonable estimate of the grade of the resource.

Moon Mining Co. v. Hecla Mining Co., 161 IBLA 334 (June 2, 2004).

Mining Claims
Marketability

The prudent man standard of discovery has been supplemented by the marketability test involving the potential that a mineral deposit can be extracted, removed, and marketed at a profit. Evidence of the costs and profits of mining a claim may be properly considered in determining whether a person of ordinary prudence would be justified in the further expenditure of his labor and capital with a reasonable prospect of success in developing a valuable mine.

Moon Mining Co. v. Hecla Mining Co., 161 IBLA 334 (June 2, 2004).

Mining Claims
Marketability

In applying the reasonable prudent man standard of discovery, consideration is properly given to costs of compliance with relevant requirements imposed under such regulatory statutes as the Clean Water Act and the Endangered Species Act.

Moon Mining Co. v. Hecla Mining Co., 161 IBLA 334 (June 2, 2004).

Mining Claims
Marketability

Uncontradicted evidence of absence of production from a mining claim over a period of years is sufficient, without more, to establish a prima facie case of invalidity of the claim.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Marketability

For a mining claim to be valid, it must contain an exposure of mineralization representing a mineable mineral deposit presently marketable at a profit. This means that the evidence must show, as a present fact,considering historic price and cost factors and assuming they will continue, that there is a reasonable likelihood of success that a

paying mine can be developed. Where an appellant presents no evidence that prices will return to high, historic "optimum" or "break-even" levels, he does not undermine the Government's prima facie case by arguing that the Government failed to utilize such higher prices in its market analysis.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Marketability

That a stone deposit on a mining claim can be profitably marketed is not enough by itself to validate a claim located for uncommon building stone. The claimant must still establish that the deposit is not a common variety of building stone.

United States v. Lyle I. Thompson, et al., 168 IBLA 64 (Mar. 16, 2006).

Mining Claims
Marketability

That a mining claimant can identify a use for limestone that commands a higher price than a use that all parties concede requires only a common variety of stone is not enough, by itself, to demonstrate that the limestone is an uncommon variety. The claimant must also establish that the deposit has a unique property that gives the deposit a distinct and special value. Evidence of a higher price available in the market can supply proof that a deposit has unique value, but it must be evidence of the higher price the *deposit* commands, not evidence of a higher price purchasers will pay for material from a deposit of a common variety of limestone.

United States v. Pitkin Iron Corporation, et al., 170 IBLA 352 (Nov. 29, 2006).

Mining Claims
Mill Sites

A statutory moratorium on the processing of applications for patent for a mill site claim imposed by section 314 of the Department of the Interior and Related Agencies Appropriations Act of 1998, Pub. L. No. 105-83, 111 Stat. 1543, 1591 (1997), precludes BLM from adjudicating a mineral patent application for a dependent mill site claim for the duration of the moratorium. Accordingly, a decision rejecting a mill site patent application will be vacated and the case remanded to BLM pending lifting of the moratorium.

Ulf T. Teigen, Mona A. Teigen, 153 IBLA 273 (Sept. 21, 2000).

Mining Claim
Mill Sites

A mineral patent application for a dependent mill site claim will be rejected if it is not associated with a lode claim which has already been patented or will be patented simultaneously with the mill site claim.

Ulf T. Teigen, Mona A. Teigen (On Reconsideration), 159 IBLA 142 (May 27, 2003).

Mining Claims
Mill Sites

Section 4(a) of the Surface Resources Act, 30 U.S.C. § 612(a) (2000), bars 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." Under the authority of 43 C.F.R. § 3715.7-1(c), BLM properly issues a notice of noncompliance requiring the removal of all personal property from a millsite claim where no minerals are being beneficiated on the site and no observable work is taking place.

Jay H. Friel, 159 IBLA 150 (May 29, 2003).

Mining Claims
Mill Sites

The use and occupancy regulations at 43 C.F.R. Subpart 3715 authorize the issuance of a temporary or permanent cessation order when there is a failure to comply timely with a notice of noncompliance issued under 43 C.F.R. § 3715.7-1(c). BLM properly issues a cessation order pursuant to 43 C.F.R. § 3715.7-1(b)(ii) where the claimant has failed to comply with a previous notice of noncompliance requiring him to remove property from a millsite and reclaim the land because his use and occupancy are not reasonably incident to mining or processing operations.

Jay H. Friel, 159 IBLA 150 (May 29, 2003).

Mining Claims
Mill Sites

A BLM decision establishing the amount of the financial guarantee (reclamation bond) required to extend a mining notice for a mill site will be affirmed where the operator fails to establish error in BLM's determination of the bond amount or to show that his bond estimate more accurately reflects the costs of reclaiming the site.

Pilot Plant, Inc., 168 IBLA 193 (Mar. 16, 2006).

Mining Claims
Notice of Intent to Locate

On or after October 13, 1993, mining claims cannot be located on lands patented under the Stock Raising Homestead Act, *as amended*, until a person who intends to enter

such lands to explore for or locate a mining claim has first filed a notice of intent to locate with the proper BLM state office and served a copy of that notice upon the surface owners of record.

American Colloid Co. Bentonite Corp., 154 IBLA 7 (Oct. 16, 2000).

Mining Claims
Notice of Intent to Locate

Even where a mining association is formed before any mining claims have been located, nothing prevents an agent from acting on behalf of the association. There is no statutory or regulatory provision which prohibits the location of a mining claim or the doing of any acts required to complete the appropriation by an agent, and the fact that the locator acted through an agent in such matters does not invalidate the location. Thus, 43 C.F.R. § 3832.1 expressly provides that agents may make locations for qualified locators.

American Colloid Co. Bentonite Corp., 154 IBLA 7 (Oct. 16, 2000).

Mining Claims
Notice of Intent to Locate

When lands are segregated from entry under the mining laws, such a segregation attaches to the mineral estate of lands patented under the Stock Raising Homestead Act, which are included within the lands described in the segregation, and although it has no effect on mining claims covering part of that mineral estate, if those claims are forfeited by operation of law for failure to pay the maintenance fees while the segregation is still effective, the segregation automatically becomes effective, *eo instanti*, as to the mineral estate covered by those claims, thus closing it to future mineral entry for the period of the segregation. A notice of intent to locate mining claims on such mineral lands, filed while the segregation is still effective, must be rejected.

National Cement Company of California, 156 IBLA 131 (Dec. 31, 2001).

Mining Claims
Operations Conducted Under Notices

A BLM decision establishing the amount of the financial guarantee (reclamation bond) required to extend the mining notice for operations on certain lode mining claims will be affirmed where the operator fails to demonstrate error in BLM's reclamation cost estimate, including the type of equipment to be used for reclamation.

Ferrell Anderson, 171 IBLA 289 (May 25, 2007).

Mining Claims
Operations Conducted Under Notices

The regulations at 43 C.F.R. Subpart 3809, which require BLM to prevent unnecessary or undue degradation to the public lands and allow BLM to enter into agreements with the states to regulate mining activity, authorize BLM to require operators seeking an extension of a mining notice to provide BLM with copies of any required state permits as a condition of the extension of the notice.

Ferrell Anderson, 171 IBLA 289 (May 25, 2007).

Mining Claims
Patent

The execution of an application for patent to a mining claim by an authorized representative, at a time when the applicants are physically within the land district in which the mining claim is located and the applicants have no legal incapacity, is unauthorized and the application is invalid.

Salmon Creek Association, 151 IBLA 369 (Feb. 3, 2000).

Mining Claims
Patent

If BLM is not satisfied with the evidence of discovery submitted by a mineral patent applicant, it may request further information. However, where a patent applicant presents an application that is correct as to form and contains information supporting the substantive question of whether a discovery has been made, and where BLM disputes that conclusion as a matter of fact by concluding that the information presented is insufficient to support a discovery, BLM may not summarily reject the patent application but must instead initiate a contest proceeding.

American Colloid Company, 162 IBLA 158 (July 12, 2004).

Mining Claims
Patent

Issuance of a first half final certificate by the Secretary when adjudicating a mineral patent application certifies that the applicant has satisfactorily complied with the paperwork requirements of the Mining Law, grants equitable title to the claimant (subject to confirmation of a discovery on the claims), and segregates the land from all forms of entry and appropriation under the public land laws.

Mouat Nickel Mines, Inc., et al., 165 IBLA 305 (Apr. 28, 2005).

Mining Claims
Patent

When the Secretary of the Interior has adjudicated the issues involved by issuing a first half final certificate for mineral entry in response to a mineral patent application,

the review authority of the Board on appeal is limited to determining whether the Secretary's decision has been properly applied and implemented. A BLM decision which is inconsistent with the Secretary's decision in the matter will be vacated.

Mount Nickel Mines, Inc., et al., 165 IBLA 305 (Apr. 28, 2005).

Mining Claims
Placer Claims

A placer mining claim located on land patented without a mineral reservation to the United States is properly declared null and void ab initio to the extent it includes such land. When the exact situs of the claim on the ground is unclear from the record and the claim may actually embrace land open to mineral entry, a decision finding the claim null and void ab initio will be set aside and the case remanded to BLM pending a determination of the actual position of the claim on the ground.

Wallace E. Mieras, 151 IBLA 274 (Dec. 22, 1999).

Mining Claims
Placer Claims

The Board will affirm a BLM decision declaring a placer mining claim null and void where the claimants, despite notice from BLM, failed to amend or relocate the claim so as to bring it into compliance with the requirements of 30 U.S.C. § 35 (1994) and 43 C.F.R. § 3842.1-2, to conform the claim as near as practicable to the United States system of public-land surveys and to encompass not more than 20 acres per claimant. Where the appellant fails to contravene evidence in the record that the claim was located for more than 40 acres by the two individuals named in the location notice recorded with BLM, and where, though practicable, the claim did not encompass regular subdivisions of that system, the claim will be declared null and void.

Allen C. Kroeze, 153 IBLA 140 (Aug. 16, 2000).

Mining Claims
Placer Claims

BLM improperly declares a placer mining claim located on land subject to a powersite reservation null and void when the claimants, following notice from BLM, failed to submit a location notice properly marked to indicate that it was filed pursuant to the Mining Claims Rights Restoration Act of 1955, as amended, 30 U.S.C. §§ 621-625 (1994), as required by 43 C.F.R. § 3734.1(a), since the failure to do so does not affect the validity of the claim but only when mining may occur on the claimed land.

Allen C. Kroeze, 153 IBLA 140 (Aug. 16, 2000).

Mining Claims
Placer Claims

When an association of claimants, who have acquired title to all or part of contiguous 20-acre placer mining claims attempt to consolidate the claimed land into a single association placer location, the association claim constitutes a new location, and the date of location does not relate back to the original dates of location.

Lamar & Christine Burnett, 153 IBLA 215 (Aug. 31, 2000).

Mining Claims
Placer Claims

It is proper for BLM to declare null and void ab initio that portion of a placer mining claim encompassing land which was, at the time of location, withdrawn from mineral entry pursuant to section 9(b) of the Wild and Scenic Rivers Act, as amended, 16 U.S.C. § 1280(b) (1994).

Lamar & Christine Burnett, 153 IBLA 215 (Aug. 31, 2000).

Mining Claims
Placer Claims

Where an association of eight individual claimants locates a placer mining claim in excess of 160 acres and declines to amend the location, the inclusion of excess acreage may be construed as intentional and the claim may be declared null and void *ab initio*.

Melvin Helit, 157 IBLA 111 (July 25, 2002).

Mining Claims
Placer Claims

Lands within a placer mining claim must be contiguous.

William Dunn, 157 IBLA 347 (Oct. 30, 2002).

Mining Claims
Placer Claims

A mining claim located on lands partially closed to entry under the mining laws is null and void *ab initio* to that extent. If a placer claim containing noncontiguous parcels has been located, BLM may require the claimant to identify a part of the claim that it wishes to maintain subject to the rules of discovery. Should the claimant so desire, it may relocate, as separate claims, remaining noncontiguous parcels, if the land remains open to location.

William Dunn, 157 IBLA 347 (Oct. 30, 2002).

Mining Claims
Placer Claims

To be valid, a mining claim must be supported by the discovery of a valuable mineral deposit. To establish a discovery, there must be exposed within the limits of a claim a mineral deposit of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a paying mine.

United States v. Kent Bush, 157 IBLA 359 (Oct. 31, 2002).

Mining Claims
Placer Claims

Association placer mining claims are properly declared null and void ab initio where topographic maps accompanying the notices of location for the claims depict them as covering vastly more than 20 acres per person and where the gross oversizing of the claims is confirmed by post-location efforts to sell portions of one of the claims in excess of the maximum acreage.

Matthew Helit, Melvin Helit, 160 IBLA 15 (July 29, 2003).

Mining Claims
Placer Claims

The boundary of a placer mining claim may be retracted prior to patenting only where excess land has been inadvertently or unintentionally included and where proportionately small amounts of excess land are involved. The opportunity to retract is not available where the record shows that claimants intentionally located claims vastly larger than authorized by law for purposes unrelated to mining.

Matthew Helit, Melvin Helit, 160 IBLA 15 (July 29, 2003).

Mining Claims
Placer Claims

Except where otherwise allowed by applicable laws or regulations, for activities that are defined as casual use or notice activities under 43 C.F.R. Part 3800 or Subpart 3809, a mining claimant is prohibited from commencing residential occupancy before consulting with BLM. 43 C.F.R. § 3715.6(c). Consultation with BLM is initiated by the submission of a detailed map that identifies the site and the placement of temporary and permanent structures, and a written description showing how the proposed occupancy is reasonably incident to prospecting, mining, or processing operations and conforms to the requirements of 43 C.F.R. § 3715.2 and 3715.2-1. In addition to the placement of structures, the mining claimant must describe how long they are expected to be used, and the schedule for removing them and reclaiming the affected land at the end of operations. 43 C.F.R. § 3715.3-2. A claimant must not begin occupancy until he has complied with 43 C.F.R. Subpart 3715 and BLM has completed its review and made the required determination of concurrence or non-concurrence in the occupancy.

Skip Myers, 160 IBLA 101 (Oct. 8, 2003).

Mining Claims
Placer Claims

Even though appellant had long occupied his mining claim, the placement on the claim of a ramada and two camp trailers constituted new occupancies, regardless of whether they were actually or continually used for residential purposes, which required consultation with BLM so that BLM could adjudicate each specific proposed occupancy and issue a "decision" either concurring or not concurring with it pursuant to 43 C.F.R. Subpart 3715.

Skip Myers, 160 IBLA 101 (Oct. 8, 2003).

Mining Claims
Placer Claims

Absent a determination that residential occupancy of a mining claim was not reasonably incident to prospecting, mining, or processing operations or not in compliance with 43 C.F.R. §§ 3715.2, 3715.2-1, 3715.3-1(b), 3715.5, or 3715.5-1, and that immediate suspension was necessary to protect health, safety, or the environment, BLM could not properly order the immediate, temporary suspension of occupancy pursuant to 43 C.F.R. § 3715.7-1(a).

Skip Myers, 160 IBLA 101 (Oct. 8, 2003).

Mining Claims
Placer Claims

To issue a cessation order, it is not necessary for BLM to determine and conclude that an occupancy that is not reasonably incident threatens public health, safety, or the environment (43 C.F.R. § 3715.7-1(b)(1)(i)). It is necessary to show or determine lack of timely compliance with a notice of noncompliance (43 C.F.R. § 3715.7-1(b)(1)(ii)), an order issued pursuant to paragraph (d) (43 C.F.R. § 3715.7-1(b)(1)(iii)), or corrective action ordered during a suspension (43 C.F.R. § 3715.7-1(b)(1)(iv)). The record contains no such prior order, and accordingly, the order involved in this appeal cannot be deemed to be a cessation order.

Skip Myers, 160 IBLA 101 (Oct. 8, 2003).

Mining Claims
Placer Claims

When on appeal it is determined that an immediate suspension order is defective and could be sustainable only if deemed a notice of noncompliance, the notice will be set

aside and the case remanded so that BLM can decide how it wishes to proceed and issue a new decision that conforms to the requirements of 43 C.F.R. § 3715.7-1. If BLM concludes that a notice of noncompliance is appropriate, BLM must establish a date for starting corrective action, 43 C.F.R. § 3715.7-1(c)(ii), and a date by which it shall be completed, 43 C.F.R. § 3715.7-1(c)(iii). However, the regulation does not require completion of corrective action within 30 or fewer days. Therefore, nothing prevents BLM from establishing a completion date that coincides with issuance of a concurrence determination. Issuance of a concurrence determination ensures that mining claimants will not needlessly expend time and money in removing occupancies in which BLM ultimately concurs, or risk exposure to more serious enforcement action while waiting for a concurrence determination.

Skip Myers, 160 IBLA 101 (Oct. 8, 2003).

Mining Claims
Placer Claims

It is proper for BLM to declare null and void ab initio a placer mining claim encompassing land which was, at the time of location, withdrawn from mineral entry pursuant to section 9(b) of the Wild and Scenic Rivers Act, as amended, 16 U.S.C. § 1280(b) (1994).

Robert B. Hoke, et al., 160 IBLA 220 (Dec. 3, 2003).

Mining Claims
Placer Claims

BLM properly rejects a mining claimant's notice of operations and requires submission and approval, pursuant to 43 C.F.R. § Subpart 3809, of a plan of operations to construct an access road across public lands within an area of critical environmental concern.

George Stroup, 164 IBLA 74 (Nov. 29, 2004).

Mining Claims
Placer Claims

Under 30 U.S.C. § 35 (2000), all placer mining claims located after the 10th day of May 1872 shall conform as near as practicable with the United States system of public land surveys, and the rectangular subdivisions of such surveys. Even where it is not practicable to strictly conform to the system of surveys, BLM will not approve claims that are long narrow strips or grossly irregular or fantastically shaped tracts.

Matthew (Mattew) Helit, 166 IBLA 69 (June 20, 2005).

Mining Claims
Placer Claims

To be valid, a mining claim must contain, within its boundaries, a "valuable mineral deposit." The "prudent man" test determines whether a discovery of a valuable mineral deposit has been made. A discovery has been made when minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a paying mine. Assumptions regarding a prudent person are based on objective standards related to the nature of the mineral deposit disclosed on the claim, and not on the attributes or circumstances of the claimant. A mining claimant must show, as an objective matter and as a present fact, considering historic price and cost factors and assuming they will continue, that there is a reasonable likelihood that a paying mine can be developed.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Mining Claims
Placer Claims

The test of discovery includes a "marketability test." The "prudent man test" and the "marketability test" are not distinct standards; the latter is a refinement of the former. Evidence of a claimant's willingness to develop a claim does not establish the existence of a discovery. Instead, the claimant must show that there is a reasonable prospect that the commercial value of the deposit will exceed the cost of extracting, processing, transporting, and marketing the mineral.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Mining Claims
Placer Claims

No placer location shall include more than 20 acres for each individual claimant.

Rock Solid Inc. and Mining, 170 IBLA 312 (Nov. 9, 2006).

Mining Claims
Placer Claims

Where evidence of record is conclusive in showing that the mining claimant is a corporation, the submission of a document with eight signatures of individuals as purported members of the claimant group association listing their addresses as the corporate address will be seen as an attempt to substitute the names as "dummy locators" which will cause the claims to be void.

Rock Solid Inc. and Mining, 170 IBLA 312 (Nov. 9, 2006).

Mining Claims
Placer Claims

The question whether tailings are personalty or realty depends on the intent of the owner of the claim at the time of creation of the tailings. Absent evidence from a claimant supporting the assertion that tailings on a placer mining claim, which were created by historic hydraulic placer gold mining, are personalty, those tailings will be determined to be realty.

Donald W. Byrd, 171 IBLA 202 (Apr. 11, 2007).

Mining Claims
Placer Claims

To satisfy the requirement of discovery on a placer claim located for sand and gravel on or before July 23, 1955, it must be shown that the sand and gravel were exposed prior to that date and are of a quality acceptable for the work being done in the area, that the extent of the deposit is such that it would be profitable to extract it, and that there is a present demand for the sand and gravel.

Clark County v. Nevada Pacific Company, Inc., 172 IBLA 316 (Sept. 27, 2007).

Mining Claims
Placer Claims

Where expert testimony establishes that sand and gravel deposits in the region are highly variable, multiple exposures of sand and gravel are necessary to show that values on the claim are high and relatively consistent before geologic interference can be applied to determine the full extent of the deposit.

Clark County v. Nevada Pacific Company, Inc., 172 IBLA 316 (Sept. 27, 2007).

Mining Claims
Plan of Operations

When BLM approves a mining plan of operations subject to certain conditions, including the posting of an interim reclamation bond, mining may not proceed until the conditions are satisfied. However, a decision on State Director review upholding the suspension of the processing of a plan of operations on the basis of the failure to post a bond will be set aside when the record shows that the operator made a good faith effort to comply with the bonding requirements imposed by BLM and the state regulatory authority and, in fact, properly posted the required bond with BLM prior to the State Director's decision.

Pass Minerals, Inc., 151 IBLA 78 (Nov. 3, 1999).

Mining Claims
Plan of Operations

The mere pendency of a mining claim validity examination is not a basis for suspending consideration of a mining plan of operations. It is not until the completion of such an examination with the appropriate reviews and the initiation of a contest that suspension of consideration of a plan would be justified.

Pass Minerals, Inc., 151 IBLA 78 (Nov. 3, 1999).

Mining Claims
Plan of Operations

An appellant that has not been provided the opportunity to comment on the FEIS prior to approval by BLM and the Forest Service of separate mining plans of operations for their respective lands (because of the failure to issue the FEIS 30 days prior to the issuance of the ROD), but who comments as soon as the FEIS is made available and within 30 days of issuance, is a "party to a case" within the meaning of 43 C.F.R. § 4.410(a) for purposes of appeal. An appellant who is a party to the case and who can show that he could be adversely affected by the agency decisionmaking will have standing to appeal.

Newmont Mining Corp., 151 IBLA 190 (Dec. 6, 1999).

Mining Claims
Plan of Operations

Approval or disapproval of a mining plan of operations is not a wholly discretionary action. While the mere pendency of a mining claim validity examination, without more, generally is not a proper basis for suspending consideration of a plan of operations, BLM properly may suspend consideration of a proposed plan during the pendency of a mining contest.

Mount Royal Joint Venture, 153 IBLA 90 (July 31, 2000).

Mining Claims
Plan of Operations

Where BLM has determined mining claims to be valid, it has the authority to establish reasonable conditions under which mining activities are to be conducted. BLM can preclude mining altogether by rejecting a plan of operations only upon a showing that the proposed mining activity constitutes unnecessary or undue degradation – that is, that the proposed activity will result in surface disturbance greater than that which would normally be expected when the activity is accomplished by a prudent operator conducting usual, customary, and proficient operations of similar character, with due regard for the effects of operations on other resources and land uses, including those outside the area of operations. 43 C.F.R. § 3809.0-5(k).

Mount Royal Joint Venture, 153 IBLA 90 (July 31, 2000).

Mining Claims
Plan of Operations

BLM's approval of a plan of operations for open pit gold mining will be affirmed where BLM has taken a hard look in an EIS at the significant environmental consequences of mining operations and reasonable alternatives, and where the record supports BLM's conclusion that the plan, as modified, will not result in unnecessary or undue degradation of the public lands.

Legal and Safety Employer Research Inc., *et al.*, 154 IBLA 167 (Feb. 28, 2001).

Mining Claims
Plan of Operations

An EIS is not rendered invalid by the fact that it is prepared by consultants approved by BLM instead of by BLM personnel.

Legal and Safety Employer Research Inc., *et al.*, 154 IBLA 167 (Feb. 28, 2001).

Mining Claims
Plan of Operations

BLM's approval of a plan of operations for open pit gold mining will not be disturbed on account of the fact it authorizes operations on lands not owned by the operator at the time of the issuance of the approval, where BLM's record of decision contains a stipulation allowing commencement of operations on those lands only upon the filing of a document "demonstrating the right" of the operator to use them. The stipulation is not rendered defective because it is broad enough to cover the transfer of the right to use the lands to the operator via State eminent domain authority.

Legal and Safety Employer Research Inc., et al., 154 IBLA 167 (Feb. 28, 2001).

Mining Claims
Plan of Operations

BLM's approval of a plan of operations for sodium solution mining will be affirmed where BLM has taken a hard look in an EIS at the significant environmental consequences of mining operations and reasonable alternatives, and where the record supports BLM's conclusion that the plan will not result in unnecessary or undue degradation of the public lands.

IMC Chemical Inc., et al., 155 IBLA 173 (July 17, 2001).

Mining Claims
Plan of Operations

Pursuant to 43 C.F.R. § 2200.0-6(g), land acquired through a land exchange automatically becomes part of the BLM district in which it is located and is subject to management under the applicable resource management plan. BLM therefore need not amend the applicable resource management plan to specifically address the acquired land before approving a plan of operations to continue exploration within a project area that includes lands obtained pursuant to a land exchange.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

Mining Claims
Plan of Operations

Under 43 U.S.C. § 1711(a) (2000), the preparation and maintenance of an inventory of all public lands and their resource and other values "shall not, of itself, change or prevent change of the management or use of public lands." BLM therefore need not wait until an inventory of all the lands acquired through a land exchange has been completed before approving a mining plan of operations for an exploration project area that includes acquired lands where it is consistent with current management of a checkerboard pattern of adjacent lands on which exploration has been undertaken as part of the project.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

Mining Claims
Plan of Operations

A finding that approval of a plan of operations for a phased exploration project will not cause unnecessary or undue degradation of public lands will be affirmed, even though the plan does not specify the exact location of future activities because those locations depend on the results of the initial exploration phase, where BLM compensates for the lack of specific location information by analyzing the impacts of the total acreage of approved surface disturbance anywhere in the entire project area and imposes protective stipulations for identified resources throughout the entire project area and where the appellant has not shown that the project, with the mandated stipulations, will cause unnecessary or undue degradation of the public lands.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

Mining Claims
Plan of Operations

BLM's approval of a mining plan of operations based on an EA and FONSI will be affirmed if the record establishes that BLM took a "hard look" at the proposed action, carefully reviewed environmental problems, identified all relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

Mining Claims
Plan of Operations

An EA must include a brief discussion of alternatives as mandated by section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2000), which requires that every Federal agency "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." Appropriate alternatives include reasonable and feasible alternatives to the proposed action which will accomplish its intended purpose with lesser or no impact. If an alternative does not achieve the purpose of the proposed action or would not have lesser or no impact, BLM does not err in failing to consider that alternative.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

Mining Claims
Plan of Operations

The National Historic Preservation Act, 16 U.S.C. § 470f (2000), requires BLM to take into account an undertaking's effect on any property eligible for inclusion on the Register of Historic Places and to provide the Advisory Council on Historic Preservation the opportunity to comment. BLM's approval of a mining plan of operations will be affirmed without requiring consultation with the State Historic Preservation Officer where BLM has followed the procedures set forth in a State Protocol Agreement developed under BLM's National Programmatic Agreement for implementing the NHPA, and where the appellant has failed to show error in BLM's determination that the proposed exploration operations (with the stipulations imposed to avoid or mitigate impacts to eligible sites) will have no adverse effect on eligible cultural resources.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

Mining Claims
Plan of Operations

Approval of an amendment to a plan of operations will be upheld where the record, including the EA for the amendment and the scientific reports incorporated therein, demonstrates that BLM carefully considered the amendment's potential impacts, including those affecting groundwater quality and quantity, and conditioned approval of the amendment on the performance of mitigation measures designed to prevent any unnecessary or undue environmental degradation, and the appellant has failed to show error in that determination.

Western Shoshone Defense Project, 160 IBLA 32 (Aug. 21, 2003).

Mining Claims
Plan of Operations

Although BLM always retains the authority to examine the validity of unpatented mining claims located on public land, it generally does not do so when analyzing whether approval of a plan of operations will unnecessarily or unduly degrade the affected lands. An appellant who challenges BLM's approval of the amendment of mining plan of operations by questioning the validity of the claims has the burden of presenting evidence that, at a minimum, establishes a reasonable basis for a conclusion that the claims are invalid.

Western Shoshone Defense Project, 160 IBLA 32 (Aug. 21, 2003).

Mining Claims
Plan of Operations

Pursuant to 43 C.F.R. § 3809.1-4(b)(3)(2000), an approved plan of operations is required before a mining claimant begins any operation, other than casual use, in a designated area of critical environmental concern and BLM may issue a notice of noncompliance to a mining claimant who fails to file a plan of operations for operations in an area of critical environmental concern.

Robert W. Gately, 160 IBLA 192 (Nov. 20, 2003).

Mining Claims
Plan of Operations

When a mining claimant received approval from BLM to continue his present use and occupancy of a mining claim on public land for the one-year grace period for compliance with the requirements of 43 C.F.R. Subpart 3715 afforded by 43 C.F.R. § 3715.4(b), the mining claimant's use and occupancy must satisfy the applicable requirements of 43 C.F.R. Subpart 3715 following the expiration of that grace period.

Robert W. Gately, 160 IBLA 192 (Nov. 20, 2003).

Mining Claims
Plan of Operations

A BLM determination of nonconcurrence with a claimant's use and occupancy of a mining claim will be affirmed when the claimant fails to provide sufficient information about the proposed activities to show that they are reasonably incident, as required by 43 C.F.R. § 3715.2(a).

Robert W. Gately, 160 IBLA 192 (Nov. 20, 2003).

Mining Claims
Plan of Operations

A finding that approval of a mine closure and reclamation plan will not cause unnecessary or undue degradation of public lands will be affirmed where the appellant has not shown that BLM failed to adequately consider the effects of operations on other resources and land uses, including those resources and uses outside the area of operations; neglected to initiate and complete reasonable mitigation measures, including reclamation of disturbed areas; or failed to comply with applicable environmental

protection statutes and regulations thereunder, and where the record demonstrates that the project, with the mandated stipulations, will not cause unnecessary or undue degradation of the public lands.

Great Basin Mine Watch, *et al.*, 160 IBLA 340 (Jan. 26, 2004).

Mining Claims
Plan of Operations

BLM properly rejects a mining claimant's notice of operations and requires submission and approval, pursuant to 43 C.F.R. § Subpart 3809, of a plan of operations to construct an access road across public lands within an area of critical environmental concern.
George Stroup, 164 IBLA 74 (Nov. 29, 2004).

Mining Claims
Plan of Operations

When BLM receives a proposed mining plan of operations for a quartz crystal lease located on lands within a National Forest, under 43 C.F.R. § 3592.1 BLM must consult with the Forest Service and promptly approve the plan or advise the lessee of what is necessary to conform to governing requirements. If the Forest Service objects to the plan, BLM must reach an independent judgment regarding rights granted by the lease and its obligations to manage the lease under applicable authority.

Ron Coleman Mining, Inc., 168 IBLA 252 (Mar. 30, 2006).

Mining Claims
Powersite Lands

A mining claim located prior to August 11, 1955, on land subject to a powersite classification is null and void ab initio, and an attempt to amend the location is an action that has no legal effect.

Daddy Del's LLC., 151 IBLA 229 (Dec. 15, 1999).

Mining Claims
Powersite Lands

BLM improperly declares a placer mining claim located on land subject to a powersite reservation null and void when the claimants, following notice from BLM, failed to submit a location notice properly marked to indicate that it was filed pursuant to the Mining Claims Rights Restoration Act of 1955, as amended, 30 U.S.C. §§ 621-625 (1994), as required by 43 C.F.R. § 3734.1(a), since the failure to do so does not affect the validity of the claim but only when mining may occur on the claimed land.

Allen C. Kroeze, 153 IBLA 140 (Aug. 16, 2000).

Mining Claims
Powersite Lands

The Mining Claims Rights Restoration Act of 1955, as amended, 30 U.S.C. §§ 621-625 (2000), which opened powersite withdrawals for entry under the mining laws, provides that the locator of a placer claim under the Act may not conduct any mining operations for 60 days after filing a notice of location pursuant to 30 U.S.C. § 623 (2000) and that, if the Department decides to hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land, the suspension of operations will continue until the hearing has been held and the Department has issued an appropriate order providing for one of the following alternatives: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator restore the surface of the claim to the condition it was in prior to mining; or (3) a general permission to engage in placer mining.

United States v. Donald E. Eno, 171 IBLA 69 (Feb. 13, 2007).

Mining Claims
Powersite Lands

To determine whether mining would substantially interfere with other uses of powersite lands within the meaning of the Mining Claims Rights Restoration Act of 1955, *as amended*, 30 U.S.C. § 621 (2000), the Department is required to engage in a weighing or balancing of the benefits of mining against the injury mining would cause to other uses of the land. Mining may be allowed where the benefits of placer mining outweigh the detriment that placer mining causes to other uses. Central to the balancing test is the concept that the competing uses must be substantial if they are to be used to prohibit placer mining. Thus, even if the Secretary determines that placer mining would substantially interfere with other uses of the land, he may still appropriately grant a general permission to engage in placer mining operations if the competing surface uses have less significance than the proposed placer mining operation. The importance of the competing uses, which must be compared and judged on whatever grounds are relevant in the individual case, need not be economically quantifiable and may include the preservation of cultural, geological, or scenic resources.

United States v. Donald E. Eno, 171 IBLA 69 (Feb. 13, 2007).

Mining Claims
Reclamation

The failure to post a reclamation bond as required by the authorized officer under the authority of 43 C.F.R. § 3809.1-9(b) (1996), which bond is based on the claimant's own estimate of the costs of removing existing structures and reclaiming the land, fully supports issuance of a notice of noncompliance.

Nevada Mineral Processing, 157 IBLA 223 (Oct. 3, 2002).

Mining Claims
Reclamation

Under the provisions of 43 C.F.R. § 3809.505 (2001), all persons conducting operations on a mining claim or millsite under a plan of operations must submit a financial guarantee (bond) to guarantee reclamation of the claim or millsite.

Nevada Mineral Processing, 157 IBLA 223 (Oct. 3, 2002).

Mining Claims
Recordation of Affidavit of Assessment Work
or Notice of Intention to Hold

A claimant who files a small miner waiver must perform assessment work and file the affidavit of assessment work with the proper BLM office on or before December 30 immediately following the August 31 by which the small miner filed for a waiver of payment of the maintenance fee, and failure to do so shall conclusively constitute forfeiture of the mining claim or site. The option of filing a notice of intention to hold the claims is not contemplated under 43 C.F.R. § 3833.1-7, the regulation which sets forth the filing requirements for the maintenance fee waiver.

Cheryl Jong, 154 IBLA 71 (Dec. 12, 2000).

Mining Claims
Recordation of Affidavit of Assessment Work
or Notice of Intention to Hold

The affidavit of assessment work performed by a small miner claiming a maintenance fee waiver must be filed with the proper BLM office in accordance with sec. 314 of the Federal Land Policy and Management Act, 43 U.S.C. § 1744 (1994), and 43 C.F.R. § 3833.1-7(b) (1994).

Mineral Hill Venture, 155 IBLA 323 (Sept. 6, 2001).

Mining Claims
Recordation of Affidavit of Assessment Work
or Notice of Intention to Hold

A claimant who files a small miner waiver certification must perform assessment work for the same assessment year for which that waiver was filed, and then file evidence of assessment work with the proper BLM office on or before December 30 following the end of that assessment year in accordance with annual filing requirements found in sec. 314(a) of FLPMA. This evidence of assessment work is in addition to whatever was filed the previous year to comply with the waiver requirements. Failure to file the required evidence of assessment work will result in abandonment of the mining claim.

Audrey Bradbury, 160 IBLA 269 (Dec. 30, 2003).

Mining Claims
Recordation of Affidavit of Assessment Work
or Notice of Intention to Hold

The obligation to file evidence of required assessment work by December 30 following the filing of a waiver certification stems from the assessment work requirements of the Mining Law of 1872 and the filing requirements of sec. 314 of the Federal Land Policy and Management Act of 1976 and not from the fact a waiver certification was filed by the previous September 1.

Earl Riggs, *et al.,* 165 IBLA 36 (Feb. 17, 2005).

Mining Claims
Recordation of Affidavit of Assessment Work
or Notice of Intention to Hold

The general rule is that for every assessment year either the maintenance fee must be paid in advance, or a small miner waiver certification filed in advance and assessment work performed during that assessment year, with evidence of assessment work filed with BLM under the filing requirements of sec. 314 of the Federal Land Policy and Management Act of 1976 by December 30 following the end of the assessment year.

Earl Riggs, *et al.*, 165 IBLA 36 (Feb. 17, 2005).

Mining Claims
Recordation of Certificate or Notice of Location

BLM improperly declares a placer mining claim located on land subject to a powersite reservation null and void when the claimants, following notice from BLM, failed to submit a location notice properly marked to indicate that it was filed pursuant to the Mining Claims Rights Restoration Act of 1955, as amended, 30 U.S.C. §§ 621-625 (1994), as required by 43 C.F.R. § 3734.1(a), since the failure to do so does not affect the validity of the claim but only when mining may occur on the claimed land.

Allen C. Kroeze, 153 IBLA 140 (Aug. 16, 2000).

Mining Claims
Recordation of Certificate or Notice of Location

Where a claimant asserts that a filing with BLM was meant to constitute an amended notice of location, or several of them, such an intent will be discounted where the filing does not conform to state and Federal requirements for an amended location.

Rock Solid Inc. and Mining, 170 IBLA 312 (Nov. 9, 2006).

Mining Claims
Relocation

A mining claim located prior to August 11, 1955, on land subject to a powersite classification is null and void ab initio, and an attempt to amend the location is an action that has no legal effect.

Daddy Del's LLC., 151 IBLA 229 (Dec. 15, 1999).

Mining Claims
Relocation

Where a mining claim is null and void ab initio, an amended notice of location will not be construed as a relocation where the filing does not conform to state and Federal requirements for a new location.

Daddy Del's LLC., 151 IBLA 229 (Dec. 15, 1999).

Mining Claims
Relocation

While failure to record a mining claim with a County recorder within 30 days of the date of location may not, in and of itself, render the claim invalid under Utah State law, a withdrawal or classification of the land by the United States, prior to any corrective action by the claimant, operates as an adverse right rendering the claim invalid. Where a mining claim is staked and notice is posted on September 4, 1996, but notice of location of the claim is not filed with the County recorder until November 26, 1996, and where the land on which the claim is located is withdrawn from operation of the mining laws on September 18, 1996, the claim is properly declared null and void ab initio. This is because, owing to the failure to record within 30 days as required by State law, there was no valid "location" of the claim under 43 C.F.R. § 3831.1 at the time of the segregation, rendering the claim null and void ab initio.

N. C. Rice, Jr., 153 IBLA 185 (Aug. 25, 2000).

Mining Claims
Relocation

When an association of claimants, who have acquired title to all or part of contiguous 20-acre placer mining claims attempt to consolidate the claimed land into a single association placer location, the association claim constitutes a new location, and the date of location does not relate back to the original dates of location.

Lamar & Christine Burnett, 153 IBLA 215 (Aug. 31, 2000).

Mining Claims
Relocation

It is proper for BLM to declare null and void ab initio that portion of a placer mining claim encompassing land which was, at the time of location, withdrawn from mineral entry pursuant to section 9(b) of the Wild and Scenic Rivers Act, as amended, 16 U.S.C. § 1280(b) (1994).

Lamar & Christine Burnett, 153 IBLA 215 (Aug. 31, 2000).

Mining Claims
Relocation

Rights acquired under relocations of lode mining claims declared to be forfeited by operation of law for failure to timely file the claim maintenance fee do not relate back to the date of the locations of the original claims but only to the date of the relocations. When such claims are located totally on land withdrawn from entry under the mining laws, BLM properly declares those claims null and void ab initio. When only part of such claims lies on withdrawn land, BLM properly notifies the claimants that they have not acquired any surface rights to the portion of the claims overlapping the withdrawn land; that mining and mining-related activities on those lands would constitute a trespass; and that, depending on the circumstances, they may or may not have any mineral rights in the subsurface of such land.

Devon Britton, et al., 158 IBLA 279 (Feb. 24, 2003).

Mining Claims
Relocation

It is proper for BLM to declare null and void ab initio a placer mining claim encompassing land which was, at the time of location, withdrawn from mineral entry pursuant to section 9(b) of the Wild and Scenic Rivers Act, as amended, 16 U.S.C. § 1280(b) (1994).

Robert B. Hoke, et al., 160 IBLA 220 (Dec. 3, 2003).

Mining Claims
Rental or Claim Maintenance Fees
Generally

Responsibility for satisfying the rental fee requirement of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, Pub. L. No. 102-381, 106 Stat. 1374, 1378-79 (1992), resides with the owner of the unpatented mining claim, mill site, or tunnel site, as Congress has mandated that failure to make the annual payment of the claim rental fee as required by the Act shall conclusively constitute an abandonment of the unpatented mining claim, mill site, or tunnel site. Failure to pay the fee in accordance with the Act and implementing regulations results in a conclusive presumption of abandonment. Neither the claimant's lack of actual knowledge of the statutory requirement to pay rental fees nor BLM's failure to advise the claimant of that statutory requirement excuses the claimant's lack of compliance with the rental fee requirement, since all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Sandra E. Garrand, 152 IBLA 139 (Apr. 3, 2000).

Mining Claims

Rental or Claim Maintenance Fees
Generally

Under 30 U.S.C. § 28f(a) (1994), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of $100 per claim on or before August 31 of each year for years 1994 through 1998, and failure to pay the fee renders the claim null and void by operation of law. The statute gives the Secretary discretion to waive the fee for a small miner who holds not more than 10 mining claims, mill sites, or tunnel sites, or combination thereof. Where the claimant does not qualify for a waiver and did not pay the claim maintenance fee, BLM properly declares the claims forfeited and void.

Black Bear Mines Co., et al., 152 IBLA 387 (June 29, 2000).

Mining Claims
Rental or Claim Maintenance Fees
Generally

Prior to the assessment year for which a maintenance fee waiver is sought, a claimant must certify that it and related parties do not hold in aggregate more than 10 claims. Under 30 U.S.C. § 28f(d)(1994), a party is deemed related where it controls, is controlled by, or is under common control with the claimant. Where a company has a majority of directors or officers who are also the majority of directors or officers of another company, the two are related under the statute. If their claims in aggregate exceed 10, they cannot individually qualify for the waiver.

Black Bear Mines Co., et al., 152 IBLA 387 (June 29, 2000).

Mining Claims
Rental or Claim Maintenance Fees
Generally

Under 30 U.S.C. § 28f(a) (1994), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of $100 per claim on or before August 31 of each year for years 1994 through 1998, and failure to pay the fee renders the claim null and void by operation of law. The statute gives the Secretary discretion to waive the fee for a small miner who holds not more than 10 mining claims, mill sites, or combination thereof, and under 43 C.F.R. § 3833.1-7(d)(2), a claimant must file proof of conditions for waiver by the August 31 immediately preceding the assessment year for which the waiver is sought.

Aileen Mayes, 153 IBLA 192 (Aug. 30, 2000).

Mining Claims
Rental or Claim Maintenance Fees
Generally

The failure to record a quitclaim deed conveying a mining claim in Idaho prior to August 31 did not prevent title from passing to the grantee before that date, and where the grantee failed to pay the claim maintenance fee or qualify for a waiver, BLM properly declared the claims null and void.

Aileen Mayes, 153 IBLA 192 (Aug. 30, 2000).

Mining Claims
Rental or Claim Maintenance Fees
Generally

Under 30 U.S.C. § 28f(a) (1994), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of $100 per claim on or before August 31 of each year for years 1994 through 1998, and failure to pay the fee renders the claim null and void by operation of law. The statute gives the Secretary discretion to waive the fee for a small miner who holds not more than 10 mining claims, mill sites, or tunnel sites, or combination thereof, and under 43 C.F.R. § 3833.1-7 (d)(2) (1997), a claimant must file proof of the conditions for waiver by the August 31 immediately preceding the assessment year for which the waiver is sought.

Cheryl Jong, 154 IBLA 71 (Dec. 12, 2000).

Mining Claims
Rental or Claim Maintenance Fees
Generally

A claimant who files a small miner waiver must perform assessment work and file the affidavit of assessment work with the proper BLM office on or before December 30 immediately following the August 31 by which the small miner filed for a waiver of payment of the maintenance fee, and failure to do so shall conclusively constitute forfeiture of the mining claim or site. The option of filing a notice of intention to hold the claims is not contemplated under 43 C.F.R. § 3833.1-7, the regulation which sets forth the filing requirements for the maintenance fee waiver.

Cheryl Jong, 154 IBLA 71 (Dec. 12, 2000).

Mining Claims
Rental or Claim Maintenance Fees
Generally

Under 43 C.F.R. § 3833.1-6(d)(1) (1997), a mining claimant may obtain an exemption from the payment of maintenance fees for mining claims and sites if (1) he has received a declaration of taking or a notice of intent to take from the National Park Service or has otherwise been formally denied access to his mining claims or sites by the United States, and (2) he timely provides proof of those conditions for exemption. The failure of a claimant to satisfy the conditions for obtaining approval of a plan of operations during a particular assessment year does not constitute a denial of access to the claims so as to exempt the claims from the maintenance fee.

Cheryl Jong, 154 IBLA 71 (Dec. 12, 2000).

Mining Claims

Rental or Claim Maintenance Fees
Generally

Under 43 C.F.R. § 3833.1-6(e) (1997), payment of mining claim maintenance fees may be deferred for the period during which a deferment of assessment work has been granted, but a mining claimant who has not filed a petition for deferment of assessment work does not qualify for a deferment of the maintenance fees.

Cheryl Jong, 154 IBLA 71 (Dec. 12, 2000).

Mining Claims
Rental or Claim Maintenance Fees
Generally

An assertion that a maintenance fee waiver certification met the regulatory requirements when signed by a family member on behalf of another family member who owned the claim, because 43 C.F.R. § 1.3 allows individuals to practice before the Department on behalf of family members, cannot be accepted. "Practice" is defined in 43 C.F.R. § 1.2 to expressly exclude "the preparation and filing of an application," and such a certification is properly considered to be an application.

Samual B. Fretwell & Carl F. Fretwell, 154 IBLA 201 (Mar. 16, 2001).

Mining Claims
Rental or Claim Maintenance Fees
Generally

A maintenance fee waiver certification signed by an individual on behalf of the claim owner, which is filed without documentation showing the authority of the individual to do so, is defective, but may be cured under 43 C.F.R. § 3833.4(b). A power of attorney filed in response to a call for information under 43 C.F.R. § 3833.4(b), which is executed after the filing of a waiver certification, may be considered a proper authorization under the doctrine of ratification, when there is no prejudice to the Government or third parties.

Samual B. Fretwell & Carl F. Fretwell, 154 IBLA 201 (Mar. 16, 2001).

Mining Claims
Rental or Claim Maintenance Fees
Generally

Where claimants fail to certify in writing that, on the date payment of a mining claim maintenance fee was required, they held no more than 10 mining claims, mill sites, or tunnel sites (or combination thereof), they were not entitled under section 101(e) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of October 21, 1998, either to written notice by BLM of a defective certification or to a period of 60 days following receipt of the notice to pay the maintenance fee, and their claim is properly declared forfeited by operation of law.

Otto Adams, Katherine Smith, 155 IBLA 1 (Apr. 26, 2001).

Mining Claims
Rental or Claim Maintenance Fees
Generally

As enacted by Congress, the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312, originally required mining claimants to pay claim maintenance fees on or before August 31 of each year for the years 1994 through 1998, and regulations implementing this legislation provided that the requirement to pay a claim maintenance fee did not apply to any claim located after September 29, 1998. However, on October 21, 1998, Congress passed the Omnibus Consolidated and Emergency Supplemental Appropriations Act for 1999 which contained a provision requiring payment of the maintenance fee of $100 per claim on or before September 1 of each year for the years 1999 through 2001 and that statute made clear that the maintenance fee was required for each claim whether located *before* or *after* October 21, 1998.

Flynn C. Johnson, 155 IBLA 24 (May 1, 2001).

Mining Claims
Rental or Claim Maintenance Fees
Generally

Where a mining claimant tenders payment of the fees via a check that is later dishonored by its bank, the effect is the same as if the maintenance fees are not paid. The claims are properly declared forfeited and null and void if the mining claimant did not apply for a small miner exemption from the maintenance fee requirement.

Loco Mining Company, 155 IBLA 153 (June 27, 2001).

Mining Claims
Rental or Claim Maintenance Fees
Generally

Where a mining claimant submits a payment for maintenance fees that is dishonored by the bank on which it is drawn; where the claimant notifies BLM of the problem only after the statutory deadline for filing the fees; where BLM misadvises the claimant at that time that BLM may accept a replacement payment as long as the funds arrive before BLM receives notice that there was a problem with the payment; and where no replacement payment is filed until after the statutory deadline, there is no basis for estopping BLM from declaring the claims forfeited and null and void. BLM's misadvice was not in the form of a crucial misstatement in an official decision. Further, reliance on such misadvice was irrelevant, since it was not given until after the mandatory statutory deadline for making payment (when BLM was no longer authorized to accept maintenance fees) and since reliance on any misadvice may not create rights not authorized by law.

Loco Mining Company, 155 IBLA 153 (June 27, 2001).

Mining Claims
Rental or Claim Maintenance Fees
Generally

Where a mining claim was located on July 22, 1996, payment of the initial $100 nonrefundable maintenance fee was timely made at the time of filing the location notice on September 4, 1996, since it was made within the 90-day period allowed under FLPMA. The $100 fee due on August 31, 1996, for the succeeding assessment year, or the certification of exemption in lieu thereof, was also required to be submitted at the time of filing the location notice and the initial $100 fee. A certification of exemption for the succeeding assessment year not filed until December 24, 1996, was untimely.

Carl Riddle, 155 IBLA 311 (Aug. 31, 2001).

Mining Claims
Rental or Claim Maintenance Fees
Generally

The affidavit of assessment work performed by a small miner claiming a maintenance fee waiver must be filed with the proper BLM office in accordance with sec. 314 of the Federal Land Policy and Management Act, 43 U.S.C. § 1744 (1994), and 43 C.F.R. § 3833.1-7(b) (1994).

Mineral Hill Venture, 155 IBLA 323 (Sept. 6, 2001).

Mining Claims
Rental or Claim Maintenance Fees
Generally

A mining claimant seeking a waiver of the requirement to pay the annual mining claim maintenance fee must file an annual certification of his qualifications for a waiver on the date payment is due. The refiling of a photocopy of a certification of qualifications previously executed by claimants and filed for a different assessment year does not constitute a timely-filed certification of qualifications for a waiver and the claim is properly held to be forfeited and void.

Thomas L. Carufel, Dorothea L. Johnson, 155 IBLA 340 (Sept. 21, 2001).

Mining Claims
Rental or Claim Maintenance Fees
Generally

The purpose of the "postmark" rule for determining whether a document received within the regulatory grace period was mailed prior to the statutory deadline for filing, and thus was timely filed, is to make it unnecessary to resolve disputes regarding when a document was mailed. When the envelope in which such a document was received has been lost by BLM, the record is insufficient to support a finding that the document was not timely filed and a decision declaring the mining claim forfeited and void will be reversed.

L. R. Church, 155 IBLA 367 (Oct. 10, 2001).

Mining Claims
Rental or Claim Maintenance Fees
Generally

Under 43 C.F.R. § 3833.4-1, BLM is required to provide notice to a claimant who has filed a maintenance fee payment waiver certification when it finds a "defect" therein. However, because the intent to seek a waiver is within the province of the claimant, BLM may accept that the claims or sites listed on a timely filed certification are those for which the waiver is sought. The fact that BLM records may show that the claimant owns one or more additional claims or sites not listed on the certification does not establish that there is a "defect" in the certification triggering the notice requirement of 43 C.F.R. § 3833.4-1.

Max Buckner, *et al.*, 156 IBLA 30 (2001).

Mining Claims
Rental or Claim Maintenance Fees
Generally

Under 30 U.S.C. § 28f(a) (1994), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of $100 per claim on or before August 31 of each year for years 1994 through 1998, and failure to pay the fee renders the claim forfeited and void by operation of law. Where claimant held 522 claims but submitted maintenance fee payments for 521 claims for the 1995 assessment year and the claims list submitted with payment omitted both name and serial number for a particular claim, the omitted claim is properly declared void by operation of law.

USA Mining, Inc., 156 IBLA 54 (2001).

Mining Claims
Rental or Claim Maintenance Fees
Generally

In the absence of any evidence in the case file that a mining claim fee waiver certification was received by BLM, the legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them will support a finding that the document was not timely filed. Although the presumption is rebuttable by evidence to the contrary, a statement that a document was enclosed in the same envelope with other documents that were received by BLM must be corroborated by other evidence.

Debbee Hosko, 158 IBLA 4 (Nov. 5, 2002).

Mining Claims

Rental or Claim Maintenance Fees
Generally

BLM properly declares mining claims forfeited by operation of law when a mining claimant, who filed the location notices and paid the location fee, service charge and maintenance fee for the 2001 assessment year in which the claims were located, as required by 30 U.S.C. § 28f(b)(2002) and 43 C.F.R. § 3833.1-5(a)(1), fails to pay the maintenance fee or file the maintenance fee payment waiver certification for the 2002 assessment year on or before September 1, 2001.

James W. Sircy, 158 IBLA 234 (Jan. 28, 2003).

Mining Claims
Rental or Claim Maintenance Fees
Generally

Rights acquired under relocations of lode mining claims declared to be forfeited by operation of law for failure to timely file the claim maintenance fee do not relate back to the date of the locations of the original claims but only to the date of the relocations. When such claims are located totally on land withdrawn from entry under the mining laws, BLM properly declares those claims null and void ab initio. When only part of such claims lies on with- drawn land, BLM properly notifies the claimants that they have not acquired any surface rights to the portion of the claims overlapping the withdrawn land; that mining and mining-related activities on those lands would constitute a trespass; and that, depending on the circumstances, they may or may not have any mineral rights in the subsurface of such land.

Devon Britton, *et al*, 158 IBLA 279 (Feb. 24, 2003).

Mining Claims
Rental or Claim Maintenance Fees
Generally

A BLM decision purporting to declare mining claims forfeited by operation of law for failure to either pay the $100 maintenance fee or file a maintenance fee payment waiver certification on or before September 1, 2000, for the 2001 assessment year is properly set aside and remanded to BLM where mining claimant on appeal establishes by a preponderance of the evidence that he timely filed a maintenance fee payment waiver certification on August 28, 2000, which date was before September 1, 2000, albeit possibly incorrect identifying the serial numbers assigned by BLM to the named claims.

Terrence Timmins, 158 IBLA 318 (Mar. 26, 2003).

Mining Claims
Rental or Claim Maintenance Fees
Generally

Under 43 C.F.R. § 3833.4-1, should BLM records indicate that a mining claimant, while timely filing the required maintenance fee payment waiver certification, identified erroneous serial numbers associated with named claims for which the waiver was sought, BLM should issue claimant a notice identifying the defect and the claimant must cure the defective waiver or pay the annual maintenance fees within 60 days of receiving BLM notification of the defect. Otherwise the claims covered by the defective waiver are forfeited.

Terrence Timmins, 158 IBLA 318 (Mar. 26, 2003).

Mining Claims
Rental or Claim Maintenance Fees
Generally

When a claimant fails to file a waiver and no payment has been made prior to the deadline, forfeiture results from the statutory mandate. BLM and this Board were not given the authority to excuse lack of compliance with the maintenance fee requirement, to extend the time for compliance, or to afford any relief from the statutory consequences.

Robert B. Hoke, *et al.*, 160 IBLA 220 (Dec. 3, 2003).

Mining Claims
Rental or Claim Maintenance Fees
Generally

A claimant who files a small miner waiver certification must perform assessment work for the same assessment year for which that waiver was filed, and then file evidence of assessment work with the proper BLM office on or before December 30 following the end of that assessment year in accordance with annual filing requirements found in sec. 314(a) of FLPMA. This evidence of assessment work is in addition to whatever was filed the previous year to comply with the waiver requirements. Failure to file the required evidence of assessment work will result in abandonment of the mining claim.

Audrey Bradbury, 160 IBLA 269 (Dec. 30, 2003).

Mining Claims
Rental or Claim Maintenance Fees
Generally

Where the 90-day period allowed by 43 U.S.C. § 1744(b) (2000) and 43 C.F.R. § 3833.1-2(a) to record copies of the certificates of location of newly-located mining claims "bridges" the September 1 annual deadline for filing mining claim maintenance fees under 43 C.F.R. § 3833.1-5, the claimant (1) must file a $100 fee for each claim located for the assessment year in which the claim was located (the initial maintenance fee) and (2) may either file a second $100 fee for each claim for the succeeding assessment year *or* may establish entitlement to a fee waiver for its claims for the succeeding assessment year and pay no fee. If the requisite payment and/or filings are made with BLM within the 90-day filing period allowed for new claims, the claimant has complied. Where the claimant makes two filings (one paying requisite filing fees and the initial maintenance fees and another presenting a maintenance fee payment waiver certification for the claims for the succeeding assessment year) within the 90-day period, a BLM decision declaring its claims forfeited will be reversed.

Bear Creek Mining Company, 160 IBLA 308 (Jan. 22, 2004).

Mining Claims
Rental or Claim Maintenance Fees
Generally

The requirement to perform assessment work on a mining claim begins with the assessment year commencing on the September 1 following the date of location of the claim. A claimant filing a maintenance fee waiver certification certifies compliance with the assessment work requirements for the assessment year ending on the September 1 that the maintenance fee is due. A decision forfeiting a mining claim for failure to record proof of labor by December 30 for the assessment year ending on the September 1 that the maintenance fee was due will be reversed when the claim was located during that assessment year and, hence, no proof of labor was required for that assessment year.

James J. Holmberg, III, 160 IBLA 372 (Jan. 28, 2004).

Mining Claims
Rental or Claim Maintenance Fees
Generally

Prior to the assessment year for which a maintenance fee waiver is sought, a claimant must certify that it and related parties do not hold in aggregate more than 10 claims. Under 30 U.S.C. § 28f(d) (2000), a party is deemed related where it controls, is controlled by, or is under common control with the claimant. The mere fact that an individual claimant is also one of several directors of a company that holds mining claims is insufficient to establish that the corporation is a related party. The exercise of control must be evaluated to determine whether an individual who personally holds mining claims and acts as a director of a company is in violation of the 10-claim limit. Where an individual is only one of several directors, and cannot, acting alone, control the company's claims, a decision to aggregate the company's claims so that he is deemed in violation of the 10-claim limit must be reversed.

W. Douglas Sellers, 160 IBLA 377 (Feb. 5, 2004).

Mining Claims
Rental or Claim Maintenance Fees
Generally

A mining claim located on lands withdrawn from mineral entry at the time of location is null and void *ab initio*. Where claimants argue that their claim predates the effective date of the withdrawal, they must establish that they are the successors to an interest in a mining claim that was located on this land before its withdrawal from mineral entry; to do so, they must show an unbroken chain of title to a valid claim located prior to the withdrawal of the land and, further, if a new notice of location is filed after the effective date of the withdrawal, the claim had to be an "amended location" rather than a "relocation." A new notice of location filed after a claim has been declared abandoned and void for failure to meet Federal recording and/or rental or fee requirements is a relocation, since such failure extinguishes the prior claim. Where a claim that is located prior to the effective date of a withdrawal is abandoned and void by operation of law for failure to comply with the rental or fee requirements, a subsequent claim located for the same land is a relocation and does not relate back to the location date of the previous claim. Where the subsequent claim is located on lands segregated from mineral entry by the filing of an application for withdrawal, the claim is properly declared null and void *ab initio*.

Douglas and Jane Weldy, 164 IBLA 166 (December 8, 2004).

Mining Claims
Claim Maintenance Fees
Generally

A document that does not certify that on the date it was due the claimant and all related parties held not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands does not meet the requirement of 30 U.S.C. § 28f(d)(1)(A) and 30 C.F.R. § 3833.1-6 and 3833.1-7 for a small miner waiver from payment of the annual mining claim maintenance fee. Failure to make this certification cannot be cured.

Julie Dimitrov, et al., 164 IBLA 278 (Jan. 14, 2005).

Mining Claims
Rental or Claim Maintenance Fees
Generally

In the absence of any evidence in the case file that a mining claim fee waiver certification was received by BLM, the legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them will support a finding that the document was not timely filed. Although the presumption is rebuttable by evidence to the contrary, an assertion that a waiver certification was filed with BLM is insufficient in the absence of a copy of the waiver certification and corroboration that the document was received by BLM.

Ed Sorrells, 164 IBLA 379 (Feb. 10, 2005).

Mining Claims
Rental or Claim Maintenance Fees
Generally

The obligation to file evidence of required assessment work by December 30 following the filing of a waiver certification stems from the assessment work requirements of the Mining Law of 1872 and the filing requirements of sec. 314 of the Federal Land Policy and Management Act of 1976 and not from the fact a waiver certification was filed by the previous September 1.

Earl Riggs, et al., 165 IBLA 36 (Feb. 17, 2005).

Mining Claims
Rental or Claim Maintenance Fees
Generally

The general rule is that for every assessment year either the maintenance fee must be paid in advance, or a small miner waiver certification filed in advance and assessment work performed during that assessment year, with evidence of assessment work filed with BLM under the filing requirements of sec. 314 of the Federal Land Policy and Management Act of 1976 by December 30 following the end of the assessment year.

Earl Riggs, et al., 165 IBLA 36 (Feb. 17, 2005).

Mining Claims
Rental or Claim Maintenance Fees
Generally

Payment of the annual maintenance fee for a mining claim is in lieu of the assessment work requirements of the Mining Law of 1872, 30 U.S.C. §§ 28-28e (2000), and the related filing requirements of section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (2000), for the upcoming assessment year that begins at noon on September 1 of the year payment is due. However, where a waiver certification is filed for that assessment year, the claimant is required, by the Mining Law of 1872, to perform assessment work during that assessment year and, by section 314(a) of FLPMA, to file an affidavit of having performed such work on or before December 30 of the calendar year in which the assessment year ends. If the claimant fails to timely file the evidence of assessment work, the result is a statutory abandonment of the claims in accordance with 43 U.S.C. § 1744(c) (2000).

John J. Trautner, 165 IBLA 265 (Apr. 25, 2005).

Mining Claims
Rental or Claim Maintenance Fees
Generally

Under 30 U.S.C. § 28f(a) (2000), *as amended*, the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of $100 per claim or site on or before September 1 of each year for years 2002 and 2003, and failure to pay the fee renders the claim forfeited and void by operation of law, under 30 U.S.C. § 28i (2000). Payment of the annual claim maintenance fee may be waived when a claimant certifies that, on the date payment of the maintenance fee was due, he held not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands and has performed the assessment work required by the Mining Law of 1872, for the assessment year ending at noon of September 1 of the calendar year payment was due. A claimant must file the waiver certification by September 1, at the beginning of the assessment year for which the waiver is sought.

Carl A. Parker, Sr., 165 IBLA 300 (Apr. 28, 2005).

Mining Claims
Rental or Claim Maintenance Fees
Generally

Under 43 C.F.R. § 3833.1-6(e) (2001), payment of mining claim maintenance fees may be deferred until the authorized officer has acted upon a petition for deferment and, if the petition is granted, the fees may be deferred for the upcoming assessment year. A mining claimant who has not filed a petition for deferment of assessment work on or before September 1 for a given year does not qualify for a deferment of the maintenance fees.

Carl A. Parker, Sr., 165 IBLA 300 (Apr. 28, 2005).

Mining Claims
Rental or Claim Maintenance Fees
Generally

When a claimant invokes relief pursuant to the Soldiers' and Sailors' Civil Relief Act, after BLM has invalidated a mining claim for failure timely to pay the annual maintenance fee or file a waiver certification for that assessment year, BLM's decision will be set aside and the matter remanded for BLM to adjudicate the claimant's eligibility for relief under the Act.

Eric Lundquest, 166 IBLA 1 (May 16, 2005).

Mining Claims
Rental or Claim Maintenance Fees
Generally

In accordance with 43 C.F.R. § 3836.11(a), the obligation to perform assessment work for mining claims located in August 2004 did not arise until the 2005 assessment year, which commenced at noon on September 1, 2004. Thus, a decision declaring such mining claims forfeited by operation of law for failure to file with BLM an affidavit of assessment work or notice of intention to hold on or before December 30, 2004, will be reversed because the claimants had no obligation to file an affidavit of assessment work on or before December 30, 2004, for the 2004 assessment year.

Larry G. Andrus, Jr., Scott P. Andrus, Sr., 166 IBLA 17 (May 25, 2005).

Mining Claims
Rental or Claim Maintenance Fees
Generally

When a mining claim is located before and recorded after the September 1 effective date of adjusted fees, the location and initial maintenance fees in effect at the time of location of the claim control what must be paid at the time of recordation. 43 C.F.R. § 3834.23(a) provides that "[y]ou must pay the adjusted initial maintenance and location fees when you record a new mining claim . . . located on or after the September 1st immediately following the date BLM published its notice about the adjustment." When mining claimants located mining claims in July 2004, after BLM published amended regulations in the *Federal Register* raising location and maintenance fees from $25 to $30 and $100 to $125, respectively, they were not responsible for the increased fees in October 2004 when they recorded their claims, because their claims were located before September 1, 2004.

Lisa Tucker, 167 IBLA 118 (Sept. 29, 2005).

Mining Claims
Rental or Claim Maintenance Fees
Generally

When a mining claim is located before September 1, during one assessment year, and recorded after September 1, during the succeeding assessment year, the claimant is required to either pay the maintenance fee or file a waiver certification for the succeeding assessment year, but is also permitted the entire 90-day period for recording the claim with BLM to take such action.

Lisa Tucker, 167 IBLA 118 (Sept. 29, 2005).

Mining Claims
Rental or Claim Maintenance Fees
Generally

When a mining claimant pays only part of the service charges, maintenance fees, and location fees when recording new mining claims, BLM must act in accordance with 43 C.F.R. § 3830.95 in applying that payment to the required fees and, when the fees paid are insufficient to cover the fees for a claim and the 90-day period for recording that claim has expired, the claim is properly deemed forfeited and null and void by operation of law.

Lisa Tucker, 167 IBLA 118 (Sept. 29, 2005).

Mining Claims
Rental or Claim Maintenance Fees
Generally

Under 43 C.F.R. § 3833.1-1 (2003), maintenance and location fees are not returnable or refundable unless the mining claim or site has been determined, as of the date the fees were submitted, to be null and void, abandoned by operation of law, or otherwise forfeited. Since the Department has no jurisdiction to determine questions regarding the right of possession between rival claimants, the ruling of a state court of competent jurisdiction that a claimant has no ownership interest in various mining claims constitutes a determination that the claimant's claims are null and void. A BLM decision denying a requested refund of the claim maintenance fees paid on the voided claims will be reversed as to the fees paid subsequent to the date of the court's ruling. BLM's decision denying the requested refund of fees paid before the date of the court's ruling will be set aside and remanded to BLM for further analysis where the record contains conflicting evidence of BLM's interpretation of and practice under the applicable regulation.

Recon Mining Company, Inc., 167 IBLA 103 (Oct. 6, 2005).

Mining Claims
Rental or Claim Maintenance Fees
Generally

A BLM denial of a request for interest on a refund of claim maintenance and other fees and charges will be affirmed because, absent a statutory provision authorizing the payment of interest, no interest may be paid by the Government on such refunds.

Recon Mining Company, Inc., 167 IBLA 103 (Oct. 6, 2005).

Mining Claims
Rental or Claim Maintenance Fees
Generally

When a mining claimant timely submits two checks to BLM totaling $125 (one for $100 and the other for $25) in payment of the maintenance fee for a mining claim and the bank properly dishonors the check for $100, the fee is, in accordance with 43 C.F.R. § 3830.23(b), "unpaid." The remaining payment is not a partial payment subject to cure because the payment of the fee is required by 30 U.S.C. § 28f(a) (2000), and, in accordance with 43 C.F.R. § 3830.93(a), "[i]f there is a defect in your compliance with a statutory requirement, the defect is incurable."

Beverly D. Glass, 167 IBLA 118 (Feb. 13, 2006).

Mining Claims
Rental or Claim Maintenance Fees
Generally

Under 43 C.F.R. § 3835.20, the transferree of mining claims, mill sites, or tunnel sites that are subject to a waiver of the maintenance fee requirements of 30 U.S.C. § 28f (a) (2000), as amended, must also qualify for the waiver in order for BLM to continue to apply that waiver to the transferred claims or sites. If the transferree does not qualify for the waiver, it must pay the annual maintenance fee by the September 1, following the date the transfer became effective under state law.

Dan Adelmann, 169 IBLA 13 (Apr. 24, 2006).

Mining Claims
Rental or Claim Maintenance Fees
Generally

Under 43 C.F.R. § 3830.24(c), a mining claimant may send the annual claim maintenance fee to BLM using a bona fide mail delivery service, but such payment must be postmarked or clearly identified by the mail delivery service as being sent on or before the due date and received by the BLM state office on later than 15 calendar days after the due date. When BLM receives a maintenance fee payment in an envelope bearing both a Pitney-Bowes postage meter postmark before the September 1 due date and a United States Postal Service postmark after the due date, the payment is untimely. A Pitney-Bowes postage meter is not a bona fide mail delivery service.

Jon Roalf, et al., 169 IBLA 58 (May 12, 2006).

Mining Claims
Rental or Claim Maintenance Fees
Generally

To the extent a BLM decision declares mining claims located and recorded in August 2004 forfeited by operation of law for failure to file with BLM an affidavit of assessment work on or before December 30, 2004, it is properly reversed because the obligation to perform assessment work for the claims did not arise until the 2005 assessment year, which commenced at noon on September 1, 2004. However, to the extent the same BLM decision declares the same mining claims also forfeited by operation of law for failure to file a notice of intent to hold on or before December 30, 2004, it must be vacated and the case remanded to allow the claimants the opportunity to submit a notice of intent to hold, because the requirement to file a notice of intent to hold in such circumstances is a regulatory requirement, not a statutory requirement.

Larry G. Andrus, Jr. Scott P. Andrus, Sr.(on Reconsideration), 169 IBLA 353 (Aug. 10, 2006).

Mining Claims
Rental or Claim Maintenance Fees
Generally

Under 43 C.F.R. § 3835.20(a), the transferee of a mining claim that is subject to a waiver of the maintenance fee requirements of 30 U.S.C. § 28f(a) (2000), as amended, must also qualify for the waiver "in order for BLM to continue to apply that waiver" to the transferred claim. If that person qualifies for the waiver at the time of transfer, the assessment work for the assessment year for which the waiver was sought and obtained must be performed, as required by the Mining Law of 1872, and thereafter, as required by section 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (2000), the affidavit of having performed that work must be filed with BLM on or before December 30 following the end of that assessment year. If the transferee does not qualify for the waiver, 43 C.F.R. § 3835.20(b) requires that he/she must pay the annual maintenance fee for the assessment year for which the transferor obtained the waiver by the September 1 following the date the transfer became effective under state law. A transferee who qualifies for the waiver does not have the option of paying the maintenance fee.

Frank E. & Carol Sieglitz, 170 IBLA 286 (Nov. 3, 2006).

Mining Claims
Rental or Claim Maintenance Fees
Generally

The requirement to file an affidavit of assessment work with BLM arises from section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (2000), not the maintenance fee waiver requirement of 30 U.S.C. § 28f(d) (2000). 30 U.S.C. § 28f(d) (2000) only requires that a claimant certify that he/she has performed assessment work for the assessment year then ending, and does not render a waiver contingent on performance of assessment work and satisfaction of the FLPMA filing requirement for the subsequent assessment year, for which the waiver is sought. Failure to file an affidavit of assessment work is a violation of the FLPMA filing requirement, and not the waiver requirement of 30 U.S.C. § 28f(d) (2000), and results in abandonment of the claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (2000).

Frank E. & Carol Sieglitz, 170 IBLA 286 (Nov. 3, 2006).

Mining Claims
Rental or Claim Maintenance Fees
Generally

When a small miner timely paid maintenance fees for his mining claims in 2003 for the 2004 assessment year, those fees were, in accordance with 30 U.S.C. § 28f(a) (2000), as amended, in lieu of both the annual labor requirements of the Mining Law of 1872, 30 U.S.C. §§ 28-28e (2000), and the related filing requirements of section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (2000), for the 2004 assessment year. Therefore, when he timely filed a waiver certification for the claims on August 30, 2004, for the 2005 assessment year beginning at noon on September 1, 2004, and ending at noon on September 1, 2005, he did not have a statutory obligation to make an annual filing under section 314(a) of FLPMA on or before December 30, 2004. The obligation imposed by 43 C.F.R. § 3835.15(a) to file a notice of intention to hold on or before the December 30th immediately following the submission of the waiver certification in such a situation is regulatory only and, therefore, eligible for cure.

Hector Santa Anna, 171 IBLA 103 (Feb. 15, 2007).

Mining Claims
Rental or Claim Maintenance Fees
Postmark Rule

A mining claimant is required to pay a maintenance fee annually, on or before September 1. In accordance with 43 C.F.R. § 3833.0-5(m) (2002), a maintenance fee payment will be deemed timely if it is received within the time period prescribed by law or, if mailed, is clearly postmarked by a bona fide mail delivery service on or before the due date, and is received by the "proper BLM State Office," by 15 calendar days after the due date. BLM properly declares mining claims forfeited and null and void for failure to timely file the claim maintenance fee where the record clearly establishes that the proper BLM State Office did not receive the payment by 15 calendar days after the due date.

F.W.A. Holdings, Inc., F.W. Aggregates, Inc., 167 IBLA 93 (Sept. 30, 2005).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

A BLM decision declaring an unpatented mining claim situated within a unit of the National Park System forfeited and void by operation of law, pursuant to section 10104 of the Omnibus Budget Reconciliation Act of 1993, 30 U.S.C. § 28i (1994), will be affirmed where the claimant failed to either pay the maintenance fee, obtain NPS approval of the assessment work referenced in his small miner maintenance fee waiver certification, or file a petition for deferral of such work.

Stephen Dwyer, 151 IBLA 92 (Nov. 8, 1999).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

Under 30 U.S.C. § 28f(a) (1994), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of $100 per claim on or before August 31 of each year for years 1994 through 1998, and failure to pay the fee renders the claim null and void by operation of law. The statute gives the Secretary discretion to waive the fee for a small miner who holds not more than 10 mining claims, mill sites, or tunnel sites, or combination thereof. Where the claimant does not qualify for a waiver and did not pay the claim maintenance fee, BLM properly declares the claims forfeited and void.

Black Bear Mines Co., et al., 152 IBLA 387 (June 29, 2000).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

Prior to the assessment year for which a maintenance fee waiver is sought, a claimant must certify that it and related parties do not hold in aggregate more than 10 claims. Under 30 U.S.C. § 28f(d)(1994), a party is deemed related where it controls, is controlled by, or is under common control with the claimant. Where a company has a majority of directors or officers who are also the majority of directors or officers of another company, the two are related under the statute. If their claims in aggregate exceed 10, they cannot individually qualify for the waiver.

Black Bear Mines Co., et al., 152 IBLA 387 (June 29, 2000).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

Under 30 U.S.C. § 28f(a) (1994), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of $100 per claim on or before August 31 of each year for years 1994 through 1998, and failure to pay the fee renders the claim null and void by operation of law. The statute gives the Secretary discretion to waive the fee for a small miner who holds not more than 10 mining claims, mill sites, or combination thereof, and under 43 C.F.R. § 3833.1-7(d)(2), a claimant must file proof of conditions for waiver by the August 31 immediately preceding the assessment year for which the waiver is sought.

Aileen Mayes, 153 IBLA 192 (Aug. 30, 2000).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

The failure to record a quitclaim deed conveying a mining claim in Idaho prior to August 31 did not prevent title from passing to the grantee before that date, and where the grantee failed to pay the claim maintenance fee or qualify for a waiver, BLM properly declared the claims null and void.

Aileen Mayes, 153 IBLA 192 (Aug. 30, 2000).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

A claimant who files a small miner waiver must perform assessment work and file the affidavit of assessment work with the proper BLM office on or before December 30 immediately following the August 31 by which the small miner filed for a waiver of payment of the maintenance fee, and failure to do so shall conclusively constitute forfeiture of the mining claim or site. The option of filing a notice of intention to hold the claims is not contemplated under 43 C.F.R. § 3833.1-7, the regulation which sets forth the filing requirements for the maintenance fee waiver.

Cheryl Jong, 154 IBLA 71 (Dec. 12, 2000).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

An assertion that a maintenance fee waiver certification met the regulatory requirements when signed by a family member on behalf of another family member who owned the claim, because 43 C.F.R. § 1.3 allows individuals to practice before the Department on behalf of family members, cannot be accepted. “Practice” is defined in 43 C.F.R. § 1.2 to expressly exclude “the preparation and filing of an application,” and such a certification is properly considered to be an application.

Samual B. Fretwell, Carl F. Fretwell, 154 IBLA 201 (Mar. 16, 2001).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

A maintenance fee waiver certification signed by an individual on behalf of the claim owner, which is filed without documentation showing the authority of the individual to do so, is defective, but may be cured under 43 C.F.R. § 3833.4(b). A power of attorney filed in response to a call for information under 43 C.F.R. § 3833.4(b), which is executed after the filing of a waiver certification, may be considered a proper authorization under the doctrine of ratification, when there is no prejudice to the Government or third parties.

Samual B. Fretwell, Carl F. Fretwell, 154 IBLA 201 (Mar. 16, 2001).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

Where claimants fail to certify in writing that, on the date payment of a mining claim maintenance fee was required, they held no more than 10 mining claims, mill sites, or tunnel sites (or combination thereof), they were not entitled under section 101(e) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of October 21, 1998, either to written notice by BLM of a defective certification or to a period of 60 days following receipt of the notice to pay the maintenance fee, and their claim is properly declared forfeited by operation of law.

Otto Adams, Katherine Smith, 155 IBLA 1 (Apr. 26, 2001).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

Where a mining claimant tenders payment of the fees via a check that is later dishonored by its bank, the effect is the same as if the maintenance fees are not paid. The claims are properly declared forfeited and null and void if the mining claimant did not apply for a small miner exemption from the maintenance fee requirement.

Loco Mining Company, 155 IBLA 153 (June 27, 2001).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

Where a mining claimant submits a payment for maintenance fees that is dishonored by the bank on which it is drawn; where the claimant notifies BLM of the problem only after the statutory deadline for filing the fees; where BLM misadvises the claimant at that time that BLM may accept a replacement payment as long as the funds arrive before BLM receives notice that there was a problem with the payment; and where no replacement payment is filed until after the statutory deadline, there is no basis for estopping BLM from declaring the claims forfeited and null and void. BLM's misadvice was not in the form of a crucial misstatement in an official decision. Further, reliance on such misadvice was irrelevant, since it was not given until after the mandatory statutory deadline for making payment (when BLM was no longer authorized to accept maintenance fees) and since reliance on any misadvice may not create rights not authorized by law.

Loco Mining Company, 155 IBLA 153 (June 27, 2001).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

Where a mining claim was located on July 22, 1996, payment of the initial $100 nonrefundable maintenance fee was timely made at the time of filing the location notice on September 4, 1996, since it was made within the 90-day period allowed under FLPMA. The $100 fee due on August 31, 1996, for the succeeding assessment year, or the certification of exemption in lieu thereof, was also required to be submitted at the time of filing the location notice and the initial $100 fee. A certification of exemption for the succeeding assessment year not filed until December 24, 1996, was untimely.

Carl Riddle, 155 IBLA 311 (Aug. 31, 2001).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

The affidavit of assessment work performed by a small miner claiming a maintenance fee waiver must be filed with the proper BLM office in accordance with sec. 314 of the Federal Land Policy and Management Act, 43 U.S.C. § 1744 (1994), and 43 C.F.R. § 3833.1-7(b) (1994).

Mineral Hill Venture, 155 IBLA 323 (Sept. 6, 2001).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

A mining claimant seeking a waiver of the requirement to pay the annual mining claim maintenance fee must file an annual certification of his qualifications for a waiver on the date payment is due. The refiling of a photocopy of a certification of qualifications previously executed by claimants and filed for a different assessment year does not constitute a timely-filed certification of qualifications for a waiver and the claim is properly held to be forfeited and void.

Thomas L. Carufel, Dorothea L. Johnson, 155 IBLA 340 (Sept. 21, 2001).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

The purpose of the "postmark" rule for determining whether a document received within the regulatory grace period was mailed prior to the statutory deadline for filing, and thus was timely filed, is to make it unnecessary to resolve disputes regarding when a document was mailed. When the envelope in which such a document was received has been lost by BLM, the record is insufficient to support a finding that the document was not timely filed and a decision declaring the mining claim forfeited and void will be reversed.

L. R. Church, 155 IBLA 367 (Oct. 10, 2001).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

Under 43 C.F.R. § 3833.4-1, BLM is required to provide notice to a claimant who has filed a maintenance fee payment waiver certification when it finds a "defect" therein. However, because the intent to seek a waiver is within the province of the claimant, BLM may accept that the claims or sites listed on a timely filed certification are those for which the waiver is sought. The fact that BLM records may show that the claimant owns one or more additional claims or sites not listed on the certification does not establish that there is a "defect" in the certification triggering the notice requirement of 43 C.F.R. § 3833.4-1.

Max Buckner, *et al.*, 156 IBLA 30 (2001).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

In the absence of any evidence in the case file that a mining claim fee waiver certification was received by BLM, the legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them will support a finding that the document was not timely filed. Although the presumption is rebuttable by evidence to the contrary, a statement that a document was enclosed in the same envelope with other documents that were received by BLM must be corroborated by other evidence.

Debbee Hosko, 158 IBLA 4 (Nov. 5, 2002).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

A BLM decision purporting to declare mining claims forfeited by operation of law for failure to either pay the $100 maintenance fee or file a maintenance fee payment waiver certification on or before September 1, 2000, for the 2001 assessment year is properly set aside and remanded to BLM where mining claimant on appeal establishes by a preponderance of the evidence that he timely filed a maintenance fee payment waiver certification on August 28, 2000, which date was before September 1, 2000, albeit possibly incorrect identifying the serial numbers assigned by BLM to the named claims.

Terrence Timmins, 158 IBLA 318 (Mar. 26, 2003).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

Under 43 C.F.R. § 3833.4-1, should BLM records indicate that a mining claimant, while timely filing the required maintenance fee payment waiver certification, identified erroneous serial numbers associated with named claims for which the waiver was sought, BLM should issue claimant a notice identifying the defect and the claimant must cure the defective waiver or pay the annual maintenance fees within 60 days of receiving BLM notification of the defect. Otherwise the claims covered by the defective waiver are forfeited.

Terrence Timmins, 158 IBLA 318 (Mar. 26, 2003).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

When a claimant fails to file a waiver and no payment has been made prior to the deadline, forfeiture results from the statutory mandate. BLM and this Board were not given the authority to excuse lack of compliance with the maintenance fee requirement, to extend the time for compliance, or to afford any relief from the statutory consequences.

Robert B. Hoke, *et al.*, 160 IBLA 220 (Dec. 3, 2003).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

A claimant who files a small miner waiver certification must perform assessment work for the same assessment year for which that waiver was filed, and then file evidence of assessment work with the proper BLM office on or before December 30 following the end of that assessment year in accordance with annual filing requirements found in sec. 314(a) of FLPMA. This evidence of assessment work is in addition to whatever was filed the previous year to comply with the waiver requirements. Failure to file the required evidence of assessment work will result in abandonment of the mining claim.

Audrey Bradbury, 160 IBLA 269 (Dec. 30, 2003).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

Where the 90-day period allowed by 43 U.S.C. § 1744(b) (2000) and 43 C.F.R. § 3833.1-2(a) to record copies of the certificates of location of newly-located mining claims "bridges" the September 1 annual deadline for filing mining claim maintenance fees under 43 C.F.R. § 3833.1-5, the claimant (1) must file a $100 fee for each claim located for the assessment year in which the claim was located (the initial maintenance fee) and (2) may either file a second $100 fee for each claim for the succeeding assessment year *or* may establish entitlement to a fee waiver for its claims for the succeeding assessment year and pay no fee. If the requisite payment and/or filings are made with BLM within the 90-day filing period allowed for new claims, the claimant has complied. Where the claimant makes two filings (one paying requisite filing fees and the initial maintenance fees and another presenting a maintenance fee payment waiver certification for the claims for the succeeding assessment year) within the 90-day period, a BLM decision declaring its claims forfeited will be reversed.

Bear Creek Mining Company, 160 IBLA 308 (Jan. 22, 2004).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

Prior to the assessment year for which a maintenance fee waiver is sought, a claimant must certify that it and related parties do not hold in aggregate more than 10 claims. Under 30 U.S.C. § 28f(d) (2000), a party is deemed related where it controls, is controlled by, or is under common control with the claimant. The mere fact that an individual claimant is also one of several directors of a company that holds mining claims is insufficient to establish that the corporation is a related party. The exercise of control must be evaluated to determine whether an individual who personally holds mining claims and acts as a director of a company is in violation of the 10-claim limit. Where an individual is only one of several directors, and cannot, acting alone, control the company's claims, a decision to aggregate the company's claims so that he is deemed in violation of the 10-claim limit must be reversed.

W. Douglas Sellers, 160 IBLA 377 (Feb. 5, 2004).

Mining Claims
Claim Maintenance Fees
Small Miner Exemption

A document that does not certify that on the date it was due the claimant and all related parties held not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands does not meet the requirement of 30 U.S.C. § 28f(d)(1)(A) and 30 C.F.R. § 3833.1-6 and 3833.1-7 for a small miner waiver from payment of the annual mining claim maintenance fee. Failure to make this certification cannot be cured.

Julie Dimitrov, et al., 164 IBLA 278 (Jan. 14, 2005).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

In the absence of any evidence in the case file that a mining claim fee waiver certification was received by BLM, the legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them will support a finding that the document was not timely filed. Although the presumption is rebuttable by evidence to the contrary, an assertion that a waiver certification was filed with BLM is insufficient in the absence of a copy of the waiver certification and corroboration that the document was received by BLM.

Ed Sorrells, 164 IBLA 379 (Feb. 10, 2005).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

The obligation to file evidence of required assessment work by December 30 following the filing of a waiver certification stems from the assessment work requirements of the Mining Law of 1872 and the filing requirements of sec. 314 of the Federal Land Policy and Management Act of 1976 and not from the fact a waiver certification was filed by the previous September 1.

Earl Riggs, et al., 165 IBLA 36 (Feb. 17, 2005).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

The general rule is that for every assessment year either the maintenance fee must be paid in advance, or a small miner waiver certification filed in advance and assessment work performed during that assessment year, with evidence of assessment work filed with BLM under the filing requirements of sec. 314 of the Federal Land Policy and Management Act of 1976 by December 30 following the end of the assessment year.

Earl Riggs, et al., 165 IBLA 36 (Feb. 17, 2005).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

When a maintenance fee waiver certification contains a handwritten statement that the claimant intends to relinquish any interest in any mining claim he might have, BLM erroneously relies on such a statement to close the files for claims included in the certification when other evidence shows that the statement was intended to relate only to any interest the claimant may have held in any claims other than those listed. In order to have a valid relinquishment of a mining claim, and thus an abandonment thereof, it must be demonstrated that the claimant actually intended to abandon the claim on or before the filing of his certification.

Andy D. Delcomte, 165 IBLA 247 (Apr. 21, 2005).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

Payment of the annual maintenance fee for a mining claim is in lieu of the assessment work requirements of the Mining Law of 1872, 30 U.S.C. §§ 28-28e (2000), and the related filing requirements of section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (2000), for the upcoming assessment year that begins at noon on September 1 of the year payment is due. However, where a waiver certification is filed for that assessment year, the claimant is required, by the

Mining Law of 1872, to perform assessment work during that assessment year and, by section 314(a) of FLPMA, to file an affidavit of having performed such work on or before December 30 of the calendar year in which the assessment year ends. If the claimant fails to timely file the evidence of assessment work, the result is a statutory abandonment of the claims in accordance with 43 U.S.C. § 1744(c) (2000).

John J. Trautner, 165 IBLA 265 (Apr. 25, 2005).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

Under 30 U.S.C. § 28f(a) (2000), *as amended*, the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of $100 per claim or site on or before September 1 of each year for years 2002 and 2003, and failure to pay the fee renders the claim forfeited and void by operation of law, under 30 U.S.C. § 28i (2000). Payment of the annual claim maintenance fee may be waived when a claimant certifies that, on the date payment of the maintenance fee was due, he held not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands and has performed the assessment work required by the Mining Law of 1872, for the assessment year ending at noon of September 1 of the calendar year payment was due. A claimant must file the waiver certification by September 1, at the beginning of the assessment year for which the waiver is sought.

Carl A. Parker, Sr., 165 IBLA 300 (Apr. 28, 2005).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

In accordance with 43 C.F.R. § 3836.11(a), the obligation to perform assessment work for mining claims located in August 2004 did not arise until the 2005 assessment year, which commenced at noon on September 1, 2004. Thus, a decision declaring such mining claims forfeited by operation of law for failure to file with BLM an affidavit of assessment work or notice of intention to hold on or before December 30, 2004, will be reversed because the claimants had no obligation to file an affidavit of assessment work on or before December 30, 2004, for the 2004 assessment year.

Larry G. Andrus, Jr., Scott P. Andrus, Sr., 166 IBLA 17 (May 25, 2005).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

A document, timely filed with BLM, which does not, in some fashion, apply for or request a waiver of the statutory requirement to pay a claim maintenance fee, is not a small miner waiver application or request, within the meaning of 30 U.S.C. § 28f(d)(3) (2000), and its implementing regulations.

Beverly D. Glass, 167 IBLA 118 (Feb. 13, 2006).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

Under 43 C.F.R. § 3835.20, the transferree of mining claims, mill sites, or tunnel sites that are subject to a waiver of the maintenance fee requirements of 30 U.S.C. § 28f (a) (2000), as amended, must also qualify for the waiver in order for BLM to continue to apply that waiver to the transferred claims or sites. If the transferree does not qualify for the waiver, it must pay the annual maintenance fee by the September 1, following the date the transfer became effective under state law.

Dan Adelmann, 169 IBLA 13 (Apr. 24, 2006).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

The requirement that each small miner seeking a waiver of the maintenance fee requirement file a waiver certification on or before September 1 of each calendar year the certification is due means that the certification may not be filed any earlier than during the assessment year immediately preceding the assessment year for which the waiver is sought.

David G. Kukowski, 169 IBLA 19 (Apr. 25, 2006).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

To the extent a BLM decision declares mining claims located and recorded in August 2004 forfeited by operation of law for failure to file with BLM an affidavit of assessment work on or before December 30, 2004, it is properly reversed because the obligation to perform assessment work for the claims did not arise until the 2005 assessment year, which commenced at noon on September 1, 2004. However, to the extent the same BLM decision declares the same mining claims also forfeited by operation of law for failure to file a notice of intent to hold on or before December 30, 2004, it must be vacated and the case remanded to allow the claimants the opportunity to submit a notice of intent to hold, because the requirement to file a notice of intent to hold in such circumstances is a regulatory requirement, not a statutory requirement.

Larry G. Andrus, Jr., Scott P. Andrus, Sr. (On Reconsideration), 169 IBLA 353 (Aug. 10, 2006).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

Under 43 C.F.R. § 3835.20(a), the transferee of a mining claim that is subject to a waiver of the maintenance fee requirements of 30 U.S.C. § 28f(a) (2000), as amended, must also qualify for the waiver "in order for BLM to continue to apply that waiver" to the transferred claim. If that person qualifies for the waiver at the time of transfer, the assessment work for the assessment year for which the waiver was sought and obtained must be performed, as required by the Mining Law of 1872, and thereafter, as required by section 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (2000), the affidavit of having performed that work must be filed with BLM on or before December 30 following the end of that assessment year. If the transferee does not qualify for the waiver, 43 C.F.R. § 3835.20(b) requires that he/she must pay the annual maintenance fee for the assessment year for which the transferor obtained the waiver by the September 1 following the date the transfer became effective under state law. A transferee who qualifies for the waiver does not have the option of paying the maintenance fee.

Frank E. & Carol Sieglitz, 170 IBLA 286 (Nov. 3, 2006).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

The requirement to file an affidavit of assessment work with BLM arises from section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (2000), not the maintenance fee waiver requirement of 30 U.S.C. § 28f(d) (2000). 30 U.S.C. § 28f(d) (2000) only requires that a claimant certify that he/she has performed assessment work for the assessment year then ending, and does not render a waiver contingent on performance of assessment work and satisfaction of the FLPMA filing requirement for the subsequent assessment year, for which the waiver is sought. Failure to file an affidavit of assessment work is a violation of the FLPMA filing requirement, and not the waiver requirement of 30 U.S.C. § 28f(d) (2000), and results in abandonment of the claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (2000).

Frank E. & Carol Sieglitz, 170 IBLA 286 (Nov. 3, 2006).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

When a small miner timely paid maintenance fees for his mining claims in 2003 for the 2004 assessment year, those fees were, in accordance with 30 U.S.C. § 28f(a) (2000), as amended, in lieu of both the annual labor requirements of the Mining Law of 1872, 30 U.S.C. §§ 28-28e (2000), and the related filing requirements of section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (2000), for the 2004 assessment year. Therefore, when he timely filed a waiver certification for the claims on August 30, 2004, for the 2005 assessment year beginning at noon on September 1, 2004, and ending at noon on September 1, 2005, he did not have a statutory obligation to make an annual filing under section 314(a) of FLPMA on or before December 30, 2004. The obligation imposed by 43 C.F.R. § 3835.15(a) to file a notice of intention to hold on or before the December 30th immediately following the submission of the waiver certification in such a situation is regulatory only and, therefore, eligible for cure.

Hector Santa Anna, 171 IBLA 103 (Feb. 15, 2007).

Mining Claims
Rental or Claim Maintenance Fees
Small Miner Exemption

The requirement to perform assessment work on a mining claim begins with the assessment year commencing on the September 1 following the date of location of the claim. A claimant filing a maintenance fee waiver certification certifies compliance with the assessment work requirements for the assessment year ending on the September 1 that the maintenance fee is due. A decision forfeiting a mining claim for failure to record proof of labor by December 30 for the assessment year ending on the September 1 that the maintenance fee was due will be reversed when the claim was located during that assessment year and, hence, no proof of labor was required for that assessment year.

James J. Holmberg, III, 160 IBLA 372 (Jan. 28, 2004).

Mining Claims
Special Acts

On or after October 13, 1993, mining claims cannot be located on lands patented under the Stock Raising Homestead Act, as amended, until a person who intends to enter such lands to explore for or locate a mining claim has first filed a notice of intent to locate with the proper BLM state office and served a copy of that notice upon the surface owners of record.

American Colloid Co. Bentonite Corp., 154 IBLA 7 (Oct. 16, 2000).

Mining Claims
Special Acts

Even where a mining association is formed before any mining claims have been located, nothing prevents an agent from acting on behalf of the association. There is no statutory or regulatory provision which prohibits the location of a mining claim or the doing of any acts required to complete the appropriation by an agent, and the fact that the locator acted through an agent in such matters does not invalidate the location. Thus, 43 C.F.R. § 3832.1 expressly provides that agents may make locations for qualified locators.

American Colloid Co. Bentonite Corp., 154 IBLA 7 (Oct. 16, 2000).

Mining Claims
Special Acts

When lands are segregated from entry under the mining laws, such a segregation attaches to the mineral estate of lands patented under the Stock Raising Homestead Act, which are included within the lands described in the segregation, and although it has no effect on mining claims covering part of that mineral estate, if those claims are forfeited by operation of law for failure to pay the maintenance fees while the segregation is still effective, the segregation automatically becomes effective, *eo instanti*, as to the mineral estate covered by those claims, thus closing it to future mineral entry for the period of the segregation. A notice of intent to locate mining claims on such mineral lands, filed while the segregation is still effective, must be rejected.

National Cement Company of California, 156 IBLA 131 (Dec. 31, 2001).

Mining Claims
Special Acts

Minerals are reserved in patents issued pursuant to the Stock-Raising Homestead Act, *as amended,* 43 U.S.C. § 299 (1970). Parties holding mineral rights have the right to occupy so much of the surface as may be required for all purposes reasonably incident to mining and removing the minerals. To obtain approval for mining from the Secretary, a qualified person must, *inter alia*, file a plan of operations which includes procedures for minimizing damage to crops and improvements and for minimizing disruption of grazing and other land uses. The Secretary must serve the plan of operations on surface owners for a 45-day comment period. Patents under the Stock-Raising Homestead Act do not reserve any right in a mining claimant for a recreational opportunity that is superior to the uses the owner of the surface might make of the land.

Susan J. Kayler, Tom Traw, 162 IBLA 245 (July 29, 2004).

Mining Claims
Special Acts

The Mining Claims Rights Restoration Act of 1955, as amended, 30 U.S.C. §§ 621-625 (2000), which opened powersite withdrawals for entry under the mining laws, provides that the locator of a placer claim under the Act may not conduct any mining operations for 60 days after filing a notice of location pursuant to 30 U.S.C. § 623 (2000) and that, if the Department decides to hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land, the suspension of operations will continue until the hearing has been held and the Department has issued an appropriate order providing for one of the following alternatives: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator restore the surface of the claim to the condition it was in prior to mining; or (3) a general permission to engage in placer mining.

United States v. Donald E. Eno, 171 IBLA 69 (Feb. 13, 2007).

Mining Claims
Special Acts

To determine whether mining would substantially interfere with other uses of powersite lands within the meaning of the Mining Claims Rights Restoration Act of 1955, *as amended*, 30 U.S.C. § 621 (2000), the Department is required to engage in a weighing or balancing of the benefits of mining against the injury mining would cause to other uses of the land. Mining may be allowed where the benefits of placer mining outweigh the detriment that placer mining causes to other uses. Central to the balancing test is the concept that the competing uses must be substantial if they are to be used to prohibit placer mining. Thus, even if the Secretary determines that placer mining would substantially interfere with other uses of the land, he may still appropriately grant a general permission to engage in placer mining operations if the competing surface uses have less significance than the proposed placer mining operation. The importance of the competing uses, which must be compared and judged on whatever grounds are relevant in the individual case, need not be economically quantifiable and may include the preservation of cultural, geological, or scenic resources.

United States v. Donald E. Eno, 171 IBLA 69 (Feb. 13, 2007).

Mining Claims
Special Acts

BLM does not have the discretion to reject a Notice of Intent to Locate mining claims on Stock-Raising Homestead Act lands under regulations at 43 C.F.R. Part 3838 for the sole reason that it was submitted by the owner of the surface estate.

Margaret L. Berggren, Margaret L. Berggren, Trustee, Scott Ranch Trust, 171 IBLA 297 (June 5, 2007).

Mining Claims
Surface Management
Generally

Operations to extract and remove rock that constitutes a valuable mining law mineral from a mining claim located prior to passage of section 3 of the Multiple Use Mining Act of 1955, 30 U.S.C. § 611 (2000), must comply with the requirements of 43 C.F.R. § Subpart 3809.

Ronald W. Byrd, 171 IBLA 202 (Apr. 11, 2007).

Mining Claims
Surface Management
Mining Notice

Under 43 C.F.R. § 3809.332, a mining notice remains in effect for 2 years unless extended or terminated. Under 43 C.F.R. § 3809.503(a), an operator whose notice was on file with BLM on January 20, 2001, was not required to file a financial guarantee or bond unless he modified or extended the notice under 43 C.F.R. § 3809.333. After 2 years, however, the operator may extend the notice under 43 C.F.R. § 3809.333, but "must notify BLM in writing on or before the expiration date and meet the financial guarantee requirements of § 3809.503." The financial guarantee "must cover the estimated cost as if BLM were to contract with a third party to reclaim your operations." 43 C.F.R. § 3809.552.

Robert B. Wineland, 169 IBLA 212 (June 27, 2006).

Mining Claims
Surface Management
Mining Notice

Operations to extract and remove rock that constitutes a valuable mining law mineral from a mining claim located prior to passage of section 3 of the Multiple Use Mining Act of 1955, 30 U.S.C. § 611 (2000), must comply with the requirements of 43 C.F.R. Subpart 3809.

Ronald W. Byrd, 171 IBLA 202 (Apr. 11, 2007).

Mining Claims
Surface Uses

The regulations at 43 C.F.R. Subpart 3715 apply to any use or occupancy of a mining claim in existence when the regulations were published, and all existing uses and occupancies were required to meet the applicable requirements of that subpart by August 18, 1997.

Bradshaw Industries, 152 IBLA 57 (Mar. 10, 2000).

Mining Claims
Surface Uses

All persons dealing with the Government are presumed to have knowledge of relevant statutes and regulations, and BLM had no obligation to provide mining claimants with personal notice when it published regulations in 43 C.F.R. Subpart 3715 concerning use and occupancy of mining claims.

Bradshaw Industries, 152 IBLA 57 (Mar. 10, 2000).

Mining Claims
Surface Uses

The term "reasonably incident" as defined in 43 C.F.R. § 3715.5(a) requires active efforts with respect to "prospecting, mining, or processing operations and uses reasonably incident thereto."

Bradshaw Industries, 152 IBLA 57 (Mar. 10, 2000).

Mining Claims
Surface Uses

Under 43 C.F.R. § 3715.5-1, a mining claimant must remove all permanent structures, temporary structures, material, equipment, or other personal property placed on the public lands during authorized use or occupancy within 90 days after operations end. When a mining claimant has exceeded the 1-year period of "non-operation" allowed by the regulation without previously obtaining BLM's written approval, a decision requiring removal of personal property, cessation of use and occupancy, and reclamation of the site will be affirmed.

Bradshaw Industries, 152 IBLA 57 (Mar. 10, 2000).

Mining Claims
Surface Uses

"*Occupancy*." As used in 43 C.F.R. Subpart 3715, the word "occupancy" means full or part time residence, and under 43 C.F.R. § 3715.2, occupancy must not only (a) be reasonably incident but must also (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 under 43 C.F.R. § 3715.7; and (e) use appropriate equipment that is presently operable, subject to the need for reasonable assembly, maintenance, repair or fabrication of replacement parts.

Bradshaw Industries, 152 IBLA 57 (Mar. 10, 2000).

Mining Claims
Surface Uses

A mining claimant who asserts that occupancy by a watchman is necessary to prevent vandalism must show that the need for occupancy is reasonably incident and continual under 43 C.F.R. § 3715.5-2. Where a mining claimant is unable to show that its use and occupancy of a site is "reasonably incident" within the meaning of 43 C.F.R. Subpart 3715, a determination of nonconcurrence and an order to cease use and occupancy will be affirmed.

Bradshaw Industries, 152 IBLA 57 (Mar. 10, 2000).

Mining Claims
Surface Uses

BLM properly issued a notice of noncompliance under 43 C.F.R. § 3809.3-2(b)(2) requiring a millsite operator to remove junked vehicles, railroad ties, tires and other debris, to clean up fuel spills, to either rehabilitate or take down and remove dilapidated millsite structures and to file a plan of operations describing the measures to be taken to prevent unnecessary and undue degradation of the public lands.

American Stone, Inc., 153 IBLA 77 (July 27, 2000).

Mining Claims
Surface Uses

Section 4(a) of the Surface Resources Act, 30 U.S.C. § 612(a) (1994), bars use of an unpatented mining claim for any purpose other than prospecting, mining, or processing operations and uses "reasonably incident thereto." Residential occupancy may be reasonably incident to mining during the conduct of operations where the claims are located in an area so remote as to require the claimant to remain on site in order to work a full shift. Residential occupancy may also be allowed to provide security for equipment and material at times when operations are ongoing. These needs are obviated, however, and residential occupancy may not be reasonably incident where the claimant's family owns fee lands adjacent to the claims in question, on which the claimant is mining, where he could reside and store equipment to protect it from theft.

David E. Pierce, 153 IBLA 348 (Sept. 29, 2000).

Mining Claims
Surface Uses

Storage on unpatented mining claims of an excessive amount of equipment for a mining operation which is in an exploratory or prospecting stage of development is not reasonably incidental to mining.

David E. Pierce, 153 IBLA 348 (Sept. 29, 2000).

Mining Claims
Surface Uses

While 43 C.F.R. § 3715.6(g) prohibits placing gates on mining claims to exclude the general public, a notice of noncompliance cannot be sustained to the extent that it is premised on a locked cable blocking access to mining claims where it is unclear whether the cable is located on public land.

David E. Pierce, 153 IBLA 348 (Sept. 29, 2000).

Mining Claims
Surface Uses

Section 4(a) of the Surface Resources Act, 30 U.S.C. § 612(a) (1994), bars use of an unpatented mining claim for any purpose other than prospecting, mining, or processing operations and uses "reasonably incident thereto." Under the authority of 43 C.F.R. § 3715.7-1(c), BLM properly requires the removal of a locked gate blocking access to mining claims, a mobile home, a wooden shack, and personal items from the site where the record supports BLM's determination that the level of the use and occupancy by the claimant are not reasonably incident to mining operations.

Wilbur L. Hulse, 153 IBLA 362 (Sept. 29, 2000).

Mining Claims
Surface Uses

BLM properly orders an immediate suspension of use or occupancy under 43 C.F.R. § 3715.7-1(a) when it is begun before obtaining required state or Federal permits.

Gerald A. Henderson, 156 IBLA 84 (2001).

Mining Claims
Surface Uses

The essence of the statutory grant allowing the appropriation of the public lands for millsites is actual use and occupancy for mining and milling purposes. The Surface Resources Act of July 23, 1955, 30 U.S.C. § 612(a) (1994), further clarifies that use and occupancy shall be for the purposes of prospecting, mining, or processing and uses reasonably incident thereto. The mining claimant must stand ready to prove the validity of the millsite at any time before patent issues, by demonstrating that he uses and occupies the land for such purposes.

United States v. James L. Pence, d.b.a. Shooter Mining Co., and Milton Embry, 157 IBLA 124 (July 31, 2002)

Mining Claims
Surface Uses

Where a contestee chose not to retain counsel, despite ample opportunity and urging to do so, and chose not to put on a case on his own behalf, the Government's prima facie case is unrebutted. In such circumstances, the Board properly affirms the Administrative Law Judge's decision declaring the millsites null and void.

United States v. James L. Pence, d.b.a. Shooter Mining Co., and Milton Embry, 157 IBLA 124 (July 31, 2002)

Mining Claims
Surface Uses

The regulations at 43 C.F.R. § Subpart 3715 apply to the use and occupancy of mining claims in existence on the August 15, 1996, effective date of the regulations, and BLM properly relied on those regulations even though the affected claims, while extant on August 15, 1996, had subsequently been forfeited for failure to pay the required claim maintenance fee.

David J. Timberlin, 158 IBLA 144 (Jan. 7, 2003).

Mining Claims
Surface Uses

A BLM decision holding the president of a defunct corporation personally liable for reclamation of a mine site formerly operated by the corporation will be reversed where BLM has not shown that the corporate veil should be pierced.

David J. Timberlin, 158 IBLA 144 (Jan. 7, 2003).

Mining Claims
Surface Uses

Public lands may be occupied pursuant to valid millsite claims in accordance with the general mining laws, only for the purpose of prospecting, mining, or processing, and uses reasonably incident thereto. Under 43 C.F.R. § 3715.0-5, "occupancy" means full or part-time residence on the public lands, and "residence" includes placing barriers to access, trailers, buildings, or storage of equipment or supplies on the claims. Where the record shows that all of those were found on a millsite, there was "occupancy" and BLM may properly consider whether that occupancy was authorized under the regulations.

John B. Nelson Robert Kahre, 158 IBLA 370 (Apr. 15, 2003).

Mining Claims
Surface Uses

In order to "occupy" a mill site under the mining laws, a party must comply with the requirements of 43 C.F.R. § 3715.2. Where the millsite has not been used for many years, there is no compliance with those requirements as the claimant's occupancy of the millsite is not reasonably incident to legitimate millsite activities, in that it is unrelated to actual processing operations on the claim, such as development or beneficiation of mineral resources. That is, it cannot be said that there was any processing operations on the claim to which appellants' occupancy related or that the claimant's use of the site constituted substantially regular work or involved observable on-the-ground activity that BLM may verify. It is no defense that appellant hopes or expects to receive mineral material for processing at the site in the future.

John B. Nelson Robert Kahre, 158 IBLA 370 (Apr. 15, 2003).

Mining Claims
Surface Uses

In the event of noncompliance with the occupancy regulations, BLM may either order a millsite claimant to cease (temporarily or permanently) all or any part of a his use or occupancy or issue a notice of noncompliance requiring corrective action. The extent of permissible occupancy is directly related to the extent of processing activity conducted on a millsite claim. The structures and equipment maintained on site must be related to and commensurate with the operations. Where there was no activity on the site, BLM was justified in directing claimants to remove all of their equipment from the site.

John B. Nelson Robert Kahre, 158 IBLA 370 (Apr. 15, 2003).

Mining Claims
Surface Uses

Section 4(a) of the Surface Resources Act, 30 U.S.C. § 612(a) (2000), bars 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." Under the authority of 43 C.F.R. § 3715.7-1(c), BLM properly issues a notice of noncompliance requiring the removal of all personal property from a millsite claim where no minerals are being beneficiated on the site and no observable work is taking place.

Jay H. Friel, 159 IBLA 150 (May 29, 2003).

Mining Claims
Surface Uses

The use and occupancy regulations at 43 C.F.R. Subpart 3715 authorize the issuance of a temporary or permanent cessation order when there is a failure to comply timely with a notice of noncompliance issued under 43 C.F.R. § 3715.7-1(c). BLM properly issues a cessation order pursuant to 43 C.F.R. § 3715.7-1(b)(ii) where the claimant has failed to comply with a previous notice of noncompliance requiring him to remove property from a millsite and reclaim the land because his use and occupancy are not reasonably incident to mining or processing operations.

Jay H. Friel, 159 IBLA 150 (May 29, 2003).

Mining Claims
Surface Uses

A mining claimant has no right to use or occupy the surface of a mining claim site unless the activity constituting the reason for the use or occupancy is reasonably incident to mining-related operations.

Patrick Breslin, 159 IBLA 162 (May 29, 2003).

Mining Claims
Surface Uses

BLM may properly issue a Notice of Noncompliance and Cessation Order pursuant to 43 C.F.R. § 3715.7-1 where an appellant's mill site claims are no longer valid and his continued occupancy is not reasonably incident to mining.

James R. McColl, 159 IBLA 167 (May 29, 2003).

Mining Claims
Surface Uses

The Board will not enforce an interpretation of 43 C.F.R. §§ 3715.5-1 and 5-2 that holds a current occupant liable for removal of structures and other materials from the public lands where the current occupant clearly establishes that the structures, etc., existed on site at the time his or her occupancy commenced, as a reasonably prudent prospective or current occupant could reasonably interpret the regulatory language to indicate that he or she is responsible for removing only structures and materials he or she placed there.

James R. Mccoll, 159 IBLA 167 (May 29, 2003).

Mining Claims
Surface Uses

Except where otherwise allowed by applicable laws or regulations, for activities that are defined as casual use or notice activities under 43 C.F.R. § Part 3800 or Subpart 3809, a mining claimant is prohibited from commencing residential occupancy before consulting with BLM. 43 C.F.R. § 3715.6(c). Consultation with BLM is initiated by the submission of a detailed map that identifies the site and the placement of temporary and permanent structures, and a written description showing how the proposed occupancy is reasonably incident to prospecting, mining, or processing operations and conforms to the requirements of 43 C.F.R. § 3715.2 and 3715.2-1. In addition to the placement of structures, the mining claimant must describe how long they are expected to be used, and the schedule for removing them and reclaiming the affected land at the end of operations. 43 C.F.R. § 3715.3-2. A claimant must not begin occupancy until he has complied with 43 C.F.R. Subpart 3715 and BLM has completed its review and made the required determination of concurrence or non-concurrence in the occupancy.

Skip Myers, 160 IBLA 101 (Oct. 8, 2003).

Mining Claims
Surface Uses

Even though appellant had long occupied his mining claim, the placement on the claim of a ramada and two camp trailers constituted new occupancies, regardless of whether they were actually or continually used for residential purposes, which required consultation with BLM so that BLM could adjudicate each specific proposed occupancy and issue a "decision" either concurring or not concurring with it pursuant to 43 C.F.R. Subpart 3715.

Skip Myers, 160 IBLA 101 (Oct. 8, 2003).

Mining Claims
Surface Uses

Absent a determination that residential occupancy of a mining claim was not reasonably incident to prospecting, mining, or processing operations or not in compliance with 43 C.F.R. §§ 3715.2, 3715.2-1, 3715.3-1(b), 3715.5, or 3715.5-1, and that immediate suspension was necessary to protect health, safety, or the environment, BLM could not properly order the immediate, temporary suspension of occupancy pursuant to 43 C.F.R. § 3715.7-1(a).

Skip Myers, 160 IBLA 101 (Oct. 8, 2003).

Mining Claims
Surface Uses

To issue a cessation order, it is not necessary for BLM to determine and conclude that an occupancy that is not reasonably incident threatens public health, safety, or the environment (43 C.F.R. § 3715.7-1(b)(1)(i)). It is necessary to show or determine lack of timely compliance with a notice of noncompliance (43 C.F.R. § 3715.7-1(b)(1)(ii)), an order issued pursuant to paragraph (d) (43 C.F.R. § 3715.7-1(b)(1)(iii)), or corrective action ordered during a suspension (43 C.F.R. § 3715.7-1(b)(1)(iv)). The record contains no such prior order, and accordingly, the order involved in this appeal cannot be deemed to be a cessation order.

Skip Myers, 160 IBLA 101 (Oct. 8, 2003).

Mining Claims
Surface Uses

When on appeal it is determined that an immediate suspension order is defective and could be sustainable only if deemed a notice of noncompliance, the notice will be set aside and the case remanded so that BLM can decide how it wishes to proceed and issue a new decision that conforms to the requirements of 43 C.F.R. § 3715.7-1. If BLM concludes that a notice of noncompliance is appropriate, BLM must establish a date for starting corrective action, 43 C.F.R. § 3715.7-1(c)(ii), and a date by which it shall be completed, 43 C.F.R. § 3715.7-1(c)(iii). However, the regulation does not require completion of corrective action within 30 or fewer days. Therefore, nothing prevents BLM from establishing a completion date that coincides with issuance of a concurrence determination. Issuance of a concurrence determination ensures that mining claimants will not needlessly expend time and money in removing occupancies in which BLM ultimately concurs, or risk exposure to more serious enforcement action while waiting for a concurrence determination.

Skip Myers, 160 IBLA 101 (Oct. 8, 2003).

Mining Claims
Surface Uses

Pursuant to 43 C.F.R. § 3809.1-4(b)(3)(2000), an approved plan of operations is required before a mining claimant begins any operation, other than casual use, in a designated area of critical environmental concern and BLM may issue a notice of noncompliance to a mining claimant who fails to file a plan of operations for operations in an area of critical environmental concern.

Robert W. Gately, 160 IBLA 192 (Nov. 20, 2003).

Mining Claims
Surface Uses

When a mining claimant received approval from BLM to continue his present use and occupancy of a mining claim on public land for the one-year grace period for compliance with the requirements of 43 C.F.R. § Subpart 3715 afforded by 43 C.F.R. § 3715.4(b), the mining claimant's use and occupancy must satisfy the applicable requirements of 43 C.F.R. § Subpart 3715 following the expiration of that grace period.

Robert W. Gately, 160 IBLA 192 (Nov. 20, 2003).

Mining Claims
Surface Uses

A BLM determination of nonconcurrence with a claimant's use and occupancy of a mining claim will be affirmed when the claimant fails to provide sufficient information

about the proposed activities to show that they are reasonably incident, as required by 43 C.F.R. § 3715.2(a).

Robert W. Gately, 160 IBLA 192 (Nov. 20, 2003).

Mining Claims
Surface Uses

The Surface Resources Act, 30 U.S.C. § 612(a) (2000), bars 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 site unless the activity constituting the reason for the use or occupancy is reasonably incident to mining-related operations.

Karen V. Clausen, 161 IBLA 168 (Apr. 13, 2004).

Mining Claims
Surface Uses

Under the authority of 43 C.F.R. § 3715.7-1(c), BLM properly issues a notice of noncompliance requiring the removal of all personal property from a mining claim site where no observable work or use reasonably incident to mining is taking place.

Karen V. Clausen, 161 IBLA 168 (Apr. 13, 2004).

Mining Claims
Surface Uses

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. The fact that a mining claimant's use of a mining claim constitutes "casual use," however, does not by itself exclude all types of "occupancy" under the terms of 43 C.F.R. Subpart 3715.

Dan Solecki, Marylou Teel, Alfred Cook, 162 IBLA 178 (July 21, 2004).

Mining Claims
Surface Uses

In order to justify an occupancy on a mining claim, the miner's activities must comply with all of the requirements of 43 C.F.R. § 3715.2 and meet at least one standard set forth in 43 C.F.R. § 3715.2-1. To issue a cessation order, BLM must determine whether a miner's actual activities on a mining claim meet the standards set forth in those two rules. Where the record demonstrates that an appellant's activities do not meet the standards of 43 C.F.R. § 3715.2, BLM's conclusion that an occupancy is not permitted will be affirmed on that ground.

Dan Solecki, Marylou Teel, Alfred Cook, 162 IBLA 178 (July 21, 2004).

Mining Claims
Surface Uses

The regulations governing use and occupancy of unpatented mining claims, 43 C.F.R. § Subpart 3715, apply to a use or occupancy that was in existence when the regulations were published. All existing uses and occupancies had to meet the applicable requirements of that subpart by August 18, 1997.

Terry Hankins, 162 IBLA 198 (July 22, 2004).

Mining Claims
Surface Uses

Departmental regulation 43 C.F.R. § 3715.0-5 defines "occupancy" of public lands covered by mining claims as "full or part-time residence on the public lands," including "the construction, presence, or maintenance of temporary or permanent structures." However, under that definition, "residence or structures" include uses not commonly associated with residential occupancy, *viz.*, "barriers to access, fences, buildings, and storage of equipment or supplies." As a result, structures used for purposes other than residential use are governed by 43 C.F.R. Subpart 3715, specifically including buildings and storage of equipment or supplies.

Terry Hankins, 162 IBLA 198 (July 22, 2004).

Mining Claims
Surface Uses

Under 43 C.F.R. § 3715.2, in order to occupy the public lands under the mining laws for more than 14 calendar days in any 90-day period, a claimant must be involved in certain activities that (a) are reasonably incident; (b) constitute substantially regular work; (c) are reasonably calculated to lead to the extraction and beneficiation of minerals; (d) involve observable on-the-ground activity that BLM may verify under 43 C.F.R. § 3715.7; *and* (e) use appropriate equipment that is presently operable, subject to the need for reasonable assembly, maintenance, repair or fabrication of replacement parts. All five of those requirements must be met for occupancy to be permissible, in addition to other relevant requirements.

Terry Hankins, 162 IBLA 198 (July 22, 2004).

Mining Claims
Surface Uses

The regulation at 43 C.F.R. § 3715.2-1 establishes a requirement separate from and additional to those at 43 C.F.R. § 3715.2. Under 43 C.F.R. § 3715.2-1, occupancy of a mining claim is permissible if it involves one or more of the following: (a) Protecting exposed, concentrated or otherwise accessible valuable minerals from theft or loss; (b) protecting from theft or loss appropriate, operable equipment which is regularly used, is not readily portable, and cannot be protected by means other than occupancy;

(c) protecting the public from appropriate, operable equipment which is regularly used, is not readily portable, and if left unattended, creates a hazard to public safety; (d) protecting the public from surface uses, workings, or improvements which, if left unattended, create a hazard to public safety; or (e) being located in an area so isolated or lacking in physical access as to require the mining claimant, operator, or workers to remain on site in order to work a full shift of a usual and customary length, a full shift being ordinarily 8 hours and not including travel time to the site from a community or area in which housing may by obtained. Occupancy of a mining claim by using it as a residence is not authorized where the claim is located near two towns, minerals and equipment on the claim can be protected by removing them from the claim or by storing them in buildings on the claim, and the claim does not contain equipment or works that are hazardous to the public or that cannot be stored in buildings on the claim. At the same time, the need to use a mining claim for protective storage of equipment and samples, satisfies one or more of those requirements, justifying maintenance of non-residential structures on the claim, if other relevant requirements are met.

Terry Hankins, 162 IBLA 198 (July 22, 2004).

Mining Claims
Surface Uses

BLM may not, in the context of issuing a notice of noncompliance under 43 C.F.R. § 3715.7-1(c) citing a claimant for unauthorized occupancy of a mining claimant, order immediate cessation of occupancy and the complete reclamation of the mining claim. In such a NON, BLM is required to (1) describe how the claimant's use is not in compliance with the regulations, (2) describe the actions that must be taken in order to correct the noncompliance, (3) set a date not to exceed 30 days from the issuance of the NON by which corrective action is to commence, and (4) establish the time frame by which corrective action is to be completed. BLM may issue a Cessation Order under 43 C.F.R. § 3715.7-1(b)(ii) only when corrective action by the mining claimant is not completed within the time specified in the NON. Where a NON effectively required immediate cessation of occupancy and reclamation of the mine site, it will be amended on appeal, as it was premature for BLM to take such action.

Terry Hankins, 162 IBLA 198 (July 22, 2004).

Mining Claims
Surface Uses

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's acquisition of milling equipment and placement of it on public lands does not validate the use and occupancy of a site as a mill site when the claimant did not use the equipment for significant milling operations in the ensuing 14 years.

Precious Metals Recovery, Inc., 163 IBLA 332 (Nov. 4, 2004).

Mining Claims
Surface Uses

BLM properly rejects a mining claimant's notice of operations and requires submission and approval, pursuant to 43 C.F.R. Subpart 3809, of a plan of operations to construct an access road across public lands within an area of critical environmental concern.
George Stroup, 164 IBLA 74 (Nov. 29, 2004).

Mining Claims
Surface Uses

An enforcement order issued under 43 C.F.R. § 3715.7-1 survives the forfeiture of a mining claim or mill site or the abandonment of such a claim or site that attends the conclusion of the permitted exploration, mining, or milling operation.

Marietta Corporation, Comstock Ore Buyers, 164 IBLA 360 (Feb. 10, 2005).

Mining Claims
Surface Uses

A mill site claimant who actually disturbs public lands and uses and occupies the site in connection with a putative milling operation is responsible for reclaiming the mill site. The obligation to reclaim the land entails the obligation to remove all structures, equipment, material, and other personal property under 43 C.F.R. Subpart 3715, as well as any other measures required by 43 C.F.R. Subpart 3809 to rehabilitate and stabilize the land and the habitat it contains. When the claimant dies, that unsatisfied obligation becomes an obligation of his estate.

Betty Dungey, Mary Humphries, Peggy Ruesch, 165 IBLA 1 (Feb. 17, 2005).

Mining Claims
Surface Uses

Nevada State law prescribes a time and formal procedure for disclaiming a testamentary devise or bequest, absent which the devise or bequest is deemed accepted. When the heirs of a deceased mill site claimant do not aver or proffer evidence that they have complied with such State law or otherwise show that the statute does not apply to them, the Board properly may assume that they accepted their inheritance of the mill site and the personal property on it and are legally responsible for removing it.

Betty Dungey, Mary Humphries, Peggy Ruesch, 165 IBLA 1 (Feb. 17, 2005).

Mining Claims
Surface Uses

As used in 43 C.F.R. § 3715.7-1, the pronouns "you" and "your" include persons who acquire property on a mining claim or mill site by transfer, contract, agreement, or by exercise or operation of law, and who exercise or assert dominion and control over that property.
Betty Dungey, Mary Humphries, Peggy Ruesch, 165 IBLA 1 (Feb. 17, 2005).

Mining Claims

Surface Uses

When appellants paid the annual maintenance fee for a mill site, they exercised and asserted dominion and control over the mill site to retain possession as against the United States and avoid the consequence of conclusive forfeiture that attends the failure to timely pay the fee or obtain a small miner waiver certification. Where appellants also failed to produce evidence showing that they timely disclaimed the interests in personal property on the mill site that they acquired by operation of law, a notice of noncompliance for failing to remove their property will be upheld.

Betty Dungey, Mary Humphries, Peggy Ruesch, 165 IBLA 1 (Feb. 17, 2005).

Mining Claims
Surface Uses

Departmental regulation 43 C.F.R. § 3715.0-5 defines "occupancy" of public lands covered by mining claims as "full or part-time residence on the public lands," including "the construction, presence, or maintenance of temporary or permanent structures," expressly including "trailers." Leaving a 14-foot travel trailer on a mining claim for indefinite periods of time (with claimants residing in that trailer overnight while spending time on the claim and storing equipment during their absences from the claim) constitutes "occupancy" of the claim within the meaning of 43 C.F.R. § 3715.0-5. Such use is "occupancy" even if claimants do not stay overnight in the trailer, as the "presence" of a "trailer" on the claim constitutes "occupancy" under that regulation. Accordingly, maintaining a trailer on the claim is "occupancy," and doing so for more than a prescribed period is allowed only under certain circumstances as provided in 43 C.F.R. Subpart 3715.

Donna Friedman, John Csupick, 165 IBLA 313 (May 2, 2005).

Mining Claims
Surface Uses

Under 43 C.F.R. § 3715.2, in order to justify occupancy of the public lands (that is, either maintaining a residence, trailer, or other structures) for *more than* 14 days in a 90-day period, the activities that are the reason for the occupancy must (a) be reasonably incident; (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 under 43 C.F.R. § 3715.7; *and* (e) use appropriate equipment that is presently operable, subject to the need for reasonable assembly, maintenance, repair or fabrication of replacement parts. In order to comply with 43 C.F.R. § 3715.2, all five of those requirements must be met for occupancy to be permissible. Where mining activities associated with claimants' proposed occupancy are small-scale, occasional operations using very small, portable mining equipment, and where claimants' proposal involves only bi-weekly visits to the mining claim and excavating and mining only a few cubic feet of placer material per visit, those activities are not "substantially regular work" within the meaning of the regulation. Where claimants have presented a plan that only very generally describes where material would be removed and does not set out any organized exploration activity, the small level of activity is therefore not "associated with the search for and development of mineral deposits or the processing of ores"; it does not include "active and continuous exploration, mining, and beneficiation or processing of ores; and it does not "include assembly or maintenance of equipment [and] work on physical improvements" incident to mining activities, within the definition of "substantially regular work" at 43 C.F.R. § 3715.0-5.

Donna Friedman, John Csupick, 165 IBLA 313 (May 2, 2005).

Mining Claims
Surface Uses

The regulation at 43 C.F.R. § 3715.2-1 establishes a requirement separate from and additional to those at 43 C.F.R. § 3715.2, under which occupancy of the public lands is permissible if it involves one or more of the following: (a) Protecting exposed, concentrated or otherwise accessible valuable minerals from theft or loss; (b) protecting from theft or loss appropriate, operable equipment which is regularly used, is not readily portable, and cannot be protected by means other than occupancy; (c) protecting the public from appropriate, operable equipment which is regularly used, is not readily portable, and if left unattended, creates a hazard to public safety; (d) protecting the public from surface uses, workings, or improvements which, if left unattended, create a hazard to public safety; *or* (e) being located in an area so isolated or lacking in physical access as to require the mining claimant, operator, or workers to remain on site in order to work a full shift of a usual and customary length, a full shift being ordinarily 8 hours and not including travel time to the site from a community or area in which housing may by obtained. If any one of the criteria of 43 C.F.R. § 3715.2-1 is met, the claim may be occupied for more than 14 days in any 90-day period (if the occupancy is otherwise in compliance with all of the five criteria of 43 C.F.R. § 3715.2). Where claimants have neither exposed any valuable mineral deposit nor created hazardous workings on the claim; where claimants' equipment is readily portable and can be protected from theft easily by removing it from their claim, thereby also protecting the public from any injury; and where claimants' claim is not so distant from a nearby community in which housing is available as to prevent them from being able to put in a full work shift on the claim, they have complied with none of the applicable criteria.

Donna Friedman, John Csupick, 165 IBLA 313 (May 2, 2005).

Mining Claims
Surface Uses

A BLM cessation order requiring the immediate removal of a building, equipment, and all other personal property from an abandoned mill site is properly affirmed when BLM previously found the occupancy to be in noncompliance with the regulations regarding use and occupancy under the mining laws, issued a notice of noncompliance providing a deadline for removal, and no progress in removing the personal property from the site had been made despite extensions of the deadline for more than a year.

Peter Blair, 166 IBLA 120 (June 30, 2005).

Mining Claims
Surface Uses

Occupancy of the public lands under the mining laws within the meaning of the regulations at 43 C.F.R. Subpart 3715 includes the construction, presence, or maintenance of temporary or permanent structures, including buildings and the storage of equipment or supplies, regardless of whether they are actually used as a residence.

Leadville Corp., 166 IBLA 249 (Aug. 5, 2005).

Mining Claims
Surface Uses

The activities justifying a claimant's occupancy of a mining claim or mill site in the form of the placement of structures and property, must (a) be reasonably incident to mining and milling operations; (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 equipment that is presently operable. A notice of noncompliance issued under the authority of 43 C.F.R. § 3715.7-1(c), is properly affirmed when there have been no mining operations or mineral processing for more than 15 years and the buildings on site are extremely dilapidated.

Leadville Corp., 166 IBLA 249 (Aug. 5, 2005).

Mining Claims
Surface Uses

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.

Rivers Edge Trust, Jimmy C. Chisum, Trustee, 166 IBLA 297 (Aug. 23, 2005).

Mining Claims
Surface Uses

Occupancy of the public lands under the mining laws within the meaning of the regulations at 43 C.F.R. § Subpart 3715 includes the construction, presence, or maintenance of temporary or permanent structures, including buildings and the storage of equipment or supplies, regardless of whether they are actually used as a residence.
Las Vegas Mining Facility, Inc., 166 IBLA 306 (Aug. 25, 2005).

Mining Claims
Surface Uses

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." Under 43 C.F.R. § 3715.2, in order to justify occupancy of the public lands for more than 14 days in a 90-day period, the activities that are the reason for the occupancy must include all five elements: (a) be reasonably incident to mining or mineral processing operations; (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 by inspection; and (e) use appropriate equipment that is presently operable. Where the record demonstrates that an appellant's activities do not meet the standards of 43 C.F.R. § 3715.2, BLM's conclusion that an occupancy is not permitted will be affirmed on that ground.

Las Vegas Mining Facility, Inc., 166 IBLA 306 (Aug. 25, 2005).

Mining Claims
Surface Uses

Occupancy of the public lands under the mining laws within the meaning of the regulations at 43 C.F.R. Subpart 3715 includes the construction, presence, or maintenance of temporary or permanent structures, including buildings and the storage of equipment or supplies, regardless of whether they are actually used as a residence.

L. Joei Netolicky, 167 IBLA 193 (Nov. 9, 2005).

Mining Claims
Surface Uses

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." Under 43 C.F.R. § 3715.2, in order to justify occupancy of the public lands, the activities that are the reason for the occupancy must include five elements: (a) be reasonably incident to mining or mineral processing operations; (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 by inspection; and (e) use appropriate equipment that is presently operable. In order to be reasonably incident, occupancy must be commensurate with the scope and nature of current mining activities.

L. Joei Netolicky, 167 IBLA 193 (Nov. 9, 2005).

Mining Claims
Surface Uses

When BLM is unable to concur after inspection under the regulations at 43 C.F.R. Subpart 3715 that a mining claimant's occupancy is reasonably incident to mining and processing activities, it may issue a cessation order describing the ways in which the occupancy is not reasonably incident. The cessation order must be supported by a reasoned analysis of the facts in the record and, when the record lacks copies of recent inspection reports as well as any analysis of the asserted scope of claimant's operations, the decision is properly set aside and the case remanded for adjudication.

L. Joei Netolicky, 167 IBLA 193 (Nov. 9, 2005).

Mining Claims
Surface Uses

A mining claimant is not entitled to use and occupy a mining claim or mill site unless such use and occupancy justifiably can be considered reasonably incident to prospecting, mining, or processing operations. The possibility that mining or milling might commence sometime in the future does not justify current occupancy of a mining claim or mill site.

Jason S. Day, 167 IBLA 395 (Feb. 14, 2006).

Mining Claims
Surface Uses

Under the Surface Resources Act of July 23, 1955, 30 U.S.C. § 612(a) (2000), mining and mill site 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. Where appellants had no viable mining operation on their claim and it contained no valuable mineral deposit, the disposition of common sand and gravel from the claim for use as Type II road base and as aggregate in other commodities was properly held a mineral trespass.

Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 183 (Mar. 16, 2006).

Mining Claims
Surface Uses

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." To justify occupancy of the public lands, the regulations at 43 C.F.R. Subpart 3715 require that the activities be reasonably incident to mining, milling, or processing operations; constitute substantially regular work; be reasonably calculated to lead to the extraction and beneficiation of minerals; involve observable on-the-ground activity that BLM may verify by inspection; and use appropriate equipment that is presently operable. 43 C.F.R. § 3715.2. The regulations also mandate that occupancy must involve either protecting exposed, concentrated or otherwise accessible minerals from loss or theft; protecting appropriate, regularly used, and not readily portable operable equipment from theft or loss; protecting the public from such equipment which, if unattended, creates a hazard to public safety; protecting the public from surface uses, workings, or improvements which, if left unattended, create a hazard to public safety; or being located in an area so isolated or lacking in physical access as to require the claimant, operator, or workers to remain on the site in order to work a customary full 8-hour shift. 43 C.F.R. § 3715.2-1.

Pilot Plant, Inc., 168 IBLA 201 (Mar. 16, 2006).

Mining Claims
Surface Uses

A BLM notice of noncompliance finding that occupancy of a mill site does not meet the requirements of 43 C.F.R. Subpart 3715 will be affirmed where the operator has not shown that the current level of occupancy is commensurate with the magnitude of mining and milling operations occurring on the site or that the schedule for the removal of various items is unreasonable or otherwise erroneous.

Pilot Plant, Inc., 168 IBLA 201 (Mar. 16, 2006).

Mining Claims
Surface Uses

In addition to meeting the criteria for an occupancy prescribed in 43 C.F.R. §§ 3715.2 and 3715.2-1, a claimant who asserts the need for a caretaker or watchman must show that the need is reasonably incident and continual and that occupancy by a caretaker or watchman is needed whenever the operation is not active or whenever the claimant or the claimant's workers are not present on site. 43 C.F.R. § 3715.2-2. In the absence of a need to protect exposed valuable minerals from theft or loss; to protect operable equipment that is not readily portable from theft or loss; to avoid creating a hazard to the public from unattended equipment, surface uses, workings, or improvements; or a location in an isolated or physically inaccessible area, a caretaker or watchman cannot be justified under the regulations.

Pilot Plant, Inc., 168 IBLA 201 (Mar. 16, 2006).

Mining Claims
Surface Uses

Under 43 C.F.R. § 3809.332, a mining notice remains in effect for 2 years unless extended or terminated. Under 43 C.F.R. § 3809.503(a), an operator whose notice was on file with BLM on January 20, 2001, was not required to file a financial guarantee or bond unless he modified or extended the notice under 43 C.F.R. § 3809.333. After 2 years, however, the operator may extend the notice under 43 C.F.R. § 3809.333, but "must notify BLM in writing on or before the expiration date and meet the financial guarantee requirements of § 3809.503." The financial guarantee "must cover the estimated cost as if BLM were to contract with a third party to reclaim your operations." 43 C.F.R. § 3809.552.

Robert B. Wineland, 169 IBLA 212 (June 27, 2006).

Mining Claims
Surface Uses

All existing uses and occupancies under the mining laws were required to comply with Departmental regulations at 43 C.F.R. Subpart 3715 implementing the Surface Resources Act, 30 U.S.C. § 612(a) (2000), by August 18, 1997, after which they became subject to enforcement action.

Combined Metals Reduction Co., 170 IBLA 56 (Sept. 7, 2006).

Mining Claims
Surface Uses

A party will be deemed not to have received constructive notice under 43 C.F.R. § 1810.2(b) of a notice of noncompliance (NON) issued by BLM under 43 C.F.R. § 3715.7-1(c) where the NON was mailed to the party but not received by him, the record does not establish that it was mailed to his last address of record, and the circumstances of the non-delivery are not clear from the record. In the absence of service of the NON, the purpose of providing notice to the claimant of how it is failing or has failed to comply with 43 C.F.R. Subpart 3715 was thwarted, and the matter must proceed as though no NON was issued.

Combined Metals Reduction Co., 170 IBLA 56 (Sept. 7, 2006).

Mining Claims

Surface Uses

Under 43 C.F.R. § 3715.7(b)(1), to the extent that a use or occupancy is not reasonably incident to prospecting, mining, or processing operations, BLM may order a temporary or permanent cessation of all or any part thereof if all or part of the use or occupancy is not reasonably incident but does not endanger health, safety, or the environment. A cessation order citing use or occupancy that is not reasonably incident, but does not endanger health, safety, or the environment, is properly issued even though it was not preceded by a cognizable notice of noncompliance.

Combined Metals Reduction Co., 170 IBLA 56 (Sept. 7, 2006).

Mining Claims
Surface Uses

Reasonably incident. Under 43 C.F.R. § 3715.2, occupancy of a mining claim for more than 14 days in any 90-day period is not an authorized use or occupancy if the mining operations used to justify the use or occupancy are not "reasonably incident" to mining or mining-related activity. "Reasonably incident" is defined at 43 C.F.R. § 3715.0-5 as those actions involving the "statutory standard" of "prospecting, mining, or processing operations and uses reasonably incident thereto" and "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."

Combined Metals Reduction Co., 170 IBLA 56 (Sept. 7, 2006).

Mining Claims
Surface Uses

The burden of proving that activities on a mining claim are reasonably incident to mining or mining-related activity is on the claimant. The extent of permissible occupancy is directly related to the extent of mining-related activity conducted on the claim; the structures and equipment maintained on site must be related to and commensurate with the operations. The relevant period of time for determining the level of activity on mining claims is the time immediately prior to BLM's issuance of a cessation order. Where the record shows that, for a period of some 3 years immediately prior to the issuance of the CO, an occupant was merely "mothballing" its equipment, while actually dismantling much of its mining infrastructure, and that the actions taken were defensive and preservational and not related to the development of the mineral resources of the claims, the occupancy is not "reasonably incident" under the regulations.

Combined Metals Reduction Co., 170 IBLA 56 (Sept. 7, 2006).

Mining Claims
Surface Uses

Where an occupancy does not meet the conditions of 43 C.F.R. § 3715.2(a) and 3715.5(a) (both requiring that such occupancy be "reasonably incident") maintaining structures and equipment for such occupancy is prohibited under 43 C.F.R. § 3715.6(a) and (j), and a cessation order directing the immediate removal of structures and equipment from the claims is properly issued under 43 C.F.R. § 3715.7-1(b)(i).

Combined Metals Reduction Co., 170 IBLA 56 (Sept. 7, 2006).

Mining Claims
Surface Uses

The promulgation of 43 C.F.R. Subpart 3715 superseded any previous authorizations for occupancy. In the absence of a new authorization under 43 C.F.R. Subpart 3715, any prior authorization of occupancy is irrelevant.

Combined Metals Reduction Co., 170 IBLA 56 (Sept. 7, 2006).

Mining Claims
Surface Uses

As long as mining claims remain valid, the claimant retains the right to re-enter its claims for mining, exploration, and/or milling operations, subject to the limitations imposed by 43 C.F.R. Subparts 3809 and 3715. To the extent that a validly-issued cessation order purports to permanently bar an operator from re-entering a valid mining claim to conduct mining and/or milling operations, it will be modified to clarify that occupancy is barred only until BLM approves a new occupancy.

Combined Metals Reduction Co., 170 IBLA 56 (Sept. 7, 2006).

Mining Claims
Surface Uses

A cessation order issued by BLM pursuant to 43 C.F.R. Subpart 3715 is properly vacated as unsupported where the record does not show, and BLM has not ruled in the first instance, that reclamation is in order under relevant provisions of 43 C.F.R. Subpart 3809.

Combined Metals Reduction Co., 170 IBLA 56 (Sept. 7, 2006).

Mining Claims
Surface Uses

As a BLM decision concerning permissibility of occupancy of a mining claim is not a decision determining whether the claim is invalid due to lack of a discovery under the Mining Law of 1872, the mining claimant is not entitled to a pre-decisional fact-finding hearing before an administrative law judge. The claimant's due process rights are fully protected by its right to appeal such decision to the Interior Board of Land Appeals.

Combined Metals Reduction Co., 170 IBLA 56 (Sept. 7, 2006).

Mining Claims
Surface Uses

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. The fact that a mining claimant's use of a mining claim constitutes

"casual use," however, does not by itself exclude all types of "occupancy" under the terms of 43 C.F.R. Subpart 3715.

Cynthia Balser, et al., 170 IBLA 269 (Oct. 24, 2006).

Mining Claims
Surface Uses

"*Substantially regular work*." As used in 43 C.F.R. § 3715.0-5, the phrase "substantially regular work" means work on, or that substantially and directly benefits, a mineral property including nearby properties under control of the mining claimant. The term also embraces mining activity that is intermittent and/or seasonal in nature.

Cynthia Balser, et al., 170 IBLA 269 (Oct. 24, 2006).

Mining Claims
Surface Uses

BLM, acting on behalf of the Secretary of the Interior, has discretionary authority, in accordance with 43 C.F.R. § 2920.1-1, to authorize any use of public land not specifically authorized under other laws or regulations and not specifically forbidden by law. Residential occupancy of a mining claim is specifically authorized under 43 C.F.R. § Subpart 3715, when certain conditions are met. When a mining claimant fails to comply with those conditions, the claimant may not, as an alternative, receive authorization for residential occupancy of the claim under 43 C.F.R. Part 2920.

Jason S. Day, 171 IBLA 53 (Jan. 25, 2007).

Mining Claims
Surface Uses

Occupancy of the public lands under the mining laws within the meaning of the regulations at 43 C.F.R. Subpart 3715 includes the construction, presence, or maintenance of temporary or permanent structures, including buildings and the storage of equipment or supplies. BLM properly makes a determination of nonconcurrence with a request for occupancy of a mining claim when the claimant has failed to demonstrate by a preponderance of the evidence that the activity on the claim is reasonably incident to prospecting, mining, or processing operations, and is commensurate with the level of occupancy requested.

Karl F. Reith, 172 IBLA 351 (Sept. 28, 2007).

Mining Claims
Surface Uses

When BLM issues a decision enforcing the use and occupancy requirements of 43 C.F.R. Subpart 3715, it must ensure, as an initial matter, that the decision is supported by a reasoned analysis of the facts in the record. Thereafter, a party challenging a BLM decision that is based on a finding that a claimant's use or occupancy of a mining claim is not reasonably incident to prospecting, mining, or processing operations bears the burden of proving, by a preponderance of the evidence, that the challenged decision is in error and that the use or occupancy is, in fact, in compliance with section 4(a) of the Multiple Use Mining Act of 1955 and 43 C.F.R. §§ 3715.2 and 3715.2-1. When a decision does not include a reasoned analysis of a determination regarding a claimant's request to occupy the mining claim by storing equipment and other property the decision will be set aside and remanded to BLM.

Karl F. Reith, 172 IBLA 351 (Sept. 28, 2007).

Mining Claims
Title

Under 43 C.F.R. § 3833.1-1 (2003), maintenance and location fees are not returnable or refundable unless the mining claim or site has been determined, as of the date the fees were submitted, to be null and void, abandoned by operation of law, or otherwise forfeited. Since the Department has no jurisdiction to determine questions regarding the right of possession between rival claimants, the ruling of a state court of competent jurisdiction that a claimant has no ownership interest in various mining claims constitutes a determination that the claimant's claims are null and void. A BLM decision denying a requested refund of the claim maintenance fees paid on the voided claims will be reversed as to the fees paid subsequent to the date of the court's ruling. BLM's decision denying the requested refund of fees paid before the date of the court's ruling will be set aside and remanded to BLM for further analysis where the record contains conflicting evidence of BLM's interpretation of and practice under the applicable regulation.

Recon Mining Company, Inc., 167 IBLA 103 (Oct. 6, 2005).

Mining Claims
Use and Occupancy

BLM properly orders an immediate suspension of use or occupancy under 43 C.F.R. § 3715.7-1(a) when it is begun before obtaining required state or Federal permits.

Gerald A. Henderson, 156 IBLA 84 (2001).

Mining Claims
Withdrawn Land

A mining claim located prior to August 11, 1955, on land subject to a powersite classification is null and void ab initio, and an attempt to amend the location is an action that has no legal effect.

Daddy Del's LLC., 151 IBLA 229 (Dec. 15, 1999).

Mining Claims
Withdrawn Land

Public lands designated by Congress as a wilderness area in 1994 are withdrawn from mineral entry and mining claims located on the land in 1996 are properly declared null and void ab initio.

G. Robert Carlson, 152 IBLA 35 (Mar. 1, 2000).

Mining Claims
Withdrawn Land

While failure to record a mining claim with a County recorder within 30 days of the date of location may not, in and of itself, render the claim invalid under Utah State law, a withdrawal or classification of the land by the United States, prior to any corrective action by the claimant, operates as an adverse right rendering the claim invalid. Where a mining claim is staked and notice is posted on September 4, 1996, but notice of location of the claim is not filed with the County recorder until November 26, 1996, and where the land on which the claim is located is withdrawn from operation of the mining laws on September 18, 1996, the claim is properly declared null and void ab initio. This is because, owing to the failure to record within 30 days as required by State law, there was no valid "location" of the claim under 43 C.F.R. § 3831.1 at the time of the segregation, rendering the claim null and void ab initio.

N. C. Rice, Jr., 153 IBLA 185 (Aug. 25, 2000).

Mining Claims
Withdrawn Land

It is proper for BLM to declare null and void ab initio that portion of a placer mining claim encompassing land which was, at the time of location, withdrawn from mineral entry pursuant to section 9(b) of the Wild and Scenic Rivers Act, as amended, 16 U.S.C. § 1280(b) (1994).

Lamar & Christine Burnett, 153 IBLA 215 (Aug. 31, 2000).

Mining Claims
Withdrawn Land

Where public land records have been noted to show that a parcel of land is not open to entry under the public land laws, the parcel is not available for entry until such time as the notation is removed and the land restored to entry, even if the original notation was made in error.

William Dunn, 157 IBLA 347 (Oct. 30, 2002).

Mining Claims
Withdrawn Land

Rights acquired under relocations of lode mining claims declared to be forfeited by operation of law for failure to timely file the claim maintenance fee do not relate back to the date of the locations of the original claims but only to the date of the relocations. When such claims are located totally on land withdrawn from entry under the mining laws, BLM properly declares those claims null and void ab initio. When only part of such claims lies on with- drawn land, BLM properly notifies the claimants that they have not acquired any surface rights to the portion of the claims overlapping the withdrawn land; that mining and mining-related activities on those lands would constitute a trespass; and that, depending on the circumstances, they may or may not have any mineral rights in the subsurface of such land.

Devon Britton, et al., 158 IBLA 279 (Feb. 24, 2003).

Mining Claims
Withdrawn Land

It is proper for BLM to declare null and void ab initio a placer mining claim encompassing land which was, at the time of location, withdrawn from mineral entry pursuant to section 9(b) of the Wild and Scenic Rivers Act, as amended, 16 U.S.C. § 1280(b) (1994).

Robert B. Hoke, et al., 160 IBLA 220 (Dec. 3, 2003).

Mining Claims
Withdrawn Lands

BLM may not properly temporarily segregate lands from entry under the mining laws under the authority of section 206(i) of the Federal Land Policy and Management Act of 1976 (FLPMA), *as amended*, 43 U.S.C. § 1716(i) (2000), and 43 C.F.R. § 2201.1-2 in the absence of a proposal to exchange Federal lands. A statement in a resource management plan to the effect that upwards of 149,000 acres of Federal lands are "available for exchange" is not a "proposal" made by BLM to exchange lands within the meaning of 43 C.F.R. Subpart 2201, as it does not identify the lands to be exchanged or the parties seeking the exchange. BLM's improper use of this temporary segregation authority effectively works a withdrawal of the lands without compliance with the procedural requirements of section 204 of FLPMA, 43 U.S.C. § 1714 (2000).

Michael L. Carver, et al, 163 IBLA 77 (Sept. 8, 2004).

Mining Claims
Withdrawn Land

The notation rule directs that mining claims located at a time when BLM's records indicate that the lands on which they are located are segregated from mineral entry are void regardless of whether the underlying segregation was proper. Where public land records have been noted to show that a parcel of land is not open to entry under the public land laws, the parcel is not available for entry until such time as the notation is removed and the land is restored to entry, even if the original notation was made in error or the segregative effect is void, voidable, or has terminated or expired.

Michael L. Carver, et al, 163 IBLA 77 (Sept. 8, 2004).

Mining Claims

Withdrawn Land

A mining claim located on lands withdrawn from mineral entry at the time of location is null and void *ab initio*. Where claimants argue that their claim predates the effective date of the withdrawal, they must establish that they are the successors to an interest in a mining claim that was located on this land before its withdrawal from mineral entry; to do so, they must show an unbroken chain of title to a valid claim located prior to the withdrawal of the land and, further, if a new notice of location is filed after the effective date of the withdrawal, the claim had to be an "amended location" rather than a "relocation." A new notice of location filed after a claim has been declared abandoned and void for failure to meet Federal recording and/or rental or fee requirements is a relocation, since such failure extinguishes the prior claim. Where a claim that is located prior to the effective date of a withdrawal is abandoned and void by operation of law for failure to comply with the rental or fee requirements, a subsequent claim located for the same land is a relocation and does not relate back to the location date of the previous claim. Where the subsequent claim is located on lands segregated from mineral entry by the filing of an application for withdrawal, the claim is properly declared null and void *ab initio*.

Douglas and Jane Weldy, 164 IBLA 166 (Dec. 8, 2004).

Mining Claims
Withdrawn Land

Under 43 C.F.R. § 2310.2(a), the filing by the Forest Service of an application for withdrawal of Federally-owned lands segregates the lands described in the application from settlement, sale, location or entry under the public land laws, including the mining laws for 2 years from the date of publication in the *Federal Register* of notice of the filing of the application. Under 43 C.F.R. § 2310.2-1(c), where the Forest Service subsequently cancels its application for withdrawal, the effective date of the termination of such segregation is the date specified in the notice of cancellation published in the *Federal Register*. Where a mining claim is located on lands covered by an application for withdrawal filed by the Forest Service at a time following publication of notice of the application in the *Federal Register*, BLM properly declares the claim null and void *ab initio*, as the lands are segregated from mineral entry at that time. It is irrelevant that the Forest Service subsequently cancels its application for withdrawal, where notice of such cancellation is not published in the *Federal Register* until long after the date of location of the claim, as revocation of the withdrawal subsequent to the date of the location does not restore or validate the claim.

James Aubert, 164 IBLA 297 (Jan. 24, 2005).

Mining Claims
Withdrawn Land

The Government is precluded from declaring a mining claim void for lack of a discovery when it is shown that the Government prevented the claimant from entering his claim to gather information necessary to prove the existence of a discovery. Where the Government invited a claimant to examine and sample prior exposures, and to accompany the Government during its own investigation and sampling program, the claimant was not denied access to his claims to rehabilitate prior discovery points. A claimant does not show that he was prevented from access to prove the existence of a prior discovery where he demanded to drill his mining claims to explore them for minerals. Following the withdrawal of land from mineral entry, a claimant may enter the claims to gather evidence that a discovery existed on the date of withdrawal, but may not engage in activity that constitutes further exploration to disclose a deposit not previously exposed.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Withdrawn Land

Where the Government discouraged a claimant from reopening an adit that may have caved during the time of a court-ordered injunction, thereby preventing the claimant from entering the claim to rehabilitate a prior discovery point, and where the evidence is susceptible of the interpretation that the claimant accepted the Government's advice in writing on the assumption that his claim would be found to be valid, the Government is foreclosed from declaring the mining claim in question invalid until such time as the claimant is offered the opportunity, by means authorized by law and regulation, to reopen the specific adit potentially affected by the injunction.

United States v. Milan Martinek, 166 IBLA 347 (Sept. 13, 2005).

Mining Claims
Withdrawn Land

When land embracing the contested mining claims has been segregated for inclusion in a land exchange, a mining claimant acquires rights which cannot be cancelled by the segregation only if the claim is perfected, including discovery, on the date of segregation. The deposit must be physically exposed as of the date of segregation, and the discovery must be based upon showings of mineral value from the mineral deposit that was exposed as of the segregation date. Once a discovery has been made, it must be maintained. A discovery must exist and present marketability must be shown as of the date of the segregation and as of the date of the hearing, and no further exploration to physically expose valuable minerals of sufficient quality and quantity to constitute discovery can be permitted after the date of segregation.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Mining Claims
Withdrawn Land

The validity of the segregation of lands embracing contested mining claims for purposes of a land exchange is not justiciable. Even if the segregation was justiciable, under the notation rule, no rights incompatible with the use so noted in BLM's land records can attach until the record is changed to show that the land is no longer segregated.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Mining Claims
Withdrawn Lands

The segregative effect of a proposed land exchange automatically terminates 5 years from the date the segregation is noted on the public land records, but the termination does not instantly restore the lands to the operation of public land laws, including the mining laws. To effectuate the opening of lands to the operation of the public land laws requires a change in the status of the lands noted on the public land records. Lands may not be appropriated under the mining laws prior to the date and time of restoration and opening, and any such attempted appropriation vests no rights against the United States. 43 C.F.R. § 2091.1(b). An opening order may be issued at any time, but is required when the opening date is not specified in the document creating the segregation. 43 C.F.R. § 2091.07(b).

Pilot Plant, Inc., et al., 168 IBLA 169 (Mar. 16, 2006).

Mining Claims
Withdrawn Lands

Under the notation rule, mining claims located at a time when BLM's records indicate that the lands on which they are located are segregated from mineral entry are void regardless of whether the underlying segregation was proper. The land is not available for entry until such time as the notation is removed and the land is restored to entry, even if the original notation was made in error or the segregative effect is void, voidable, or has terminated or expired. 43 C.F.R. § 2091.1(b).

Pilot Plant, Inc., et al., 168 IBLA 169 (Mar. 16, 2006).

Mining Claims
Withdrawn Lands

Under the notation rule, a mining claim located at a time when BLM's official public land records indicate that the lands on which the claim is located is segregated from mineral entry is void regardless of whether the underlying segregation was proper. The land is not available for entry until such time as the notation is removed and the land is restored to entry, even if the original notation was made in error, or the segregative effect is void or voidable, or has terminated or expired.

Joe R. Young, 171 IBLA 142 (Feb. 27, 2007).

Mining Claims Rights Restoration Act

The Mining Claims Rights Restoration Act of 1955, as amended, 30 U.S.C. §§ 621-625 (2000), which opened powersite withdrawals for entry under the mining laws, provides that the locator of a placer claim under the Act may not conduct any mining operations for 60 days after filing a notice of location pursuant to 30 U.S.C. § 623 (2000) and that, if the Department decides to hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land, the suspension of operations will continue until the hearing has been held and the Department has issued an appropriate order providing for one of the following alternatives: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator restore the surface of the claim to the condition it was in prior to mining; or (3) a general permission to engage in placer mining.

United States v. Donald E. Eno, 171 IBLA 69 (Feb. 13, 2007).

Mining Claims Rights Restoration Act

To determine whether mining would substantially interfere with other uses of powersite lands within the meaning of the Mining Claims Rights Restoration Act of 1955, *as amended,* 30 U.S.C. § 621 (2000), the Department is required to engage in a weighing or balancing of the benefits of mining against the injury mining would cause to other uses of the land. Mining may be allowed where the benefits of placer mining outweigh the detriment that placer mining causes to other uses. Central to the balancing test is the concept that the competing uses must be substantial if they are to be used to prohibit placer mining. Thus, even if the Secretary determines that placer mining would substantially interfere with other uses of the land, he may still appropriately grant a general permission to engage in placer mining operations if the competing surface uses have less significance than the proposed placer mining operation. The importance of the competing uses, which must be compared and judged on whatever grounds are relevant in the individual case, need not be economically quantifiable and may include the preservation of cultural, geological, or scenic resources.

United States v. Donald E. Eno, 171 IBLA 69 (Feb. 13, 2007).

National Environmental Policy Act of 1969
Generally

A BLM decision issuing a geothermal resources lease, pursuant to the Geothermal Steam Act of 1970, *as amended*, 30 U.S.C. §§ 1001-1028 (1994), will be vacated when BLM failed to prepare, prior to lease issuance, either an EIS or an EA analyzing the potential environmental impacts of leasing, including any likely exploration and development, as required by section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. § 4332(2)(C) (1994), and its implementing regulations (40 C.F.R. Chapter V).

St. James Village, Inc., et al., 154 IBLA 150 (Feb. 22, 2001).

National Environmental Policy Act of 1969
Generally

NEPA requires agencies, in undertaking actions, to consider significant impacts on the human environment. 42 U.S.C. § 4332(2)(C) (1994). The CEQ regulations implementing NEPA at 40 C.F.R. Part 1500 specify the sufficiency of NEPA review to sustain an agency's decision to undertake the action. BLM does not undertake such an action, subject to NEPA or the CEQ rules, in ordering an applicant for a preference right lease to submit a final showing of commercial quantities of coal in support of its application.

Jesse H. Knight, et al., 155 IBLA 104 (May 23, 2001).

National Environmental Policy Act of 1969
Generally

NEPA is primarily a procedural statute designed to ensure a fully informed and well-considered decision after taking a "hard look" at the environmental effects of any major Federal action. The Board, reviewing a BLM record of decision on the basis of an environmental assessment, will ensure that the agency undertook full and adequate review but will not substitute its judgment for that of BLM.

Von L. and Marian Sorensen v. Bureau of Land Management, 155 IBLA 207 (July 18, 2001).

National Environmental Policy Act of 1969
Generally

Where an appellant opposes BLM's choice among alternatives in a record of decision on the basis of an environmental assessment and asks that the Board implement the appellant's choice of alternatives, the Board will not entertain the appeal when: (1) reversal would require a new NEPA process rather than implementation of appellant's choice and (2) a subsequent BLM decision has already supplanted the record of decision in question.

Von L. and Marian Sorensen v. Bureau of Land Management, 155 IBLA 207 (July 18, 2001).

National Environmental Policy Act of 1969
Generally

NEPA applies only to actions a Federal agency proposes to take and specifies procedures designed to produce relevant information concerning the environmental consequences of the Federal action proposed, before that action is taken. Departmental regulation 43 C.F.R. § 2802.4(d) mandates a completed EA in any case in which BLM determines to issue a requested right-of-way. Even when an EA is completed pursuant to 43 C.F.R. § 2802.4(d), BLM retains its discretionary authority to deny a right-of-way application.

Bear River Development Corporation, et al., 157 IBLA 37 (July 19, 2002).

National Environmental Policy Act of 1969
Generally

Review of a challenge to a timber sale on the ground of consistency with the aquatic conservation strategy is guided by principles generally relevant to review of environmental compliance. The record must provide a rational rational basis for a finding of consistency. One challenging such a finding must demonstrate either an error of law or fact or that the analysis failed to consider a significant impact of the timber sale. This showing must be satisfied by objective evidence and a mere difference of opinion with BLM specialists will not suffice.

Klamath Siskiyou Wildlands Center et al., 157 IBLA 322 (Oct. 29, 2002).

National Environmental Policy Act of 1969
Generally

When an appellant challenges a BLM finding of no significant impact on grounds that BLM failed to demonstrate that mitigation measures enumerated therein can work, appellants' failure to identify a mitigation measure with which they quarrel defeats their case.

Colorado Mountain Club, et al., 161 IBLA 371 (June 4, 2004).

National Environmental Policy Act of 1969
Generally

In order to establish a challenge based upon an alleged BLM failure to consider alternatives in an environmental assessment, an appellant must proffer an alternative that BLM should have considered which would accomplish the intended purpose of the proposed action, be technically and economically feasible, and have a lesser impact than the proposed project.

Colorado Mountain Club, et al., 161 IBLA 371 (June 4, 2004).

National Environmental Policy Act of 1969
Generally

A BLM decision to approve an action based on an EA and FONSI generally will be affirmed if BLM has taken a "hard look" at the proposed action, identified relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. A party challenging BLM's decision has the burden of demon-strating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environ-mental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal.

Rainer Huck, et al., 168 IBLA 365 (Apr. 18, 2006).

National Environmental Policy Act of 1969
Generally

An EIS prepared to evaluate the environmental impacts of a modification of a mining plan of operations complies with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), *as amended*, 42 U.S.C. § 4332(2)(C) (2000), when it shows that BLM has taken a "hard look" at potential environmental consequences of the proposed action and reasonable alternatives thereto, considering relevant matters of environmental concern. To successfully challenge a decision based on an EIS, an appellant must demonstrate by a preponderance of the evidence and with objective proof that BLM failed adequately to consider a substantial environmental question of material significance to the proposed action, or otherwise failed to abide by section 102(2) of NEPA.

Western Exploration Inc. & Doby George LLC, 169 IBLA 388 (Aug. 23, 2006).

National Environmental Policy Act of 1969
Generally

In the preparation of an EIS, BLM is obligated to assess alternatives to a proposed action, including the no-action alternative and reasonable alternatives which are feasible, will accomplish the intended purpose, and will avoid or minimize the adverse impacts of the action upon the environment. A proposed modification to a mining plan of operations will be upheld where an appellant fails to identify an alternative that will accomplish the intended purpose of the proposed action, is technically and economically feasible, and has a lesser impact that BLM failed to consider.

Western Exploration Inc. & Doby George LLC, 169 IBLA 388 (Aug. 23, 2006).

National Environmental Policy Act of 1969
Generally

A finding that impacts of issuing an oil and gas lease would not be significant due to the mitigative effects of a special status species stipulation must be based on NEPA analysis. The stipulation does not provide a basis for deferring an environmental analysis in the absence of an existing NEPA statement that includes an analysis of the mitigative effects of the stipulation.

Center for Native Ecosystems, 170 IBLA 331 (Nov. 22, 2006).

National Environmental Policy Act of 1969
Generally

Nothing in the Federal Land Policy and Management Act or the National Environmental Policy Act, or their implementing regulations, requires the Board to conclude that BLM cannot revise its method of calculating the number of wells remaining to be drilled under a Reasonably Foreseeable Development (RFD) scenario, or that the degree of short- and long-term surface disturbance resulting from oil and gas activities is an improper reference point in ascertaining the present status of the RFD scenario.

Wyoming Outdoor Council, Wyoming Wildlife Federation, 170 IBLA 240 (Sept. 29, 2006).

National Environmental Policy Act of 1969
Generally

The temporary closure of an Area of Critical Environmental Concern to protect the public health and safety from exposure to increased levels of naturally occurring asbestos to complete sampling and related studies is categorically excluded from NEPA review. Under Part 516 of the Departmental Manual, Chapter 11, the temporary closure is categorically excluded as both a temporary closure of roads and as a closure for preliminary hazardous materials assessments and site investigations, site characterization studies, and environmental monitoring. BLM may choose to use an Environmental Assessment to facilitate discussion and analysis of the closure action, but where it was not required to do so under NEPA, doing so does not create an obligation under that statute where none otherwise exists.

Salinas Ramblers Motorcycle Club, et al., 171 IBLA 396 (July 10, 2007).

National Environmental Policy Act of 1969
Environmental Assessments

The "reasonably foreseeable development" scenario (RFD scenario) for oil and gas is a long-term projection of oil and gas exploration, development, production, and reclamation activity in a defined area for a specified period of time. The RFD scenario projects a baseline scenario of activity assuming all potentially productive areas can be open under standard lease terms and conditions, except those areas designated as closed to leasing by law, regulation or executive order. The baseline RFD scenario provides the mechanism to analyze the effects that discretionary management decisions have on oil and gas activity, and it also provides basic information that is analyzed in environmental documents under various alternatives.

Wyoming Outdoor Council, et al., 164 IBLA 84 (Nov. 30, 2004).

National Environmental Policy Act of 1969
Environmental Assessments

Whether an RMP's exceeded RFD scenario demonstrates an inadequate analysis of environmental impacts to the extent of such exceedance is a question that must be determined on a case-by-case basis. Where the RMP is being revised pursuant to 43 C.F.R. § 1610.5-6, the Board will not further consider appellants' arguments regarding the RFD scenario in support of that outcome.

Wyoming Outdoor Council, et al., 164 IBLA 84 (Nov. 30, 2004).

National Environmental Policy Act of 1969
Environmental Assessments

The appropriate time for considering the potential impacts of oil and gas exploration and development is when BLM proposes to lease public lands for oil and gas purposes because leasing, at least without no surface occupancy stipulations, constitutes an irreversible and irretrievable commitment to permit surface- disturbing activity, in some form and to some extent. Where the environmental assessment (EA) of each parcel at issue shows that there is no serious promise of CBM development, the burden falls upon the appellant to come forward with objective, countering evidence showing error in the EA's conclusions, to demonstrate that BLM could not properly rely on the RMP/EIS's environmental analysis to support the decision to offer these parcels for sale. In light of the absence of any serious potential for CBM development on the parcels, BLM could rely on the impacts analysis contained in the RMP to fulfill its pre-leasing NEPA obligation.

Wyoming *Outdoor Council, et al.*, 164 IBLA 84 (Nov. 30, 2004).

National Environmental Policy Act of 1969
Environmental Assessments

Where appellants' allegations regarding the potential for CBM extraction and development on the parcels at issue and the unique impacts associated therewith were not refuted by the record or by BLM on appeal, and where it is also undisputed that the RMP/EIS did not analyze CBM extraction and development or the unique impacts that might be occasioned by such activities, existing environmental NEPA documents did not provide the required pre-leasing NEPA analysis for the sale of those parcels. BLM's decision dismissing a protest on the basis of a contrary conclusion is properly reversed and the case remanded for further action.

Wyoming Outdoor Council, et al., 164 IBLA 84 (Nov. 30, 2004).

National Environmental Policy Act of 1969
Environmental Assessments

BLM properly denies a protest of a competitive oil and gas lease sale on the basis that BLM violated the National Environmental Policy Act of 1969 when the environmental

analyses demonstrate that BLM took a hard look at the potential significant environmental consequences, considering all relevant matters of environmental concern.

Deganawidah-Quetzalcoatle University, 164 IBLA 155 (Dec. 8, 2004).

National Environmental Policy Act of 1969
Environmental Impact Statements

The "reasonably foreseeable development" scenario (RFD scenario) for oil and gas is a long-term projection of oil and gas exploration, development, production, and reclamation activity in a defined area for a specified period of time. The RFD scenario projects a baseline scenario of activity assuming all potentially productive areas can be open under standard lease terms and conditions, except those areas designated as closed to leasing by law, regulation or executive order. The baseline RFD scenario provides the mechanism to analyze the effects that discretionary management decisions have on oil and gas activity, and it also provides basic information that is analyzed in environmental documents under various alternatives.

Wyoming Outdoor Council, et al., 164 IBLA 84 (Nov. 30, 2004).

National Environmental Policy Act of 1969
Environmental Impact Statements

Whether an RMP's exceeded RFD scenario demonstrates an inadequate analysis of environmental impacts to the extent of such exceedance is a question that must be determined on a case-by-case basis. Where the RMP is being revised pursuant to 43 C.F.R. § 1610.5-6, the Board will not further consider appellants' arguments regarding the RFD scenario in support of that outcome.

Wyoming Outdoor Council, et al., 164 IBLA 84 (Nov. 30, 2004).

National Environmental Policy Act of 1969
Environmental Impact Statements

The appropriate time for considering the potential impacts of oil and gas exploration and development is when BLM proposes to lease public lands for oil and gas purposes because leasing, at least without no surface occupancy stipulations, constitutes an irreversible and irretrievable commitment to permit surface- disturbing activity, in some form and to some extent. Where the environmental assessment (EA) of each parcel at issue shows that there is no serious promise of CBM development, the burden falls upon the appellant to come forward with objective, countering evidence showing error in the EA's conclusions, to demonstrate that BLM could not properly rely on the RMP/EIS's environmental analysis to support the decision to offer these parcels for sale. In light of the absence of any serious potential for CBM development on the parcels, BLM could rely on the impacts analysis contained in the RMP to fulfill its pre-leasing NEPA obligation.

Wyoming Outdoor Council, et al., 164 IBLA 84 (Nov. 30, 2004).

National Environmental Policy Act of 1969
Environmental Impact Statements

Where appellants' allegations regarding the potential for CBM extraction and development on the parcels at issue and the unique impacts associated therewith were not refuted by the record or by BLM on appeal, and where it is also undisputed that the RMP/EIS did not analyze CBM extraction and development or the unique impacts that might be occasioned by such activities, existing environmental NEPA documents did not provide the required pre-leasing NEPA analysis for the sale of those parcels. BLM's decision dismissing a protest on the basis of a contrary conclusion is properly reversed and the case remanded for further action.

Wyoming Outdoor Council, et al., 164 IBLA 84 (Nov. 30, 2004).

National Environmental Policy Act of 1969
Environmental Impact Statements

BLM properly denies a protest of a competitive oil and gas lease sale on the basis that BLM violated the National Environmental Policy Act of 1969 when the environmental analyses demonstrate that BLM took a hard look at the potential significant environmental consequences, considering all relevant matters of environmental concern.

Deganawidah-Quetzalcoatle University, 164 IBLA 155 (Dec. 8, 2004).

National Environmental Policy Act of 1969
Environmental Statements

BLM did not err in not adopting a 2 mile buffer zone for sage grouse leks or strutting grounds in the ROD/FEIS where authorities relied on in support of a 2 mile buffer zone and addressed widespread sagebrush eradication rather than the more limited impacts associated with oil and gas operations, and no scientific evidence was offered showing that a 2 mile buffer zone was necessary to protect sage grouse leks or strutting grounds.

Wyoming Audubon et al., 151 IBLA 42 (Oct. 22, 1999).

National Environmental Policy Act of 1969
Environmental Statements

BLM did not violate seasonal sage grouse restrictions identified in the RMP where the RMP also provided for modification of the restrictions if necessary based upon environmental analysis of specific proposal and site specific mitigation, and BLM prepared an environmental impact statement modifying the seasonal restriction based on post-RMP research more clearly defining sage grouse breeding and nesting activity and required site-specific mitigation which protects nests and chicks identified through required surveys.

Wyoming Audubon et al., 151 IBLA 42 (Oct. 22, 1999).

National Environmental Policy Act of 1969

Environmental Statements

Where the scientific data relied on by BLM and appellants indicate that a ½-mile buffer zone is preferable but not essential to protect sage grouse leks, and there is no scientific evidence or studies indicating a ¼-mile buffer zone with appropriate mitigation measures is insufficient to protect sage grouse leks, BLM's conclusion that a ¼-mile buffer zone with additional mitigation is sufficient to lessen the impact on sage grouse due to oil and gas development will be affirmed.

Wyoming Audubon et al., 151 IBLA 42 (Oct. 22, 1999).

National Environmental Policy Act of 1969
Environmental Statements

A BLM decision to allow cattle grazing at a spring based on a finding of no significant impact is properly set aside and remanded when it appears from the record that a "unique water" designated under state law in which existing water quality is required to be maintained and protected includes the entire length of the stream for which the spring is the headwater and that BLM failed to consider that fact in making its finding.

National Wildlife Federation, et al., 151 IBLA 66 (Oct. 28, 1999).

National Environmental Policy Act of 1969
Environmental Statements

A BLM decision to adopt a range improvement maintenance plan will be affirmed on appeal if the decision is based on a consideration of all relevant factors and is supported by the record, including an environmental assessment which establishes that a careful review of environmental problems has been made, all relevant areas of environmental concern have been identified, and the final determination is reasonable in light of the environmental analysis. A party challenging the BLM decision must show that it was premised on an error of law or fact or that the analysis failed to consider a material environmental question. Unsupported differences of opinion provide no basis for reversal.

National Wildlife Federation, et al., Erik and Tina Barnes, 151 IBLA 104 (Nov. 24, 1999).

National Environmental Policy Act of 1969
Environmental Statements

Compliance with the National Environmental Policy Act of 1969 requires BLM to take a hard look at the issues, identify relevant areas of environmental concern, identify alternatives, and, where no EIS is prepared, make a convincing case that the potential environmental impacts are insignificant.

National Wildlife Federation, et al., Erik and Tina Barnes, 151 IBLA 104 (Nov. 24, 1999).

National Environmental Policy Act of 1969
Environmental Statements

Compliance with the National Environmental Policy Act of 1969 requires BLM to take a hard look at the issues, identify relevant areas of environmental concern, identify alternatives, and, where no EIS is prepared, make a convincing case that the potential environmental impacts are insignificant.

Erik and Tina Barnes, National Wildlife Federation, et al., 151 IBLA 128 (Nov. 30, 1999).

National Environmental Policy Act of 1969
Environmental Statements

NEPA is primarily a procedural statute designed to insure a fully informed and well-considered decision. It requires that an agency take a "hard look" at the environmental effects of any major Federal action. An EIS must fulfill the primary mission of NEPA, which is to ensure that a Federal agency, in exercising the substantive discretion afforded it to approve or disapprove a project, is fully informed regarding the environmental consequences of such action. In deciding whether an EIS has done so, it is well settled that a rule of reason will be employed such that the question becomes whether the statement contains a reasonably thorough discussion of the significant aspects of the probable environmental consequences.

Newmont Mining Corp., 151 IBLA 190 (Dec. 6, 1999).

National Environmental Policy Act of 1969
Environmental Statements

An environmental analysis for a mineral material sale properly considers the impact of connected actions which are triggered by the action or which are part of a larger action and which depend on the larger action for their justification. An environmental analysis for a sand and gravel mining operation is not required to consider the impact of construction of a processing plant for crushing and asphalt mixing which is not authorized by the sales contract and is not a necessary result of the sale.

Larry Thompson, et al., 151 IBLA 208 (Dec. 10, 1999).

National Environmental Policy Act of 1969
Environmental Statements

A decision approving a mineral material sale based on an EA and FONSI may be upheld in the absence of considering a requirement for a permit under section 404 of the Clean Water Act when it appears from the record that no section 404 dredge and fill permit is required for incidental fallback from a sand and gravel mining operation.

Larry Thompson, et al., 151 IBLA 208 (Dec. 10, 1999).

National Environmental Policy Act of 1969
Environmental Statements

A BLM decision approving issuance of a mineral sales contract is properly affirmed when the record shows the FONSI was based on reasoned decisionmaking, and appellant fails to demonstrate that the finding was based on an error of law or fact, or that the analysis failed to consider a substantial environmental problem of material significance.

Larry Thompson, et al., 151 IBLA 208 (Dec. 10, 1999).

National Environmental Policy Act of 1969
Environmental Statements

An EIS must ensure that a Federal agency, in exercising the substantive discretion afforded it to approve or disapprove a project, is fully informed regarding the environmental consequences of an agency action. In deciding whether an EIS has done so, it is well settled that a rule of reason will be employed such that the question becomes whether the statement contains a reasonably thorough discussion of the significant aspects of the probable environmental consequences.

Wyoming Outdoor Council, 151 IBLA 260 (Dec. 22, 1999).

National Environmental Policy Act of 1969
Environmental Statements

Section 102(2)(C) of NEPA provides that BLM "shall consult with and obtain the comments of any Federal Agency which has jurisdiction by law or special expertise with respect to any environmental impact involved." 42 U.S.C. § 4332(2)(C) (1994). Assuming BLM was required to consult with the U.S. Department of Agriculture, Forest Service, regarding impacts from a natural gas development project, where BLM publishes notice of the DEIS for that project in the *Federal Register* with a 60-day period for comment and the Forest Service fails to comment and there is no evidence that BLM's environmental analysis was in any way compromised by lack of consultation with the Forest Service, failure to consult is not a prejudicial error.

Wyoming Outdoor Council, 151 IBLA 260 (Dec. 22, 1999).

National Environmental Policy Act of 1969
Environmental Statements

Sections 102(2)(C) and 102(2)(E) of NEPA require an agency to present alternatives to the proposed action and to "study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(C) and (E) (1994). NEPA requires that the range of alternatives be reasonably related to the purposes of the project and sufficient to permit a reasoned choice. Where the record shows that this was done, there has been compliance with this NEPA requirement.

Wyoming Outdoor Council, 151 IBLA 260 (Dec. 22, 1999).

National Environmental Policy Act of 1969
Environmental Statements

A rule of reason applies when reviewing new alternatives and information regarding a proposed action analyzed in a draft and final EIS and considering whether a supplemental EIS is required. A decision to approve a coalbed methane project analyzed in both a draft EIS and a final EIS without preparation of a supplemental draft EIS will be affirmed when the new alternative developed and adopted in the final EIS responds to public comments seeking increased protection for big game and falls qualitatively within the spectrum of alternatives discussed in the draft, and the new and expanded information generated in the preparation of the final EIS does not significantly vary from that considered in the draft EIS in either the nature or magnitude of the disclosed impacts.

William E. Love, 151 IBLA 309 (Jan. 13, 2000).

National Environmental Policy Act of 1969
Environmental Statements

A BLM decision not to adopt an alternative mitigation measure preferred by an appellant will be upheld when BLM considered the suggested mitigation measure but chose not to incorporate it because it conflicted with applicable land use plans, and the selected mitigation measure had been successfully implemented in the past.

William E. Love, 151 IBLA 309 (Jan. 13, 2000).

National Environmental Policy Act of 1969
Environmental Statements

BLM properly decides to approve construction of a new trail providing motorized access to public lands for hunting and other recreational purposes, absent preparation of an EIS, where, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4332(2)(C) (1994), it has taken a hard look at the environmental consequences of doing so, considering all relevant matters of environmental concern, including the effects of off–road vehicle use away from the trail, and made a convincing case that, given appropriate mitigation measures, no significant impact will result therefrom. Its decision not to prepare an EIS will be affirmed when no appellant demonstrates, with objective proof, that BLM failed to consider a substantial environmental problem of material significance to the proposed action, or otherwise failed to abide by the statute.

Bales Ranch, Inc., et al., 151 IBLA 353, 357 (Feb. 2, 2000).

National Environmental Policy Act of 1969
Environmental Statements

Section 102(2)(E) of NEPA, 42 U.S.C. § 4332 (2)(E) requires consideration of "appropriate alternatives" to a proposed action, as well as their environmental consequences. The alternatives to the proposed action should accomplish the intended purpose, be technically and economically feasible, and have a lesser or no impact. Consideration of alternatives ensures that the decisionmaker has before him and takes into proper account all possible approaches to a particular project.

Bales Ranch, Inc., et al., 151 IBLA 353 (Feb. 2, 2000).

National Environmental Policy Act of 1969
Environmental Statements

An EA for a proposed action properly considers the indirect effects caused by the action which, although later in time or further removed, are reasonably foreseeable. Thus, the impacts of connected actions conducted by private parties which would not occur without the supporting Federal action are appropriately considered in an EA.

Defenders of Wildlife, 152 IBLA 1 (Feb. 17, 2000).

National Environmental Policy Act of 1969
Environmental Statements

A decision to issue a right-of-way for a power line to supply electricity for the reopening of an open pit mining operation on private land based on an EA and FONSI will be upheld when the record establishes a reasonable basis for the FONSI. An appeal challenging the scope of the EA for failure to consider all the impacts of the mining operation will be denied when it appears from the record that the mining operation would proceed in the absence of approval of the right-of-way.

Defenders of Wildlife, 152 IBLA 1 (Feb. 17, 2000).

National Environmental Policy Act of 1969
Environmental Statements

Pursuant to section 102(2) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4332(2) (1994), and its implementing regulations (40 C.F.R. Chapter V), BLM is required to consider a reasonable range of alternatives to a proposed action, including a no-action alternative. An EA which considers a range of alternatives and gives reasons for BLM rejection of alternatives not selected will be upheld when it appears that BLM assessed alternatives in a manner that will avoid or minimize the adverse effects of the proposed action.

Defenders of Wildlife, 152 IBLA 1 (Feb. 17, 2000).

National Environmental Policy Act of 1969
Environmental Statements

A finding of no significant impact requiring preparation of an environmental impact statement will be affirmed when the record demonstrates that BLM has considered the relevant environmental concerns, taken a hard look at potential environmental impacts, and made a convincing case that no significant environmental impact will result from the action to be implemented. The adequacy of the record to support a finding of no significant impact is evaluated on the basis of the action which BLM has decided to implement in the absence of connected actions upon which the proposed action depends for its justification or cumulative impacts from past, present, or reasonably foreseeable future actions.

Emerald Trail Riders Association, 152 IBLA 210 (Apr. 28, 2000).

National Environmental Policy Act of 1969
Environmental Statements

A BLM decision to approve expansion and commercial use of airstrip on public land, to include rights-of-way to commercial providers, will be affirmed on appeal if the decision is based on a consideration of all relevant factors and is supported by the record, including an environmental assessment which establishes that a careful review of environmental problems has been made, all relevant areas of environmental concern have been identified, and the final determination is reasonable in light of the environmental analysis. A party challenging the BLM decision must show that it was premised on an error of law or fact or that the analysis failed to consider a material environmental question. Unsupported differences of opinion provide no basis for reversal.

Southern Utah Wilderness Alliance, 152 IBLA 216 (Apr. 28, 2000).

National Environmental Policy Act of 1969
Environmental Statements

Compliance with the National Environmental Policy Act of 1969 requires BLM to take a hard look at the issues, identify relevant areas of environmental concern, identify alternatives, and, where no EIS is prepared, make a convincing case that the potential environmental impacts are insignificant.

Southern Utah Wilderness Alliance, 152 IBLA 216 (Apr. 28, 2000).

National Environmental Policy Act of 1969
Environmental Statements

Preparation of an environmental impact statement for a water pipeline right-of-way requires that BLM rigorously and objectively analyze reasonable alternatives to the proposed action which will accomplish the intended purpose, are technically and economically feasible, and will have less environmental impact. A decision to implement the proposed action may be affirmed when the record discloses that other alternatives analyzed were rejected because they are not feasible.

Sierra Club Uncompahgre Group, *Concerned Citizens Resource Association*, 152 IBLA 371 (June 29, 2000).

National Environmental Policy Act of 1969
Environmental Statements

In preparing an environmental impact statement, BLM is required to consider the indirect impacts which will be caused by the proposed action. When the record discloses that a proposed water pipeline was prompted in part by existing population growth, no error is established by the failure of BLM to consider the impacts of population growth as indirect impacts of the pipeline.

Sierra Club Uncompahgre Group, Concerned Citizens Resource Association, 152 IBLA 371 (June 29, 2000).

National Environmental Policy Act of 1969
Environmental Statements

Under section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C) (1994), the adequacy of an EA must be judged by whether it took a "hard look" at the potential significant environmental consequences of the proposed action, and reasonable alternatives thereto, and considered all relevant matters of environmental concern. In general, the EA must fulfill the primary mission of that section, which is to ensure that BLM, in exercising the substantive discretion afforded it to approve or disapprove an action, is fully informed regarding the environmental consequences of such action.

Wade Patrick Stout, et al., 153 IBLA 13 (July 13, 2000).

National Environmental Policy Act of 1969
Environmental Statements

An appellant must demonstrate that, when finding that its proposed action will not result in significant adverse impact on the human environment, BLM erred in its analysis or acted contrary to any law to prevail on appeal. A BLM decision to approve amendment of a special recreation permit to authorize a jet boat race on a Federally–designated wild and scenic river will be affirmed when the record adequately supports the decision, demonstrates that BLM took a hard look at the potential environmental impacts of its decision, and makes a convincing case that no significant impact will likely result, in accordance with section 102(2) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4332(2) (1994).

Klamath–Siskiyou Wildlands Center, 153 IBLA 110 (Aug. 7, 2000).

National Environmental Policy Act of 1969
Environmental Statements

Where the EA supporting the Decision Notice and Finding of No Significant Impact describes the proposed action of the Montana Department of Fish Wildlife and Parks as maintaining an "observed" late-winter elk population of 2,000 rather than maintaining a late-winter elk population of 2,000, the inclusion of the word does not result in a new proposal or overrule the population objectives in the State Elk Plan and its use is not inconsistent with the Decision where the record shows that the target elk population contained in Elkhorn Mountains Travel Management Plan is in fact based on the elk population objectives established in the State Elk Plan which BLM has no authority to alter.

Paul B. Smith and Bill Myers, The Boulder Technical Advisory Group, 153 IBLA 334 (Sept. 29, 2000).

National Environmental Policy Act of 1969
Environmental Statements

A BLM finding (based on preparation of an EA) that no significant environmental impact will occur as a result of issuing a travel management plan will be affirmed when the record shows that BLM took a hard look at the environmental consequences of its action and appellant fails to show that BLM's finding was based on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared.

Paul B. Smith and Bill Myers, The Boulder Technical Advisory Group, 153 IBLA 334 (Sept. 29, 2000).

National Environmental Policy Act of 1969
Environmental Statements

BLM's approval of a plan of operations for open pit gold mining will be affirmed where BLM has taken a hard look in an EIS at the significant environmental consequences of mining operations and reasonable alternatives, and where the record supports BLM's conclusion that the plan, as modified, will not result in unnecessary or undue degradation of the public lands.

Legal and Safety Employer Research Inc., et al., 154 IBLA 167 (Feb. 28, 2001).

National Environmental Policy Act of 1969
Environmental Statements

An EIS is not rendered invalid by the fact that it is prepared by consultants approved by BLM instead of by BLM personnel.

Legal and Safety Employer Research Inc., et al., 154 IBLA 167 (Feb. 28, 2001).

National Environmental Policy Act of 1969
Environmental Statements

NEPA is primarily a procedural statute designed to insure a fully informed and well-considered decision. It requires that an agency take a "hard look" at the environmental effects of any major Federal action. An EIS must fulfill the primary mission of NEPA, which is to ensure that a Federal agency, in exercising the substantive discretion afforded it to approve or disapprove a project, is fully informed regarding the environmental consequences of such action. In deciding whether an EIS has done so, it is well settled that a rule of reason will be employed such that the question becomes whether the statement contains a reasonably thorough discussion of the significant aspects of the probable environmental consequences.

Southwest Center for Biological Diversity, 154 IBLA 231 (Apr. 2, 2001).

National Environmental Policy Act of 1969
Environmental Statements

A BLM decision to implement a fire rehabilitation plan will be affirmed where the appellant fails to establish that BLM did not adequately consider matters of environmental concern. The party challenging a BLM decision has the burden of showing by objective proof that the determination was premised on a clear error of law or

a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. Mere differences of opinion or disagreements do not suffice to establish that BLM's analysis is inadequate.

Southern Utah Wilderness Alliance, 154 IBLA 275 (Apr. 16, 2001).

National Environmental Policy Act of 1969
Environmental Statements

Compliance with the National Environmental Policy Act of 1969 requires BLM to take a hard look at the issues, identify relevant areas of environmental concern, and, where no EIS is prepared, make a convincing case that the potential environmental impacts are insignificant.

Thomas E. Smigel, Barbara W. Smigel v. Bureau of Land Management, 155 IBLA 158 (July 17, 2001).

National Environmental Policy Act of 1969
Environmental Statements

BLM's approval of a plan of operations for sodium solution mining will be affirmed where BLM has taken a hard look in an EIS at the significant environmental consequences of mining operations and reasonable alternatives, and where the record supports BLM's conclusion that the plan will not result in unnecessary or undue degradation of the public lands.

IMC Chemical Inc., et al., 155 IBLA 173 (July 17, 2001).

National Environmental Policy Act of 1969
Environmental Statements

A BLM decision approving a land use authorization on the basis of an EA and FONSI will be affirmed on appeal if the decision is based on a consideration of all relevant factors and is supported by the record which establishes that a careful review of environmental problems has been made, all relevant areas of environmental concern have been identified, and the final determination is reasonable in light of the environmental analysis. A party challenging a BLM decision must show that it was premised on an error of law or fact or that the analysis failed to consider a material environmental question. Unsupported differences of opinion provide no basis for reversal.

Las Vegas Valley Action Committee et al., 156 IBLA 110 (Dec. 19, 2001).

National Environmental Policy Act of 1969
Environmental Statements

A BLM decision approving a sand and gravel mining project may be affirmed when the environmental impact statement takes a hard look at all of the potential significant environmental consequences and reasonable alternatives, including imposition of appropriate mitigation measures.

Sierra Club, Angeles Chapter, Santa Clarita Group, et al., 156 IBLA 144 (Jan. 8, 2002)

National Environmental Policy Act of 1969
Environmental Statements

BLM is vested with broad discretion to deny a right-of-way application in any case in which the authorized officer determines that granting the proposed right-of-way would be inconsistent with the purpose for which the affected public lands are managed; that the proposed right-of-way would not be in the public interest; or that the proposed right-of-way would otherwise be inconsistent with
applicable law.

Bear River Development Corporation, et al., 157 IBLA 37 (July 19, 2002).

National Environmental Policy Act of 1969
Environmental Statements

Although differing right-of-way applications may have facts or issues in common, BLM retains its broad discretion to weigh the totality of facts and circumstances in each case in determining the public
interest.

Bear River Development Corporation, et al., 157 IBLA 37 (July 19, 2002).

National Environmental Policy Act of 1969
Environmental Statements

In determining whether a proposed action will generate significant impacts requiring the preparation of an EIS, the law is clear that the significance of an impact is related not only to its intensity, but also to its context. Thus, an impact which could be significant in isolation may be insignificant when compared to other impacts in the area of the proposed action, although the cumulative harm that may result from its contribution to existing impacts must also be a consideration.

Southern Utah Wilderness Alliance, Natural Resources Defense Council, Wilderness Society, Utah Chapter of the Sierra Club, 157 IBLA 150 (Aug. 22, 2002).

National Environmental Policy Act of 1969
Environmental Statements

In examining the environmental impacts of a proposed action, BLM must consider alternatives that accomplish the intended purpose of the proposed action, are technically and economically feasible, and have a lesser impact than the proposed project. A "rule of reason" approach applies to both the range of alternatives and the extent to which each alternative must be addressed.

Southern Utah Wilderness Alliance, Natural Resources Defense Council, Wilderness Society, Utah Chapter of the Sierra Club, 157 IBLA 150 (Aug. 22, 2002).

National Environmental Policy Act of 1969
Environmental Statements

The Board of Land Appeals has the authority under 43 C.F.R. § 4.403 to grant a petition for reconsideration in extraordinary circumstances for sufficient reason. A petition for reconsideration filed by BLM seeking to have the Board reconsider its determination that the agency failed to take the requisite hard look at the environmental consequences of coalbed methane extraction and development and relevant leasing alternatives before deciding to offer three parcels of land for oil and gas leasing will be denied when BLM fails to satisfy the requirements of 43 C.F.R. § 4.403.

Wyoming Outdoor Council, et al., (On Reconsideration), 157 IBLA 259 (Oct. 15, 2002).

National Environmental Policy Act of 1969
Environmental Statements

BLM may approve a timber sale without preparing an EIS, if, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2)(C) (1994), it has taken a hard look at the environmental consequences of the timber sale and reasonable alternatives, considering all relevant matters of environmental concern, including the expected individual and cumulative impacts, and made a convincing case that no significant impact will result, or that the impacts will be reduced to insignificance by the adoption of appropriate mitigation measures. BLM's decision not to prepare an EIS will be affirmed if an appellant does not demonstrate, with objective proof, that BLM failed to consider a substantial environmental problem of material significance, or otherwise failed to abide by the statute.

Klamath Siskiyou Wildlands Center, 157 IBLA 332 (Oct. 30, 2002).

National Environmental Policy Act of 1969
Environmental Statements

Upon review of the cumulative impacts analysis in an EA for a timber sale which is tiered to a broader programmatic EIS for timber management in the area, the finding of no significant impact based on the EA may be upheld when there is no showing that BLM failed to consider significant impacts different in nature than those analyzed in the EIS.

Klamath Siskiyou Wildlands Center et al., 157 IBLA 322 (Oct. 29, 2002).

National Environmental Policy Act of 1969
Environmental Statements

It is proper for BLM to approve a timber sale, absent preparation of an EIS, when, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2)(C) (1994), it has taken a hard look at the environmental consequences of doing so and reasonable alternatives thereto, considering all relevant matters of environmental concern, including the expected individual and cumulative impacts to soils, water quality and quantity, and threatened or endangered species, and made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. BLM's decision not to prepare an EIS will be affirmed if the appellant does not demonstrate, with objective proof, that BLM failed to consider a substantial environmental problem of material significance to the proposed action, or otherwise failed to abide by the statute.

Umpqua Watersheds, Inc., et al., 158 IBLA 62 (Dec. 18, 2002).

National Environmental Policy Act of 1969
Environmental Statements

Separate decisions approving a coal bed methane development project and a plan of development on the basis of environmental assessments and findings of no significant impact will be set aside when the record fails to show that BLM took a hard look at potential water quality issues from the production of coal bed methane.

Wyoming Outdoor Council, et al., 158 IBLA 155 (Jan. 9, 2003).

National Environmental Policy Act of 1969
Environmental Statements

An environmental analysis of the impacts of a proposed coal bed methane project properly considers the potential cumulative impacts of the project together with other past, present, and reasonably foreseeable future actions which may interact to produce cumulatively significant impacts. It is error to fail to analyze the impacts of a reasonably foreseeable coal bed methane development project in the same watershed as the proposed project.

Wyoming Outdoor Council, et al., 158 IBLA 155 (Jan. 9, 2003).

National Environmental Policy Act of 1969
Environmental Statements

When certain lands have been the subject of a BLM wilderness inventory and found not to be within a wilderness study area in a final decision, the fact a party disputes this finding and believes that BLM erred does not itself establish a mineral material sale on such land will have significant impact requiring preparation of an EIS.

Southern Utah Wilderness Alliance, 158 IBLA 212 (Jan. 23, 2003).

National Environmental Policy Act of 1969
Environmental Statements

The National Environmental Policy Act requires BLM to consider a reasonable range of alternatives, including the no action alternative. Such alternatives should include reasonable alternatives to proposed action which will accomplish the intended purpose, are technically and economically feasible, and yet have a lesser impact. No error is

committed by not considering an alternative that would not achieve the purpose of the proposed action.

Southern Utah Wilderness Alliance, 158 IBLA 212 (Jan. 23, 2003).

National Environmental Policy Act of 1969
Environmental Statements

A decision that it is not necessary to prepare an EIS before proceeding with a prescribed burn and juniper cut will be affirmed on appeal if the record demonstrates that BLM has, considering all relevant matters of environmental concern, taken a "hard look" at potential environmental impacts, and made a convincing case that no significant impact will result or that the impacts will be reduced to insignificance by the adoption of appropriate mitigation measures. An appellant seeking to set aside or overturn a decision to proceed without preparing an EIS must demonstrate, with objective proof, that BLM failed to consider a substantial environmental question of material significance to the proposed action, or that it otherwise failed to abide by section 102(2)(C) of NEPA.

Committee for Idaho's High Desert, Western Watersheds Project & Idaho Bird Hunters, 158 IBLA 322 (Mar. 27, 2003).

National Environmental Policy Act of 1969
Environmental Statements

An environmental assessment addressing the impacts of a coalbed methane pilot project proposed for land adjacent to parcels included in an oil and gas lease sale, prepared after BLM issued its decision approving the oil and gas lease sale, does not cure the defects in the environmental documentation relied upon by BLM as support for the leasing decision, when that documentation did not mention coalbed methane extraction and its impacts.

Wyoming Outdoor Council, et al., 158 IBLA 384 (Apr. 15, 2003).

National Environmental Policy Act of 1969
Environmental Statements

A BLM decision dismissing a protest of a competitive oil and gas lease sale will be affirmed to the extent the environmental documentation relied upon in the decision considered the impacts of coalbed methane production before deciding that certain lands, including those embraced by the parcel at issue, should be open to oil and gas leasing and development.

Wyoming Outdoor Council, et al., 158 IBLA 384 (Apr. 15, 2003).

National Environmental Policy Act of 1969
Environmental Statements

A BLM decision approving a natural gas development project which includes a buffer zone barring wells within ½-mile of active raptor nests, subject to modification of the buffer zone based on a site-specific analysis at the time an APD is filed, will be affirmed where it has a rational basis in the record and the appellant fails to demonstrate, by a preponderance of the evidence, that BLM did not give due consideration to all relevant factors.

Fred E. Payne, Randy D. Leader, 159 IBLA 69 (May 20, 2003).

National Environmental Policy Act of 1969
Environmental Statements

Section 102(2)(E) of NEPA, 42 U.S.C. § 4332 (2)(E) (2000), requires consideration of "appropriate alternatives" to a proposed action, including the no action alternative. In deciding whether BLM need not consider the "no action" alternative in an EA considering an application for permit to drill a well on a Federal oil and gas lease, the appropriate inquiry for BLM is whether the lease was issued after full environmental review and the no action alternative was already considered in a document to which the EA is tiered. The Board may affirm a finding of no significant impact where the no action alternative was considered.

Southern Utah Wilderness Alliance, 159 IBLA 220 (June 16, 2003).

National Environmental Policy Act of 1969
Environmental Statements

BLM's approval of a mining plan of operations based on an EA and FONSI will be affirmed if the record establishes that BLM took a "hard look" at the proposed action, carefully reviewed environmental problems, identified all relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

National Environmental Policy Act of 1969
Environmental Statements

An EA must include a brief discussion of alternatives as mandated by section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2000), which requires that every Federal agency "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." Appropriate alternatives include reasonable and feasible alternatives to the proposed action which will accomplish its intended purpose with lesser or no impact. If an alternative does not achieve the purpose of the proposed action or would not have lesser or no impact, BLM does not err in failing to consider that alternative.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

National Environmental Policy Act of 1969

Environmental Statements

A BLM decision dismissing a protest challenging the approval of an oil and gas lease sale will be reversedas to the parcels for which the appellants have established standing when the decision to offer the parcels for leasing was based on existing environmental analyses which either did not contain any discussion of the unique potential impacts associated with coalbed methane extraction and development or failed to consider reasonable alternatives relevant to a pre-leasing environmental analysis.

Wyoming Outdoor Council, et al., 158 IBLA 384 (Apr. 15, 2003).

National Environmental Policy Act of 1969
Environmental Statements

This Board has no jurisdiction over decisions made by the Forest Service. However, when BLM adopts the FEIS of another agency in lieu of performing its own environmental analysis and relies on it as the basis for an exercise of its own decision making authority, this Board properly may review that FEIS to determine whether BLM's decision is supported by the record, guided by the same principles ordinarily applicable to an FEIS prepared by BLM.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

National Environmental Policy Act of 1969
Environmental Statements

BLM is required to consider the potential cumulative impacts of a proposed action with those of any other past, present, and reasonably foreseeable future actions. 40 C.F.R. § 1508.7. Where appellant has failed to explicitly identify any cumulative impact likely to result from the interaction of oil and gas exploration and development with other projects or activities that was not addressed in the EIS, there is no violation of NEPA.

Wyoming Outdoor Council James M. Walsh, 159 IBLA 388 (July 25, 2003).

National Environmental Policy Act of 1969
Environmental Statements

Where BLM issued a "Letter of Review and Acceptance" by which it adopted a Forest Service FEIS and ROD and the record demonstrates that BLM actively and extensively participated in its preparation as a cooperating agency, and had also prepared two earlier EIS's considering the impacts of oil and gas leasing for an area that included the Shoshone National Forest, the Board properly may look beyond the style and format of the adoption document to consider its substantive content and effect.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

National Environmental Policy Act of 1969
Environmental Statements

Until a public record of decision is issued, an agency is prohibited from taking an action concerning a proposal which would either have an adverse environmental impact or limit the choice of reasonable alternatives. Although BLM's Letter of Review and Acceptance had not been issued when BLM decided to offer the parcels for leasing or when the lease sales were conducted, these actions did not constitute actions which would either have an adverse environmental impact or limit the choice of reasonable alternatives.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

National Environmental Policy Act of 1969
Environmental Statements

A decision to limit use of a recreational site to day-use-only (no overnight camping) will be affirmed (1) where BLM took a hard look at the environmental consequences as opposed to reaching conclusions unaided by preliminary investigation, identified relevant areas of environmental concern, and made a convincing case that environmental impact is insignificant; (2) where BLM's decision is supported by valid reasons clearly set out in the supporting documentation; and (3) where those reasons are not challenged on appeal.

Lee and Jody Sprout, Dick and Shauna Sprout, 160 IBLA 9 (July 29, 2003).

National Environmental Policy Act of 1969
Environmental Statements

A BLM decision approving an amendment to a plan of operations will be affirmed where the appellant fails to show that BLM neglected to consider a reasonable alternative to the amendment. An alternative considered and rejected in the EIS to which the project-specific EA is tiered does not need to be reconsidered in the project-specific EA, absent evidence that the rationale for the EIS' rejection of the alternative no longer applies.

Western Shoshone Defense Project, 160 IBLA 32 (Aug. 21, 2003).

National Environmental Policy Act of 1969
Environmental Statements

A BLM decision notice and finding of no significant impact approving a vegetation treatment plan and noncommercial timber sale is properly affirmed on appeal where a party challenging the finding of no significant impact has not shown that the determination was premised on a clear error of law, that there was a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. Mere differences of opinion provide no support for reversal of BLM's decision, if the decision is reasonable and supported by the record on appeal.

Native Ecosystems Council, 160 IBLA 288 (Jan. 22, 2004).

National Environmental Policy Act of 1969
Environmental Statements

BLM's approval of a closure and reclamation plan for a mine based on an EA and FONSI will be affirmed if the record establishes that BLM took a "hard look" at the proposed action, carefully reviewed environmental problems, identified all relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal.

Great Basin Mine Watch et al., 160 IBLA 340 (Jan. 26, 2004).

National Environmental Policy Act of 1969
Environmental Statements

An EA must include a brief discussion of alternatives as mandated by section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2000), which requires that every Federal agency "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." Appropriate alternatives include reasonable and feasible alternatives to the proposed action which will accomplish its intended purpose with lesser or no impact.
Great Basin Mine Watch et al., 160 IBLA 340 (Jan. 26, 2004).

National Environmental Policy Act of 1969
Environmental Statements

BLM's approval of a mine closure and reclamation plan based on an EA does not violate the Federal Government's trust responsibility to an Indian Tribe where BLM formally consulted with the Tribe, explained the rationale for its decision, and concluded that tribal assets would not be at risk of contamination even if some groundwater migration did occur because the Tribe's reservation was located upgradient from the flow of any potential groundwater in the area.

Great Basin Mine Watch et al., 160 IBLA 340 (Jan. 26, 2004).

National Environmental Policy Act of 1969
Environmental Statements

A BLM decision dismissing a protest challenging the approval of an oil and gas lease sale will be affirmed as to the sale parcels for which the appellant has established standing, when the Board reviews the record de novo and determines that that record, as supplemented by BLM with the submission of a new "Interim Documentation of Land Use Conformance and NEPA Adequacy" worksheet and supporting information, provides a hard look at the environmental consequences of leasing, including the impacts of exploration for and development of coalbed methane.

Wyoming Outdoor Council, 160 IBLA 387 (Feb. 19, 2004).

National Environmental Policy Act of 1969
Environmental Statements

A BLM decision to issue a conveyance to a county under the Airport and Airways Improvement Act of 1982 will be affirmed where BLM has prepared an environmental assessment taking a "hard look" at the environmental consequences of the proposal, and reasonable alternatives thereto.

William J. & Grace Gandolfo, 161 IBLA 7 (Mar. 2, 2004).

National Environmental Policy Act of 1969
Environmental Statements

BLM properly decides to approve issuance of a right-of-way grant authorizing commercial use and maintenance of an existing airstrip on public lands pursuant to Title V of FLPMA based on an environmental assessment, where it has taken a hard look at the potential environmental consequences of doing so and reasonable alternatives, considering all relevant matters of environmental concern, and made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. BLM's decision not to prepare an EIS will be affirmed where the appellant does not show that BLM failed to consider a substantial environmental question of material significance to the proposed action or otherwise failed to abide by the statute.

Southern Utah Wilderness Alliance, et al., 161 IBLA 15 (Mar. 9, 2004).

National Environmental Policy Act of 1969
Environmental Statements

The scope of the environmental impacts to be considered in an EIS for a proposed land exchange includes the indirect effects which, although later in time, are still reasonably foreseeable. Indirect effects of a land exchange may include the impacts of the proposed use of the selected lands when this land use could not occur without the exchange. A challenge to an exchange on the basis of the scope of the impacts from mining operations considered in the EIS is properly denied when the selected lands are located adjacent to an ongoing mining operation, the lands are encompassed by mining and mill site claims located by the proponent, and it appears these mining operations would be conducted under the mining law in the absence of an exchange.

Center for Biological Diversity, et al., 162 IBLA 268 (Aug. 16, 2004).

National Environmental Policy Act of 1969
Environmental Statements

In the preparation of an EIS, BLM is obligated to assess alternatives to a proposed action including the no-action alternative and reasonable alternatives which are feasible, will accomplish the intended purpose, and will avoid or minimize the adverse impacts of the action upon the environment. A proposed land exchange will be upheld despite a failure to consider a no-mining alternative in detail when the selected lands are encumbered by mining and mill site claims and located adjacent to an ongoing mining operation such that a no-mining alternative is based on a highly speculative assumption of the invalidity of the claims.

Center for Biological Diversity, et al., 162 IBLA 268 (Aug. 16, 2004).

National Environmental Policy Act of 1969
Environmental Statements

BLM properly decides to approve an integrated resource management project, including timber harvesting and road building, without preparing an EIS, where, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, *as amended,* 42 U.S.C. § 4332(2)(C) (2000), it has taken a hard look at the environmental consequences of doing so and reasonable alternatives thereto, considering all relevant matters of environmental concern, including the anticipated individual and cumulative impacts to soils, water quality, and threatened and endangered species, and determined that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. BLM's decision not to prepare an EIS will be affirmed where the appellant does not demonstrate, with objective proof, that BLM failed to consider a significant impact resulting from the proposed action, or otherwise failed to abide by the statute.

Friends of the Clearwater, et al., 163 IBLA 1 (Aug. 31, 2004).

National Environmental Policy Act of 1969
Environmental Statements

BLM's determination that existing environmental documents adequately analyze the effects of the inclusion in a competitive oil and gas lease sale of parcels located on lands that have not been included in a wilderness study area or found to possess wilderness characteristics in a BLM inventory will be affirmed where the appellant bases its objection to the adequacy of those documents on the fact that the lands were determined to have wilderness characteristics in a citizens' group wilderness inventory and were included in an area proposed for wilderness designation in legislation introduced in Congress.

Southern Utah Wilderness Alliance, 163 IBLA 14 (Sept. 3, 2004).

National Environmental Policy Act of 1969
Environmental Statements

A BLM finding of no significant impact (FONSI) for a grant of public-land rights-of-way for surface facilities, access road, telephone line, and power line in connection with underground coal mining operations based on an analysis set forth in an environmental assessment will be upheld when the record reveals that BLM has taken a hard look at the environmental impacts and establishes a rational basis for the FONSI.

Southern Utah Wilderness Alliance, 163 IBLA 142 (Sept. 22, 2004).

National Environmental Policy Act of 1969
Environmental Statements

In deciding whether to authorize the reintroduction of big game wildlife on Federal lands, using predator control deemed necessary to the optimal success of the reintroduction effort, BLM is not required to consider the alternative of going forward with reintroduction without any such control, and did not violate section 102(2)(E) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2)(E) (2000), by failing to address that alternative.

Escalante Wilderness Project, 163 IBLA 235 (Oct. 25, 2004).

National Environmental Policy Act of 1969
Environmental Statements

BLM properly denies a protest of a competitive oil and gas lease sale on the basis that BLM violated the National Environmental Policy Act of 1969 when the environmental analyses demonstrate that BLM took a hard look at the potential significant environmental consequences, considering all relevant matters of environmental concern.

Southern Utah Wilderness Alliance, The Natural Resources Defense Council, 164 IBLA 1 (Nov. 10, 2004).

National Environmental Policy Act of 1969
Environmental Statements

In preparing a programmatic environmental assessment to assess whether an environmental impact statement (EIS) is required under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2000), an agency must take a "hard look" at the proposal being addressed and identify relevant areas of environmental concern so that it can make an informed determination as to whether the environmental impact is insignificant or impacts will be reduced to insignificance by mitigation measures A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is based on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action.

Southern Utah Wilderness Alliance, 164 IBLA 33 (Nov. 16, 2004)

National Environmental Policy Act of 1969
Environmental Statements

A decision permitting guided vehicle tours over designated roads, ways, or trails within a wilderness study area is properly set aside when the record shows that such routes cross through and parallel to riparian/wetland zones and have caused damage to such resources, and fails to disclose what information BLM had before it when it concluded that the addition of tour traffic would have no significant impact on riparian/wetland areas on the designated travel routes.

Southern Utah Wilderness Alliance, 164 IBLA 33 (Nov. 16, 2004).

National Environmental Policy Act of 1969
Environmental Statements

The "reasonably foreseeable development" scenario (RFD scenario) for oil and gas is a long-term projection of oil and gas exploration, development, production, and reclamation activity in a defined area for a specified period of time. The RFD scenario projects a baseline scenario of activity assuming all potentially productive areas can be open under standard lease terms and conditions, except those areas designated as closed to leasing by law, regulation or executive order. The baseline RFD scenario provides the mechanism to analyze the effects that discretionary management decisions have on oil and gas activity, and it also provides basic information that is analyzed in environmental documents under various alternatives.

Wyoming Outdoor Council, et al., 164 IBLA 84 (Nov. 30, 2004).

National Environmental Policy Act of 1969
Environmental Statements

Whether an RMP's exceeded RFD scenario demonstrates an inadequate analysis of environmental impacts to the extent of such exceedance is a question that must be determined on a case-by-case basis. Where the RMP is being revised pursuant to 43 C.F.R. § 1610.5-6, the Board will not further consider appellants' arguments regarding the RFD scenario in support of that outcome.

Wyoming Outdoor Council, et al., 164 IBLA 84 (Nov. 30, 2004).

National Environmental Policy Act of 1969
Environmental Statements

The appropriate time for considering the potential impacts of oil and gas exploration and development is when BLM proposes to lease public lands for oil and gas purposes because leasing, at least without no surface occupancy stipulations, constitutes an irreversible and irretrievable commitment to permit surface- disturbing activity, in some form and to some extent. Where the environmental assessment (EA) of each parcel at issue shows that there is no serious promise of CBM development, the burden falls upon the appellant to come forward with objective, countering evidence showing error in the EA's conclusions, to demonstrate that BLM could not properly rely on the RMP/EIS's environmental analysis to support the decision to offer these parcels for sale. In light of the absence of any serious potential for CBM development on the parcels, BLM could rely on the impacts analysis contained in the RMP to fulfill its pre-leasing NEPA obligation.

Wyoming *Outdoor Council, et al.*, 164 IBLA 84 (Nov. 30, 2004).

National Environmental Policy Act of 1969
Environmental Statements

Where appellants' allegations regarding the potential for CBM extraction and development on the parcels at issue and the unique impacts associated therewith were not refuted by the record or by BLM on appeal, and where it is also undisputed that the RMP/EIS did not analyze CBM extraction and development or the unique impacts that might be occasioned by such activities, existing environmental NEPA documents did not provide the required pre-leasing NEPA analysis for the sale of those parcels. BLM's decision dismissing a protest on the basis of a contrary conclusion is properly reversed and the case remanded for further action.

Wyoming Outdoor Council, et al., 164 IBLA 84 (Nov. 30, 2004).

National Environmental Policy Act of 1969
Environmental Statements

BLM properly denies a protest of a competitive oil and gas lease sale on the basis that BLM violated the National Environmental Policy Act of 1969 when the environmental analyses demonstrate that BLM took a hard look at the potential significant environmental consequences, considering all relevant matters of environmental concern.

Deganawidah-Quetzalcoatle University, 164 IBLA 155 (Dec. 8, 2004).

National Environmental Policy Act of 1969
Environmental Statements

The impact of more than one timber sale may be addressed in a single environmental analysis. The Board will not set aside a timber sale based on an appellant's objections that pertain to another timber sale which had been addressed in the same environmental analysis unless those objections are tied to the cumulative effect of the action.

In re Big Deal Timber Sale, 165 IBLA 18 (Feb. 17, 2005).

National Environmental Policy Act of 1969
Environmental Statements

A party challenging a finding of no significant impact based on an environmental assessment has the burden of showing an error of law, error of material fact, or that the environmental analysis failed to consider a substantial environmental question of material significance to the proposed action.

Armando Fernandez, Coachella Valley Collection Service, 165 IBLA 41 (Feb. 23, 2005).

National Environmental Policy Act of 1969
Environmental Statements

A party challenging BLM's decision to proceed with construction of a fence to protect public rangeland and a finding of no significant impact has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal where the decision is reasonable and supported by the record.

Underwood Livestock, Inc., 165 IBLA 128 (Mar. 23, 2005).

National Environmental Policy Act of 1969

Environmental Statements

A BLM decision to adopt a plan for controlling tamarisk on the public lands will be affirmed when the record adequately supports the decision and demonstrates that, in an environmental assessment tiered to a programmatic environmental impact statement, BLM took a hard look at the potential environmental impacts of its decision and properly concluded that no significant impact not previously considered would likely result, thus complying with section 102(2) of the National Environmental Policy Act, 42 U.S.C. § 4332(2) (2000).

Californians for Alternatives to Toxic, 165 IBLA 135 (Mar. 24, 2005).

National Environmental Policy Act of 1969
Environmental Statements

The reasonableness of a FONSI will be upheld if the record establishes that BLM took a "hard look" at the proposed action, carefully reviewed environmental problems, identified all relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or that any such impacts will be reduced to insignificance by the adoption of appropriate mitigation measures. A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Where a FONSI is based on mitigation measures designed to minimize acknowledged adverse environmental impacts, analysis of the proposed mitigation measures and how effective they would be in eliminating those impacts is required. A mitigation plan must be sufficiently developed and explained to provide a convincing case that significant environmental impacts will be reduced to insignificance. A FONSI will be set aside where an appellant has shown that the proposed actions will have a significant impact to riparian resources and that BLM has failed to demonstrate that the proposed mitigation measures will reduce those impacts to insignificance.

Southern Utah Wilderness Alliance, et al., 166 IBLA 140 (July 12, 2005).

National Environmental Policy Act of 1969
Environmental Statements

The appropriate time for considering the potential impacts of oil and gas exploration and development is when BLM proposes to lease public lands for oil and gas purposes, because leasing without no-surface-occupancy stipulations constitutes an irreversible and irretrievable commitment to permit surface-disturbing activity, in some form and to some extent.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

National Environmental Policy Act of 1969
Environmental Statements

In considering the potential impacts of oil and gas exploration and development when BLM proposes to lease public lands for oil and gas purposes, BLM may properly use "Documentation of Land Use Plan Conformance and NEPA Adequacy" worksheets (DNAs) to assess the adequacy of previous environmental review documents. Although preparation of DNAs is a valid vehicle to determine whether previous NEPA documentation adequately considered the environmental effects of proposed oil and gas leasing, DNAs are not a replacement for EAs or EISs and cannot properly be used to supplement previous EAs or EISs or to address site-specific environmental effects not previously considered in them.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

National Environmental Policy Act of 1969
Environmental Statements

When BLM has denied a protest of the inclusion of parcels in an oil and gas lease sale, asserting that it has complied with the National Environmental Policy Act by preparing pre-leasing environmental review documents, but the pre-leasing documents contain only an outdated, brief review of environmental consequences, the BLM decision denying the protest will be reversed and the case remanded. However, where those pre-leasing documents adequately address the environmental consequences of issuing oil and gas leases both with and without special protective stipulations, BLM's decision denying the protest is properly affirmed.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

National Environmental Policy Act of 1969
Environmental Statements

Where the record in an appeal from the denial of a protest of an oil and gas lease sale shows that BLM excluded some parcels from the sale when it determined that leasing them might have impacts on species that are candidates for listing as sensitive, threatened, or endangered, it follows that BLM determined that the parcels that remained in the sale would not have such impacts. In the absence of a showing to the contrary by a protestant/appellant, BLM's determination that previous environmental review was adequate to determine any effects on such species will be affirmed on appeal.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

National Environmental Policy Act of 1969
Environmental Statements

Even though existing land use plans and their associated environmental statements may not provide a separate analysis of the effects of coalbed methane (CBM) development, BLM may properly rely on those documents in support of a decision to offer a parcel of Federal land for competitive oil and gas leasing where there is no foreseeable likelihood of CBM development or where the impacts of CBM development do not differ significantly from the effects of oil and gas development already described in those documents.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

National Environmental Policy Act of 1969
Environmental Statements

The Board will ordinarily uphold a BLM determination that a proposed project, with appropriate mitigation measures, will not have a significant impact on the quality of the human environment if the record establishes that a careful review of environmental problems has been made, relevant environmental concerns have been identified, and the final determination is reasonable. A party challenging BLM's decision to approve a timber sale based on a finding of no significant impact has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal. If the appealed decision is the denial of a protest, the appellant must affirmatively point out error in the protest decision.

Bark (In re Rusty Saw Timber Sale), 167 IBLA 48 (Sept. 29, 2005).

National Environmental Policy Act of 1969
Environmental Statements

An EA must take a hard look at the environmental consequences, as opposed to reaching bald conclusions, identify the relevant areas of environmental concern, and make a convincing case that environmental impacts are insignificant in order to support a conclusion that an EIS is not required. A party challenging a FONSI must demonstrate either an error of law or fact or that the analysis failed to consider a substantial environmental problem of material significance to the proposed action.

Lynn Canal Conservation, Inc., 167 IBLA 136 (Oct. 19, 2005).

National Environmental Policy Act of 1969
Environmental Statements

Failure to provide notice of the availability of a draft environmental assessment to the general public, including interested and affected members of the public and organizations, and allow a period for comment, or alternatively to provide notice of the completed EA and proposed pending decision with time to provide written comments, violates 40 C.F.R. § 1506.6.

Lynn Canal Conservation, Inc., 167 IBLA 136 (Oct. 19, 2005).

National Environmental Policy Act of 1969
Environmental Statements

An EA serves to (1) provide evidence and analysis for determining whether to prepare an EIS or a FONSI; (2) aid an agency's decisionmaking process when no EIS is necessary; and (3) facilitate preparation of an EIS when one is necessary. If the agency chooses to prepare an EA for a proposed action, but the resulting analysis projects a significant impact, the EA is insufficient and an EIS is required. To support a FONSI, and, hence, the conclusion that an EIS is not required, an EA must take a hard look at the environmental consequences of a proposed action, identify the relevant areas of environmental concern, and make a convincing case that environmental impacts from it are insignificant. Where the EA met the first two standards of the test but failed to make a convincing case that the identified impacts were not significant, the FONSI is reversed.

Wilderness Watch, et al., 168 IBLA 16 (Feb. 17, 2006).

National Environmental Policy Act of 1969
Environmental Statements

A decision designating an off-highway vehicle trail adjacent to a sensitive riparian area is properly affirmed where the project identifies riparian resources as critical elements of the human environment and the Decision Record/Finding of No Significant Impact concludes that, in the absence of the proposed action diverting off-highway vehicle use away from the riparian area, continued use of the riparian lands by such vehicles will cause increasing degradation.

Forest Guardian, 168 IBLA 323 (Apr. 3, 2006).

National Environmental Policy Act of 1969
Environmental Statements

The determination of whether the public was adequately involved in BLM's National Environmental Policy Act review process assessing the potential environmental impacts of a proposed action depends on a fact-intensive inquiry made on a case-by-case basis.

Lynn Canal Conservation, Inc., 169 IBLA 1 (Apr. 20, 2006).

National Environmental Policy Act of 1969
Environmental Statements

When the final EA, upon which the decision record and finding of no significant impact is based, predates the public comment period offered by BLM and neither the decision record nor finding of no significant impact contains any discussion, or even a reference to comments received, the comments have not been considered, and, therefore, the public has not been adequately involved in the Department's National Environmental Policy Act review process.

Lynn Canal Conservation, Inc., 169 IBLA 1(Apr. 20, 2006).

National Environmental Policy Act of 1969
Environmental Statements

Where in a biological opinion FWS concurs in the determination that a listed species has merely passed through a proposed well site area that contains no critical habitat on a transient basis and that the proposed well project is not likely to affect the species or its habitat, and where appellants have provided no persuasive evidence to the contrary, BLM is not prohibited from authorizing site-specific action while it updates or revises an EIS to which that action is tiered. In such circumstances, the question is whether in the EA the agency sufficiently considered those environmental effects not analyzed in the EIS. If BLM took a hard look at the potential environmental impacts of its proposed action and properly concluded that no significant impact would likely result, it has complied with section 102(2) of the NEPA, 42 U.S.C. § 4332(2) (2000).

Defenders of Wildlife, Wyoming Outdoor Council, 169 IBLA 117 (May 31, 2006).

National Environmental Policy Act of 1969
Environmental Statements

A party challenging BLM's decision to approve a timber sale based on a finding of no significant impact has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal. If the appealed decision is the denial of a protest, the appellant must affirmatively point out error in the protest decision.

In re North Trail Timber Sale, 169 IBLA 258 (July 13, 2006).

National Environmental Policy Act of 1969
Environmental Statements

A party appealing the denial of a protest of a timber sale may raise an issue pertaining to the prospectus for the timber sale, dated subsequent to the environmental assessment (EA), the finding of no significant impact, and the decision record, when there is no basis for concluding that the party should have been alerted to the issue by the scoping notice or EA.

In re North Trail Timber Sale, 169 IBLA 258 (July 13, 2006).

National Environmental Policy Act of 1969
Environmental Statements

When an agency prepares an EA to determine whether an EIS is necessary, it must consider all relevant matters of environmental concern and take a hard look at potential environmental impacts so that it can make an informed decision about whether the environmental impacts are significant or that significant impacts can be reduced to insignificance by mitigation measures.

Biodiversity Conservation Alliance, 169 IBLA 321 (Aug. 2, 2006).

National Environmental Policy Act of 1969
Environmental Statements

A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is based on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action.

Biodiversity Conservation Alliance, 169 IBLA 321 (Aug. 2, 2006).

National Environmental Policy Act of 1969
Environmental Statements

When making a determination as to whether a proposed action will have a significant effect on the human environment, the cumulative effects of the proposed action and other actions not connected with the proposed activity must be taken into consideration. A cumulative impact is one which results from the incremental impact of the action when added to other past, present, and reasonably future actions and can result from individually minor but collectively significant actions taking place over time.

Biodiversity Conservation Alliance, 169 IBLA 321 (Aug. 2, 2006).

National Environmental Policy Act of 1969
Environmental Statements

When a cumulative impacts analysis in an EA is tiered to the cumulative impact analysis contained in a project EIS that also includes the EA project wells, the EA properly summarizes the issues discussed in the EIS. A party challenging the adequacy of the EA must show that the impacts analysis as tiered does not constitute a reasonably thorough discussion of significant impacts of the probable environmental consequences of the proposed action.

Biodiversity Conservation Alliance, 169 IBLA 321(Aug. 2, 2006).

National Environmental Policy Act of 1969
Environmental Statements

Section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2000), requires consideration of a reasonable range of alternatives to a proposed action, including a no-action alternative. An EA which considers a range of alternatives and gives reasons for BLM's rejection of the alternatives not selected will be upheld when it appears that BLM assessed alternatives in a manner that will avoid or minimize the adverse impacts of the proposed action.

Biodiversity Conservation Alliance, 169 IBLA 321 (Aug. 2, 2006).

National Environmental Policy Act of 1969
Environmental Statements

A BLM decision dismissing a protest to a competitive oil and gas lease sale is properly affirmed on appeal when the appellant fails to demonstrate with objective proof that BLM's decision was premised on a clear error of law or demonstrable error of fact, or that BLM's analysis failed to consider a substantial environmental question of material significance to the proposed action.

The Coalition of Concerned National Park Service Retirees, et al., 169 IBLA 366 (Aug. 22, 2006).

National Environmental Policy Act of 1969
Environmental Statements

In considering the potential impacts of oil and gas development when BLM proposes to lease public lands for oil and gas purposes, BLM may properly use "Documentation of Land Use Plan Conformance and NEPA Adequacy" worksheets (DNAs) to assess the adequacy of previous environmental review documents. Where pre-leasing documents, including an EIS, adequately address the environmental consequences of issuing oil and gas leases both with and without special protective stipulations, BLM's decision denying the protest is properly affirmed.

The Coalition of Concerned National Park Service Retirees, et al., 169 IBLA 366 (Aug. 22, 2006).

National Environmental Policy Act of 1969
Environmental Statements

BLM is not required to supplement an EIS prepared in connection with a land-use plan when it is deciding whether to offer lands for competitive oil and gas leasing, where it has taken a hard look at the environmental consequences of leasing and reasonable alternatives thereto in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2)(C) (2000), considering all relevant matters of environmental concern. BLM's decision not to supplement the EIS will be affirmed where the appellant fails to demonstrate, by reason of new information or circumstances, that leasing will affect the environment in a significant manner or to a significant extent not previously considered in the EIS.

Forest Guardians, 170 IBLA 80 (Sept. 8, 2006).

National Environmental Policy Act of 1969
Environmental Statements

Section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. § 4332(2)(C) (2000), requires consideration of potential environmental impacts of a proposed action in an environmental impact statement if that action is a "major Federal action significantly affecting the quality of the human environment." The appropriate time for considering the potential impacts of oil and gas exploration and development is when BLM proposes to lease public land for oil and gas purposes, because leasing without stipulations requiring no surface occupancy constitutes an irreversible and irretrievable commitment to permit surface-disturbing activity.

Center for Native Ecosystems, 170 IBLA 331 (Nov. 22, 2006).

National Environmental Policy Act of 1969
Environmental Statements

In considering the potential impacts of oil and gas exploration and development when BLM proposes to lease public lands for oil and gas purposes, BLM may properly use "Documentation of Land Use Plan Conformance and NEPA Adequacy" worksheets to assess the adequacy of previous NEPA documents. Although BLM may use DNAs to determine whether new NEPA documentation is required, DNAs cannot properly be used to supplement previous EAs or EISs or to address site-specific environmental effects not previously considered in them. Information developed after the last NEPA analysis may be used to determine whether supplemental analysis is required, but it cannot be used as a substitute for a NEPA analysis. When BLM decides on the basis of a DNA not to supplement an existing EIS or EA, its decision must rise or fall on the contents of previously issued NEPA documents.

Center for Native Ecosystems, 170 IBLA 331 (Nov. 22, 2006).

National Environmental Policy Act of 1969
Environmental Statements

A finding that impacts of issuing an oil and gas lease would not be significant due to the mitigative effects of a special status species stipulation must be based on NEPA analysis. The stipulation does not provide a basis for deferring an environmental analysis in the absence of an existing NEPA statement that includes an analysis of the mitigative effects of the stipulation.

Center for Native Ecosystems, 170 IBLA 331 (Nov. 22, 2006).

National Environmental Policy Act of 1969
Environmental Statements

BLM's decision to issue oil and gas leases without an evaluation of best management practices prior to leasing is not contrary to a BLM instruction memorandum, which was issued to guide the exercise of BLM's discretionary authority regarding whether to temporarily defer oil and gas leasing during periods when land use plans are being revised or amended.

Wyoming Outdoor Council, et al., 171 IBLA 153 (Mar. 29, 2007).

National Environmental Policy Act of 1969
Environmental Statements

When an agency prepares an EA to determine whether an EIS is necessary, it must consider all relevant matters of environmental concern and take a hard look at potential environmental impacts so that it can make an informed decision about whether the environmental impacts will be significant or whether any significant impacts will be reduced to insignificance by mitigation measures. A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is based on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action.

Biodiversity Conservation Alliance et al., 171 IBLA 218 (Apr. 19, 2007).

National Environmental Policy Act of 1969
Environmental Statements

When making a determination as to whether a proposed action will have a significant effect on the human environment, the cumulative effects of the proposed action and

other actions not connected with the proposed activity must be taken into consideration. A cumulative impact is one which results from the incremental impact of the action when added to other past, present, and reasonably future actions and can result from individually minor but collectively significant actions taking place over time.

Biodiversity Conservation Alliance et al., 171 IBLA 218 (Apr. 19, 2007).

National Environmental Policy Act of 1969
Environmental Statements

Section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2000), requires consideration of a reasonable range of alternatives to a proposed action, including a no-action alternative. An EA which considers a range of alternatives will be upheld when BLM has assessed alternatives in a manner that will avoid or minimize the adverse impacts of the proposed action.

Biodiversity Conservation Alliance et al., 171 IBLA 218 (Apr. 19, 2007).

National Environmental Policy Act of 1969
Environmental Statements

When parcels nominated for inclusion in a competitive oil and gas lease sale encompass lands that were not included in a wilderness study area, BLM may administer those lands for other purposes, including oil and gas leasing, even though the lands were asserted to have wilderness characteristics in a citizens' group wilderness proposal and were included in an area proposed for wilderness designation in legislation introduced in Congress. BLM's determination that existing environmental documents adequately analyze the effects of a competitive oil and gas lease sale for such parcels will be affirmed where the appellants base their objection to the adequacy of those documents on purported "significant new circumstances or information" but fail to establish such circumstances or information.

Colorado Environmental Coalition, et al., 171 IBLA 256 (May 9, 2007).

National Environmental Policy Act of 1969
Environmental Statements

The approval of a proposed action in a Decision Record and Finding of No Significant Impact, following the preparation of an Environmental Assessment, does not constitute an authorization to use the public lands. BLM authorizes use of public land for grazing by issuing grazing permits or leases which specify all grazing use. Allowing cattle to graze on public land without a permit or lease and an annual grazing authorization is a prohibited act under 43 C.F.R. § 4140.1(b)(1)(I).

Badger Ranch, et al, v. Bureau of Land Management, 171 IBLA 285 (May 23, 2007).

National Environmental Policy Act of 1969
Environmental Statements

BLM may properly rely on existing land use documents and their associated environmental statements where there is no foreseeable likelihood of CBM development or where the impacts of CBM development do not differ significantly from the effects of oil and gas development already described in existing NEPA documents. Whether more NEPA analysis based on new information is required depends on the nature of the NEPA analysis already completed, and the nature of the information available at the time of the agency action. Where an appellant asserts a failure to perform NEPA review in the context of an "RMP level" document, this argument alone is insufficient to prove a violation of NEPA. Where recent Board and judicial precedent affirm that the question of whether additional environmental analysis is required in any given case depends on whether an appellant can show that existing NEPA documents failed to analyze the likely effects of the action at hand, and an appellant fails to show why arguments expressly considered and rejected in recent precedent remain viable, the Board properly rejects such arguments.

Biodiversity Conservation Alliance, Center for Native Ecosystems, Wyoming Wilderness Association, Clark Resource Council, 171 IBLA 313 (June 26, 2007).

National Environmental Policy Act of 1969
Environmental Statements

To support a finding of no significant impact, an environmental assessment must take a hard look at the environmental consequences of a proposed action, identify relevant areas of environmental concern, and make a convincing case that environmental impacts from the proposed action are insignificant.

Oregon Chapter of the Sierra Club, Wilderness Watch; George Stroemple, Central Oregon Land, LLC; Steens Mountain Landowner Group, 172 IBLA 27 (July 25, 2007).

National Environmental Policy Act of 1969
Environmental Statements

A determination that a proposed action will not have a significant impact on the quality of the human environment will be affirmed on appeal if the record establishes that a careful review of environmental problems has been made, relevant environmental concerns have been identified, and the final determination is reasonable in light of the environmental analysis. The party challenging the determination must show it was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of significance to the action for which the analysis was prepared.

Missouri Coalition for the Environment, Heartwood, 172 IBLA 226 (Sept. 5, 2007).

National Environmental Policy Act of 1969
Environmental Statements

Section 102(2)(E) of the National Environmental Policy Act of 1969, *as amended,* 42 U.S.C. § 4332(2)(E) (2000), requires consideration of a reasonable range of alternatives to a proposed action, including a no-action alternative. Appropriate alternatives are those that would accomplish the intended purpose of the proposed action, are technically and economically feasible, and will avoid or minimize adverse effects. A "rule of reason" governs the selection of alternatives, both as to which alternatives an agency must discuss and the extent to which it must discuss them.

Missouri Coalition for the Environment, Heartwood, 172 IBLA 226 (Sept. 5, 2007).

National Environmental Policy Act of 1969
Environmental Statements

NEPA and the regulatory concepts of "cumulative effects," "connected actions" or "similar actions" do not require that an environmental assessment address the potential environmental impact of mining under any lease which might later be issued as a result of exploration. BLM may properly defer any assessment of the environmental consequences of mineral development until after discovery of a valuable mineral deposit and prior to issuance of a lease.

Missouri Coalition for the Environment, Heartwood, 172 IBLA 226 (Sept. 5, 2007).

National Environmental Policy Act of 1969
Environmental Statements

No error is shown where a decision to approve issuance of mineral prospecting permits is based on an Environmental Assessment/ Finding of No Significant Impact that comply with NEPA and require the adoption of the stipulations and mitigation measures on which the FONSI is predicated.

Missouri Coalition for the Environment, Heartwood, 172 IBLA 226 (Sept. 5, 2007).

National Environmental Policy Act of 1969
Environmental Statements

A BLM decision to deny a grazing privileges does not require the preparation of an Environmental Assessment. Only when an agency reaches the point in its deliberations when it is ready to approve an action that may have adverse effects on the human environment is it obligated to assess the environmental impacts of such action.

Jennifer J. Walt, Box D Ranch, 172 IBLA 300 (Sept. 21, 2007).

National Environmental Policy Act of 1969
Environmental Statements

Where BLM chooses to exercise its discretionary authority to deny grazing privileges based upon environmental considerations presented in an Environmental Assessment which adequately assessed the impacts of four alternatives that included some form of a grazing scenario, absent objective proof of a clear error of law or demonstrable error of fact, or proof that the analysis failed to consider a substantial environmental question of significance to the proposed action, the Board properly finds that BLM's decision has a rational basis in the record and that it is not arbitrary and capricious.

Jennifer J. Walt, Box D Ranch, 172 IBLA 300 (Sept. 21, 2007).

National Environmental Policy Act of 1969
Environmental Statements

Under section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C) (2000), the adequacy of an Environmental Assessment must be judged by whether it took a "hard look" at the potential significant environmental consequences of the proposed action, and reasonable alternatives thereto, and considered all relevant matters of environmental concern. In general, the Environmental Assessment must fulfill the primary mission of section 102(2)(C), which is to ensure that BLM, in exercising the substantive discretion afforded it to approve or disapprove an action, is fully informed regarding the environmental consequences of such action.

Shasta Coalition for the Preservation of Public Land; Sacramento River Preservation Trust, 172 IBLA 333 (Sept. 28, 2007).

National Environmental Policy Act of 1969
Finding of No Significant Impact

An environmental analysis for a mineral material sale properly considers the impact of connected actions which are triggered by the action or which are part of a larger action and which depend on the larger action for their justification. An environmental analysis for a sand and gravel mining operation is not required to consider the impact of construction of a processing plant for crushing and asphalt mixing which is not authorized by the sales contract and is not a necessary result of the sale.

Larry Thompson, et al., 151 IBLA 208 (Dec. 10, 1999).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A decision approving a mineral material sale based on an EA and FONSI may be upheld in the absence of considering a requirement for a permit under section 404 of the Clean Water Act when it appears from the record that no section 404 dredge and fill permit is required for incidental fallback from a sand and gravel mining operation.

Larry Thompson, et al., 151 IBLA 208 (Dec. 10, 1999).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A BLM decision approving issuance of a mineral sales contract is properly affirmed when the record shows the FONSI was based on reasoned decisionmaking, and appellant fails to demonstrate that the finding was based on an error of law or fact, or that the analysis failed to consider a substantial environmental problem of material significance.

Larry Thompson, et al., 151 IBLA 208 (Dec. 10, 1999).

National Environmental Policy Act of 1969
Finding of No Significant Impact

BLM properly decides to approve construction of a new trail providing motorized access to public lands for hunting and other recreational purposes, absent preparation of an EIS, where, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2)(C) (1994), it has taken a hard look at the environmental consequences of doing so, considering all relevant matters of environmental concern, including the effects of off–road vehicle use away from the trail, and made a convincing case that, given appropriate mitigation measures, no significant impact will result therefrom. Its decision not to prepare an EIS will be affirmed when no appellant demonstrates, with objective proof, that BLM failed to consider a substantial environmental problem of material significance to the proposed action, or otherwise failed to abide by the statute.

Bales Ranch, Inc., et al., 151 IBLA 353 (Feb. 2, 2000).

National Environmental Policy Act of 1969
Finding of No Significant Impact

An EA for a proposed action properly considers the indirect effects caused by the action which, although later in time or further removed, are reasonably foreseeable. Thus, the impacts of connected actions conducted by private parties which would not occur without the supporting Federal action are appropriately considered in an EA.

Defenders of Wildlife, 152 IBLA 1 (Feb. 17, 2000).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A decision to issue a right-of-way for a power line to supply electricity for the reopening of an open pit mining operation on private land based on an EA and FONSI will be upheld when the record establishes a reasonable basis for the FONSI. An appeal challenging the scope of the EA for failure to consider all the impacts of the mining operation will be denied when it appears from the record that the mining operation would proceed in the absence of approval of the right-of-way.

Defenders of Wildlife, 152 IBLA 1 (Feb. 17, 2000).

National Environmental Policy Act of 1969
Finding of No Significant Impact

Pursuant to section 102(2) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2) (1994), and its implementing regulations (40 C.F.R. Chapter V), BLM is required to consider a reasonable range of alternatives to a proposed action, including a no-action alternative. An EA which considers a range of alternatives and gives reasons for BLM rejection of alternatives not selected will be upheld when it appears that BLM assessed alternatives in a manner that will avoid or minimize the adverse effects of the proposed action.

Defenders of Wildlife, 152 IBLA 1 (Feb. 17, 2000).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A finding of no significant impact requiring preparation of an environmental impact statement will be affirmed when the record demonstrates that BLM has considered the relevant environmental concerns, taken a hard look at potential environmental impacts, and made a convincing case that no significant environmental impact will result from the action to be implemented. The adequacy of the record to support a finding of no significant impact is evaluated on the basis of the action which BLM has decided to implement in the absence of connected actions upon which the proposed action depends for its justification or cumulative impacts from past, present, or reasonably foreseeable future actions.

Emerald Trail Riders Association, 152 IBLA 210 (Apr. 28, 2000).

National Environmental Policy Act of 1969
Finding of No Significant Impact

An appellant must demonstrate that, when finding that its proposed action will not result in significant adverse impact on the human environment, BLM erred in its analysis or acted contrary to any law to prevail on appeal. A BLM decision to approve amendment of a special recreation permit to authorize a jet boat race on a Federally–designated wild and scenic river will be affirmed when the record adequately supports the decision, demonstrates that BLM took a hard look at the potential environmental impacts of its decision, and makes a convincing case that no significant impact will likely result, in accordance with section 102(2) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2) (1994).

Klamath–Siskiyou Wildlands Center, 153 IBLA 110 (Aug. 7, 2000).

National Environmental Policy Act of 1969
Finding of No Significant Impact

Where the EA supporting the Decision Notice and Finding of No Significant Impact describes the proposed action of the Montana Department of Fish Wildlife and Parks as maintaining an “observed” late-winter elk population of 2,000 rather than maintaining a late-winter elk population of 2,000, the inclusion of the word does not result in a new proposal or overrule the population objectives in the State Elk Plan and its use is not inconsistent with the Decision where the record shows that the target elk population contained in Elkhorn Mountains Travel Management Plan is in fact based on the elk population objectives established in the State Elk Plan which BLM has no authority to alter.

Paul B. Smith and Bill Myers, The Boulder Technical Advisory Group, 153 IBLA 334 (Sept. 29, 2000).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A BLM finding (based on preparation of an EA) that no significant environmental impact will occur as a result of issuing a travel management plan will be affirmed when the record shows that BLM took a hard look at the environmental consequences of its action and appellant fails to show that BLM’s finding was based on a clear error of

law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared.

Paul B. Smith and Bill Myers, the Boulder Technical Advisory Group, 153 IBLA 334 (Sept. 29, 2000).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A BLM decision selecting the no action alternative, rather than a county's proposed action to control a prairie dog population on public lands, which is based on an EA, will be affirmed on appeal when the record establishes that a careful review of environmental problems has been made, relevant areas of environmental concern have been identified, and the final determination to select the no action alternative is reasonable in light of the analysis.

Johnson County Weed and Pest Control Board, 155 IBLA 98 (May 18, 2001).

National Environmental Policy Act of 1969
Finding of No Significant Impact

Activity planning implementing an off-highway vehicle project management plan, based upon an environmental assessment sufficient to support an informed judgment, may not be overcome by a mere difference of opinion.

Rocky Mountain Trials Association, 156 IBLA 64 (2001).

National Environmental Policy Act of 1969
Finding of No Significant Impact

In determining whether a proposed action will generate significant impacts requiring the preparation of an EIS, the law is clear that the significance of an impact is related not only to its intensity, but also to its context. Thus, an impact which could be significant in isolation may be insignificant when compared to other impacts in the area of the proposed action, although the cumulative harm that may result from its contribution to existing impacts must also be a consideration.

Southern Utah Wilderness Alliance, Natural Resources Defense Council, Wilderness Society, Utah Chapter of the Sierra Club 157 IBLA 150 (Aug. 22, 2002).

National Environmental Policy Act of 1969
Finding of No Significant Impact

In examining the environmental impacts of a proposed action, BLM must consider alternatives that accomplish the intended purpose of the proposed action, are technically and economically feasible, and have a lesser impact than the proposed project. A "rule of reason" approach applies to both the range of alternatives and the extent to which each alternative must be addressed.

Southern Utah Wilderness Alliance, Natural Resources Defense Council, Wilderness Society, Utah Chapter of the Sierra Club 157 IBLA 150 (Aug. 22, 2002).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A BLM decision to adopt an integrated management plan for controlling the spread of noxious weeds on the public lands in a BLM district will be affirmed where the record adequately supports the decision and demonstrates that BLM (in an environmental assessment tiered to a programmatic environmental impact statement) took a hard look at the potential environmental impacts of its decision and properly concluded that no significant impact not previously considered will likely result, thus complying with section 102(2) of NEPA.

Headwaters, Klamath Siskiyou Wildlands Center, 157 IBLA 139 (Aug. 14, 2002).

National Environmental Policy Act of 1969
Finding of No Significant Impact

The Board of Land Appeals has the authority under 43 C.F.R. § 4.403 to grant a petition for reconsideration in extraordinary circumstances for sufficient reason. A petition for reconsideration filed by BLM seeking to have the Board reconsider its determination that the agency failed to take the requisite hard look at the environmental consequences of coalbed methane extraction and development and relevant leasing alternatives before deciding to offer three parcels of land for oil and gas leasing will be denied when BLM fails to satisfy the requirements of 43 C.F.R. § 4.403.

Wyoming Outdoor Council, et al., (On Reconsideration), 157 IBLA 259 (Oct. 15, 2002).

National Environmental Policy Act of 1969
Finding of No Significant Impact

BLM may approve a timber sale without preparing an EIS, if, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2)(C) (1994), it has taken a hard look at the environmental consequences of the timber sale and reasonable alternatives, considering all relevant matters of environmental concern, including the expected individual and cumulative impacts, and made a convincing case that no significant impact will result, or that the impacts will be reduced to insignificance by the adoption of appropriate mitigation measures. BLM's decision not to prepare an EIS will be affirmed if an appellant does not demonstrate, with objective proof, that BLM failed to consider a substantial environmental problem of material significance, or otherwise failed to abide by the statute.

Klamath Siskiyou Wildlands Center, 157 IBLA 332 (Oct. 30, 2002).

National Environmental Policy Act of 1969
Finding of No Significant Impact

It is proper for BLM to approve a timber sale, absent preparation of an EIS, when, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2)(C) (1994), it has taken a hard look at the environmental consequences of doing so and reasonable alternatives thereto, considering all relevant matters of environmental concern, including the expected individual and cumulative impacts to soils, water quality and quantity, and threatened or endangered species, and made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. BLM's decision not to prepare an EIS will be affirmed if the appellant does not demonstrate, with objective proof, that BLM failed to consider a substantial environmental problem of material significance to the proposed action, or otherwise failed to abide by the statute.

Umpqua Watersheds, Inc., et al., 158 IBLA 62 (Dec. 18, 2002).

National Environmental Policy Act of 1969
Finding of No Significant Impact

Separate decisions approving a coal bed methane development project and a plan of development on the basis of environmental assessments and findings of no significant impact will be set aside when the record fails to show that BLM took a hard look at potential water quality issues from the production of coal bed methane.

Wyoming Outdoor Council, et al., 158 IBLA 155 (Jan. 9, 2003).

National Environmental Policy Act of 1969
Finding of No Significant Impact

An environmental analysis of the impacts of a proposed coal bed methane project properly considers the potential cumulative impacts of the project together with other past, present, and reasonably foreseeable future actions which may interact to produce cumulatively significant impacts. It is error to fail to analyze the impacts of a reasonably foreseeable coal bed methane development project in the same watershed as the proposed project.

Wyoming Outdoor Council, et al., 158 IBLA 155 (Jan. 9, 2003).

National Environmental Policy Act of 1969
Finding of No Significant Impact

When certain lands have been the subject of a BLM wilderness inventory and found not to be within a wilderness study area in a final decision, the fact a party disputes this finding and believes that BLM erred does not itself establish a mineral material sale on such land will have significant impact requiring preparation of an EIS.

Southern Utah Wilderness Alliance, 158 IBLA 212 (Jan. 23, 2003).

National Environmental Policy Act of 1969
Finding of No Significant Impact

The National Environmental Policy Act requires BLM to consider a reasonable range of alternatives, including the no action alternative. Such alternatives should include reasonable alternatives to proposed action which will accomplish the intended purpose, are technically and economically feasible, and yet have a lesser impact. No error is comitted by not considering an alternative that would not achieve the purpose of the proposed action.

Southern Utah Wilderness Alliance, 158 IBLA 212 (Jan. 23, 2003).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A decision that it is not necessary to prepare an EIS before proceeding with a prescribed burn and juniper cut will be affirmed on appeal if the record demonstrates that BLM has, considering all relevant matters of environmental concern, taken a "hard look" at potential environmental impacts, and made a convincing case that no significant impact will result or that the impacts will be reduced to insignificance by the adoption of appropriate mitigation measures. An appellant seeking to set aside or overturn a decision to proceed without preparing an EIS must demonstrate, with objective proof, that BLM failed to consider a substantial environmental question of material significance to the proposed action, or that it otherwise failed to abide by section 102(2)(C) of NEPA.

Committee for Idaho's High Desert, Western Watersheds Project & Idaho Bird Hunters, 158 IBLA 322 (Mar. 27, 2003).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A BLM decision dismissing a protest challenging the approval of an oil and gas lease sale will be reversedas to the parcels for which the appellants have established standing when the decision to offer the parcels for leasing was based on existing environmental analyses which either did not contain any discussion of the unique potential impacts associated with coalbed methane extraction and development or failed to consider reasonable alternatives relevant to a pre-leasing environmental analysis.

Wyoming Outdoor Council, et al., 158 IBLA 384 (Apr. 15, 2003).

National Environmental Policy Act of 1969
Finding of No Significant Impact

An environmental assessment addressing the impacts of a coalbed methane pilot project proposed for land adjacent to parcels included in an oil and gas lease sale, prepared after BLM issued its decision approving the oil and gas lease sale, does not cure the defects in the environmental documentation relied upon by BLM as support for the leasing decision, when that documentation did not mention coalbed methane extraction and its impacts.

Wyoming Outdoor Council, et al., 158 IBLA 384 (Apr. 15, 2003).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A BLM decision dismissing a protest of a competitive oil and gas lease sale will be affirmed to the extent the environmental documentation relied upon in the decision considered the impacts of coalbed methane production before deciding that certain lands, including those embraced by the parcel at issue, should be open to oil and gas leasing and development.

Wyoming Outdoor Council, et al., 158 IBLA 384 (Apr. 15, 2003).

National Environmental Policy Act of 1969
Finding of No Significant Impact

BLM's approval of a mining plan of operations based on an EA and FONSI will be affirmed if the record establishes that BLM took a "hard look" at the proposed action, carefully reviewed environmental problems, identified all relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

National Environmental Policy Act of 1969
Finding of No Significant Impact

An EA must include a brief discussion of alternatives as mandated by section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2000), which requires that every Federal agency "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." Appropriate alternatives include reasonable and feasible alternatives to the proposed action which will accomplish its intended purpose with lesser or no impact. If an alternative does not achieve the purpose of the proposed action or would not have lesser or no impact, BLM does not err in failing to consider that alternative.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A decision to limit use of a recreational site to day-use-only (no overnight camping) will be affirmed (1) where BLM took a hard look at the environmental consequences as opposed to reaching conclusions unaided by preliminary investigation, identified relevant areas of environmental concern, and made a convincing case that environmental impact is insignificant; (2) where BLM's decision is supported by valid reasons clearly set out in the supporting documentation; and (3) where those reasons are not challenged on appeal.

Lee and Jody Sprout, Dick and Shauna Sprout, 160 IBLA 9 (July 29, 2003).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A BLM decision dismissing a protest challenging the approval of an oil and gas lease sale will be affirmed as to the sale parcels for which the appellant has established standing, when the Board reviews the record de novo and determines that that record, as supplemented by BLM with the submission of a new "Interim Documentation of Land Use Conformance and NEPA Adequacy" worksheet and supporting information, provides a hard look at the environmental consequences of leasing, including the impacts of exploration for and development of coalbed methane.

Wyoming Outdoor Council, 160 IBLA 387 (Feb. 19, 2004).

National Environmental Policy Act of 1969
Finding of No Significant Impact

BLM properly decides to approve issuance of a right-of-way grant authorizing commercial use and maintenance of an existing airstrip on public lands pursuant to Title V of FLPMA based on an environmental assessment, where it has taken a hard look at the potential environmental consequences of doing so and reasonable alternatives, considering all relevant matters of environmental concern, and made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. BLM's decision not to prepare an EIS will be affirmed where the appellant does not show that BLM failed to consider a substantial environmental question of material significance to the proposed action or otherwise failed to abide by the statute.

Southern Utah Wilderness Alliance, et al., 161 IBLA 15 (Mar. 9, 2004).

National Environmental Policy Act of 1969
Finding of No Significant Impact

When an appellant challenges a BLM finding of no significant impact on grounds that BLM failed to demonstrate that mitigation measures enumerated therein can work, appellants' failure to identify a mitigation measure with which they quarrel defeats their case.

Colorado Mountain Club, *et al.*, 161 IBLA 371 (June 4, 2004).

National Environmental Policy Act of 1969
Finding of No Significant Impact

In order to establish a challenge based upon an alleged BLM failure to consider alternatives in an environmental assessment, an appellant must proffer an alternative that BLM should have considered which would accomplish the intended purpose of the proposed action, be technically and economically feasible, and have a lesser impact than the proposed project.

Colorado Mountain Club, *et al.*, 161 IBLA 371 (June 4, 2004).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A BLM decision approving the expansion of an existing sand and gravel mining operation based upon an environmental assessment will be affirmed when the record establishes that BLM has taken a hard look at the environmental consequences of the proposed action and reasonable alternates thereto, considered all relevant matters of environmental concern, and imposed mitigation measures to ensure that no significant impact upon the human environment will result. BLM's determination that it is not necessary to prepare an EIS will be affirmed on appeal if an appellant fails to tender objective proof that BLM failed to consider an environmental consequence of material significance that would result from the proposed action, or otherwise failed to abide by the applicable statute.

Mary Lee Dereske, et al., 162 IBLA 303 (Aug. 18, 2004).

National Environmental Policy Act of 1969
Finding of No Significant Impact

BLM properly decides to approve an integrated resource management project, including timber harvesting and road building, without preparing an EIS, where, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, *as amended,* 42 U.S.C. § 4332(2)(C) (2000), it has taken a hard look at the environmental consequences of doing so and reasonable alternatives thereto, considering all relevant matters of environmental concern, including the anticipated individual and cumulative impacts to soils, water quality, and threatened and endangered species, and determined that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. BLM's decision not to prepare an EIS will be affirmed where the appellant does not demonstrate, with objective proof, that BLM failed to consider a significant impact resulting from the proposed action, or otherwise failed to abide by the statute.

Friends of the Clearwater, et al., 163 IBLA 1 (Aug. 31, 2004).

National Environmental Policy Act of 1969
Finding of No Significant Impact

When, on appeal of a timber sale, key issues regarding implementation of the Northwest Forest Plan and compliance with the Aquatic Conservation Strategy and the Endangered Species Act of 1973 have been decided in Federal court by an agreement settling litigation, or by the preparation of further environmental documentation, and those issues that remain must await the development of a new site-specific consultation process and the issuance of new biological opinions, BLM's decision denying appellant's protest and authorizing commercial thinning will be vacated and the case remanded to BLM for further action after reconsultation and issuance of new biological opinions.

Umpqua Watersheds, Inc. in re Johnson Creek Commercial Thinning Project, 163 IBLA 94 (Sept. 9, 2004).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A BLM finding of no significant impact (FONSI) for a grant of public-land rights-of-way for surface facilities, access road, telephone line, and power line in connection with underground coal mining operations based on an analysis set forth in an environmental assessment will be upheld when the record reveals that BLM has taken a hard look at the environmental impacts and establishes a rational basis for the FONSI.

Southern Utah Wilderness Alliance, 163 IBLA 142 (Sept. 22, 2004).

National Environmental Policy Act of 1969
Finding of No Significant Impact

Review of a FONSI hinges on whether BLM took a "hard look" at the environmental impacts of a project and made a convincing case either that the impact was insignificant or that potential impacts have been reduced to insignificance by changes in the project. A FONSI may be set aside when BLM fails to consider the indirect and cumulative impacts of the project disclosed in the record.

Owen Severance, Southern Utah Wilderness Alliance; Ute Mountain Ute Tribe, 163 IBLA 208 (Oct. 21, 2004).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A BLM decision dismissing a protest to a competitive oil and gas lease sale is properly affirmed on appeal where appellant fails to demonstrate with objective proof that BLM's decision was premised on a clear error of law or demonstrable error of fact, or that BLM's analysis failed to consider a substantial environmental question of material significance to the proposed action. BLM did not fail to consider alleged significant unique impacts associated with coalbed methane production on the North Fork Valley parcels in the Piceance Basin where no evidence was produced establishing that significant impacts had occurred or were reasonably likely to occur in connection with coalbed methane production. Evidence of asserted significant impacts associated with coalbed methane production in other basins was insufficient to establish that those impacts would occur on the North Fork Valley parcels in the Piceance Basin, absent objective proof that the conditions that exist on the North Fork Valley parcels in the Piceance Basin will result in the asserted significant impacts.

Western Slope Environmental Resource Council, et al., 163 IBLA 262 (Oct. 28, 2004).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A BLM decision dismissing a protest to a competitive oil and gas lease sale is properly affirmed on appeal where the appellant fails to demonstrate with objective proof that BLM's decision was premised on a clear error of law or demonstrable error of fact, or that BLM's analysis failed to consider a substantial environmental question of material significance to the proposed action. BLM did not fail to consider alleged significant unique impacts associated with coalbed methane production in the Piceance Basin where no evidence was produced establishing that significant impacts had occurred or were reasonably likely to occur in connection with coalbed methane production. Evidence of asserted significant impacts associated with coalbed methane production in other basins is insufficient to establish that those impacts would occur on parcels in

the Piceance Basin, absent objective proof that the conditions that exist in the Piceance Basin will result in the asserted significant impacts.

Western Slope Environmental Resource Council, High Country Citizens Alliance, 164 IBLA 329 (Feb. 8, 2005).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A party challenging a finding of no significant impact based on an environmental assessment has the burden of showing an error of law, error of material fact, or that the environmental analysis failed to consider a substantial environmental question of material significance to the proposed action.

Armando Fernandez, Coachella Valley Collection Service, 165 IBLA 41 (Feb. 23, 2005).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A BLM decision to adopt a plan for controlling tamarisk on the public lands will be affirmed when the record adequately supports the decision and demonstrates that, in an environmental assessment tiered to a programmatic environmental impact statement, BLM took a hard look at the potential environmental impacts of its decision and properly concluded that no significant impact not previously considered would likely result, thus complying with section 102(2) of the National Environmental Policy Act, 42 U.S.C. § 4332(2) (2000).

Californians for Alternatives to Toxic, 165 IBLA 135 (Mar. 24, 2005).

National Environmental Policy Act of 1969
Finding of No Significant Impact

The Board will ordinarily uphold a BLM determination that a proposed project, with appropriate mitigation measures, will not have a significant impact on the quality of the human environment if the record establishes that a careful review of environmental problems has been made, relevant environmental concerns have been identified, and the final determination is reasonable. A party challenging BLM's decision to approve a timber sale based on a finding of no significant impact has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal. If the appealed decision is the denial of a protest, the appellant must affirmatively point out error in the protest decision.

Bark (In re Rusty Saw Timber Sale), 167 IBLA 48 (Sept. 29, 2005).

National Environmental Policy Act of 1969
Finding of No Significant Impact

An EA must take a hard look at the environmental consequences, as opposed to reaching bald conclusions, identify the relevant areas of environmental concern, and make a convincing case that environmental impacts are insignificant in order to support a conclusion that an EIS is not required. A party challenging a FONSI must demonstrate either an error of law or fact or that the analysis failed to consider a substantial environmental problem of material significance to the proposed action.

Lynn Canal Conservation, Inc., 167 IBLA 136 (Oct. 19, 2005).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A difference of opinion regarding the efficacy of an action proposed by BLM is not a sufficient showing to overturn a decision. Even when there is doubt whether the BLM action is necessary to achieve the cited objective, the Board will not substitute its judgment for that of the technical experts employed by BLM acting within their field of expertise in the absence of a showing of clear error.

Arizona Zoological Society, et al., 167 IBLA 347 (Jan. 25, 2006).

National Environmental Policy Act of 1969
Finding of No Significant Impact

In determining whether preparation of an environmental impact statement is required with respect to a project, one consideration is whether the effects of the project on the quality of the human environment are highly controversial in that there is a substantial dispute as to the size, nature, or effect of an action. Disagreement regarding the efficacy of a project is properly distinguished from controversy over the impacts of the project and does not require an environmental impact statement.

Arizona Zoological Society, et al., 167 IBLA 347 (Jan. 25, 2006).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A party challenging a finding of no significant impact based on an environmental assessment has the burden of showing with objective proof that a decision is based on an error of law, demonstrable error of fact, or that the analysis failed to consider an environmental question of material significance to the proposed action. It is not sufficient to simply speculate, request more information, and express disagreement.

Arizona Zoological Society, et al., 167 IBLA 347 (Jan. 25, 2006).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A BLM decision to approve an action based on an EA and FONSI generally will be affirmed if BLM has taken a "hard look" at the proposed action, identified relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or that any such impact will be reduced to insignificance by the

adoption of appropriate mitigation measures. A party challenging BLM's decision has the burden of demon-strating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal.

Rainer Huck, et al., 168 IBLA 365 (Apr. 18, 2006).

National Environmental Policy Act of 1969
Finding of No Significant Impact

The determination of whether the public was adequately involved in BLM's National Environmental Policy Act review process assessing the potential environmental impacts of a proposed action depends on a fact-intensive inquiry made on a case-by-case basis.

Lynn Canal Conservation, Inc., 169 IBLA 1 (Apr. 20, 2006).

National Environmental Policy Act of 1969
Finding of No Significant Impact

When the final EA, upon which the decision record and finding of no significant impact is based, predates the public comment period offered by BLM and neither the decision record nor finding of no significant impact contains any discussion, or even a reference to comments received, the comments have not been considered, and, therefore, the public has not been adequately involved in the Department's National Environmental Policy Act review process.

Lynn Canal Conservation, Inc., 169 IBLA 1 (Apr. 20, 2006).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A decision to approve an APD will be affirmed where the record shows that, in the EA and the RMP FEIS to which the EA was tiered, BLM considered the potential impacts of oil and gas drilling on a wild horse herd, and the surface stipulations for leases and COAs for APDs provide for mitigation of site specific impacts.

Colorado Environmental Coalition, The Wilderness Society, Western Colorado Congress, 169 IBLA 137 (May 31, 2006).

National Environmental Policy Act of 1969
Finding of No Significant Impact

When an agency issues a decision record and finding of no significant impact based on an environmental assessment, that decision will be deemed to comply with the National Environmental Policy Act of 1969 (NEPA) if the record demonstrates that the agency has considered all relevant matters of environmental concern, taken a hard look at potential environmental impacts, and made a convincing case that any potentially significant impact will be reduced to insignificance by imposing appropriate mitigation measures.

National Wildlife Federation, Biodiversity Conservation Alliance, Wyoming Outdoor Council, Wyoming Wildlife Federation, 169 IBLA 146 (June 13, 2006).

National Environmental Policy Act of 1969
Finding of No Significant Impact

An Interim Drilling Policy that establishes numerous conditions and criteria designed to ensure that exploratory drilling activity does not exceed the limitations on interim actions specified by 40 C.F.R. § 1506.1 is not itself independently subject to review and analysis under NEPA, so long as when and to the extent it is incorporated into a proposed agency action, full NEPA review of the effects of that action is undertaken.

National Wildlife Federation, Biodiversity Conservation Alliance, Wyoming Outdoor Council, Wyoming Wildlife Federation, 169 IBLA 146 (June 13, 2006).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A party challenging BLM's decision to approve a timber sale based on a finding of no significant impact has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal. If the appealed decision is the denial of a protest, the appellant must affirmatively point out error in the protest decision.

In re North Trail Timber Sale, 169 IBLA 258 (July 13, 2006).

National Environmental Policy Act of 1969
Finding of No Significant Impact

When an agency prepares an EA to determine whether an EIS is necessary, it must consider all relevant matters of environmental concern and take a hard look at potential environmental impacts so that it can make an informed decision about whether the environmental impacts are significant or that significant impacts can be reduced to insignificance by mitigation measures.

Biodiversity Conservation Alliance, 169 IBLA 321 (Aug. 2, 2006).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is based on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action.

Biodiversity Conservation Alliance, 169 IBLA 321 (Aug. 2, 2006*)*.

National Environmental Policy Act of 1969
Finding of No Significant Impact

When making a determination as to whether a proposed action will have a significant effect on the human environment, the cumulative effects of the proposed action and other actions not connected with the proposed activity must be taken into consideration. A cumulative impact is one which results from the incremental impact of the action when added to other past, present, and reasonably future actions and can result from individually minor but collectively significant actions taking place over time.

Biodiversity Conservation Alliance, 169 IBLA 321 (Aug. 2, 2006).

National Environmental Policy Act of 1969
Finding of No Significant Impact

When a cumulative impacts analysis in an EA is tiered to the cumulative impact analysis contained in a project EIS that also includes the EA project wells, the EA properly summarizes the issues discussed in the EIS. A party challenging the adequacy of the EA must show that the impacts analysis as tiered does not constitute a reasonably thorough discussion of significant impacts of the probable environmental consequences of the proposed action.

Biodiversity Conservation Alliance, 169 IBLA 321 (Aug. 2, 2006).

National Environmental Policy Act of 1969
Finding of No Significant Impact

Section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2000), requires consideration of a reasonable range of alternatives to a proposed action, including a no-action alternative. An EA which considers a range of alternatives and gives reasons for BLM's rejection of the alternatives not selected will be upheld when it appears that BLM assessed alternatives in a manner that will avoid or minimize the adverse impacts of the proposed

Biodiversity Conservation Alliance, 169 IBLA 321 (Aug. 2, 2006).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A BLM decision dismissing a protest challenging the approval of a competitive oil and gas lease sale will be affirmed as to the sale parcels for which the appellant has established standing, when the record shows that existing environmental documentation provided BLM with a hard look at the environmental consequences of leasing, supporting the conclusion that the impacts from exploration and development of coalbed methane would not be significantly different from those associated with conventional oil and gas exploration and development.

Wyoming Outdoor Council, et al., 170 IBLA 130 (Sept. 21, 2006).

National Environmental Policy Act of 1969
Finding of No Significant Impact

When an agency issues a Decision Record and Finding of No Significant Impact based on an Environmental Assessment, that decision will be deemed to comply with the National Environmental Policy Act if the record demonstrates that the agency has considered all relevant matters of environmental concern, taken a hard look at potential environmental impacts, and made a convincing case that any potentially significant impact will be reduced to insignificance by imposing appropriate mitigation measures.

National Wildlife Federation, Biodiversity Conservation Alliance, Wyoming Outdoor Council, Wyoming Wildlife Federation, 170 IBLA 240 (Sept. 29, 2006).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A BLM decision dismissing a protest challenging a competitive oil and gas lease sale will be affirmed when the record shows that existing environmental documentation provided BLM with a hard look at the environmental consequences of leasing, supporting the conclusion that the impacts from exploration and development of coalbed methane would not be significantly different than those associated with conventional oil and gas exploration and development.

Forest Guardians, 170 IBLA 253 (Sept. 29, 2006).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A finding that impacts of issuing an oil and gas lease would not be significant due to the mitigative effects of a special status species stipulation must be based on NEPA analysis. The stipulation does not provide a basis for deferring an environmental analysis in the absence of an existing NEPA statement that includes an analysis of the mitigative effects of the stipulation.

Center for Native Ecosystems, 170 IBLA 331 (Nov. 22, 2006).

National Environmental Policy Act of 1969
Finding of No Significant Impact

When an agency prepares an EA to determine whether an EIS is necessary, it must consider all relevant matters of environmental concern and take a hard look at potential environmental impacts so that it can make an informed decision about whether the environmental impacts will be significant or whether any significant impacts will be reduced to insignificance by mitigation measures. A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is based on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action.

Biodiversity Conservation Alliance et al., 171 IBLA 218 (Apr. 19, 2007).

National Environmental Policy Act of 1969
Finding of No Significant Impact

When making a determination as to whether a proposed action will have a significant effect on the human environment, the cumulative effects of the proposed action and other actions not connected with the proposed activity must be taken into consideration. A cumulative impact is one which results from the incremental impact of the action when added to other past, present, and reasonably future actions and can result from individually minor but collectively significant actions taking place over time.

Biodiversity Conservation Alliance et al., 171 IBLA 218 (Apr. 19, 2007).

National Environmental Policy Act of 1969
Finding of No Significant Impact

Section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (2000), requires consideration of a reasonable range of alternatives to a proposed action, including a no-action alternative. An EA which considers a range of alternatives will be upheld when BLM has assessed alternatives in a manner that will avoid or minimize the adverse impacts of the proposed action.

Biodiversity Conservation Alliance et al., 171 IBLA 218 (Apr. 19, 2007).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A BLM decision dismissing a protest to a competitive oil and gas lease sale will be affirmed when the appellant fails to demonstrate with objective proof clear error of law or demonstrable error of fact in the decision and when the record shows that existing environmental documentation provided BLM with a hard look at the environmental consequences of the lease sale. In considering the potential impacts of an oil and gas lease sale, BLM may properly use "Documentation of Land Use Plan Conformance and NEPA Adequacy" worksheets to assess the adequacy of previous environmental review documents.

Colorado Environmental Coalition, et al., 171 IBLA 256 (May 9, 2007).

National Environmental Policy Act of 1969
Finding of No Significant Impact

To support a finding of no significant impact, an environmental assessment must take a hard look at the environmental consequences of a proposed action, identify relevant areas of environmental concern, and make a convincing case that environmental impacts from the proposed action are insignificant.

Oregon Chapter of the Sierra Club, Wilderness Watch; George Stroemple, Central Oregon Land, LLC; Steens Mountain Landowner Group, 172 IBLA 27 (July 25, 2007).

National Environmental Policy Act of 1969
Finding of No Significant Impact

A determination that a proposed action will not have a significant impact on the quality of the human environment will be affirmed on appeal if the record establishes that a careful review of environmental problems has been made, relevant environmental concerns have been identified, and the final determination is reasonable in light of the environmental analysis. The party challenging the determination must show it was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of significance to the action for which the analysis was prepared.

Missouri Coalition for the Environment, Heartwood, 172 IBLA 226 (Sept. 5, 2007).

National Environmental Policy Act of 1969
Finding of No Significant Impact

No error is shown where a decision to approve issuance of mineral prospecting permits is based on an Environmental Assessment/ Finding of No Significant Impact that comply with NEPA and require the adoption of the stipulations and mitigation measures on which the FONSI is predicated.

Missouri Coalition for the Environment, Heartwood, 172 IBLA 226 (Sept. 5, 2007).

National Historic Preservation Act
Generally

An appellant's concessions of the existence of stone and ceramic prehistoric artifacts on the site of a potential drill pad prevent the Board from reversing a decision to attach a stipulation to an Application for Permit to Drill, designed to test and survey the impacts of drilling on the artifacts, without a record showing that the artifacts are outside the coverage of the National Historic Preservation Act, and its implementing regulations.

Mack Energy Corporation, 153 IBLA 277 (Sept. 22, 2000).

National Historic Preservation Act
Generally

Where the record substantiates that a site has a potential to yield information significant to prehistory, the Board will not invalidate a cultural resources stipulation attached to an approval of an Application for Permit to Drill, without finding that the record controverts the agency's and State Historic Preservation Officer's finding that they had reason to believe in the potential eligibility of the site.

Mack Energy Corporation, 153 IBLA 277 (Sept. 22, 2000).

National Historic Preservation Act
Generally

The Board cannot exempt a party from the operation of the National Historic Preservation Act, and its implementing regulations, on grounds that the challenged BLM decision did not consider, correctly or at all, all issues raised by the appellant in its request for review, when the record nonetheless shows that the BLM had a reasonable belief that the subject property contained potential eligible artifacts.

Mack Energy Corporation, 153 IBLA 277 (Sept. 22, 2000).

National Historic Preservation Act
Generally

The burden of proof is on the appellant to present evidence to support its contentions regarding costs of a project, when it presents arguments regarding costs to the Board. It is not unreasonable to impose testing and survey stipulations on an approval of an Application for Permit to Drill. In the absence of standards to determine whether the costs of a cultural resources stipulation for testing and survey are excessive, evidence to support the costs, evidence describing the value or cost to the appellant of the drilling project, or findings from the testing and surveying required by the stipulation, the Board has no basis upon which to make findings regarding the nature of the alleged costs or whether they exceed reasonableness.

Mack Energy Corporation, 153 IBLA 277 (Sept. 22, 2000).

National Historic Preservation Act
Generally

When authorizing a project, BLM is obligated under section 106 of the National Historic Preservation Act to seek to identify any property eligible for inclusion in the National Historic Register located within the area of the project's potential impact which may be affected by the project. An appellant challenging approval of a project must show that BLM erred in collecting the data, interpreting the data, or reaching its conclusion, and not simply that a different conclusion can be drawn from the evidence.

Sierra Club, Angeles Chapter, Santa Clarita Group, et al., 156 IBLA 144 (Jan. 8, 2002)

National Historic Preservation Act
Generally

The National Historic Preservation Act, 16 U.S.C. § 470f (2000), requires BLM to take into account an undertaking's effect on any property eligible for inclusion on the Register of Historic Places and to provide the Advisory Council on Historic Preservation the opportunity to comment. BLM's approval of a mining plan of operations will be affirmed without requiring consultation with the State Historic Preservation Officer where BLM has followed the procedures set forth in a State Protocol Agreement developed under BLM's National Programmatic Agreement for implementing the NHPA, and where the appellant has failed to show error in BLM's determination that the proposed exploration operations (with the stipulations imposed to avoid or mitigate impacts to eligible sites) will have no adverse effect on eligible cultural resources.

Great Basin Mine Watch, et al., 159 IBLA 324 (July 16, 2003).

National Historic Preservation Act
Generally

Regulations implementing section 106 of the National Historic Preservation Act establish a three-step process: identification of historic properties; assessment of any adverse effect of the proposed undertaking on such properties; and creation of a plan to avoid, minimize, or mitigate those adverse effects. 36 C.F.R. Part 800. The requirements of the Utah Protocol, an alternate procedure, must be consistent with the section 106 regulations at 36 C.F.R. Part 800. *See* 36 C.F.R. § 800.14(a).

Southern Utah Wilderness Alliance, The Natural Resources Defense Council, 164 IBLA 1 (Nov. 10, 2004).

National Historic Preservation Act
Generally

A BLM determination under the Utah Protocol that there is no potential for an oil and gas lease sale, an "undertaking" as defined at 43 C.F.R. § 800.16(y), to adversely affect historic properties, and therefore that BLM has no further obligations under section 106 of the National Historic Preservation Act, will be set aside when the record does not support the determination. BLM's interpretation and application of the Utah Protocol must be consistent with the 43 C.F.R. Part 800 regulations; otherwise, BLM has undermined the fundamental purpose of section 106 of the National Historic Preservation Act, *i.e.*, to take into account the effect of its undertaking on historic properties.

Southern Utah Wilderness Alliance, The Natural Resources Defense Council, 164 IBLA 1 (Nov. 10, 2004).

National Historic Preservation Act
Generally

The National Historic Preservation Act is essentially a procedural statute designed to ensure that an agency identifies and considers significant cultural resources in its decision-making process. Section 106 of that act requires that the head of any Federal agency having authority to license any undertaking take into account the effect of the undertaking on any property eligible for inclusion on the National Register of Historic Places. 16 U.S.C. § 470f (2000). Section 101(d)(6)(A) provides that properties of traditional religious and cultural importance to an Indian tribe may be determined to be eligible for inclusion on the National Register. 16 U.S.C. § 470a(6)(A) (2000).

The Mandan, Hidatsa, and Arikara Nation, 164 IBLA 343 (Feb. 9, 2005).

National Historic Preservation Act
Generally

In considering a proposed action, a Federal agency must first determine whether such action is an "undertaking," within the meaning of section 106 of the National

Historic Preservation Act, *as amended*, 16 U.S.C. § 470f (2000). An "undertaking" is defined as "a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including . . . those requiring a Federal permit, license, or approval . . . ." 36 C.F.R. § 800.16(y). Issuance of a Federal oil and gas lease is an "undertaking."

The Mandan, Hidatsa, and Arikara Nation, 164 IBLA 343 (Feb. 9, 2005).

National Historic Preservation Act
Generally

In issuing Federal oil and gas leases, BLM may adopt a phased approach to compliance with section 106 of the National Historic Preservation Act, *as amended*, 16 U.S.C. § 470f (2000), when no surface-disturbing activity is to occur until the section 106 process is completed.

The Mandan, Hidatsa, and Arikara Nation, 164 IBLA 343 (Feb. 9, 2005).

National Historic Preservation Act
Applicability

An appellant's concessions of the existence of stone and ceramic prehistoric artifacts on the site of a potential drill pad prevent the Board from reversing a decision to attach a stipulation to an Application for Permit to Drill, designed to test and survey the impacts of drilling on the artifacts, without a record showing that the artifacts are outside the coverage of the National Historic Preservation Act, and its implementing regulations.

Mack Energy Corporation, 153 IBLA 277 (Sept. 22, 2000).

National Historic Preservation Act
Applicability

Where the record substantiates that a site has a potential to yield information significant to prehistory, the Board will not invalidate a cultural resources stipulation attached to an approval of an Application for Permit to Drill, without finding that the record controverts the agency's and State Historic Preservation Officer's finding that they had reason to believe in the potential eligibility of the site.

Mack Energy Corporation, 153 IBLA 277 (Sept. 22, 2000).

National Historic Preservation Act
Applicability

The Board cannot exempt a party from the operation of the National Historic Preservation Act, and its implementing regulations, on grounds that the challenged BLM decision did not consider, correctly or at all, all issues raised by the appellant in its request for review, when the record nonetheless shows that the BLM had a reasonable belief that the subject property contained potential eligible artifacts.

Mack Energy Corporation, 153 IBLA 277 (Sept. 22, 2000).

National Historic Preservation Act
Applicability

The burden of proof is on the appellant to present evidence to support its contentions regarding costs of a project, when it presents arguments regarding costs to the Board. It is not unreasonable to impose testing and survey stipulations on an approval of an Application for Permit to Drill. In the absence of standards to determine whether the costs of a cultural resources stipulation for testing and survey are excessive, evidence to support the costs, evidence describing the value or cost to the appellant of the drilling project, or findings from the testing and surveying required by the stipulation, the Board has no basis upon which to make findings regarding the nature of the alleged costs or whether they exceed reasonableness.

Mack Energy Corporation, 153 IBLA 277 (Sept. 22, 2000).

National Historic Preservation Act
Applicability

In approving a mining and reclamation plan, BLM must comply with section 106 of the National Historic Preservation Act of 1966 on both Federal and non-Federal lands involved in the project. However, it was not error for BLM to consult with the plan applicant instead of the current owner of lands containing an historic site regarding measures to protect the site where it was contemplated that ownership of those lands would be transferred to the applicant, and where mining near the site would not proceed if the lands were not in fact transferred.

Legal and Safety Employer Research Inc., et al., 154 IBLA 167 (Feb. 28, 2001).

National Historic Preservation Act
Applicability

Regulations implementing section 106 of the National Historic Preservation Act establish a three-step process: identification of historic properties; assessment of any adverse effect of the proposed undertaking on such properties; and creation of a plan to avoid, minimize, or mitigate those adverse effects. 36 C.F.R. Part 800. The requirements of the Utah Protocol, an alternate procedure, must be consistent with the section 106 regulations at 36 C.F.R. Part 800. *See* 36 C.F.R. § 800.14(a).

Southern Utah Wilderness Alliance, The Natural Resources Defense Council, 164 IBLA 1 (Nov. 10, 2004).

National Historic Preservation Act
Applicability

A BLM determination under the Utah Protocol that there is no potential for an oil and gas lease sale, an "undertaking" as defined at 43 C.F.R. § 800.16(y), to adversely affect historic properties, and therefore that BLM has no further obligations under section 106 of the National Historic Preservation Act, will be set aside when the record does not support the determination. BLM's interpretation and application of the Utah Protocol must be consistent with the 43 C.F.R. § Part 800 regulations; otherwise, BLM has undermined the fundamental purpose of section 106 of the National Historic Preservation Act, *i.e.*, to take into account the effect of its undertaking on historic properties.

Southern Utah Wilderness Alliance, The Natural Resources Defense Council, 164 IBLA 1 (Nov. 10, 2004).

National Historic Preservation Act
Applicability

The National Historic Preservation Act is essentially a procedural statute designed to ensure that an agency identifies and considers significant cultural resources in its decision-making process. Section 106 of that act requires that the head of any Federal agency having authority to license any undertaking take into account the effect of the undertaking on any property eligible for inclusion on the National Register of Historic Places. 16 U.S.C. § 470f (2000). Section 101(d)(6)(A) provides that properties of traditional religious and cultural importance to an Indian tribe may be determined to be eligible for inclusion on the National Register. 16 U.S.C. § 470a(6)(A) (2000).

The Mandan, Hidatsa, and Arikara Nation, 164 IBLA 343 (Feb. 9, 2005).

National Historic Preservation Act
Applicability

In considering a proposed action, a Federal agency must first determine whether such action is an "undertaking," within the meaning of section 106 of the National Historic Preservation Act, *as amended*, 16 U.S.C. § 470f (2000). An "undertaking" is defined as "a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including . . . those requiring a Federal permit, license, or approval . . . ." 36 C.F.R. § 800.16(y). Issuance of a Federal oil and gas lease is an "undertaking."

The Mandan, Hidatsa, and Arikara Nation, 164 IBLA 343 (Feb. 9, 2005).

National Historic Preservation Act
Applicability

In issuing Federal oil and gas leases, BLM may adopt a phased approach to compliance with section 106 of the National Historic Preservation Act, *as amended*, 16 U.S.C. § 470f (2000), when no surface-disturbing activity is to occur until the section 106 process is completed.

The Mandan, Hidatsa, and Arikara Nation, 164 IBLA 343 (Feb. 9, 2005).

National Historic Preservation Act
Undertaking

A programmatic environmental assessment analyzing the impacts of guided vehicle tours to as yet unidentified archaeological or historic sites which are or may become eligible for inclusion on the National Register of Historic Places, to be permitted at some future date, does not constitute "undertaking" for purposes of triggering consultation with the State Historic Preservation Officer (SHPO) pursuant to the Utah State Protocol Agreement between BLM and the SHPO.

Southern Utah Wilderness Alliance, 164 IBLA 33 (Nov. 16, 2004).

Navigable Waters

Where BLM terminates seven public easements, which had been reserved to guarantee access to three lakes pursuant to section 17(b) of ANSCA, 43 U.S.C. § 1616(b) (1976), on the basis of a determination that the lakes are non-navigable and not major waterways and therefore that the easements do not provide access to publicly owned lands or major waterways, and the record does not support BLM's determination, the Board will remand the cases to BLM. Should BLM wish to proceed with decisions regarding the easements under 43 C.F.R. § 2650.4-7(a)(13), it must render an initial determination of navigability of the lakes as an aid to deciding whether the easements may be terminated.

State of Alaska Louis and Marion Collier, 168 IBLA 334 (Apr. 6, 2006).

Navigable Waters

All accretions, whether resulting from natural or artificial causes and whether the water body at issue is navigable or non-navigable, belong to the upland owner.

Western Aggregates, LLC., 169 IBLA 64 (May 17, 2006).

Navigable Waters

The rule of avulsion states that sudden and perceptible changes in the course of a river do not deprive riparian owners of their land. In such case, the ownership must be determined based upon the ownership prior to avulsion.

Western Aggregates, LLC, 169 IBLA 64 (May 17, 2006).

Navigable Waters

The Secretary of the Interior has both the authority and the duty to consider and determine what lands are public lands of the United States, including a determination of navigability of a river to ascertain whether title to the land underlying the river is in the United States or whether title passed to a state upon its admission into the Union. The bed of a non-navigable river is usually deemed to be the property of the adjoining landowners; under the "equal footing doctrine," title to land beneath navigable waters passed to the State upon its admission into the Union. Where the record shows that a portion of a river is non-navigable, and the State of California has treated it as

non-navigable by statute, BLM did not err in deciding that the lands in the bed of that non-navigable river remained under the ownership of the United States at the time of California Statehood, provided that their uplands were owned by the United States.

Western Aggregates, LLC, 169 IBLA 64 (May 17, 2006).

Navigable Waters

By withdrawing upland lots along the banks of a non-navigable river from entry under the laws of the United States, the Department also withdrew all Federally-owned lands within the riverbed to the thread of the river. The withdrawal attached to the lands in the bed of the non-navigable river deemed to be owned by the United States in conjunction with its ownership of each of the upland lots. The fact that the lots were depicted on contemporary plats as extending only to the meander lines of the river is not controlling.

Western Aggregates, LLC, 169 IBLA 64 (May 17, 2006).

Notice
Generally

Responsibility for satisfying the rental fee requirement of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, Pub. L. No. 102-381, 106 Stat. 1374, 1378-79 (1992), resides with the owner of the unpatented mining claim, mill site, or tunnel site, as Congress has mandated that failure to make the annual payment of the claim rental fee as required by the Act shall conclusively constitute an abandonment of the unpatented mining claim, mill site, or tunnel site. Failure to pay the fee in accordance with the Act and implementing regulations results in a conclusive presumption of abandonment. Neither the claimant's lack of actual knowledge of the statutory requirement to pay rental fees nor BLM's failure to advise the claimant of that statutory requirement excuses the claimant's lack of compliance with the rental fee requirement, since all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Sandra E. Garrand, 152 IBLA 139 (Apr. 3, 2000).

Notice
Generally

One who deals with the Government is presumed to know the relevant statutes and duly promulgated regulations.

Pacific Operators Offshore, Inc., 154 IBLA 100 (Dec. 20, 2000).

Office of Hearings and Appeals

The Office of Hearings and Appeals does not have authority to review the merits of biological opinions issued by the FWS under section 7 of the Endangered Species Act, 16 U.S.C. § 1536 (1994). BLM properly limits activity on a private inholding in a wilderness area where the limitations imposed are directed by an FWS biological opinion in order to prevent adverse impacts on wildlife.

National Wildlife Federation, et al., *Erik and Tina Barnes*, 151 IBLA 104 (Nov. 24, 1999).

Office of Hearings and Appeals

The Board of Land Appeals will not entertain an appeal when no effective relief can be afforded an appellant. Where a challenged interim decision has been superceded by a final multiple use decision, this Board will decline to entertain the appeal with respect to the interim decision because no effective relief is available.

Von L. and Marian Sorensen v. Bureau of Land Management, 155 IBLA 207 (July 18, 2001).

Office of Hearings and Appeals

Where an appellant opposes BLM's choice among alternatives in a record of decision on the basis of an environmental assessment and asks that the Board implement the appellant's choice of alternatives, the Board will not entertain the appeal when: (1) reversal would require a new NEPA process rather than implementation of appellant's choice and (2) a subsequent BLM decision has already supplanted the record of decision in question.

Von L. and Marian Sorensen v. Bureau of Land Management, 155 IBLA 207 (July 18, 2001).

Office of Hearings and Appeals

A well-recognized exception to the rule of mootness is that the Board will not dismiss an appeal when an issue raised by the appeal is capable of repetition, yet evading review. A decision on appeal does not fall into this exception where the appellant did not appeal a subsequent BLM decision supplanting the decision at issue.

Von L. and Marian Sorensen v. Bureau of Land Management, 155 IBLA 207 (July 18, 2001).

Office of Hearings and Appeals

On appeal from a BLM decision authorizing a sand and gravel mining project, the Board may review whether BLM considered the potential impact to threatened and endangered species or their habitat. However, it lacks jurisdiction to review the merits of a biological opinion issued by USFWS, as a result of consultation regarding a species, which serves, in part, as a basis for BLM's decision.

Sierra Club, Angeles Chapter, Santa Clarita Group, et al., 156 IBLA 144 (Jan. 8, 2002).

Office of Hearings and Appeals

Under the Endangered Species Act (ESA), BLM is obligated to ensure that an authorized action is not likely to jeopardize the continued existence of a threatened or

endangered species or result in the destruction or adverse modification of its habitat. The Act imposes the same obligation for species that have been proposed for listing. Compliance with the ESA is also an element of complying with NEPA. In evaluating whether BLM took the requisite "hard look" at the environmental impacts of a proposed action that NEPA requires, the Board properly considers whether BLM considered the potential impacts on listed or proposed species or their habitat that the ESA mandates. However, the Board lacks jurisdiction to review the merits of a biological opinion issued by the U.S. Fish and Wildlife Service as a result of formal consultation regarding a species, which opinion serves, in part, as a basis for BLM's decisionmaking.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

Office of Hearings and Appeals

An Administrative Law Judge has no authority to invalidate an otherwise valid BLM grazing trespass decision based on proof of improper motive on the part of a BLM official or employee involved in the development or issuance of the decision.

Frank Robbins and High Island Ranch v. Bureau of Land Management, 170 IBLA 219 (Sept. 26, 2006).

Oil and Gas Leases
Generally

To assess a civil penalty under 43 U.S.C. § 1350(b) (1994) and 30 C.F.R. § 250.200(a)(1), the record before the Board must show the existence of a violation and that the violation constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment. The existence of a violation of the safety-system testing regulation at 43 C.F.R. § 250.124 (1995) may reasonably constitute a threat under 30 C.F.R. § 250.200(2)(b) warranting the assessment of a civil penalty.

Conn Energy, Inc., 151 IBLA 53 (Oct. 26, 1999).

Oil and Gas Leases
Generally

A failure to test safety equipment installed on oil wells at required intervals prescribed in the regulations may compromise safety resulting in a threat of the danger sought to be avoided. An MMS decision assessing civil penalties under 43 U.S.C. § 1350(b) and 30 C.F.R. § 250.200(a)(1) will be affirmed where there is no dispute that safety testing violations occurred and MMS determined that, due to the nature of the violations, the violations posed a threat of serious, irreparable, or immediate harm or damage to life (including fish or other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment.

Conn Energy, Inc., 151 IBLA 53 (Oct. 26, 1999).

Oil and Gas Leases
Generally

For onshore operations, the Congressional grant of authority, found at 30 U.S.C. § 226(m) (1994), authorizes the Secretary to approve the combining of units and participating areas for conservation reasons.

Petrocorp., William H. Davis, 152 IBLA 77 (Mar. 24, 2000).

Oil and Gas Leases
Generally

When BLM imposes a condition of approval to an operator's request to plug and abandon a well, in order to protect a fresh water zone from contamination by gas or saline water from deeper formations, and the operator asserts that such a condition is unnecessary, the operator must show by a preponderance of the evidence that the condition is excessive in order to prevail.

Grynberg Petroleum Co., 152 IBLA 300 (June 8, 2000).

Oil and Gas Leases
Generally

When, on the basis of differing interpretations of the same geological data, the operator of an oil and gas well and BLM disagree on the proper procedure to be used in plugging and abandoning an oil and gas well, the Secretary is entitled to rely on the reasoned opinions and conclusions of his technical experts in the field, absent a showing by a preponderance of the evidence that such opinions are erroneous.

Grynberg Petroleum Co., 152 IBLA 300 (June 8, 2000).

Oil and Gas Leases
Generally

Statutes of limitations directed at "any action to recover penalties" (30 U.S.C. § 1755 (1994)), or any "action for money damages" (28 U.S.C. § 2415 (a)(1994)) establishing time limits for commencement of judicial actions, initiated by the filing of a complaint in a court of competent jurisdiction, do not limit administrative proceedings within the Department of the Interior.

Williams Production Company, 154 IBLA 283 (Apr. 19, 2001).

Oil and Gas Leases
Generally

Settlement Agreement barred lessor's recovery of amounts offset by lessee to balance overpayment of advance rentals where lessee was gas purchaser under a gas

purchasing agreement, and where the Settlement Agreement unequivocally resolved this issue because the offset lessee had executed was as a gas purchaser under the gas purchasing agreement, not as a royalty payor or lessee, and these gas purchase issues were settled without question under the Settlement Agreement.

Williams Production Company, 154 IBLA 283 (Apr. 19, 2001).

Oil and Gas Leases
Generally

Tribal Resolution No. 79-55 and Payor Handbook requiring Tribal oil and gas lessee to seek refunds of advanced minimum royalties (rentals) from Tribe during periods when Tribe elected to take its royalty gas in-kind, did not preclude lessee from effecting offset of refund monies due lessee with monies due Tribe under Royalty Gas Gathering and Exchange Agreement.

Williams Production Company, 154 IBLA 283 (Apr. 19, 2001).

Oil and Gas Leases
Generally

The authority conferred by 30 U.S.C. § 209 (2000), enables BLM to exercise discretionary authority to grant or deny an application for royalty rate reductions. In order to grant such a reduction, BLM must determine that either (i) the reduction is necessary to promote development, or (ii) the lease cannot be successfully operated without the reduction. Granting a royalty rate reduction under MLA section 39's "necessary to promote development" provision is appropriate if doing so would encourage the greatest ultimate recovery of oil and gas in the interest of conservation of natural resources, and if prudent business judgment indicates that the reduction would be in the interest of the United States.

Union Oil Company of California, 158 IBLA 265 (Feb. 21, 2003).

Oil and Gas Leases
Generally

The assignee of an Indian oil and gas lease, upon approval of an assignment, becomes the lessee and is responsible for compliance with the lease terms.

Marlin Oil Corporation, 158 IBLA 362 (Apr. 10, 2003).

Oil and Gas Leases
Generally

The Board may not exercise supervisory authority over BLM to compel it to re-inventory land for wilderness characteristics for purposes of amending existing land use plans, prior to making a decision to go forward with a lease sale. The manner and time of implementation of the statutory mandate to keep a current inventory of the public lands and their resource values is committed to the discretion of the Secretary by section 201(a) of FLPMA. 43 U.S.C. § 1711(a) (2000).

Southern Utah Wilderness Alliance, 160 IBLA 225 (Dec. 11, 2003).

Oil and Gas Leases
Generally

When BLM prepares an environmental analysis for a proposed action to issue an oil and gas lease in an area open to leasing under a governing resource management plan, it is not required to postpone leasing under its existing resource management plan in order to consider a wilderness proposal from an advocacy group. Proposed designations that would require amendment of the existing resource management plan need not be considered each time BLM decides to grant a right to undertake an activity in conformity with the existing land use plan.

Colorado Environmental Coalition the Wilderness Society, 161 IBLA 386 (June 4, 2004).

Oil and Gas Leases
Generally

An environmental assessment of a proposal to issue an oil and gas lease which is tiered to a final environmental impact statement for a resource management plan or activity plan need not restate cumulative impacts or the no action alternative considered in the environmental impact statement to which the environmental assessment is tiered.

Colorado Environmental Coalition, The Wilderness Society, 161 IBLA 386 (June 4, 2004).

Oil and Gas Leases
Generally

An Information Notice has no legal consequences, except to give notice of existing requirements, and may be attached to a lease by the authorized officer at the time of lease issuance to convey certain operational, procedural or administrative requirements relative to lease management within the terms and conditions of the standard lease form. Information Notices do not provide a basis for denying lease operations. 43 C.F.R. § 3101.1-3.

Continental Land Resources, 162 IBLA 1 (June 16, 2004).

Oil and Gas Leases
Generally

The use of an Information Notice to announce the exercise of the authorized officer's discretion to suspend the offering of a specific parcel while considering a protest or appeal against its inclusion in a Notice of Competitive Lease Sale under 43 C.F.R. § 3120.1-3 does not demonstrate error in a BLM decision to reject competitive lease bids.

Continental Land Resources, 162 IBLA 1 (June 16, 2004).

Oil and Gas Leases
Generally

The Secretary of the Interior is vested by the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 *et seq.* (2000), *as amended*, with discretionary authority to lease or not lease Federal public land which is otherwise available for oil and gas leasing. The offer to lease is but a hope, or expectation, rather than a valid claim against the Government. Where lease parcels were erroneously included in a lease sale after BLM had determined that a protest should be sustained, and appellant's bids were rejected before they were accepted by the United States, they never matured beyond the hope or expectation that a lease might issue.

Continental Land Resources, 162 IBLA 1 (June 16, 2004).

Oil and Gas Leases
Generally

An exercise of discretion must be supported by a rational and defensible basis which is set forth in the decision, or it will be found to be arbitrary and capricious. When BLM's decision to reject competitive lease bids is based on protests requesting further analysis of the impacts of leasing on a crucial big game winter range migration corridor and deferral of leasing until revision of the Pinedale Resource Management Plan is completed, and the Board's review of the record discloses adequate support for BLM's decision to defer leasing, the decision will be affirmed.

Continental Land Resources, 162 IBLA 1 (June 16, 2004).

Oil and Gas Leases
Generally

When parcels nominated for inclusion in a competitive oil and gas lease sale encompass lands that have not been included in a wilderness study area or found to possess wilderness characteristics in a BLM wilderness inventory, BLM may administer those lands for other purposes, including oil and gas leasing, even though the lands were determined to have wilderness characteristics in a citizens' group wilderness inventory and were included in an area proposed for wilderness designation in legislation introduced in Congress.

Southern Utah Wilderness Alliance, 163 IBLA 14 (Sept. 3, 2004).

Oil and Gas Leases
Generally

BLM is not required to re-inventory lands that have not been included in a wilderness study area or found to possess wilderness characteristics in a BLM inventory for wilderness suitability even though the lands were determined to have wilderness characteristics in a citizens' group wilderness inventory and were included in an area proposed for wilderness designation in legislation introduced in Congress. The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1711(a) (2000), controls the Secretary's wilderness inventory authority and grants the Secretary the discretion to determine the manner and time of implementation of the statutory mandate to keep a current inventory of the public lands and their resources.

Southern Utah Wilderness Alliance, 163 IBLA 14 (Sept. 3, 2004).

Oil and Gas Leases
Generally

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1712 (2000), does not require BLM to revise a land use plan at any specific time, nor does it require BLM to cease actions authorized under an existing land use plan, including oil and gas leasing, in order to consider a wilderness proposal from a citizens group.

Southern Utah Wilderness Alliance, 163 IBLA 14 (Sept. 3, 2004).

Oil and Gas Leases
Generally

BLM's determination that existing environmental documents adequately analyze the effects of the inclusion in a competitive oil and gas lease sale of parcels located on lands that have not been included in a wilderness study area or found to possess wilderness characteristics in a BLM inventory will be affirmed where the appellant bases its objection to the adequacy of those documents on the fact that the lands were determined to have wilderness characteristics in a citizens' group wilderness inventory and were included in an area proposed for wilderness designation in legislation introduced in Congress.

Southern Utah Wilderness Alliance, 163 IBLA 14 (Sept. 3, 2004).

Oil and Gas Leases
Generally

Under 43 C.F.R. § 4.410(a), in order to have standing to appeal a BLM decision dismissing protests to the inclusion of various parcels in a notice of competitive oil and gas lease sale, the appellant must be a party to the case and be adversely affected by the dismissal action. Dismissal of the protest establishes that an appellant is a party to the case. Evidence that one or more members of an appellant organization uses each parcel to which the appeal relates establishes that the appellant is adversely affected by the decision being appealed as to that particular parcel.

Southern Utah Wilderness Alliance, The Natural Resources Defense Council, 164 IBLA 1 (Nov. 10, 2004).

Oil and Gas Leases
Generally

MMS appropriately assessed civil penalties against a Federal offshore oil and gas lessee who authorized welding and burning activities in a manner that did not comply with rules applicable to such practices on the Outer Continental Shelf. The fact that such activities may have taken place in association with well abandonment does not exempt them from safety regulations governing welding and burning practices during production operations.

W & T Offshore, Inc., 164 IBLA 193 (Dec. 20, 2004).

Oil and Gas Leases
Generally

In considering a proposed action, a Federal agency must first determine whether such action is an "undertaking," within the meaning of section 106 of the National Historic Preservation Act, *as amended*, 16 U.S.C. § 470f (2000). An "undertaking" is defined as "a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including . . . those requiring a Federal permit, license, or approval . . . ." 36 C.F.R. § 800.16(y). Issuance of a Federal oil and gas lease is an "undertaking."

The Mandan, Hidatsa, and Arikara Nation, 164 IBLA 343 (Feb. 9, 2005).

Oil and Gas Leases
Generally

In issuing Federal oil and gas leases, BLM may adopt a phased approach to compliance with section 106 of the National Historic Preservation Act, *as amended*, 16 U.S.C. § 470f (2000), when no surface-disturbing activity is to occur until the section 106 process is completed.

The Mandan, Hidatsa, and Arikara Nation, 164 IBLA 343 (Feb. 9, 2005).

Oil and Gas Leases
Generally

An MMS decision not to extend a deadline for completion of repairs/replacement of corroded structures on two OCS platforms will be affirmed on appeal if it is supported by substantial evidence and not shown to be in error or otherwise contrary to law. The continued presence of those conditions violated applicable regulations requiring the lessee to protect health, safety, property, and the environment by maintaining equipment in a safe condition (30 C.F.R. § 250.107), to assure the structural integrity of the platforms for the safe conduct of operations (30 C.F.R. § 250.900(a)), and to protect equipment against the effects of corrosion (30 C.F.R. § 907(d)).

Pacific Offshore Operators, Inc., et al., 165 IBLA 62 (Mar. 3, 2005).

Oil and Gas Leases
Generally

An MMS decision setting a deadline for completion of repair/replacement of platform equipment and/or structures will be set aside if the basis for the decision is not found in the record. In the absence of a stated rationale and evidence supporting the decision, the Board cannot reasonably conclude that the decision is not arbitrary or capricious and appellants are afforded no way to challenge the decision.

Pacific Offshore Operators, Inc., et al., 165 IBLA 62 (Mar. 3, 2005).

Oil and Gas Leases
Generally

Under the Mineral Leasing Act, 30 U.S.C. § 226 (2000), the decision whether to issue an oil and gas lease is a matter within the discretion of the Secretary. Once issued, the holder of an oil and gas lease issued prior to the enactment of FLPMA may develop the leasehold to the extent authorized by the issuance document.

Colorado Environmental Coalition, The Wilderness Society, 165 IBLA 221 (Apr. 8, 2005).

Oil and Gas Leases
Generally

A no surface occupancy (NSO) restriction in a Resource Management Plan that is by its terms to be applied to future oil and gas leases does not provide an independent basis for imposing an NSO restriction on a pre-FLPMA lease on which drilling and production had commenced before enactment of the statute.

Colorado Environmental Coalition, The Wilderness Society, 165 IBLA 221 (Apr. 8, 2005).

Oil and Gas Leases
Generally

MMS properly assesses a civil penalty when a lessee does not have the records required by 30 C.F.R. § 250.804(b) to show that safety-system devices have been inspected and tested at specified intervals.

Blue Dolphin Exploration Company, 166 IBLA 131 (July 8, 2005).

Oil and Gas Leases
Generally

A noncompetitive oil and gas lease has a primary term of 10 years, and shall continue so long after its primary term as oil or gas is produced in paying quantities. 30 U.S.C. § 226(e) (2000). When production ceases on an oil and gas lease which is in an extended term by reason of production, the lease will terminate unless (1) within 60 days after cessation of production reworking or drilling operations are begun on the lease and thereafter conducted with reasonable diligence during the period of

nonproduction, or so long as oil or gas is produced in paying quantities as a result of such operations; (2) an order or consent of the Secretary suspending operations or production on the lease has been requested and issued; or (3) the lease contains a well capable of producing oil or gas in paying quantities and the lessee places the well on a producing status within a reasonable time of not less than 60 days after notice to do so and thereafter continues production unless and until the Secretary allows production to be discontinued.

Two Bay Petroleum, Inc., 166 IBLA 329 (Sept. 2, 2005).

Oil and Gas Leases
Generally

An MMS decision assessing a civil penalty for each day an outer continental shelf oil and gas lessee failed to ensure that an automatic shutdown valve on a pipeline delivering production to a platform properly operated to shut down the pipeline at the activation of the emergency shut down system, in violation of 30 C.F.R. § 250.154 (1997), will be affirmed under section 24(b) of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. § 1350(b) (2000).

Seneca Resources Corporation, 167 IBLA 1 (Sept. 15, 2005).

Oil and Gas Leases
Generally

MMS properly assesses a civil penalty against a Federal offshore oil and gas lessee, pursuant to 43 U.S.C. § 1350(b) (2000) and 30 C.F.R. § 250.1404(b), where the record establishes that the emergency shutdown stations on an offshore oil and gas platform were inoperable, in violation of Departmental regulation, constituting a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment.

Petro Ventures, Inc., 167 IBLA 315 (Dec. 30, 2005).

Oil and Gas Leases
Generally

MMS properly takes into consideration the circumstances of the case when deciding on the dollar amount of a civil penalty. MMS' decision regarding the civil penalty amount will be upheld when supported by a record showing that MMS gave due consideration to all relevant factors and acted on the basis of a rational connection between the facts found and the choice made.

Petro Ventures, Inc., 167 IBLA 315 (Dec. 30, 2005).

Oil and Gas Leases
Generally

To determine whether a Development Operations Coordination Document for a new or modified facility operating on a Federal offshore oil and gas lease is consistent with offshore regulations implementing the Clean Air Act, MMS was required, for a particular pollutant, to make a specific determination regarding projected emissions of that pollutant, as defined in 30 C.F.R. § 250.204(b)(14), from the facility. If projected emissions did not exceed permitted amounts annually, nothing further was required. If they did exceed that amount, MMS was then required to determine whether the pollutant concentration exceeded the significance levels established at 30 C.F.R. § 250.303 (e). If not, nothing further was required. If they did exceed significance levels, then MMS was required to determine whether the adjacent affected land is within an attainment (or unclassifiable) or non-attainment area. In either case, MMS was required to ensure under 30 C.F.R. § 250.303(g) that Best Available Control Technology (BACT) was applied, and, in an attainment or unclassifiable area, to determine whether, after application of BACT, the emissions exceeded the maximum allowable increases over the baseline concentrations established in 40 C.F.R. § 52.21, as defined in 30 C.F.R. § 250.303(g)(2)(i). If they did so (more than once for the daily and 3-hour standard), MMS was required to impose additional controls.

Freeport-McMoran Sulfur, LLC, 168 IBLA 1 (Feb. 16, 2006).

Oil and Gas Leases
Generally

Because coalbed methane (CBM) is a fluid gas mineral, a land use planning decision that opens a planning area to oil and gas leasing opens it to CBM exploration and development as well.

National Wildlife Federation, Biodiversity Conservation Alliance, Wyoming Outdoor Council, Wyoming Wildlife Federation, 169 IBLA 146 (June 13, 2006).

Oil and Gas Leases
Generally

An Interim Drilling Policy that establishes numerous conditions and criteria designed to ensure that exploratory drilling activity does not exceed the limitations on interim actions specified by 40 C.F.R. § 1506.1 is not itself independently subject to review and analysis under NEPA, so long as when and to the extent it is incorporated into a proposed agency action, full NEPA review of the effects of that action is undertaken.

National Wildlife Federation, Biodiversity Conservation Alliance, Wyoming Outdoor Council, Wyoming Wildlife Federation, 169 IBLA 146 (June 13, 2006).

Oil and Gas Leases
Generally

BLM may properly look to record title holders of Federal oil and gas leases for performance of obligations to submit plans for production from or plugging and abandonment of wells.

Pitch Energy Corporation, 169 IBLA 267 (July 26, 2006).

Oil and Gas Leases
Generally

When BLM coordinates an oil and gas lease sale with the State of Wyoming in accordance with applicable memoranda of understanding, there is no violation of section 202(c)(9) of the Federal Land Policy and Management Act of 1976, *as amended*, 43 U.S.C. § 1712(c)(9) (2000), as contended by appellants.

Wyoming Outdoor Council, et al., 171 IBLA 108 (Feb. 20, 2007).

Oil and Gas Leases
Generally

BLM's decision to issue oil and gas leases subject to a timing limitation standard without also imposing the State of Wyoming's policies, plans, and guidelines does not amount to a failure to take an "action necessary to prevent unnecessary or undue degradation of the [public] lands" under section 302(b) of the Federal Land Policy and Management Act of 1976, *as amended*, 43 U.S.C. § 1732(b) (2000).

Wyoming Outdoor Council, et al., 171 IBLA 108 (Feb. 20, 2007).

Oil and Gas Leases
Generally

Under 43 C.F.R. § 4.410(a), in order to have standing to appeal a BLM decision dismissing protests to a competitive oil and gas lease sale of various parcels of land, the appellant must be a party to the case and have a legally cognizable interest that is adversely affected by the BLM decision. A party may establish it is adversely affected through evidence of use of the land in question or by setting forth interests in resources or in other land or its resources affected by the decision and showing how the decision has caused or is substantially likely to cause injury to those interests.

Colorado Environmental Coalition, et al., 171 IBLA 256 (May 9, 2007).

Oil and Gas Leases
Generally

Where the record establishes that, during a loss of well-control event, a diverter was inoperable from a remote control station when in "test" mode and the crew lacked sufficient knowledge and training concerning use and operation of the diverter system, safety regulations promulgated pursuant to the Outer Continental Shelf Lands Act were violated. Such violations constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment, justifying the assessment of civil penalties without regard to notice and an opportunity for corrective action.

BP Exploration & Production, Inc., 172 IBLA 372 (Sept. 28, 2007).

Oil and Gas Leases
Acquired Lands Leases

The Mineral Leasing Act for Acquired Lands authorizes the leasing of the mineral interest acquired by the United States in the leased lands subject to a royalty of 12-1/2 percent. When the royalty interest in the minerals acquired by the Government is subject to an outstanding enforceable royalty interest held by a third party, the lessee's royalty obligation is limited to 12-1/2 percent and the lease does not require payment of a 12-1/2 percent Federal royalty in addition to the outstanding third party royalty obligation in the absence of a lease term to that effect.

Tana Oil & Gas Corp., 151 IBLA 177 (Dec. 2, 1999).

Oil and Gas Leases
Acquired Lands Leases

A decision unilaterally amending a competitive acquired lands oil and gas lease to require the lessee to pay the full Federal lease royalty in addition to any third party royalty interest will be reversed where it appears the lessee had no notice of the outstanding royalty interest or of the obligation to pay that third party royalty in addition to the Federal lease royalty.

Tana Oil & Gas Corp., 151 IBLA 177 (Dec. 2, 1999).

Oil and Gas Leases
Acquired Lands Leases

Section 3 of the Mineral Leasing Act for Acquired Lands of 1947 clearly mandates that no mineral deposit shall be leased except with the consent of the department or agency having jurisdiction over the lands containing the deposit. 30 U.S.C. § 352 (2000).

Celeste C. Grynberg, 169 IBLA 178 (June 22, 2006).

Oil and Gas Leases
Applications
Generally

BLM has authority to eliminate specific parcels from leasing even where they had been designated in a Resource Management Plan as generally suitable for leasing.

Richard D. Sawyer, 160 IBLA 158 (Oct. 22, 2003).

Oil and Gas Leases
Applications
Generally

Land included within an outstanding oil and gas lease, whether void, voidable, or valid, is not available for leasing, and an application for such land must be rejected.

Enron Oil and Gas Co., 152 IBLA 153 (Apr. 24, 2000).

Oil and Gas Leases
Applications
Generally

The authority to issue an oil and gas lease for any given tract is within the discretion of the Secretary of the Interior. An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to it. A noncompetitive lease offer does not compel the Secretary to hold a competitive lease sale for the lands subject to the offer.

Richard D. Sawyer, 160 IBLA 158 (Oct. 22, 2003).

Oil and Gas Leases
Applications
Generally

When Congress enacted the Federal Onshore Oil and Gas Leasing Reform Act to amend statutory provisions pertaining to noncompetitive oil and gas leasing under 30 U.S.C. § 226(c), it did not fundamentally change the nature of the entitlement of the first qualified applicant for a noncompetitive oil and gas lease, which has long been recognized as subject to the discretionary authority of the Secretary under 30 U.S.C. § 226(a) to determine whether the land is to be leased or not.

Richard D. Sawyer, 162 IBLA 339 (Aug. 19, 2004).

Oil and Gas Leases
Applications
Generally

The filing of a post-sale noncompetitive oil and gas lease offer which has not been accepted does not give the offeror any right to a lease, or generate a legal interest which reduces or restricts the discretion vested in the Secretary to issue leases for the lands involved.

Richard D. Sawyer, 162 IBLA 339 (Aug. 19, 2004).

Oil and Gas Leases
Applications
Generally

Where assignees refile for approval of a 1935 assignment of a title interest in an oil and gas lease, it is improper for BLM to disapprove the assignment on the ground that the current holders of record title did not execute the resubmitted request for approval, as assignees were seeking reconsideration of a 1936 GLO decision disapproving the 1935 assignment. The requirement that the transfer document be signed by the transferor has been satisfied when the record contains the original of the 1935 assignment, duly signed by the assignor, in apparent compliance with the filing rules in effect in 1936.

Heirs of Mrs. M. H. Crawford, 151 IBLA 118 (Nov. 29, 1999).

Oil and Gas Leases
Assignments and Transfers

A 1936 GLO decision denying approval of a 1935 assignment became final in the absence of a timely appeal. Parties may resubmit a request for approval of an assignment, notwithstanding that a similar request had previously been finally rejected. However, such request for reconsideration of approval of the assignment is properly denied where no showing has been made that the circumstances cited by GLO for disapproval (failure to file affidavits showing the qualifications of the assignees or a $5,000 lease bond) no longer exist, and where intervening rights of others and changes in circumstances have arisen over 60 years that render approval inequitable.

Heirs of Mrs. M. H. Crawford, 151 IBLA 118 (Nov. 29, 1999).

Oil and Gas Leases
Assignments and Transfers

The regulations do not require an operator who is neither lessee of record nor an owner of operating rights to continue in that capacity when it no longer wishes or intends to do so, and BLM's approval is not required to change operators or to terminate operator status, BLM can only "recognize" an operator when applicable regulatory requirements have been satisfied. Where the previous operator has informed BLM that it no longer is responsible for lease operations, BLM's order directing the former operator to plug and abandon or put a well into production will be reversed.

Merrion Oil & Gas Corp., 151 IBLA 184 (Dec. 3, 1999).

Oil and Gas Leases
Assignments and Transfers

Where BLM has approved a transfer of operating rights, but the transferee has not advised BLM in writing of its intent to assume responsibility for lease operations or posted a bond to cover such operations, designated a new operator in accordance with 43 C.F.R. § 3162.3 and NTL 89-1 New Mexico, and the previous operator has stated that it no longer is responsible for operations on the lease, the transferee cannot conduct operations on the ground without posting a bond.

Merrion Oil & Gas Corp., 151 IBLA 184 (Dec. 3, 1999).

Oil and Gas Leases

Assignments and Transfers

BLM properly disapproved assignment of record title interest in oil and gas lease because the applicable regulation, 43 C.F.R. § 3106.1(a), expressly requires that assignments of separate zones or deposits within an onshore oil and gas lease be disapproved.

Bowers Oil and Gas, Inc., 152 IBLA 12 (Feb. 24, 2000).

Oil and Gas Leases
Assignments and Transfers

BLM may properly rescind its prior improper approval of an assignment of record title interest in an onshore oil and gas lease because any oil and gas lease, or interest therein, issued or approved contrary to law or regulation by subordinates of the Secretary does not bind the Secretary and is voidable.

Bowers Oil and Gas, Inc., 152 IBLA 12 (Feb. 24, 2000).

Oil and Gas Leases
Assignments and Transfers

Where the application for assignment of an oil and gas lease is pending before BLM, the assignor is responsible for the performance of all obligations under the lease until the assignment has been approved. Where no activity on the lease has occurred at the conclusion of the primary term, which expires during the pendency of the application for assignment, the requested assignment is properly disapproved.

RMOC Holdings LLC, 152 IBLA 149 (Apr. 21, 2000).

Oil and Gas Leases
Assignments and Transfers

The assignee of an Indian oil and gas lease, upon approval of an assignment, becomes the lessee and is responsible for compliance with the lease terms.

Marlin Oil Corporation, 158 IBLA 362 (Apr. 10, 2003).

Oil and Gas Leases
Assignments and Transfers

BLM may properly look to record title holders of Federal oil and gas leases for performance of obligations to submit plans for production from or plugging and abandonment of wells.

Petroleum, Inc., Frank H. Gower Trust, Rex Monahan, 161 IBLA 194 (Apr. 22, 2004).

Oil and Gas Leases
Assignments and Transfers

BLM may properly look to record title holders of Federal oil and gas leases for performance of obligations to submit plans for production from or plugging and abandonment of wells.

Pitch Energy Corporation, 169 IBLA 267 (July 26, 2006).

Oil and Gas Leases
Bonds

Where BLM has approved a transfer of operating rights, but the transferee has not advised BLM in writing of its intent to assume responsibility for lease operations or posted a bond to cover such operations, designated a new operator in accordance with 43 C.F.R. § 3162.3 and NTL 89-1 New Mexico, and the previous operator has stated that it no longer is responsible for operations on the lease, the transferee cannot conduct operations on the ground without posting a bond.

Merrion Oil & Gas Corp., 151 IBLA 184 (Dec. 3, 1999).

Oil and Gas Leases
Burden of Proof

When, during the pendency of an appeal, the arguments raised by an appellant have been addressed in other Board decisions, or by Federal courts, whether or not the appellant was a party thereto, or in other Board adjudication to which it was a party, and the appellant fails to show that those arguments remain viable, the Board may dispose of such arguments in summary fashion.

Wyoming Outdoor Council, Biodiversity Conservation Alliance, 172 IBLA 289 (Sept. 20, 2007).

Oil and Gas Leases
Cancellation

Where an oil and gas lease is issued for acquired lands administered by another agency without that agency's prior consent, the lease is properly canceled.

Celeste C. Grynberg, 169 IBLA 178 (June 22, 2006).

Oil and Gas Leases

Civil Assessments and Penalties

To assess a civil penalty under 43 U.S.C. § 1350(b) (1994) and 30 C.F.R. § 250.200(a)(1), the record before the Board must show the existence of a violation and that the violation constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment. The existence of a violation of the safety-system testing regulation at 43 C.F.R. § 250.124 (1995) may reasonably constitute a threat under 30 C.F.R. § 250.200(2)(b) warranting the assessment of a civil penalty.

Conn Energy, Inc., 151 IBLA 53 (Oct. 26, 1999).

Oil and Gas Leases
Civil Assessments and Penalties

A failure to test safety equipment installed on oil wells at required intervals prescribed in the regulations may compromise safety resulting in a threat of the danger sought to be avoided. An MMS decision assessing civil penalties under 43 U.S.C. § 1350(b) and 30 C.F.R. § 250.200(a)(1) will be affirmed where there is no dispute that safety testing violations occurred and MMS determined that, due to the nature of the violations, the violations posed a threat of serious, irreparable, or immediate harm or damage to life (including fish or other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment.

Conn Energy, Inc., 151 IBLA 53 (Oct. 26, 1999).

Oil and Gas Leases
Civil Assessments and Penalties

Drilling a gas well on a Federal or Indian oil and gas lease without obtaining the prior approval of BLM is a violation of 43 C.F.R. § 3162.3-1(c), and, under 43 C.F.R. § 3163.1(b)(2), BLM is required to impose an assessment of $500 a day for each day the violation exists, including the days the violation existed prior to discovery, not to exceed $5,000.

K2 America Corporation, 163 IBLA 199 (Oct. 12, 2004).

Oil and Gas Leases
Civil Assessments and Penalties

MMS appropriately assessed civil penalties against a Federal offshore oil and gas lessee who authorized welding and burning activities in a manner that did not comply with rules applicable to such practices on the Outer Continental Shelf. The fact that such activities may have taken place in association with well abandonment does not exempt them from safety regulations governing welding and burning practices during production operations.

W & T Offshore, Inc., 164 IBLA 193 (Dec. 20, 2004).

Oil and Gas Leases
Civil Assessments and Penalties

MMS properly assesses a civil penalty when a lessee does not have the records required by 30 C.F.R. § 250.804(b) to show that safety-system devices have been inspected and tested at specified intervals.
Blue Dolphin Exploration Company, 166 IBLA 131 (July 8, 2005).

Oil and Gas Leases
Civil Assessments and Penalties

An MMS decision assessing a civil penalty for each day an outer continental shelf oil and gas lessee failed to ensure that an automatic shutdown valve on a pipeline delivering production to a platform properly operated to shut down the pipeline at the activation of the emergency shut down system, in violation of 30 C.F.R. § 250.154 (1997), will be affirmed under section 24(b) of the Outer Continental Shelf Lands Act, *as amended*, 43 U.S.C. § 1350(b) (2000).

Seneca Resources Corporation, 167 IBLA 1 (Sept. 15, 2005).

Oil and Gas Leases
Civil Assessments and Penalties

MMS properly assesses a civil penalty against a Federal offshore oil and gas lessee, pursuant to 43 U.S.C. § 1350(b) (2000) and 30 C.F.R. § 250.1404(b), where the record establishes that the emergency shutdown stations on an offshore oil and gas platform were inoperable, in violation of Departmental regulation, constituting a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment.

Petro Ventures, Inc., 167 IBLA 315 (Dec. 30, 2005).

Oil and Gas Leases
Civil Assessments and Penalties

MMS properly takes into consideration the circumstances of the case when deciding on the dollar amount of a civil penalty. MMS' decision regarding the civil penalty amount will be upheld when supported by a record showing that MMS gave due consideration to all relevant factors and acted on the basis of a rational connection between the facts found and the choice made.

Petro Ventures, Inc., 167 IBLA 315 (Dec. 30, 2005).

Oil and Gas Leases
Civil Assessments and Penalties

The Minerals Management Service properly assesses a civil penalty, pursuant to section 24(b) of the Outer Continental Shelf Lands Act, *as amended*, 43 U.S.C. § 1350(b) (2000), where the holder of an Outer Continental Shelf oil and gas lease fails to inspect a crane operating on its fixed offshore platform once every 12 months, as required by 30 C.F.R. § 250.108(a) (2002).

The Houston Exploration Company, 169 IBLA 166 (June 22, 2006).

Oil and Gas Leases
Civil Assessments and Penalties

An appellant's argument that an administrative law judge improperly allocated the burden of proof in a hearing on the record of a proposed civil penalty under section 109 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1719 (2000), provides no basis for reversing the judge's decision where the evidence is not in equipoise and BLM preponderated on every material issue.

Grynberg Petroleum Co. v. Bureau of Land Management, 172 IBLA 167 (Aug. 23, 2007).

Oil and Gas Leases
Civil Assessments and Penalties

FOGRMA places the burden on the operator to justify a longer abatement period by informing BLM in a timely manner of circumstances that would prevent timely abatement of a violation identified in a Notice of Incidents of Noncompliance. Where an operator did not request a longer abatement period, in a hearing on the record of a proposed civil penalty, he cannot carry his burden of showing, by a preponderance of the evidence, that the abatement period was inadequate.

Grynberg Petroleum Co. v. Bureau of Land Management, 172 IBLA 167 (Aug. 23, 2007).

Oil and Gas Leases
Civil Assessments and Penalties

Where the record establishes that, during a loss of well-control event, a diverter was inoperable from a remote control station when in "test" mode and the crew lacked sufficient knowledge and training concerning use and operation of the diverter system, safety regulations promulgated pursuant to the Outer Continental Shelf Lands Act were violated. Such violations constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment, justifying the assessment of civil penalties without regard to notice and an opportunity for corrective action.

BP Exploration & Production, Inc., 172 IBLA 372 (Sept. 28, 2007).

Oil and Gas Leases
Communitization Agreements

Upon the termination of a communitization agreement to which a segregated oil and gas lease was committed, BLM properly concluded that the lease continued only for 2 years and so long thereafter as oil or gas was produced in paying quantities from or attributable to the leasehold, pursuant to the Mineral Leasing Act, *as amended,* 30 U.S.C. § 226(m) (1994), regardless of whether the lease was in an indefinite extended term, being held by continuing production on the base lands at the time of termination.

Celsius Energy Company (On Reconsideration), 154 IBLA 193 (Mar. 10, 2001).

Oil and Gas Leases
Compensatory Royalty

For purposes of assessing compensatory royalty, "common ownership" occurs when a lessee owns both the lease being drained and owns or participates in production from the offending well. A lessee which shares an ownership interest in an offended Federal lease with an owner or operator of an offending well does not become a "common lessee" solely by virtue of that shared interest.

Burlington Resources Oil & Gas Company, 153 IBLA 45 (July 20, 2000).

Oil and Gas Leases
Compensatory Royalty

Where no common lessee is involved in a drainage case, BLM must prove that a lessee actually knew or a reasonably prudent operator would have known that drainage was occurring or expected to occur. BLM must show the lessee had notice, whether "actual" or "constructive," that is sufficient to convey information about when drainage is occurring or expected to occur from the allegedly drained area. Proof of notice that compels further evaluation of data is, by itself, not sufficient to demonstrate what the prudent operator should have known or when it should have known it.

Burlington Resources Oil & Gas Company, 153 IBLA 45 (July 20, 2000).

Oil and Gas Leases
Compensatory Royalty

A lessee's obligation to drill a protective well to protect against drainage is triggered at the time it should have known that drainage was occurring or was imminent, and compensatory royalties may be assessed beginning a reasonable time after that date of first knowledge. BLM cannot show that a lessee was compelled to drill a protective well if the record does not demonstrate that the lessee knew or should have known from data available at the time of the imputed knowledge that drainage from the allegedly drained area was occurring or was imminent.

Burlington Resources Oil & Gas Company, 153 IBLA 45 (July 20, 2000).

Oil and Gas Leases
Compensatory Royalty

For purposes of assessing compensatory royalty, “common ownership” occurs when a Federal lessee owns or participates in production from the well draining the Federal lease. Without proof of such facts, a BLM decision finding the entity to be a “common lessee” will not be affirmed. With evidence that a lessee participated in the offending well while owning an interest in the offended lease, a BLM decision finding the entity to be a “common lessee” may be affirmed even where the lessee later disposed of any interest in the offending well.

Great Western Drilling Co.; Davoil, Inc., 156 IBLA 42 (Nov. 28, 2001).

Oil and Gas Leases
Compensatory Royalty

Every lessee of record bears the obligation to protect the lease from drainage and the United States as lessor has the right to enforce that obligation by requiring the lessee either to drill a well or pay compensatory royalty.

Great Western Drilling Co.; Davoil, Inc., 156 IBLA 42 (Nov. 28, 2001).

Oil and Gas Leases
Compensatory Royalty

A lessee’s claim, standing alone, that a payout time of seven to nine years is unacceptable is not sufficient to constitute a contention as to whether, based on facts in a particular case, a protective well would have been economic to drill.

Great Western Drilling Co.; Davoil, Inc., 156 IBLA 42 (Nov. 28, 2001).

Oil and Gas Leases
Competitive Leases

Under 43 C.F.R. § 4.410(a), in order to have standing to appeal a BLM decision dismissing a protest to the offering of all parcels at a competitive oil and gas lease sale, the appellant must be a party to the case and be adversely affected by the dismissal decision. Dismissal of the protest establishes that the appellant is a party to the case; however, the appellant may appeal the dismissal only as to those parcels for which it can establish that it is adversely affected.

Wyoming Outdoor Council, et al., 153 IBLA 379 (Oct. 6, 2000).

Oil and Gas Leases
Competitive Leases

One appealing the decision of a BLM State Director dismissing a protest of a competitive oil and gas lease sale may petition for a stay of that decision and the petition must show sufficient justification for granting the stay based on the standards set forth in 43 C.F.R. § 3165.4(c).

Wyoming Outdoor Council, et al., 153 IBLA 379 (Oct. 6, 2000).

Oil and Gas Leases
Competitive Leases

The Board of Land Appeals has the authority under 43 C.F.R. § 4.403 to grant a petition for reconsideration in extraordinary circumstances for sufficient reason. A petition for reconsideration filed by BLM seeking to have the Board reconsider its determination that the agency failed to take the requisite hard look at the environmental consequences of coalbed methane extraction and development and relevant leasing alternatives before deciding to offer three parcels of land for oil and gas leasing will be denied when BLM fails to satisfy the requirements of 43 C.F.R. § 4.403.

Wyoming Outdoor Council, et al., (On Reconsideration), 157 IBLA 259 (Oct. 15, 2002).

Oil and Gas Leases
Competitive Leases

A BLM decision dismissing a protest challenging the approval of an oil and gas lease sale will be reversedas to the parcels for which the appellants have established standing when the decision to offer the parcels for leasing was based on existing environmental analyses which either did not contain any discussion of the unique potential impacts associated with coalbed methane extraction and development or failed to consider reasonable alternatives relevant to a pre-leasing environmental analysis.

Wyoming Outdoor Council, et al., 158 IBLA 384 (Apr. 15, 2003).

Oil and Gas Leases
Competitive Leases

An environmental assessment addressing the impacts of a coalbed methane pilot project proposed for land adjacent to parcels included in an oil and gas lease sale, prepared after BLM issued its decision approving the oil and gas lease sale, does not cure the defects in the environmental documentation relied upon by BLM as support for the leasing decision, when that documentation did not mention coalbed methane extraction and its impacts.

Wyoming Outdoor Council, et al., 158 IBLA 384 (Apr. 15, 2003).

Oil and Gas Leases
Competitive Leases

A BLM decision dismissing a protest of a competitive oil and gas lease sale will be affirmed to the extent the environmental documentation relied upon in the decision considered the impacts of coalbed methane production before deciding that certain lands, including those embraced by the parcel at issue, should be open to oil and gas leasing and development.

Wyoming Outdoor Council, et al., 158 IBLA 384 (Apr. 15, 2003).

Oil and Gas Leases
Competitive Leases

Departmental regulations governing competitive lease sales provide that the balance of a bonus bid must be submitted within 10 working days after a competitive lease sale date. 43 C.F.R. § 3120.5-2(c). Failure to timely submit the required payment will result in bid rejection. 43 C.F.R. § 3120.5-3(a).

John P. Lockridge, 159 IBLA 117 (May 22, 2003).

Oil and Gas Leases
Competitive Leases

A BLM decision dismissing a protest challenging the approval of an oil and gas lease sale will be affirmed as to the sale parcels for which the appellant has established standing, when the Board reviews the record de novo and determines that that record, as supplemented by BLM with the submission of a new "Interim Documentation of Land Use Conformance and NEPA Adequacy" worksheet and supporting information, provides a hard look at the environmental consequences of leasing, including the impacts of exploration for and development of coalbed methane.

Wyoming Outdoor Council, 160 IBLA 387 (Feb. 19, 2004).

Oil and Gas Leases
Competitive Leases

An Information Notice has no legal consequences, except to give notice of existing requirements, and may be attached to a lease by the authorized officer at the time of lease issuance to convey certain operational, procedural or administrative requirements relative to lease management within the terms and conditions of the standard lease form. Information Notices do not provide a basis for denying lease operations. 43 C.F.R. § 3101.1-3.

Continental Land Resources, 162 IBLA 1 (June 16, 2004).

Oil and Gas Leases
Competitive Leases

The use of an Information Notice to announce the exercise of the authorized officer's discretion to suspend the offering of a specific parcel while considering a protest or appeal against its inclusion in a Notice of Competitive Lease Sale under 43 C.F.R. § 3120.1-3 does not demonstrate error in a BLM decision to reject competitive lease bids.

Continental Land Resources, 162 IBLA 1 (June 16, 2004).

Oil and Gas Leases
Competitive Leases

The Secretary of the Interior is vested by the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 *et seq.* (2000), *as amended*, with discretionary authority to lease or not lease Federal public land which is otherwise available for oil and gas leasing. The offer to lease is but a hope, or expectation, rather than a valid claim against the Government. Where lease parcels were erroneously included in a lease sale after BLM had determined that a protest should be sustained, and appellant's bids were rejected before they were accepted by the United States, they never matured beyond the hope or expectation that a lease might issue.

Continental Land Resources, 162 IBLA 1 (June 16, 2004).

Oil and Gas Leases
Competitive Leases

An exercise of discretion must be supported by a rational and defensible basis which is set forth in the decision, or it will be found to be arbitrary and capricious. When BLM's decision to reject competitive lease bids is based on protests requesting further analysis of the impacts of leasing on a crucial big game winter range migration corridor and deferral of leasing until revision of the Pinedale Resource Management Plan is completed, and the Board's review of the record discloses adequate support for BLM's decision to defer leasing, the decision will be affirmed.

Continental Land Resources, 162 IBLA 1 (June 16, 2004).

Oil and Gas Leases
Competitive Leases

Under 43 C.F.R. § 4.410(a), in order to have standing to appeal a BLM decision dismissing a protest to the offering of multiple parcels at a competitive oil and gas lease sale, the appellant must be a party to the case and be adversely affected by the dismissal decision. Dismissal of the protest establishes that the appellant is a party to the case; however, the appellant may appeal the dismissal only as to those parcels for which it can establish that it is adversely affected.

Center for Native Ecosystems, Forest Guardians, 163 IBLA 86 (Sept. 7, 2004).

Oil and Gas Leases
Competitive Leases

The regulations at 43 C.F.R. § 4.410(d) provide that "[a] party to a case is adversely affected, as set forth in paragraph (a) of this section, when that party has a legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest." While use of the land in question may constitute such a legally cognizable interest, a legally cognizable interest must exist as of the time of issuance of the decision being appealed in order to have standing to appeal under 43 C.F.R. § 4.410(a). Thus, when an appellant asserts use of the land in question in support of its standing to appeal, the asserted use must have taken place on or before the date of issuance of the decision being appealed.

Center for Native Ecosystems, Forest Guardians, 163 IBLA 86 (Sept. 7, 2004).

Oil and Gas Leases
Competitive Leases

Under section 5102(g) of the Federal Onshore Oil and Gas Leasing Reform Act, 30 U.S.C. § 226(g)(2000), the Secretary shall not issue a lease or leases to an individual identified as vice president of a corporation on state corporation records who exercises control over drilling and reclamation and signs an application for permit to drill as vice president subsequent to the involuntary dissolution of that corporation, and the dissolved corporation thereafter fails or refuses to comply with long-standing plugging, abandonment, and reclamation requirements, regardless of whether he seeks the lease individually or on behalf of an unrelated entity. The bar to holding a lease remains in effect until the reclamation requirements are complied with.

Paradise Energy, LLC & Cimarron Operating Co., LLC, 163 IBLA 222 (Oct. 21, 2004).

Oil and Gas Leases
Competitive Leases

Under 43 C.F.R. § 4.410(a), in order to have standing to appeal a BLM decision dismissing protests to the inclusion of various parcels in notices of competitive oil and gas lease sales, the appellant must be a party to the case and be adversely affected by the dismissal decision. A party may appeal the dismissals only as to those individual parcels for which it can establish that it is adversely affected. Appeals to competitive oil and gas lease sales are properly dismissed for lack of standing where appellants fail to show any cognizable legal interest that was adversely affected as to any of the lease parcels included within the sales.

Western Slope Environmental Resource Council, et al., 163 IBLA 262 (Oct. 28, 2004).

Oil and Gas Leases
Competitive Leases

A BLM decision dismissing a protest to a competitive oil and gas lease sale is properly affirmed on appeal where appellant fails to demonstrate with objective proof that BLM's decision was premised on a clear error of law or demonstrable error of fact, or that BLM's analysis failed to consider a substantial environmental question of material significance to the proposed action. BLM did not fail to consider alleged significant unique impacts associated with coalbed methane production on the North Fork Valley parcels in the Piceance Basin where no evidence was produced establishing that significant impacts had occurred or were reasonably likely to occur in connection with coalbed methane production. Evidence of asserted significant impacts associated with coalbed methane production in other basins was insufficient to establish that those impacts would occur on the North Fork Valley parcels in the Piceance Basin, absent objective proof that the conditions that exist on the North Fork Valley parcels in the Piceance Basin will result in the asserted significant impacts.

Western Slope Environmental Resource Council, et al., 163 IBLA 262 (Oct. 28, 2004).

Oil and Gas Leases
Competitive Leases

BLM properly denies a protest of a competitive oil and gas lease sale on the basis that BLM violated the National Environmental Policy Act of 1969 when the environmental analyses demonstrate that BLM took a hard look at the potential significant environmental consequences, considering all relevant matters of environmental concern.

Southern Utah Wilderness Alliance, The Natural Resources Defense Council, 164 IBLA 1 (Nov. 10, 2004).

Oil and Gas Leases
Competitive Leases

The "reasonably foreseeable development" scenario (RFD scenario) for oil and gas is a long-term projection of oil and gas exploration, development, production, and reclamation activity in a defined area for a specified period of time. The RFD scenario projects a baseline scenario of activity assuming all potentially productive areas can be open under standard lease terms and conditions, except those areas designated as closed to leasing by law, regulation or executive order. The baseline RFD scenario provides the mechanism to analyze the effects that discretionary management decisions have on oil and gas activity, and it also provides basic information that is analyzed in environmental documents under various alternatives.

Wyoming Outdoor Council, et al., 164 IBLA 84 (Nov. 30, 2004).

Oil and Gas Leases
Competitive Leases

Whether an RMP's exceeded RFD scenario demonstrates an inadequate analysis of environmental impacts to the extent of such exceedance is a question that must be determined on a case-by-case basis. Where the RMP is being revised pursuant to 43 C.F.R. § 1610.5-6, the Board will not further consider appellants' arguments regarding the RFD scenario in support of that outcome.

Wyoming Outdoor Council, et al., 164 IBLA 84 (Nov. 30, 2004).

Oil and Gas Leases
Competitive Leases

The appropriate time for considering the potential impacts of oil and gas exploration and development is when BLM proposes to lease public lands for oil and gas purposes

because leasing, at least without no surface occupancy stipulations, constitutes an irreversible and irretrievable commitment to permit surface- disturbing activity, in some form and to some extent. Where the environmental assessment (EA) of each parcel at issue shows that there is no serious promise of CBM development, the burden falls upon the appellant to come forward with objective, countering evidence showing error in the EA's conclusions, to demonstrate that BLM could not properly rely on the RMP/EIS's environmental analysis to support the decision to offer these parcels for sale. In light of the absence of any serious potential for CBM development on the parcels, BLM could rely on the impacts analysis contained in the RMP to fulfill its pre-leasing NEPA obligation.

Wyoming Outdoor Council, et al., 164 IBLA 84 (Nov. 30, 2004).

Oil and Gas Leases
Competitive Leases

Where appellants' allegations regarding the potential for CBM extraction and development on the parcels at issue and the unique impacts associated therewith were not refuted by the record or by BLM on appeal, and where it is also undisputed that the RMP/EIS did not analyze CBM extraction and development or the unique impacts that might be occasioned by such activities, existing environmental NEPA documents did not provide the required pre-leasing NEPA analysis for the sale of those parcels. BLM's decision dismissing a protest on the basis of a contrary conclusion is properly reversed and the case remanded for further action.

Wyoming Outdoor Council, et al., 164 IBLA 84 (Nov. 30, 2004).

Oil and Gas Leases
Competitive Leases

BLM properly denies a protest of a competitive oil and gas lease sale on the basis that BLM violated the National Environmental Policy Act of 1969 when the environmental analyses demonstrate that BLM took a hard look at the potential significant environmental consequences, considering all relevant matters of environmental concern.

Deganawidah-Quetzalcoatle University, 164 IBLA 155 (Dec. 8, 2004).

Oil and Gas Leases
Competitive Leases

A party claiming reliance upon a misrepresentation by a Department employee must be ignorant of the true facts. When a party successfully bidding at an oil and gas lease sale receives a bidder's receipt stating monies owing, the bidder cannot claim ignorance of the fact that such monies are due.

Carlyle, Inc., 164 IBLA 178 (Dec. 16, 2004).

Oil and Gas Leases
Competitive Leases

Departmental regulations governing competitive lease sales provide that the balance of a bonus bid must be submitted within 10 working days after a competitive lease sale date. 43 C.F.R. § 3120.5-2(c). Failure to timely submit the full amount of the required payment will result in bid rejection and forfeiture of monies previously tendered. 43 C.F.R. § 3120.5-3(a).

Carlyle, Inc., 164 IBLA 178 (Dec. 16, 2004).

Oil and Gas Leases
Competitive Leases

A BLM decision dismissing a protest to a competitive oil and gas lease sale is properly affirmed on appeal where the appellant fails to demonstrate with objective proof that BLM's decision was premised on a clear error of law or demonstrable error of fact, or that BLM's analysis failed to consider a substantial environmental question of material significance to the proposed action. BLM did not fail to consider alleged significant unique impacts associated with coalbed methane production in the Piceance Basin where no evidence was produced establishing that significant impacts had occurred or were reasonably likely to occur in connection with coalbed methane production. Evidence of asserted significant impacts associated with coalbed methane production in other basins is insufficient to establish that those impacts would occur on parcels in the Piceance Basin, absent objective proof that the conditions that exist in the Piceance Basin will result in the asserted significant impacts.

Western Slope Environmental Resource Council, High Country Citizens Alliance, 164 IBLA 329 (Feb. 8, 2005).

Oil and Gas Leases
Competitive Leases

In order to have a right to appeal a BLM decision, a person or organization must be a "party to a case" and must be "adversely affected" by the decision. 43 C.F.R. § 4.410 (a). A party may show adverse effect through evidence of use of the lands in question. A party may also show it is adversely affected by setting forth a legally cognizable interest, in resources or in other land, affected by a decision and showing how the decision has caused or is substantially likely to cause injury to those interests. 43 C.F.R. § 4.410(d).

The Coalition of Concerned National Park Retirees, et al., 165 IBLA 79 (Mar. 14, 2005).

Oil and Gas Leases
Competitive Leases

The appropriate time for considering the potential impacts of oil and gas exploration and development is when BLM proposes to lease public lands for oil and gas purposes, because leasing without no-surface-occupancy stipulations constitutes an irreversible and irretrievable commitment to permit surface-disturbing activity, in some form and to some extent.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Oil and Gas Leases
Competitive Leases

In considering the potential impacts of oil and gas exploration and development when BLM proposes to lease public lands for oil and gas purposes, BLM may properly use "Documentation of Land Use Plan Conformance and NEPA Adequacy" worksheets (DNAs) to assess the adequacy of previous environmental review documents. Although preparation of DNAs is a valid vehicle to determine whether previous NEPA documentation adequately considered the environmental effects of proposed oil and gas leasing, DNAs are not a replacement for EAs or EISs and cannot properly be used to supplement previous EAs or EISs or to address site-specific environmental effects not previously considered in them.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Oil and Gas Leases
Competitive Leases

When BLM has denied a protest of the inclusion of parcels in an oil and gas lease sale, asserting that it has complied with the National Environmental Policy Act by preparing pre-leasing environmental review documents, but the pre-leasing documents contain only an outdated, brief review of environmental consequences, the BLM decision denying the protest will be reversed and the case remanded. However, where those pre-leasing documents adequately address the environmental consequences of issuing oil and gas leases both with and without special protective stipulations, BLM's decision denying the protest is properly affirmed.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Oil and Gas Leases
Competitive Leases

Where the record in an appeal from the denial of a protest of an oil and gas lease sale shows that BLM excluded some parcels from the sale when it determined that leasing them might have impacts on species that are candidates for listing as sensitive, threatened, or endangered, it follows that BLM determined that the parcels that remained in the sale would not have such impacts. In the absence of a showing to the contrary by a protestant/appellant, BLM's determination that previous environmental review was adequate to determine any effects on such species will be affirmed on appeal.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Oil and Gas Leases
Competitive Leases

Even though existing land use plans and their associated environmental statements may not provide a separate analysis of the effects of coalbed methane (CBM) development, BLM may properly rely on those documents in support of a decision to offer a parcel of Federal land for competitive oil and gas leasing where there is no foreseeable likelihood of CBM development or where the impacts of CBM development do not differ significantly from the effects of oil and gas development already described in those documents.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Oil and Gas Leases
Competitive Leases

A BLM decision dismissing a protest to a competitive oil and gas lease sale is properly affirmed on appeal when the appellant fails to demonstrate with objective proof that BLM's decision was premised on a clear error of law or demonstrable error of fact, or that BLM's analysis failed to consider a substantial environmental question of material significance to the proposed action.

The Coalition of Concerned National Park Service Retirees, et al., 169 IBLA 366 (Aug. 22, 2006).

Oil and Gas Leases
Competitive Leases

In considering the potential impacts of oil and gas development when BLM proposes to lease public lands for oil and gas purposes, BLM may properly use "Documentation of Land Use Plan Conformance and NEPA Adequacy" worksheets (DNAs) to assess the adequacy of previous environmental review documents. Where pre-leasing documents, including an EIS, adequately address the environmental consequences of issuing oil and gas leases both with and without special protective stipulations, BLM's decision denying the protest is properly affirmed.

The Coalition of Concerned National Park Service Retirees, et al., 169 IBLA 366 (Aug. 22, 2006).

Oil and Gas Leases
Competitive Leases

A BLM decision dismissing a protest challenging the approval of a competitive oil and gas lease sale will be affirmed as to the sale parcels for which the appellant has established standing, when the record shows that existing environmental documentation provided BLM with a hard look at the environmental consequences of leasing, supporting the conclusion that the impacts from exploration and development of coalbed methane would not be significantly different from those associated with conventional oil and gas exploration and development.

Wyoming Outdoor Council, et al., 170 IBLA 130 (Sept. 21, 2006).

Oil and Gas Leases
Competitive Leases

A BLM decision dismissing a protest challenging a competitive oil and gas lease sale will be affirmed when the record shows that existing environmental documentation provided BLM with a hard look at the environmental consequences of leasing, supporting the conclusion that the impacts from exploration and development of coalbed methane would not be significantly different than those associated with conventional oil and gas exploration and development .

Forest Guardians, 170 IBLA 253 (Sept. 29, 2006).

Oil and Gas Leases
Competitive Leases

Section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. § 4332(2)(C) (2000), requires consideration of potential environmental impacts of a proposed action in an environmental impact statement if that action is a "major Federal action significantly affecting the quality of the human environment." The appropriate time for considering the potential impacts of oil and gas exploration and development is when BLM proposes to lease public land for oil and gas purposes, because leasing without stipulations requiring no surface occupancy constitutes an irreversible and irretrievable commitment to permit surface-disturbing activity.

Center for Native Ecosystems, 170 IBLA 331 (Nov. 22, 2006).

Oil and Gas Leases
Competitive Leases

In considering the potential impacts of oil and gas exploration and development when BLM proposes to lease public lands for oil and gas purposes, BLM may properly use "Documentation of Land Use Plan Conformance and NEPA Adequacy" worksheets to assess the adequacy of previous NEPA documents. Although BLM may use DNAs to determine whether new NEPA documentation is required, DNAs cannot properly be used to supplement previous EAs or EISs or to address site-specific environmental effects not previously considered in them. Information developed after the last NEPA analysis may be used to determine whether supplemental analysis is required, but it cannot be used as a substitute for a NEPA analysis. When BLM decides on the basis of a DNA not to supplement an existing EIS or EA, its decision must rise or fall on the contents of previously issued NEPA documents.

Center for Native Ecosystems, 170 IBLA 331 (Nov. 22, 2006).

Oil and Gas Leases
Competitive Leases

A finding that impacts of issuing an oil and gas lease would not be significant due to the mitigative effects of a special status species stipulation must be based on NEPA analysis. The stipulation does not provide a basis for deferring an environmental analysis in the absence of an existing NEPA statement that includes an analysis of the mitigative effects of the stipulation.

Center for Native Ecosystems, 170 IBLA 331 (Nov. 22, 2006).

Oil and Gas Leases
Competitive Leases

BLM's decision to issue oil and gas leases without an evaluation of best management practices prior to leasing is not contrary to a BLM instruction memorandum, which was issued to guide the exercise of BLM's discretionary authority regarding whether to temporarily defer oil and gas leasing during periods when land use plans are being revised or amended.

Wyoming Outdoor Council, et al., 171 IBLA 153 (Mar. 29, 2007).

Oil and Gas Leases
Competitive Leases

A BLM decision dismissing a protest to a competitive oil and gas lease sale will be affirmed when the appellant fails to demonstrate with objective proof clear error of law or demonstrable error of fact in the decision and when the record shows that existing environmental documentation provided BLM with a hard look at the environmental consequences of the lease sale. In considering the potential impacts of an oil and gas lease sale, BLM may properly use "Documentation of Land Use Plan Conformance and NEPA Adequacy" worksheets to assess the adequacy of previous environmental review documents.

Colorado Environmental Coalition, et al., 171 IBLA 256 (May 9, 2007).

Oil and Gas Leases
Competitive Leases

When parcels nominated for inclusion in a competitive oil and gas lease sale encompass lands that were not included in a wilderness study area, BLM may administer those lands for other purposes, including oil and gas leasing, even though the lands were asserted to have wilderness characteristics in a citizens' group wilderness proposal and were included in an area proposed for wilderness designation in legislation introduced in Congress. BLM's determination that existing environmental documents adequately analyze the effects of a competitive oil and gas lease sale for such parcels will be affirmed where the appellants base their objection to the adequacy of those documents on purported "significant new circumstances or information" but fail to establish such circumstances or information.

Colorado Environmental Coalition, et al., 171 IBLA 256 (May 9, 2007).

Oil and Gas Leases
Competitive Leases

BLM may properly rely on existing land use documents and their associated environmental statements where there is no foreseeable likelihood of CBM development or where the impacts of CBM development do not differ significantly from the effects of oil and gas development already described in existing NEPA documents. Whether more NEPA analysis based on new information is required depends on the nature of the NEPA analysis already completed, and the nature of the information available at the time of the agency action. Where an appellant asserts a failure to perform NEPA review in the context of an "RMP level" document, this argument alone is insufficient to prove a violation of NEPA. Where recent Board and judicial precedent affirm that the question of whether additional environmental analysis is required in any given case depends on whether an appellant can show that existing NEPA documents failed to analyze the likely effects of the action at hand, and an appellant fails to show why arguments expressly considered and rejected in recent precedent remain viable, the Board properly rejects such arguments.

Biodiversity Conservation Alliance, Center for Native Ecosystems, Wyoming Wilderness Association, Clark Resource Council, 171 IBLA 313 (June 26, 2007).

Oil and Gas Leases
Discretion to Lease

This Board has no jurisdiction over decisions made by the Forest Service. However, when BLM adopts the FEIS of another agency in lieu of performing its own environmental analysis and relies on it as the basis for an exercise of its own decisionmaking authority, this Board properly may review that FEIS to determine whether BLM's decision is supported by the record, guided by the same principles ordinarily applicable to an FEIS prepared by BLM.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

Oil and Gas Leases
Discretion to Lease

BLM is required to consider the potential cumulative impacts of a proposed action with those of any other past, present, and reasonably foreseeable future actions. 40 C.F.R. § 1508.7. Where appellant has failed to explicitly identify any cumulative impact likely to result from the interaction of oil and gas exploration and development with other projects or activities that was not addressed in the EIS, there is no violation of NEPA.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

Oil and Gas Leases
Discretion to Lease

Where BLM issued a "Letter of Review and Acceptance" by which it adopted a Forest Service FEIS and ROD and the record demonstrates that BLM actively and extensively participated in its preparation as a cooperating agency, and had also prepared two earlier EIS's considering the impacts of oil and gas leasing for an area that included the Shoshone National Forest, the Board properly may look beyond the style and format of the adoption document to consider its substantive content and effect.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

Oil and Gas Leases
Discretion to Lease

Until a public record of decision is issued, an agency is prohibited from taking an action concerning a proposal which would either have an adverse environmental impact or limit the choice of reasonable alternatives. Although BLM's Letter of Review and Acceptance had not been issued when BLM decided to offer the parcels for leasing or when the lease sales were conducted, these actions did not constitute actions which would either have an adverse environmental impact or limit the choice of reasonable alternatives.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

Oil and Gas Leases
Discretion to Lease

An Information Notice has no legal consequences, except to give notice of existing requirements, and may be attached to a lease by the authorized officer at the time of lease issuance to convey certain operational, procedural or administrative requirements relative to lease management within the terms and conditions of the standard lease form. Information Notices do not provide a basis for denying lease operations. 43 C.F.R. § 3101.1-3.

Continental Land Resources, 162 IBLA 1 (June 16, 2004).

Oil and Gas Leases
Discretion to Lease

The use of an Information Notice to announce the exercise of the authorized officer's discretion to suspend the offering of a specific parcel while considering a protest or appeal against its inclusion in a Notice of Competitive Lease Sale under 43 C.F.R. § 3120.1-3 does not demonstrate error in a BLM decision to reject competitive lease bids.

Continental Land Resources, 162 IBLA 1 (June 16, 2004).

Oil and Gas Leases
Discretion to Lease

The Secretary of the Interior is vested by the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 *et seq.* (2000), *as amended*, with discretionary authority to lease or not lease Federal public land which is otherwise available for oil and gas leasing. The offer to lease is but a hope, or expectation, rather than a valid claim against the Government. Where lease parcels were erroneously included in a lease sale after BLM had determined that a protest should be sustained, and appellant's bids were rejected before they were accepted by the United States, they never matured beyond the hope or expectation that a lease might issue.

Continental Land Resources, 162 IBLA 1 (June 16, 2004).

Oil and Gas Leases
Discretion to Lease

An exercise of discretion must be supported by a rational and defensible basis which is set forth in the decision, or it will be found to be arbitrary and capricious. When BLM's decision to reject competitive lease bids is based on protests requesting further analysis of the impacts of leasing on a crucial big game winter range migration corridor and deferral of leasing until revision of the Pinedale Resource Management Plan is completed, and the Board's review of the record discloses adequate support for BLM's decision to defer leasing, the decision will be affirmed.

Continental Land Resources, 162 IBLA 1 (June 16, 2004).

Oil and Gas Leases
Discretion to Lease

When Congress enacted the Federal Onshore Oil and Gas Leasing Reform Act to amend statutory provisions pertaining to noncompetitive oil and gas leasing under 30 U.S.C. § 226(c), it did not fundamentally change the nature of the entitlement of the first qualified applicant for a noncompetitive oil and gas lease, which has long been recognized as subject to the discretionary authority of the Secretary under 30 U.S.C. § 226(a) to determine whether the land is to be leased or not.

Richard D. Sawyer, 162 IBLA 339 (Aug. 19, 2004).

Oil and Gas Leases
Discretion to Lease

The filing of a post-sale noncompetitive oil and gas lease offer which has not been accepted does not give the offeror any right to a lease, or generate a legal interest which reduces or restricts the discretion vested in the Secretary to issue leases for the lands involved.

Richard D. Sawyer, 162 IBLA 339 (Aug. 19, 2004).

Oil and Gas Leases
Discretion to Lease

A post-sale noncompetitive oil and gas lease offer that has not been accepted is properly rejected if the land is withdrawn from oil and gas leasing while the offer is pending.

Richard D. Sawyer, 162 IBLA 339 (Aug. 19, 2004).

Oil and Gas Leases
Discretion to Lease

The appropriate time for considering the potential impacts of oil and gas exploration and development is when BLM proposes to lease public lands for oil and gas purposes, because leasing without no-surface-occupancy stipulations constitutes an irreversible and irretrievable commitment to permit surface-disturbing activity, in some form and to some extent.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Oil and Gas Leases
Discretion to Lease

In considering the potential impacts of oil and gas exploration and development when BLM proposes to lease public lands for oil and gas purposes, BLM may properly use "Documentation of Land Use Plan Conformance and NEPA Adequacy" worksheets (DNAs) to assess the adequacy of previous environmental review documents. Although preparation of DNAs is a valid vehicle to determine whether previous NEPA documentation adequately considered the environmental effects of proposed oil and gas leasing, DNAs are not a replacement for EAs or EISs and cannot properly be used to supplement previous EAs or EISs or to address site-specific environmental effects not previously considered in them.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Oil and Gas Leases
Discretion to Lease

When BLM has denied a protest of the inclusion of parcels in an oil and gas lease sale, asserting that it has complied with the National Environmental Policy Act by preparing pre-leasing environmental review documents, but the pre-leasing documents contain only an outdated, brief review of environmental consequences, the BLM decision denying the protest will be reversed and the case remanded. However, where those pre-leasing documents adequately address the environmental consequences of issuing oil and gas leases both with and without special protective stipulations, BLM's decision denying the protest is properly affirmed.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Oil and Gas Leases
Discretion to Lease

Where the record in an appeal from the denial of a protest of an oil and gas lease sale shows that BLM excluded some parcels from the sale when it determined that leasing them might have impacts on species that are candidates for listing as sensitive, threatened, or endangered, it follows that BLM determined that the parcels that remained in the sale would not have such impacts. In the absence of a showing to the contrary by a protestant/appellant, BLM's determination that previous environmental review was adequate to determine any effects on such species will be affirmed on appeal.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Oil and Gas Leases
Discretion to Lease

Even though existing land use plans and their associated environmental statements may not provide a separate analysis of the effects of coalbed methane (CBM) development, BLM may properly rely on those documents in support of a decision to offer a parcel of Federal land for competitive oil and gas leasing where there is no foreseeable likelihood of CBM development or where the impacts of CBM development do not differ significantly from the effects of oil and gas development already

described in those documents.

Southern Utah Wilderness Alliance, 166 IBLA 270 (Aug. 16, 2005).

Oil and Gas Leases
Discretion to Lease

A BLM decision dismissing a protest to a competitive oil and gas lease sale is properly affirmed on appeal when the appellant fails to demonstrate with objective proof that BLM's decision was premised on a clear error of law or demonstrable error of fact, or that BLM's analysis failed to consider a substantial environmental question of material significance to the proposed action.

The Coalition of Concerned National Park Service Retirees, et al., 169 IBLA 366 (Aug. 22, 2006).

Oil and Gas Leases
Discretion to Lease

In considering the potential impacts of oil and gas development when BLM proposes to lease public lands for oil and gas purposes, BLM may properly use "Documentation of Land Use Plan Conformance and NEPA Adequacy" worksheets (DNAs) to assess the adequacy of previous environmental review documents. Where pre-leasing documents, including an EIS, adequately address the environmental consequences of issuing oil and gas leases both with and without special protective stipulations, BLM's decision denying the protest is properly affirmed.

The Coalition of Concerned National Park Service Retirees, et al., 169 IBLA 366 (Aug. 22, 2006).

Oil and Gas Leases
Discretion to Lease

BLM is not required to reinitiate consultation with the Fish and Wildlife Service pursuant to section 7 of the Endangered Species Act of 1973, *as amended*, 16 U.S.C. § 1536 (2000), in connection with its decision to offer lands for competitive oil and gas leasing where there is no new information disclosing that leasing and potential oil and gas development may affect listed species or critical habitat in a manner or to an extent not previously considered in previous consultations.

Forest Guardians, 170 IBLA 80 (Sept. 8, 2006).

Oil and Gas Leases
Discretion to Lease

BLM is not required to supplement an EIS prepared in connection with a land-use plan when it is deciding whether to offer lands for competitive oil and gas leasing, where it has taken a hard look at the environmental consequences of leasing and reasonable alternatives thereto in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2)(C) (2000), considering all relevant matters of environmental concern. BLM's decision not to supplement the EIS will be affirmed where the appellant fails to demonstrate, by reason of new information or circumstances, that leasing will affect the environment in a significant manner or to a significant extent not previously considered in the EIS.

Forest Guardians, 170 IBLA 80 (Sept. 8, 2006).

Oil and Gas Leases
Discretion to Lease

BLM is not required to initiate or reinitiate consultation with the U.S. Fish and Wildlife Service pursuant to section 7 of the Endangered Species Act of 1973, *as amended*, 16 U.S.C. § 1536 (2000), in connection with its decision to offer lands for competitive oil and gas leasing where there is no information disclosing that leasing and potential oil and gas development may affect listed species or critical habitat in a manner or to an extent not previously considered in previous consultations.

Forest Guardians, 170 IBLA 253 (Sept. 29, 2006).

Oil and Gas Leases
Discretion to Lease

Section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. § 4332(2)(C) (2000), requires consideration of potential environmental impacts of a proposed action in an environmental impact statement if that action is a "major Federal action significantly affecting the quality of the human environment." The appropriate time for considering the potential impacts of oil and gas exploration and development is when BLM proposes to lease public land for oil and gas purposes, because leasing without stipulations requiring no surface occupancy constitutes an irreversible and irretrievable commitment to permit surface-disturbing activity.

Center for Native Ecosystems, 170 IBLA 331 (Nov. 22, 2006).

Oil and Gas Leases
Discretion to Lease

In considering the potential impacts of oil and gas exploration and development when BLM proposes to lease public lands for oil and gas purposes, BLM may properly use "Documentation of Land Use Plan Conformance and NEPA Adequacy" worksheets to assess the adequacy of previous NEPA documents. Although BLM may use DNAs to determine whether new NEPA documentation is required, DNAs cannot properly be used to supplement previous EAs or EISs or to address site-specific environmental effects not previously considered in them. Information developed after the last NEPA analysis may be used to determine whether supplemental analysis is required, but it cannot be used as a substitute for a NEPA analysis. When BLM decides on the basis of a DNA not to supplement an existing EIS or EA, its decision must rise or fall on the contents of previously issued NEPA documents.

Center for Native Ecosystems, 170 IBLA 331 (Nov. 22, 2006).

Oil and Gas Leases
Discretion to Lease

A finding that impacts of issuing an oil and gas lease would not be significant due to the mitigative effects of a special status species stipulation must be based on NEPA analysis. The stipulation does not provide a basis for deferring an environmental analysis in the absence of an existing NEPA statement that includes an analysis of the mitigative effects of the stipulation.

Center for Native Ecosystems, 170 IBLA 331, 350 (Nov. 22, 2006).

Oil and Gas Leases
Discretion to Lease

When BLM coordinates an oil and gas lease sale with the State of Wyoming in accordance with applicable memoranda of understanding, there is no violation of section 202(c)(9) of the Federal Land Policy and Management Act of 1976, *as amended*, 43 U.S.C. § 1712(c)(9) (2000), as contended by appellants.

Wyoming Outdoor Council, et al., 171 IBLA 108 (Feb. 20, 2007).

Oil and Gas Leases
Discretion to Lease

BLM's decision to issue oil and gas leases subject to a timing limitation standard without also imposing the State of Wyoming's policies, plans, and guidelines does not amount to a failure to take an "action necessary to prevent unnecessary or undue degradation of the [public] lands" under section 302(b) of the Federal Land Policy and Management Act of 1976, *as amended*, 43 U.S.C. § 1732(b) (2000).

Wyoming Outdoor Council, et al., 171 IBLA 108 (Feb. 20, 2007).

Oil and Gas Leases
Discretion to Lease

BLM's decision to issue oil and gas leases without an evaluation of best management practices prior to leasing is not contrary to a BLM instruction memorandum, which was issued to guide the exercise of BLM's discretionary authority regarding whether to temporarily defer oil and gas leasing during periods when land use plans are being revised or amended.

Wyoming Outdoor Council, et al., 171 IBLA 153 (Mar. 29, 2007).

Oil and Gas Leases
Discretion to Lease

BLM is not required to initiate consultation with the U.S. Fish and Wildlife Service pursuant to section 7 of the Endangered Species Act of 1973, *as amended*, 16 U.S.C. § 1536 (2000), in connection with its decision to approve oil and gas exploration and development where there is no information disclosing that such activity may affect listed species or critical habitat.

Biodiversity Conservation Alliance et al., 171 IBLA 218 (Apr. 19, 2007).

Oil and Gas Leases
Discretion to Lease

BLM may properly rely on existing land use documents and their associated environmental statements where there is no foreseeable likelihood of CBM development or where the impacts of CBM development do not differ significantly from the effects of oil and gas development already described in existing NEPA documents. Whether more NEPA analysis based on new information is required depends on the nature of the NEPA analysis already completed, and the nature of the information available at the time of the agency action. Where an appellant asserts a failure to perform NEPA review in the context of an "RMP level" document, this argument alone is insufficient to prove a violation of NEPA. Where recent Board and judicial precedent affirm that the question of whether additional environmental analysis is required in any given case depends on whether an appellant can show that existing NEPA documents failed to analyze the likely effects of the action at hand, and an appellant fails to show why arguments expressly considered and rejected in recent precedent remain viable, the Board properly rejects such arguments.

Biodiversity Conservation Alliance, Center for Native Ecosystems, Wyoming Wilderness Association, Clark Resource Council, 171 IBLA 313 (June 26, 2007).

Oil and Gas Leases
Drainage

For purposes of assessing compensatory royalty, "common ownership" occurs when a lessee owns both the lease being drained and owns or participates in production from the offending well. A lessee which shares an ownership interest in an offended Federal lease with an owner or operator of an offending well does not become a "common lessee" solely by virtue of that shared interest.

Burlington Resources Oil & Gas Company, 153 IBLA 45 (July 20, 2000).

Oil and Gas Leases
Drainage

Where no common lessee is involved in a drainage case, BLM must prove that a lessee actually knew or a reasonably prudent operator would have known that drainage was occurring or expected to occur. BLM must show the lessee had notice, whether "actual" or "constructive," that is sufficient to convey information about when drainage is occurring or expected to occur from the allegedly drained area. Proof of notice that compels further evaluation of data is, by itself, not sufficient to demonstrate what the prudent operator should have known or when it should have known it.

Burlington Resources Oil & Gas Company, 153 IBLA 45 (July 20, 2000).

Oil and Gas Leases
Drainage

A lessee's obligation to drill a protective well to protect against drainage is triggered at the time it should have known that drainage was occurring or was imminent, and compensatory royalties may be assessed beginning a reasonable time after that date of first knowledge. BLM cannot show that a lessee was compelled to drill a protective well if the record does not demonstrate that the lessee knew or should have known from data available at the time of the imputed knowledge that drainage from the allegedly drained area was occurring or was imminent.

Burlington Resources Oil & Gas Company, 153 IBLA 45 (July 20, 2000).

Oil and Gas Leases
Drainage

For purposes of assessing compensatory royalty, "common ownership" occurs when a Federal lessee owns or participates in production from the well draining the Federal lease. Without proof of such facts, a BLM decision finding the entity to be a "common lessee" will not be affirmed. With evidence that a lessee participated in the offending well while owning an interest in the offended lease, a BLM decision finding the entity to be a "common lessee" may be affirmed even where the lessee later disposed of any interest in the offending well.

Great Western Drilling Co., Davoil, Inc., 156 IBLA 42 (Nov. 28, 2001).

Oil and Gas Leases
Drainage

Every lessee of record bears the obligation to protect the lease from drainage and the United States as lessor has the right to enforce that obligation by requiring the lessee either to drill a well or pay compensatory royalty.

Great Western Drilling Co., Davoil, Inc., 156 IBLA 42 (Nov. 28, 2001).

Oil and Gas Leases
Drainage

A lessee's claim, standing alone, that a payout time of seven to nine years is unacceptable is not sufficient to constitute a contention as to whether, based on facts in a particular case, a protective well would have been economic to drill.

Great Western Drilling Co., Davoil, Inc., 156 IBLA 42 (Nov. 28, 2001).

Oil and Gas Leases
Drilling

Where the record substantiates that a site has a potential to yield information significant to prehistory, the Board will not invalidate a cultural resources stipulation attached to an approval of an Application for Permit to Drill, without finding that the record controverts the agency's and State Historic Preservation Officer's finding that they had reason to believe in the potential eligibility of the site.

Mack Energy Corporation, 153 IBLA 277 (Sept. 22, 2000).

Oil and Gas Leases
Drilling

The burden of proof is on the appellant to present evidence to support its contentions regarding costs of a project, when it presents arguments regarding costs to the Board. It is not unreasonable to impose testing and survey stipulations on an approval of an Application for Permit to Drill. In the absence of standards to determine whether the costs of a cultural resources stipulation for testing and survey are excessive, evidence to support the costs, evidence describing the value or cost to the appellant of the drilling project, or findings from the testing and surveying required by the stipulation, the Board has no basis upon which to make findings regarding the nature of the alleged costs or whether they exceed reasonableness.

Mack Energy Corporation, 153 IBLA 277 (Sept. 22, 2000).

Oil and Gas Leases
Drilling

Separate decisions approving a coal bed methane development project and a plan of development on the basis of environmental assessments and findings of no significant impact will be set aside when the record fails to show that BLM took a hard look at potential water quality issues from the production of coal bed methane.

Wyoming Outdoor Council, et al., 158 IBLA 155 (Jan. 9, 2003).

Oil and Gas Leases
Drilling

An environmental analysis of the impacts of a proposed coal bed methane project properly considers the potential cumulative impacts of the project together with other past, present, and reasonably foreseeable future actions which may interact to produce cumulatively significant impacts. It is error to fail to analyze the impacts of a reasonably foreseeable coal bed methane development project in the same watershed as the proposed project.

Wyoming Outdoor Council, et al., 158 IBLA 155 (Jan. 9, 2003).

Oil and Gas Leases
Drilling

A BLM decision approving a natural gas development project which includes a buffer zone barring wells within ½-mile of active raptor nests, subject to modification of the buffer zone based on a site-specific analysis at the time an APD is filed, will be affirmed where it has a rational basis in the record and the appellant fails to demonstrate, by a preponderance of the evidence, that BLM did not give due consideration to all relevant factors.

Fred E. Payne, Randy D. Leader, 159 IBLA 69 (May 20, 2003).

Oil and Gas Leases
Drilling

Where an analysis of a resource management plan (RMP) indicates that the location of a proposed well is within an area open to oil and gas leasing without special stipulations, and the RMP identifies an anticipated range of annual well approvals, the Board will not find that the projected number is a mandatory maximum which is violated by approval of a particular well.

Southern Utah Wilderness Alliance, 159 IBLA 220 (June 16, 2003).

Oil and Gas Leases
Drilling

When making a determination whether a proposed action will have a significant effect on the human environment, the cumulative effect of the proposed action and other actions not connected with the proposed action must be taken into consideration. A cumulative impact is one which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions and can result from individually minor but collectively significant actions taking place over time. The Board may affirm BLM's conclusion that the possible cumulative impact of a future action need not be considered significant when the reasonably foreseeable future action is speculative.

Southern Utah Wilderness Alliance, 159 IBLA 220 (June 16, 2003).

Oil and Gas Leases
Drilling

Connected actions are closely related and should be discussed in the same environmental impact statement if they include those which: (i) automatically trigger other actions which may require an EIS; (ii) cannot or will not proceed unless other actions are undertaken previously or simultaneously; or (iii) are interdependent parts of a larger action and depend on the larger action for their justification.

Southern Utah Wilderness Alliance, 159 IBLA 220 (June 16, 2003).

Oil and Gas Leases
Drilling

Where BLM prepares an environmental assessment regarding the environmental impact of a proposed well to be drilled on a Federal oil and gas lease in an area inventoried for wilderness suitability but not designated as a wilderness study area, BLM is not required to re-inventory the land for wilderness characteristics. The Federal Land Policy and Management Act, 43 U.S.C. § 1711(a) (2000), not the National Environmental Policy Act, controls the Secretary's wilderness inventory authority, and the Board has no supervisory authority over BLM to compel a reinventory.

Southern Utah Wilderness Alliance, 159 IBLA 220 (June 16, 2003).

Oil and Gas Leases
Drilling

A well capable of production in paying quantities generally requires a well which is actually in a condition to produce at the time in question. When production of oil and gas on a lease extended by production ceases because the well is producing water and is no longer capable of producing oil and gas in paying quantities, a finding that the lease terminated by cessation of production will be affirmed when the lessee failed to initiate reworking or drilling operations within 60 days thereafter since the lessee is not entitled to notice and a further reasonable period of not less than 60 days to produce the well.

Coronado Oil Company, 164 IBLA 107 (Nov. 30, 2004).

Oil and Gas Leases
Drilling

A decision to approve an APD will be affirmed where the record shows that, in the EA and the RMP FEIS to which the EA was tiered, BLM considered the potential impacts of oil and gas drilling on a wild horse herd, and the surface stipulations for leases and COAs for APDs provide for mitigation of site specific impacts.

Colorado Environmental Coalition, The Wilderness Society, Western Colorado Congress, 169 IBLA 137 (May 31, 2006).

Oil and Gas Leases
Drilling

An Interim Drilling Policy that establishes numerous conditions and criteria designed to ensure that exploratory drilling activity does not exceed the limitations on interim actions specified by 40 C.F.R. § 1506.1 is not itself independently subject to review and analysis under NEPA, so long as when and to the extent it is incorporated into a proposed agency action, full NEPA review of the effects of that action is undertaken.

National Wildlife Federation, Biodiversity Conservation Alliance, Wyoming Outdoor Council, Wyoming Wildlife Federation, 169 IBLA 146 (June 13, 2006).

Oil and Gas Leases
Drilling

When establishing and locating a drilling island ("consistent with present directional drilling capabilities") under the Secretarial Order's enclave policy, BLM must consider whether reasonably available direction drilling technologies and techniques can reach the intended target, but it need not consider drilling economics or the economic feasibility of directionally drilling a particular well from a specific location in the Potash Area.

IMC Kalium Carlsbad, Inc., Potash Association of New Mexico; Yates Petroleum Corporation; Pogo Producing Company; Bureau of Land Management, 170 IBLA 25 (Sept. 7, 2006).

Oil and Gas Leases
Drilling

Applications for permits to drill may be denied pursuant to the oil and gas lease stipulations of the Secretarial Order if BLM determines that contamination from oil and gas drilling will occur, that such contamination cannot be prevented, and that this contamination will interfere with potash mining, result in undue potash waste, or constitute a hazard to potash mining.

IMC Kalium Carlsbad, Inc., Potash Association of New Mexico; Yates Petroleum Corporation; Pogo Producing Company; Bureau of Land Management, 170 IBLA 25 (Sept. 7, 2006).

Oil and Gas Leases
Expiration

Where the application for assignment of an oil and gas lease is pending before BLM, the assignor is responsible for the performance of all obligations under the lease until the assignment has been approved. Where no activity on the lease has occurred at the conclusion of the primary term, which expires during the pendency of the application for assignment, the requested assignment is properly disapproved.

RMOC Holdings LLC, 152 IBLA 149 (Apr. 21, 2000).

Oil and Gas Leases
Expiration

Estoppel will not lie when the legal consequences of an action are clearly set forth in statute and/or regulation, and when the application of estoppel would afford a right not authorized by law. Thus, there is no requirement in law or regulation compelling BLM authorities to give prior notice to a potential lessee that the lease it seeks is about to expire at the conclusion of its primary term and that a further extension of the lease term may be obtained only if a certain course is followed by the current lessee.

RMOC Holdings LLC, 152 IBLA 149 (Apr. 21, 2000).

Oil and Gas Leases
Expiration

An oil and gas lease expires upon the running of its primary term unless eligible for an extension as provided by 43 C.F.R. Subpart 3107. While a request for suspension of a lease may be retroactively approved after the lease has expired, no suspension application may be approved where the application itself is not filed until after the expiration date of the lease.

Harvey E. Yates Co., et al., 156 IBLA 100 (Dec. 19, 2001).

Oil and Gas Leases
Expiration

BLM delay in conducting review of an application for permit to drill does not constitute a *de facto* suspension order under section 39 of the Mineral Leasing Act, 30 U.S.C. § 209 (1994), or excuse a lessee from submitting an application for a retroactive lease suspension on a date before the lease has expired.

Harvey E. Yates Co., et al., 156 IBLA 100 (Dec. 19, 2001).

Oil and Gas Leases
Expiration

Where the lessee fails to file an application for permit to drill, a request that a lease be included in a unit held by production, or a timely application for lease extension, the lease expires and may not be retroactively suspended.

Harvey E. Yates Co., et al., 156 IBLA 100 (Dec. 19, 2001).

Oil and Gas Leases
Expiration

BLM properly holds that noncompetitive oil and gas leases expired by operation of law upon the conclusion of the two-year extension afforded the leases upon the termination of the unit to which they had been committed where there was no production (paying or otherwise) on the leases on the anniversary date and where the lessee had been given 60 days' notice to return wells capable of production on the leases to production but failed to do so.

Oronegro, Inc., 156 IBLA 170 (Jan. 22, 2002).

Oil and Gas Leases
Expiration

When production in paying quantities ceases on an oil and gas lease which has been continued beyond its initial term by such production pursuant to section 8 of the Outer Continental Shelf Lands Act, *as amended*, 43 U.S.C. § 1337(b)(2000), the lease expires by operation of law unless production in paying quantities is resumed, drilling or well reworking is undertaken, or a suspension of operations or production is approved by the Department within 180 days.

Kerr-McGee Oil & Gas Corp., 172 IBLA 195 (Aug. 29, 2007).

Oil and Gas Leases
Expiration

When operations cease and extraordinary events occur or force majeure conditions exist which adversely affect or could adversely affect an Outer Continental Shelf oil and gas lessee's ability to resume operations within 180 days of ceasing operations on that lease to avoid lease termination by operation of law, the lessee or operator must apply for and secure from the Department a suspension of operations or production within that 180-day period.

Kerr-McGee Oil & Gas Corp., 172 IBLA 195 (Aug. 29, 2007).

Oil and Gas Leases
Expiration

"Production in paying quantities," for the purpose of continuing a lease beyond its initial term under section 8 of the Outer Continental Shelf Lands Act, *as amended*, 43 U.S.C. § 1337(b)(2000), means sufficient production to yield a net profit when revenue from the lease is reduced by normal expenses, including royalties and direct lease operating costs.

Kerr-McGee Oil & Gas Corp., 172 IBLA 195 (Aug. 29, 2007).

Oil and Gas Leases
Extensions

Estoppel will not lie when the legal consequences of an action are clearly set forth in statute and/or regulation, and when the application of estoppel would afford a right not authorized by law. Thus, there is no requirement in law or regulation compelling BLM authorities to give prior notice to a potential lessee that the lease it seeks is about to expire at the conclusion of its primary term and that a further extension of the lease term may be obtained only if a certain course is followed by the current lessee.

RMOC Holdings LLC, 152 IBLA 149 (Apr. 21, 2000).

Oil and Gas Leases
Extensions

Upon the termination of a communitization agreement to which a segregated oil and gas lease was committed, BLM properly concluded that the lease continued only for 2 years and so long thereafter as oil or gas was produced in paying quantities from or attributable to the leasehold, pursuant to the Mineral Leasing Act, *as amended*, 30 U.S.C. § 226(m) (1994), regardless of whether the lease was in an indefinite extended term, being held by continuing production on the base lands at the time of termination.

Celsius Energy Company (On Reconsideration), 154 IBLA 193 (Mar. 10, 2001).

Oil and Gas Leases
Extensions

No oil and gas lease in its extended term by reason of production on which there is a well capable of producing oil or gas in paying quantities shall expire unless the lessee is allowed a reasonable time of not less than 60 days after receipt of notice to place the well in a producing status. This notice may be applied to a well that was found by BLM to be capable of production in paying quantities upon completion but that was shut in awaiting a market with the consent of BLM.

Coronado Oil Company, 164 IBLA 309 (Jan. 31, 2005).

Oil and Gas Leases
Extensions

In order to be considered capable of production in paying quantities, a well must be physically capable of producing a quantity of oil and/or gas sufficient to yield a profit after the payment of all the day-to-day costs incurred in operating the well and marketing the oil or gas. Actual production is not required if production can be obtained, but has not occurred because of a lack of pipelines, roads, or markets for the gas. A BLM decision finding wells not capable of production in paying quantities will be reversed where, although the gas from the wells has never been marketed, unrefuted evidence shows that the wells are capable of producing sufficient gas to yield the requisite profit.

Coronado Oil Company, 164 IBLA 309 (Jan. 31, 2005).

Oil and Gas Leases
Extensions

A BLM decision rescinding its approval to shut in wells capable of production in paying quantities until a market is found and granting the lessee 60 days to place the wells into production will be affirmed where over 15 years have passed since the approval was granted and the lessee has not presented any evidence documenting past or current attempts to obtain a market for the CO_2 gas from the wells or that potential future markets for the CO_2 are more than speculative.

Coronado Oil Company, 164 IBLA 309 (Jan. 31, 2005).

Oil and Gas Leases
Extensions

When the record provided by BLM does not establish when a well produced oil, the value of that production, or the associated costs and expenses thereof, because that information was not submitted by the lessee to BLM or MMS as required by applicable regulations, and the information submitted by appellant on appeal is not supported by actual production, operations, or metering data it has or should have in its possession, appellant's motion for a hearing is properly denied, as there is no material issue of fact that cannot be resolved on the record before us.

Two Bay Petroleum, Inc., 166 IBLA 329 (Sept. 2, 2005).

Oil and Gas Leases
Extensions

When none of the circumstances set forth in the Mineral Leasing Act, 30 U.S.C. § 226(i) (2000), that could save a lease in its extended term from termination because of cessation of production materializes in the 60 days following cessation of production, the lease terminates by operation of law effective as of the date production ceased, not 60 days after appellant receives the notice BLM has chosen to give lessees under 43 C.F.R. § 3107.2-2.

Two Bay Petroleum, Inc., 166 IBLA 329 (Sept. 2, 2005).

Oil and Gas Leases
Extensions

When a company alleging a mineral interest subject to a unit agreement requests that BLM terminate the unit based upon the assumption that there had been, in the past, long periods of non-production from the unit, termination is properly denied when (1) the unit agreement does not contain any provision for automatic termination, (2) unitized substances were produced in paying quantities from the unit following its creation, (3) the unit agreement provides that it shall remain in effect so long thereafter as diligent operations are in progress for the restoration of production or discovery of new production, and (4) the unit operator is engaged in such operations.

Merrion Oil & Gas Corp., 169 IBLA 47 (May 10, 2006).

Oil and Gas Leases
Federal Onshore Oil and Gas Leasing Reform Act of 1987

When Congress enacted the Federal Onshore Oil and Gas Leasing Reform Act to amend statutory provisions pertaining to noncompetitive oil and gas leasing under 30 U.S.C. § 226(c), it did not fundamentally change the nature of the entitlement of the first qualified applicant for a noncompetitive oil and gas lease, which has long been recognized as subject to the discretionary authority of the Secretary under 30 U.S.C. § 226(a) to determine whether the land is to be leased or not.

Richard D. Sawyer, 162 IBLA 339 (Aug. 19, 2004).

Oil and Gas Leases
Federal Onshore Oil and Gas Leasing Reform Act of 1987

The filing of a post-sale noncompetitive oil and gas lease offer which has not been accepted does not give the offeror any right to a lease, or generate a legal interest which reduces or restricts the discretion vested in the Secretary to issue leases for the lands involved.

Richard D. Sawyer, 162 IBLA 339 (Aug. 19, 2004).

Oil and Gas Leases
Federal Onshore Oil and Gas Leasing Reform Act of 1987

A post-sale noncompetitive oil and gas lease offer that has not been accepted is properly rejected if the land is withdrawn from oil and gas leasing while the offer is pending.

Richard D. Sawyer, 162 IBLA 339 (Aug. 19, 2004).

Oil and Gas Leases
Federal Onshore Oil and Gas Leasing Reform Act of 1987

Under section 5102(g) of the Federal Onshore Oil and Gas Leasing Reform Act, 30 U.S.C. § 226(g)(2000), the Secretary shall not issue a lease or leases to an individual identified as vice president of a corporation on state corporation records who exercises control over drilling and reclamation and signs an application for permit to drill as vice president subsequent to the involuntary dissolution of that corporation, and the dissolved corporation thereafter fails or refuses to comply with long-standing plugging, abandonment, and reclamation requirements, regardless of whether he seeks the lease individually or on behalf of an unrelated entity. The bar to holding a lease remains in effect until the reclamation requirements are complied with.

Paradise Energy, LLC & Cimarron Operating Co., LLC, 163 IBLA 222 (Oct. 21, 2004).

Oil and Gas Leases
First Qualified Applicant

When Congress enacted the Federal Onshore Oil and Gas Leasing Reform Act to amend statutory provisions pertaining to noncompetitive oil and gas leasing under 30 U.S.C. § 226(c), it did not fundamentally change the nature of the entitlement of the first qualified applicant for a noncompetitive oil and gas lease, which has long been recognized as subject to the discretionary authority of the Secretary under 30 U.S.C. § 226(a) to determine whether the land is to be leased or not.

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Richard D. Sawyer, 162 IBLA 339 (Aug. 19, 2004).

Oil and Gas Leases
Indians
Tribal Lands

"Reasonable value" for the purpose of calculating royalties due to the United States is determined by the highest price paid for the major portion of like quality products produced or sold in arm's-length transactions from the same field or area or the gross proceeds actually received in sales by the lessee, whichever is higher. Nonarm's-length transactions may not be included in base data for major portion analysis.

Burlington Resources Oil and Gas Co., 151 IBLA 144 (Nov. 30, 1999).

Oil and Gas Leases
Indians
Tribal Lands

"Reasonable value" for the purpose of calculating royalties due to the United States is determined by the highest price paid for the major portion of like quality products produced or sold in arm's-length transactions from the same field or area or the gross proceeds actually received in sales by the lessee, whichever is higher. Nonarm's-length transactions may not be included in the database used to establish the median value against which gross proceeds received by appellant in arm's-length transactions are compared for major portion analysis. Where all sales, nonarm's-length and arm's-length, are combined to establish the data from which the median value is determined, that value may not establish the baseline majority price for comparison with appellant's arm's-length sales in major portion analysis computations.

Phillips Petroleum Co., 152 IBLA 109 (Mar. 31, 2000).

Oil and Gas Leases
Lands Subject to

Land included within an outstanding oil and gas lease, whether void, voidable, or valid, is not available for leasing, and an application for such land must be rejected.

Enron Oil and Gas Co., 152 IBLA 153 (Apr. 24, 2000).

Oil and Gas Leases
Lands Subject To

When Congress enacted the Federal Onshore Oil and Gas Leasing Reform Act to amend statutory provisions pertaining to noncompetitive oil and gas leasing under 30 U.S.C. § 226(c), it did not fundamentally change the nature of the entitlement of the first qualified applicant for a noncompetitive oil and gas lease, which has long been recognized as subject to the discretionary authority of the Secretary under 30 U.S.C. § 226(a) to determine whether the land is to be leased or not.

Richard D. Sawyer, 162 IBLA 339 (Aug. 19, 2004).

Oil and Gas Leases
Lands Subject To

The filing of a post-sale noncompetitive oil and gas lease offer which has not been accepted does not give the offeror any right to a lease, or generate a legal interest which reduces or restricts the discretion vested in the Secretary to issue leases for the lands involved.

Richard D. Sawyer, 162 IBLA 339 (Aug. 19, 2004).

Oil and Gas Leases
Lands Subject To

A post-sale noncompetitive oil and gas lease offer that has not been accepted is properly rejected if the land is withdrawn from oil and gas leasing while the offer is pending.

Richard D. Sawyer, 162 IBLA 339 (Aug. 19, 2004).

Oil and Gas Leases
Noncompetitive Leases

BLM properly holds that noncompetitive oil and gas leases expired by operation of law upon the conclusion of the two-year extension afforded the leases upon the termination of the unit to which they had been committed where there was no production (paying or otherwise) on the leases on the anniversary date and where the lessee

had been given 60 days' notice to return wells capable of production on the leases to production but failed to do so.

Oronegro, Inc., 156 IBLA 170 (Jan. 22, 2002).

Oil and Gas Leases
Noncompetitive Leases

A noncompetitive oil and gas lease in its extended term by reason of production is properly deemed terminated by operation of law upon the cessation of production if the lessee does not initiate reworking or drilling operations within 60 days of the cessation of production and fails to establish that the lease contains a well capable of production in paying quantities.

International Metals & Petroleum Corp., 158 IBLA 15 (Dec. 3, 2002).

Oil and Gas Leases
Noncompetitive Leases

A Federal oil and gas lease in its extended term by reason of production is properly deemed terminated by operation of law upon cessation of production if the lessee does not initiate reworking or drilling operations within 60 days of the cessation of production and fails to establish that the lease contains a well capable of production in paying quantities.

Stove Creek Oil Inc., 162 IBLA 97 (July 1, 2004).

Oil and Gas Leases
Noncompetitive Leases

When Congress enacted the Federal Onshore Oil and Gas Leasing Reform Act to amend statutory provisions pertaining to noncompetitive oil and gas leasing under 30 U.S.C. § 226(c), it did not fundamentally change the nature of the entitlement of the first qualified applicant for a noncompetitive oil and gas lease, which has long been recognized as subject to the discretionary authority of the Secretary under 30 U.S.C. § 226(a) to determine whether the land is to be leased or not.

Richard D. Sawyer, 162 IBLA 339 (Aug. 19, 2004).

Oil and Gas Leases
Noncompetitive Leases

The filing of a post-sale noncompetitive oil and gas lease offer which has not been accepted does not give the offeror any right to a lease, or generate a legal interest which reduces or restricts the discretion vested in the Secretary to issue leases for the lands involved.

Richard D. Sawyer, 162 IBLA 339 (Aug. 19, 2004).

Oil and Gas Leases
Noncompetitive Leases

A post-sale noncompetitive oil and gas lease offer that has not been accepted is properly rejected if the land is withdrawn from oil and gas leasing while the offer is pending.

Richard D. Sawyer, 162 IBLA 339 (Aug. 19, 2004).

Oil and Gas Leases
Noncompetitive Leases

Under section 5102(g) of the Federal Onshore Oil and Gas Leasing Reform Act, 30 U.S.C. § 226(g)(2000), the Secretary shall not issue a lease or leases to an individual identified as vice president of a corporation on state corporation records who exercises control over drilling and reclamation and signs an application for permit to drill as vice president subsequent to the involuntary dissolution of that corporation, and the dissolved corporation thereafter fails or refuses to comply with long-standing plugging, abandonment, and reclamation requirements, regardless of whether he seeks the lease individually or on behalf of an unrelated entity. The bar to holding a lease remains in effect until the reclamation requirements are complied with.

Paradise Energy, LLC & Cimarron Operating Co., LLC,, 163 IBLA 222 (Oct. 21, 2004).

Oil and Gas Leases
Offers to Lease

An Information Notice has no legal consequences, except to give notice of existing requirements, and may be attached to a lease by the authorized officer at the time of lease issuance to convey certain operational, procedural or administrative requirements relative to lease management within the terms and conditions of the standard lease form. Information Notices do not provide a basis for denying lease operations. 43 C.F.R. § 3101.1-3.

Continental Land Resources, 162 IBLA 1 (June 16, 2004).

Oil and Gas Leases
Offers to Lease

The use of an Information Notice to announce the exercise of the authorized officer's discretion to suspend the offering of a specific parcel while considering a protest or appeal against its inclusion in a Notice of Competitive Lease Sale under 43 C.F.R. § 3120.1-3 does not demonstrate error in a BLM decision to reject competitive lease bids.

Continental Land Resources, 162 IBLA 1 (June 16, 2004).

Oil and Gas Leases
Offers to Lease

The Secretary of the Interior is vested by the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 *et seq.* (2000), *as amended*, with discretionary authority to lease or not lease Federal public land which is otherwise available for oil and gas leasing. The offer to lease is but a hope, or expectation, rather than a valid claim against the Government. Where lease parcels were erroneously included in a lease sale after BLM had determined that a protest should be sustained, and appellant's bids were rejected before they were accepted by the United States, they never matured beyond the hope or expectation that a lease might issue.

Continental Land Resources, 162 IBLA 1 (June 16, 2004).

Oil and Gas Leases
Offers to Lease

An exercise of discretion must be supported by a rational and defensible basis which is set forth in the decision, or it will be found to be arbitrary and capricious. When BLM's decision to reject competitive lease bids is based on protests requesting further analysis of the impacts of leasing on a crucial big game winter range migration corridor and deferral of leasing until revision of the Pinedale Resource Management Plan is completed, and the Board's review of the record discloses adequate support for BLM's decision to defer leasing, the decision will be affirmed.

Continental Land Resources, 162 IBLA 1 (June 16, 2004).

Oil and Gas Leases
Offers to Lease

When Congress enacted the Federal Onshore Oil and Gas Leasing Reform Act to amend statutory provisions pertaining to noncompetitive oil and gas leasing under 30 U.S.C. § 226(c), it did not fundamentally change the nature of the entitlement of the first qualified applicant for a noncompetitive oil and gas lease, which has long been recognized as subject to the discretionary authority of the Secretary under 30 U.S.C. § 226(a) to determine whether the land is to be leased or not.

Richard D. Sawyer, 162 IBLA 339 (Aug. 19, 2004).

Oil and Gas Leases
Offers to Lease

The filing of a post-sale noncompetitive oil and gas lease offer which has not been accepted does not give the offeror any right to a lease, or generate a legal interest which reduces or restricts the discretion vested in the Secretary to issue leases for the lands involved.

Richard D. Sawyer, 162 IBLA 339 (Aug. 19, 2004).

Oil and Gas Leases
Offers to Lease

A post-sale noncompetitive oil and gas lease offer that has not been accepted is properly rejected if the land is withdrawn from oil and gas leasing while the offer is pending.

Richard D. Sawyer, 162 IBLA 339 (Aug. 19, 2004).

Oil and Gas Leases
Offers to Lease

A BLM decision rejecting a noncompetitive oil and gas lease offer on the basis that the offeror failed to comply with the requirement of 43 C.F.R. § 3102.4(a) that the offer be "signed in ink" by the potential lessee or anyone authorized to sign on his behalf, because the offer form was not holographically (manually) signed by the offeror or his representative, will be reversed where the regulation was satisfied by placing a rubber-stamp facsimile signature of an authorized agent of the offeror on the form.

American Energy Independence Royalty, LLC, 165 IBLA 255 (Apr. 25, 2005).

Oil and Gas Leases
Offshore Lease Bond

It is within the authority of the Department to interpret its own regulations. An MMS regulatory change increasing the general bonding requirement for Outer Continental Shelf producers to $500,000 will be upheld when the record shows the regulatory change was duly promulgated and the agency provided in the decision record a reasoned analysis for the change and its application to the facts of appellant's case.

Pacific Operators Offshore, Inc., 154 IBLA 100 (Dec. 20, 2000).

Oil and Gas
Pipelines
Rights-of-Way

A BLM appraisal of the fair market rental value of a right-of-way for a petroleum byproducts removal plant site will be affirmed where the appraisal was based on a market survey of comparable rentals and the right-of-way holder has neither demonstrated error in that methodology nor shown that the resulting rental charges are excessive.

Wesfrac, Inc., 153 IBLA 164 (Aug. 22, 2000).

Oil and Gas
Pipelines
Rights-of-Way

Letter Decisions determining rental for a pipeline right-of-way issued pursuant to sec. 28 of the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 185 (2000), based upon an appraisal of fair market rental value, will be set aside and remanded where the administrative record does not adequately support the appraisal method and

result.

Alyeska Pipeline Service Company, 167 IBLA 112 (Oct. 13, 2005).

Oil and Gas Leases
Pipelines
Rights-of-Way

Letter Decisions based upon an appraisal prepared by an outside contractor jointly for BLM and the State of Alaska for the Trans-Alaska Pipeline System will be set aside and remanded when the outside contractor accepted a special instruction from BLM and the State dictating that rental be calculated using an "encumbrance of rights" factor of 100 percent, and the administrative record does not provide a rational basis for the special instruction.

Alyeska Pipeline Service Company, 167 IBLA 112 (Oct. 13, 2005).

Oil and Gas Leases
Production

43 C.F.R. § 3162.7-3 requires that all gas production be measured on the lease, with volumes subject to certain adjustments. Off-lease measurement or commingling with production from other sources prior to measurement requires approval by the authorized officer.

Byron Oil Industries, Inc., 161 IBLA 1 (Feb. 23, 2004).

Oil and Gas Leases
Production

An amended version of a regulation or a Notice to Lessees may be applied to a pending matter if it would benefit the affected party and there are no public interests or third party rights which would be adversely affected. When a variance is granted regarding the method of measuring gas volume, which variance is necessarily predicated on a finding that the method met the regulatory standard, approval may be made retroactive when it would not violate the public interest or third party rights.

Conoco, Inc., 164 IBLA 237 (Jan. 6, 2005).

Oil and Gas Leases
Production

A noncompetitive oil and gas lease has a primary term of 10 years, and shall continue so long after its primary term as oil or gas is produced in paying quantities. 30 U.S.C. § 226(e) (2000). When production ceases on an oil and gas lease which is in an extended term by reason of production, the lease will terminate unless (1) within 60 days after cessation of production reworking or drilling operations are begun on the lease and thereafter conducted with reasonable diligence during the period of nonproduction, or so long as oil or gas is produced in paying quantities as a result of such operations; (2) an order or consent of the Secretary suspending operations or production on the lease has been requested and issued; or (3) the lease contains a well capable of producing oil or gas in paying quantities and the lessee places the well on a producing status within a reasonable time of not less than 60 days after notice to do so and thereafter continues production unless and until the Secretary allows production to be discontinued.

Two Bay Petroleum, Inc., 166 IBLA 329 (Sept. 2, 2005).

Oil and Gas Leases
Production

When the record provided by BLM does not establish when a well produced oil, the value of that production, or the associated costs and expenses thereof, because that information was not submitted by the lessee to BLM or MMS as required by applicable regulations, and the information submitted by appellant on appeal is not supported by actual production, operations, or metering data it has or should have in its possession, appellant's motion for a hearing is properly denied, as there is no material issue of fact that cannot be resolved on the record before us.

Two Bay Petroleum, Inc., 166 IBLA 329 (Sept. 2, 2005).

Oil and Gas Leases
Production

When none of the circumstances set forth in the Mineral Leasing Act, 30 U.S.C. § 226(i) (2000), that could save a lease in its extended term from termination because of cessation of production materializes in the 60 days following cessation of production, the lease terminates by operation of law effective as of the date production ceased, not 60 days after appellant receives the notice BLM has chosen to give lessees under 43 C.F.R. § 3107.2-2.

Two Bay Petroleum, Inc., 166 IBLA 329 (Sept. 2, 2005).

Oil and Gas Leases
Production

To determine whether a Development Operations Coordination Document for a new or modified facility operating on a Federal offshore oil and gas lease is consistent with offshore regulations implementing the Clean Air Act, MMS was required, for a particular pollutant, to make a specific determination regarding projected emissions of that pollutant, as defined in 30 C.F.R. § 250.204(b)(14), from the facility. If projected emissions did not exceed permitted amounts annually, nothing further was required. If they did exceed that amount, MMS was then required to determine whether the pollutant concentration exceeded the significance levels established at 30 C.F.R. § 250.303 (e). If not, nothing further was required. If they did exceed significance levels, then MMS was required to determine whether the adjacent affected land is within an attainment (or unclassifiable) or non-attainment area. In either case, MMS was required to ensure under 30 C.F.R. § 250.303(g) that Best Available Control Technology (BACT) was applied, and, in an attainment or unclassifiable area, to determine whether, after application of BACT, the emissions exceeded the maximum allowable increases over the baseline concentrations established in 40 C.F.R. § 52.21, as defined in 30 C.F.R. § 250.303(g)(2)(i). If they did so (more than once for the daily and 3-

hour standard), MMS was required to impose additional controls.

Freeport-McMoran Sulfur, LLC, 168 IBLA 1 (Feb. 16, 2006).

Oil and Gas Leases
Reinstatement

A BLM decision terminating Federal oil and gas leases by operation of law for failure to timely pay rental is properly affirmed when the lessee fails to file a petition for reinstatement within 60 days after receipt of the Notice of Termination, pursuant to 30 U.S.C. § 188(d) and (e), and 43 C.F.R. § 3108.2-3(b)(1)(i) and (ii).

Forcenergy Inc., Kidd Family Partnership Ltd., 151 IBLA 3 (Oct. 15, 1999).

Oil and Gas Leases
Reinstatement

Appellant's request to vacate BLM's decision terminating Federal oil and gas leases is properly denied when BLM records indicate the receipt of only one of three rental checks allegedly sent in the same envelope, and Appellant has failed to overcome the presumption of administrative regularity by submitting evidence that the checks were not only properly transmitted but actually received.

Forcenergy Inc., Kidd Family Partnership Ltd., 151 IBLA 3 (Oct. 15, 1999).

Oil and Gas Leases
Reinstatement

A BLM decision rejecting a Class II petition for reinstatement of a terminated Federal oil and gas lease is properly affirmed when the lessee fails to file the petition on or before the earlier of 60 days after receipt of notice of termination from BLM or 15 months after termination of the lease, pursuant to 30 U.S.C. § 188(d) and (e) (2000) and 43 C.F.R. § 3108.2-3(b)(1)(i) and (ii).

Petro Energy, Inc., 172 IBLA 186 (Aug. 29, 2007).

Oil and Gas Leases
Reinstatement

A petition for Class I reinstatement of an oil and gas lease that has terminated automatically by operation of law is properly denied when the lessee fails to show that the failure to pay on or before the anniversary date was justified or not due to a lack of reasonable diligence. Mailing a rental payment after the lease anniversary date does not constitute reasonable diligence, and unanticipated computer errors in the lessee's internal computer accounting system for lease payments do not justify late rental payment. In order to establish that a late rental payment was justified, one must demonstrate that the factors causing the late payment were beyond the lessee's control.

Western Energy Resources, 172 IBLA 395 (Oct. 2, 2007).

Oil and Gas Leases
Reinstatement

In order to have been eligible for Class II reinstatement of an oil and gas lease, pursuant to the provisions of section 371(a) of the Energy Policy Act, Pub. L. No. 109-58, 119 Stat. 594, 734 (Aug. 8, 2005), the lessee had to file a petition for Class II reinstatement not later than 120 days following the August 8, 2005, enactment of that Act. A lessee cannot rely on BLM's failure to notify it of that deadline because it is deemed to have constructive knowledge of statutes.

Western Energy Resources, 172 IBLA 395 (Oct. 2, 2007).

Oil and Gas Leases
Renewals

A BLM decision rejecting an application for renewal of a sec. 14 oil and gas lease for failure to file the renewal lease forms within a time period established in a prior decision will be set aside when the lessee filed a timely application prior to lease expiration, BLM failed to transmit the renewal forms to the lessee until more than 15 months after the expiration date of the lease, and the lessee properly paid lease rental as required by BLM.

BHB Oil Company, 157 IBLA 187 (Sept. 11, 2002).

Oil and Gas Leases
Rentals

Statutes of limitations directed at "any action to recover penalties" (30 U.S.C. § 1755 (1994)), or any "action for money damages" (28 U.S.C. § 2415 (a)(1994)) establishing time limits for commencement of judicial actions, initiated by the filing of a complaint in a court of competent jurisdiction, do not limit administrative proceedings within the Department of the Interior.

Williams Production Company, 154 IBLA 283 (Apr. 19, 2001).

Oil and Gas Leases
Rentals

Settlement Agreement barred lessor's recovery of amounts offset by lessee to balance overpayment of advance rentals where lessee was gas purchaser under a gas purchasing agreement, and where the Settlement Agreement unequivocally resolved this issue because the offset lessee had executed was as a gas purchaser under the gas purchasing agreement, not as a royalty payor or lessee, and these gas purchase issues were settled without question under the Settlement Agreement.

Williams Production Company, 154 IBLA 283 (Apr. 19, 2001).

Oil and Gas Leases
Rentals

Tribal Resolution No. 79-55 and Payor Handbook requiring Tribal oil and gas lessee to seek refunds of advanced minimum royalties (rentals) from Tribe during periods when Tribe elected to take its royalty gas in-kind, did not preclude lessee from effecting offset of refund monies due lessee with monies due Tribe under Royalty Gas Gathering and Exchange Agreement.

Williams Production Company, 154 IBLA 283 (Apr. 19, 2001).

Oil and Gas Leases
Royalties
Generally

A lessee has an affirmative duty to obtain the best possible price for the oil and gas produced from the lease, consistent with reasonable business judgment. The statutory ceiling price for the gas produced from the lease is a relevant factor to consider when gas is valued for royalty purposes in accordance with 30 C.F.R. § 206.103 (1983). However, there is a presumption that a sales price resulting from arm's-length negotiation between a buyer and seller in settlement of an ongoing contract dispute reflects the market conditions. An assessment of an additional royalty based solely on a ceiling price will be reversed in the absence of evidence that the actual sales price does not adequately represent fair market value realized in a manner consistent with reasonable business judgment.

Barbara T. Fasken, 151 IBLA 164 (Nov. 30, 1999).

Oil and Gas Leases
Royalties
Generally

The Mineral Leasing Act for Acquired Lands authorizes the leasing of the mineral interest acquired by the United States in the leased lands subject to a royalty of 12-1/2 percent. When the royalty interest in the minerals acquired by the Government is subject to an outstanding enforceable royalty interest held by a third party, the lessee's royalty obligation is limited to 12-1/2 percent and the lease does not require payment of a 12-1/2 percent Federal royalty in addition to the outstanding third party royalty obligation in the absence of a lease term to that effect.

Tana Oil & Gas Corp., 151 IBLA 177 (Dec. 2, 1999).

Oil and Gas Leases
Royalties
Generally

A decision unilaterally amending a competitive acquired lands oil and gas lease to require the lessee to pay the full Federal lease royalty in addition to any third party royalty interest will be reversed where it appears the lessee had no notice of the outstanding royalty interest or of the obligation to pay that third party royalty in addition to the Federal lease royalty.

Tana Oil & Gas Corp., 151 IBLA 177 (Dec. 2, 1999).

Oil and Gas Leases
Royalties
Generally

An order issued by the Minerals Management Service to a royalty payor is considered to be served on the date it is received at the address of record as evidenced by a certified mail return receipt card signed by any employee or agent of the payor at that address.

Apache Corporation, 152 IBLA 30 (Mar. 1, 2000).

Oil and Gas Leases
Royalties
Generally

A decision dismissing an appeal to the Director, Minerals Management Service (or to the Commissioner of Indian Affairs with respect to Indian leases), filed more than 30 days after service of the order appealed from will be affirmed when the grace period is not applicable.

Apache Corporation, 152 IBLA 30 (Mar. 1, 2000).

Oil and Gas Leases
Royalties
Generally

The 6-year statute of limitations for the commencement by the United States of civil actions for money damages, found at 28 U.S.C. § 2415(a) (1994), does not limit administrative action within the Department. MMS orders to recalculate and pay additional royalty due under an Indian lease are administrative actions not subject to the statute of limitations.

Union Texas Petroleum Energy Corporation, 153 IBLA 170 (Aug. 25, 2000).

Oil and Gas Leases
Royalties

Generally

The regulation at 30 C.F.R. § 206.159(c)(1) (1992) provides that prior to or at the same time as claiming a gas processing allowance on Form MMS-2014, a lessee must submit page one of the initial Form MMS-4109. The regulation at 30 C.F.R. § 206.159(d)(1) provides that failure to timely file Form MMS-4109 subjects a lessee to forfeiture of processing allowances taken on Form MMS-2014 until such time as lessee cures the failure to submit page one of Form MMS-4109.

Alexander Energy Corporation, 153 IBLA 238 (Aug. 31, 2000).

Oil and Gas Leases
Royalties
Generally

A federal lessee has a duty to market production sold at the lease or in the field at no cost to the lessor. Marketing costs cannot be deducted from gross proceeds, equal to the value of production, before royalty is calculated and when a lessee arranges for someone else to conduct the marketing it must add the costs of that service to its gross proceeds.

Wagner & Brown, Ltd., 155 IBLA 18 (Apr. 30, 2001).

Oil and Gas Leases
Royalties
Generally

Late payment charges are not a penalty; they are assessed to compensate the lessor for the time value of money owing and not timely paid.

Sanguine Limited, 155 IBLA 277 (July 26, 2001).

Oil and Gas Leases
Royalties
Generally

A statute establishing time limitations for commencement of judicial actions for damages on behalf of the United States does not limit administrative proceedings within the Department of the Interior to determine an obligation to pay royalties, demands for additional royalty, or demands for interest on late royalty payments.

Sanguine Limited, 155 IBLA 277 (July 26, 2001).

Oil and Gas Leases
Royalties
Generally

BLM correctly holds that an oil and gas company had improperly used the same reduced stripper oil well royalty rate for both oil and gas (and associated liquid hydrocarbon) production from a unit area, where the terms of the governing unit agreement (which controlled the governing royalty rate) did not provide for use of that reduced rate for gas production.

Amoco Production Co., 157 IBLA 203 (Sept. 24, 2002).

Oil and Gas Leases
Royalties
Generally

A Federal oil and gas lessee is under an obligation to assume the expenses of placing oil produced and sold into "marketable condition." No deduction from royalty is allowed for the expenses of gathering oil from platforms to a treatment facility on an adjacent lease, where it is commingled with other production, placed in marketable condition, and delivered to a common carrier pipeline.

Nexen Petroleum U.S.A. Inc., Nexen Petroleum Offshore U.S.A. Inc., 157 IBLA 286 (Oct. 28, 2002).

Oil and Gas Leases and Permits
Royalties
Generally

The authority conferred by 30 U.S.C. § 209 (2000), enables BLM to exercise discretionary authority to grant or deny an application for royalty rate reductions. In order to grant such a reduction, BLM must determine that either (i) the reduction is necessary to promote development, or (ii) the lease cannot be successfully operated without the reduction. Granting a royalty rate reduction under MLA section 39's "necessary to promote development" provision is appropriate if doing so would encourage the greatest ultimate recovery of oil and gas in the interest of conservation of natural resources, and if prudent business judgment indicates that the reduction would be in the interest of the United States.

Union Oil Company of California, 158 IBLA 265 (Feb. 21, 2003).

Oil and Gas Leases
Royalties
Generally

Gas produced from Federal leases that is subject only to dehydration and compression is properly valued under the valuation standards for unprocessed gas at 30 C.F.R. § 206.152.

J-W Operating Company Inc. et al., 159 IBLA 1 (Apr. 16, 2003).

Oil and Gas Leases
Royalties
Generally

Gas produced from a Federal lease is not sold pursuant to an arm's length contract where 92.5 percent of the ownership interest in the buying entity is directly or indirectly owned by the lessee and the remaining 7.5 percent is owned by the lessee's brother.

J-W Operating Company Inc. et al., 159 IBLA 1 (Apr. 16, 2003).

Oil and Gas Leases
Royalties
Generally

Gas produced from Federal leases that is subject to valuation under the standards at 30 C.F.R. § 206.152 is properly valued under 30 C.F.R. § 206.152(c) when the gas is not sold pursuant to an arm's-length contract. Under that provision, MMS values production by using the gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract. MMS' decision not to examine "benchmarks" under that provision, *viz.*, the comparability of arm's-length contracts or samples from the area, is not grounds for reversal of its decision, as MMS is required to look beyond gross proceeds via benchmark tests only where comparison to comparable sales data of like-quality gas might provide a higher value for royalty purposes.

J-W Operating Company Inc. et al., 159 IBLA 1 (Apr. 16, 2003).

Oil and Gas Leases
Royalties
Generally

Gas produced from Federal leases that is properly valued under the standards at 30 C.F.R. § 206.152 is properly valued under 30 C.F.R. § 206.152(b) when the gas is sold pursuant to an arm's-length contract. MMS properly finds under that provision the value of gas sold under an arm's-length contract is the gross proceeds accruing to the lessee.

J-W Operating Company Inc. et al., 159 IBLA 1 (Apr. 16, 2003).

Oil and Gas Leases
Royalties
Generally

Costs of dehydration and compression of gas produced from Federal leases must be included in gross proceeds, which, by regulatory definition include, *inter alia*, payments to the lessee for certain services such as compression and dehydration. Dehydration of gas to meet market specifications for water content and the compression of gas to the pressure required for entry into the buyer's pipeline are not deductible. The payment of rebates by the lessee and the offering of discounted prices to purchasers who perform compression and dehydration services amount to "payments to the lessee" for those services under the regulations.

J-W Operating Company Inc. et al., 159 IBLA 1 (Apr. 16, 2003).

Oil and Gas Leases
Royalties
Generally

Nothing in 30 C.F.R. § 206.151 or its preamble suggests that MMS intended to prevent itself from looking to the subsequent arm's-length sale in determining the lessee's gross proceeds where the reselling entity was not a "marketing affiliate." Unless the reselling entity is a market affiliate, MMS is free to consider benchmarks where doing so would increase royalty value above the amount indicated by gross proceeds.

J-W Operating Company Inc. et al., 159 IBLA 1 (Apr. 16, 2003).

Oil and Gas Leases
Royalties
Generally

When MMS issues an order to pay additional royalty, indicating that it is subject to immediate appeal, but places the order and bill for collection on hold pending additional review, the appeal period for the order does not begin to run until MMS notifies the appellant that the hold has been lifted, and an MMS decision dismissing as untimely an appeal to the Commissioner of Indian Affairs timely filed within 30 days of receipt of the notice of the lifting of the hold will be reversed and the case remanded for adjudication of the merits of the appeal.

American Petroleum Energy Company, 160 IBLA 59 (Aug. 28, 2003).

Oil and Gas Leases
Royalties
Generally

43 C.F.R. § 3162.7-3 requires that all gas production be measured on the lease, with volumes subject to certain adjustments. Off-lease measurement or commingling with production from other sources prior to measurement requires approval by the authorized officer.

Byron Oil Industries, Inc., 161 IBLA 1 (Feb. 23, 2004).

Oil and Gas Leases
Royalties
Generally

A lessee's marketing affiliate which exclusively sells gas produced by its lessee affiliate is properly distinguished from an affiliated firm which sells gas produced by several non-affiliated producers purchased under arm's-length contracts as well as gas produced by the lessee purchased under a non-arm's-length contract. Under the regulation at 30 C.F.R. § 206.152(c) (1991), gas sold to an affiliated firm which is not a marketing affiliate, pursuant to a non-arm's-length contract, is properly valued on the basis of the first applicable bench mark under the regulation.

Tom Brown, Inc., 162 IBLA 227 (July 27, 2004).

Oil and Gas Leases
Royalties
Generally

Section 115(h), added to the Federal Oil and Gas Royalty Management Act of 1982 by section 4(a) of the Federal Oil and Gas Royalty Simplification and Fairness Act, Pub. L. No. 104-185, 110 Stat. 1700, 1709-10 (1996), *codified at* 30 U.S.C. § 1724(h) (2000), requires the Secretary of the Interior to issue a final decision on appeals from Minerals Management Service or delegated state orders to pay royalty within 33 months from the date such proceeding was commenced, barring which the Act imposes a statutory rule of decision, resolving the appeal finally for the Department, in a manner favorable to either the appellant or the Secretary, depending on the monetary amount at issue.

California State Controller, 166 IBLA 5 (May 18, 2005).

Oil and Gas Leases
Royalties
Generally

The Board properly dismisses an appeal by a state from a decision of the Director, Minerals Management Service, granting an appeal by a lessee or its designee from an MMS order to pay royalty on production from a Federal onshore oil and gas lease, because the regulations at 43 C.F.R. Part 4, Subpart J, which implement the time limits and rule of decision of 30 U.S.C. § 1724(h) (2000), do not provide any opportunity for states to appeal from a decision of the Director, MMS, rescinding or modifying an MMS or delegated state order under 30 C.F.R. § 290.108, and because 43 C.F.R. § 4.906(b)(3) specifically provides that, in the absence of an appeal by the lessee or its designee, the MMS Director's decision constitutes the final decision of the Department, thus depriving the Board of jurisdiction to entertain the appeal.

California State Controller, 166 IBLA 5 (May 18, 2005).

Oil and Gas Leases
Royalties
Generally

Under 30 C.F.R. § 206.151, a gas purchase and sale contract will be considered an arm's-length contract for royalty valuation purposes where it "has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract." A determination by MMS that a purchase and sale contract entered into by a Federal oil and gas lessee and a marketing company in which it has a 40 percent ownership interest is non-arm's-length because the parties did not have opposing economic interests will be reversed where the lessee (1) has demonstrated that the parties did, in fact, have opposing economic interests and (2) has further shown the inapplicability of any of the exceptions to valuing gas sold under an arm's-length contract based on the gross proceeds accruing to the lessee under the contract.

Vastar Resources, Inc., 167 IBLA 17 (Sept. 26, 2005).

Oil and Gas Leases
Royalties
Generally

A "Dear Reporter Letter" issued by MMS to numerous Federal and Indian oil and gas lessees is not an appealable "order" under 30 C.F.R. Part 290, where the letter, although occasionally cast in mandatory terms, does not "contain mandatory or ordering language" because it does not require immediate and specific action and does not address any specific leases, gas volumes, treatment costs, or additional royalties due. The letter is properly seen only as generalized guidance on how Federal and Indian lessees nationwide are expected to proceed concerning royalty due on coalbed methane. Unless and until MMS issues specific orders containing specific instructions to specific lessees governing how they must compute, report, and/or pay royalty, among other actions, no appealable order has been issued under 30 C.F.R. Part 290.

Devon Energy, et al., 171 IBLA 43 (Jan. 24, 2007).

Oil and Gas Leases
Royalties
Generally

When appellant timely requested a hearing on the record of the August 19, 1999, Notice of Noncompliance (NON) it received when it apparently did not comply with the Order to Perform (OTP) pursuant to the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1719 (2000), as implemented by the provisions of 30 C.F.R. Part 241, appellant was entitled to contest its underlying liability, which is predicated on its alleged failure to undertake the actions set forth in the OTP to remedy an alleged violation of a statute, regulation, rule, order, or lease or permit term within the time specified therein. Appellant's right to contest its underlying liability necessarily encompasses the right to defend the NON by showing the nature and extent of its compliance, including defenses based on flaws in the service, or in the basis and substance of the OTP that might excuse compliance. Nothing in FOGRMA or the regulations supports or provides that the scope of a hearing on the record of a NON under Part 241 can be cut off or curtailed by the failure to appeal the OTP under Part 290. The two appeal procedures are separate.

Merit Energy Company v. Minerals Management Service, 172 IBLA 137 (Aug. 3, 2007).

Oil and Gas Leases
Royalties
Generally

In a hearing on the record of a Notice of Civil Penalty, a party can challenge only the amount of a civil penalty if it did not previously request a hearing on the record of a NON under 30 C.F.R. § 241.54. When a hearing on the record of the NON is not requested under § 241.54, the party may not contest its underlying liability for civil penalties. 30 C.F.R. § 241.56(a). Consequently, if a party is to have any opportunity to contest its underlying liability, it must do so in a timely requested hearing on the record of a NON. Because the OTP alleged violations and directed appellant to undertake corrective action and furnished the basis for issuance of the NON when appellant apparently took no corrective action within the period specified, the only failure that could finally cut off appellant's right to challenge the OTP under Part 241 would be a failure to timely request a hearing on the record of the NON.

Merit Energy Company v. Minerals Management Service, 172 IBLA 137 (Aug. 3, 2007).

Oil and Gas Leases
Royalties
Generally

The regulation at 30 C.F.R. § 290.111(a) broadly defines "official correspondence" to include "all RMP [Royalty Management Program, Minerals Management Service] orders that are appealable." Such official correspondence is to be served on the "addressee of record," who is defined by reference to the subject matter of the correspondence. In (b)(4), the subject matter is "official correspondence in connection with reviews and audits of payor records"; in (b)(7), the subject matter is "official correspondence including orders, demands, invoices, or decisions, and other actions identified with payors reporting to the RMP Auditing and Financial System not identified above." The qualifying phrase "not identified above" refers to the six categories of addressees, which are defined solely by the subject matter of the correspondence, not the particular caption of the correspondence or action that such correspondence demands or induces. Official correspondence may take the more specific form of "orders, demands, invoices, or decisions, and other actions," but because of the definition of "official correspondence," they all in general constitute "orders" issued by RMP that are appealable under 30 C.F.R. Parts 243 and 290. More than one category can be applicable in any given situation, and service under any other applicable category is equally valid. 30 C.F.R. § 290.111(b)(8).

Merit Energy Company v. Minerals Management Service, 172 IBLA 137 (Aug. 3, 2007).
Oil and Gas Leases
Royalties
Interest

The regulation at 30 C.F.R. § 218.202(a) requires the assessment of interest on unpaid and underpaid amounts from the date the amounts are due. Late payment charges ensure that Federal and Indian lessors do not lose the time value of money due and owing in situations where royalties were initially underpaid and then later corrected.

Asarco Inc., 152 IBLA 20 (Feb. 29, 2000).

Oil and Gas Leases
Royalties
Interest

Appellant's lease and applicable regulations specified that royalty would be determined by major portion analysis. Even though the Department did not perform such analysis until compelled to do so years after production had occurred by agreement settling litigation in *Kauley v. Lujan*, appellant knew or should have known that its Indian lease gas production was being valued by a method other than major portion analysis, and consequently, it was on notice that it could be responsible for additional royalties.

Sanguine Limited, 155 IBLA 277 (July 26, 2001).

Oil and Gas Leases
Royalties
Interest

Where nonpayment or underpayment of royalties by the end of the month following the month in which the production occurred is established, MMS properly assesses interest for late payment of royalties under section 111(a) of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. § 1721(a) (1994). That result is not changed when the impetus for recalculating royalties is an agreement between the Federal government and Indian lessors settling class action litigation years after the production in question had occurred.

Sanguine Limited, 155 IBLA 277 (July 26, 2001).

Oil and Gas Leases
Royalties
Interest

Under 30 C.F.R. § 218.50, royalty payments for Federal and Indian oil and gas leases generally are due by the end of the month following the month during which the oil and gas is produced and sold. When an appellant's lease and applicable regulations provide for use of major portion analysis in determining the value for royalty purposes and the appellant knew or should have known that its tribal lease gas production was being valued without reference to a major portion analysis, it was on notice of potential responsibility for additional royalties and the obligation to pay the additional royalties accrued on the date the royalties were due, rather than the date MMS provided appellant the major portion analysis.

Exxon Mobil Corp., 166 IBLA 226 (July 28, 2005).

Oil and Gas Leases
Royalties
Interest

Interest charged to an oil and gas lessee as mandated by the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 1721(a) (2000), for late payment of royalty for lease production is compensation to the lessor for the time value of money lost as a result of the late payment. This obligation applies even when the late payment was not the fault of the lessee.

Exxon Mobil Corp., 166 IBLA 226 (July 28, 2005).

Oil and Gas Leases
Royalties
Natural Gas Liquid Products

The regulation governing gas processing allowances, 30 C.F.R. § 206.158, states that, where the value of gas is determined pursuant to the provisions of 30 C.F.R. § 206.153, a deduction shall be allowed for the reasonable actual costs of processing. Such costs shall not exceed 66⅔ percent of the value of each gas product determined in accordance with § 206.153, unless a lessee requests, and MMS approves, an allowance that exceeds that percentage. 30 C.F.R. § 206.158(c)(2), (3). To obtain approval to deduct a processing allowance greater than 66⅔ percent, the lessee must demonstrate that the processing costs incurred in excess of the limitation were reasonable, actual, and necessary. 30 C.F.R. § 206.158(c)(3).

Marathon Oil Company, 155 IBLA 27 (May 1, 2001).

Oil and Gas Leases
Royalties
Natural Gas Liquid Products

The regulations provide for two methods of determining the gas processing allowance, one involving arm's-length gas processing contracts and the other relating to non-arm's-length gas processing contracts or situations involving no contracts.

Marathon Oil Company, 155 IBLA 27 (May 1, 2001).

Oil and Gas Leases
Royalties
Natural Gas Liquid Products

When a lessee has a non-arm's-length processing contract or where there is no contract, including those situations in which the lessee performs processing for itself, 30 C.F.R. § 206.159(b) provides the basis for determining processing allowances. In such cases, the processing allowance will be based upon the lessee's reasonable actual costs. The only way a lessee can obtain relief from the requirement to compute actual costs is to apply for and receive an exception from MMS. 30 C.F.R. § 206.159(b)(4). MMS may grant the exception only if (i) the lessee has arm's-length contracts for processing other gas production at the same processing plant; and (ii) at least 50 percent of the gas processed annually at the plant is processed pursuant to arm's-length processing contracts.

Marathon Oil Company, 155 IBLA 27 (May 1, 2001).

Oil and Gas Leases
Royalties
Payments

When computing the royalty due an Indian tribe for natural gas produced and sold from tribal lands the producer is required to abide by the applicable Federal regulations not inconsistent with the terms of a minerals agreement issued pursuant to the Indian Mineral Development Act of 1982, 25 U.S.C. §§ 2101–2108 (1994). Thus, not having gained prior MMS approval of a higher allowance, the producer was restricted by 30 C.F.R. § 206.158(c)(2) (1994) to a deduction of not more than two-thirds of the value of the products when valuing natural gas liquid products derived from processing natural gas for royalty computation purposes.

Harken Southwest Corp., 153 IBLA 153 (Aug. 17, 2000).

Oil and Gas Leases
Royalties
Payments

MMS may require restructured accounting when MMS has, by sampling a portion of but not all of the producer's production records, discovered a systemic error or deficiency (whether or not amounting to a pattern of error) in the producer's royalty computations. Finding an error or deficiency would not justify restructured accounting without a showing that it is likely that the error was repeated in other months and/or other leases. A showing of a repeated error or deficiency over an extended period of time and for a number of leases establishes a systemic error or deficiency sufficient to justify restructured accounting.

Union Texas Petroleum Energy Corporation, 153 IBLA 170 (Aug. 25, 2000).

Oil and Gas Leases
Royalties
Payments

MMS properly directs a lessee to perform dual accounting and recalculate royalties due on Indian oil and gas leases where the leases require such accounting and an MMS audit revealed instances of the lessee's failure to calculate and pay royalties utilizing that method.

Alexander Energy Corporation, 153 IBLA 238 (Aug. 31, 2000).

Oil and Gas Leases
Royalties
Payments

Where payor information forms and division orders specify that the purchaser of gas is to distribute gas sales proceeds and has assumed the lessee's legal obligation to pay royalties, the obligation to perform a restructured accounting and to pay any additional royalty found to be due rests with the purchaser. If the purchaser does not perform the accounting or pay the royalty, it is the lessee's obligation to do so.

Estoril Producing Co., 154 IBLA 1 (Oct. 12, 2000).

Oil and Gas Leases
Royalties
Payments

Appellant's lease and applicable regulations specified that royalty would be determined by major portion analysis. Even though the Department did not perform such analysis until compelled to do so years after production had occurred by agreement settling litigation in *Kauley v. Lujan*, appellant knew or should have known that its Indian lease gas production was being valued by a method other than major portion analysis, and consequently, it was on notice that it could be responsible for additional royalties.

Sanguine Limited, 155 IBLA 277 (July 26, 2001).

Oil and Gas Leases
Royalties
Payments

Where nonpayment or underpayment of royalties by the end of the month following the month in which the production occurred is established, MMS properly assesses interest for late payment of royalties under section 111(a) of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. § 1721(a) (1994). That result is not changed when the impetus for recalculating royalties is an agreement between the Federal government and Indian lessors settling class action litigation years after the production in question had occurred.

Sanguine Limited, 155 IBLA 277 (July 26, 2001).

Oil and Gas Leases
Royalties
Payments

The Minerals Management Service (MMS) properly directs a lessee to perform restructured accounting and recalculate royalties due on Indian oil and gas leases where the leases require such accounting and an MMS audit revealed instances of the lessee's failure to calculate and pay royalties utilizing that method.

Union Oil Company of California, 167 IBLA 263 (Dec. 28, 2005).

Oil and Gas Leases
Royalties
Payments

The regulation applicable to an audit of Navajo Allotted leases for the January 1993 through December 1996 audit period provided that prior to or at the same time as claiming a gas processing allowance on Form MMS-2014, a lessee must submit page one of the initial Form MMS-4109. The applicable regulation provided that failure to timely file Form MMS-4109 subjects a lessee to forfeiture of processing allowances taken on Form MMS-2014 until such time as the lessee cures the failure to submit page one of Form MMS-4109. The lessee is required to file Form MMS-4109 before claiming a processing allowance in deriving a theoretical price for processed gas.

Union Oil Company of California, 167 IBLA 263 (Dec. 28, 2005).

Oil and Gas Leases
Royalties
Payments

MMS' interpretation of the applicable regulation as requiring a lessee of Indian oil and gas leases to timely file Form MMS-4109 prior to or at the same time as claiming a processing allowance on Form MMS-2014 does not constitute the promulgation of a new rule requiring notice and comment.

Union Oil Company of California, 167 IBLA 263 (Dec. 28, 2005).

Oil and Gas Leases
Royalties
Payments

The 6-year statute of limitations for the commencement by the United States of civil actions for money damages, found at 28 U.S.C. § 2415(a) (2000), does not limit administrative actions within the Department. Orders by MMS to recalculate and pay additional royalties due under Indian leases are administrative actions not subject to the statute of limitations.

Union Oil Company of California, 167 IBLA 263 (Dec. 28, 2005).

Oil and Gas Leases
Royalties
Payments

The 6-year statute of limitations for the commencement by the United States of civil actions for money damages, found at 28 U.S.C. § 2415(a) (2000), does not limit administrative actions within the Department. Orders by MMS to recalculate and pay additional royalties due under Indian leases are administrative actions not subject to the statute of limitations.

Western Energy Company, 172 IBLA 258 (Sept. 12, 2007).

Oil and Gas Leases

Royalties
Processing Allowance

The regulation governing gas processing allowances, 30 C.F.R. § 206.158, states that, where the value of gas is determined pursuant to the provisions of 30 C.F.R. § 206.153, a deduction shall be allowed for the reasonable actual costs of processing. Such costs shall not exceed 66⅔ percent of the value of each gas product determined in accordance with § 206.153, unless a lessee requests, and MMS approves, an allowance that exceeds that percentage. 30 C.F.R. § 206.158(c)(2), (3). To obtain approval to deduct a processing allowance greater than 66⅔ percent, the lessee must demonstrate that the processing costs incurred in excess of the limitation were reasonable, actual, and necessary. 30 C.F.R. § 206.158(c)(3).

Marathon Oil Company, 155 IBLA 27 (May 1, 2001).

Oil and Gas Leases
Royalties
Processing Allowance

The regulations provide for two methods of determining the gas processing allowance, one involving arm's-length gas processing contracts and the other relating to non-arm's-length gas processing contracts or situations involving no contracts.

Marathon Oil Company, 155 IBLA 27 (May 1, 2001).

Oil and Gas Leases
Royalties
Processing Allowance

When a lessee has a non-arm's-length processing contract or where there is no contract, including those situations in which the lessee performs processing for itself, 30 C.F.R. § 206.159(b) provides the basis for determining processing allowances. In such cases, the processing allowance will be based upon the lessee's reasonable actual costs. The only way a lessee can obtain relief from the requirement to compute actual costs is to apply for and receive an exception from MMS. 30 C.F.R. § 206.159(b)(4). MMS may grant the exception only if (i) the lessee has arm's-length contracts for processing other gas production at the same processing plant; and (ii) at least 50 percent of the gas processed annually at the plant is processed pursuant to arm's-length processing contracts.

Marathon Oil Company, 155 IBLA 27 (May 1, 2001).

Oil and Gas Leases
Royalties
Reasonable Value

"Reasonable value" for the purpose of calculating royalties due to the United States is determined by the highest price paid for the major portion of like quality products produced or sold in arm's-length transactions from the same field or area or the gross proceeds actually received in sales by the lessee, whichever is higher. Nonarm's-length transactions may not be included in base data for major portion analysis.

Burlington Resources Oil and Gas Co., 151 IBLA 144 (Nov. 30, 1999).

Oil and Gas Leases
Royalties
Reasonable Value

"Reasonable value" for the purpose of calculating royalties due to the United States is determined by the highest price paid for the major portion of like quality products produced or sold in arm's-length transactions from the same field or area or the gross proceeds actually received in sales by the lessee, whichever is higher. Nonarm's-length transactions may not be included in the database used to establish the median value against which gross proceeds received by appellant in arm's-length transactions are compared for major portion analysis. Where all sales, nonarm's-length and arm's-length, are combined to establish the data from which the median value is determined, that value may not establish the baseline majority price for comparison with appellant's arm's-length sales in major portion analysis computations.

Phillips Petroleum Co., 152 IBLA 109 (Mar. 31, 2000).

Oil and Gas Leases
Stipulations

Applications for permits to drill may be denied pursuant to the oil and gas lease stipulations of the Secretarial Order if BLM determines that contamination from oil and gas drilling will occur, that such contamination cannot be prevented, and that this contamination will interfere with potash mining, result in undue potash waste, or constitute a hazard to potash mining.

IMC Kalium Carlsbad, Inc., Potash Association of New Mexico; Yates Petroleum Corporation; Pogo Producing Company; Bureau of Land Management, 170 IBLA 25 (Sept. 7, 2006).

Oil and Gas Leases
Stipulations

When BLM coordinates an oil and gas lease sale with the State of Wyoming in accordance with applicable memoranda of understanding, there is no violation of section 202(c)(9) of the Federal Land Policy and Management Act of 1976, *as amended*, 43 U.S.C. § 1712(c)(9) (2000), as contended by appellants.

Wyoming Outdoor Council, et al., 171 IBLA 108 (Feb. 20, 2007).

Oil and Gas Leases
Stipulations

BLM's decision to issue oil and gas leases subject to a timing limitation standard without also imposing the State of Wyoming's policies, plans, and guidelines does not amount to a failure to take an "action necessary to prevent unnecessary or undue degradation of the [public] lands" under section 302(b) of the Federal Land Policy and

Management Act of 1976, *as amended*, 43 U.S.C. § 1732(b) (2000).

Wyoming Outdoor Council, et al., 171 IBLA 108 (Feb. 20, 2007).

Oil and Gas Leases
Suspensions

An oil and gas lease expires upon the running of its primary term unless eligible for an extension as provided by 43 C.F.R. Subpart 3107. While a request for suspension of a lease may be retroactively approved after the lease has expired, no suspension application may be approved where the application itself is not filed until after the expiration date of the lease.

Harvey E. Yates Co., et al., 156 IBLA 100 (Dec. 19, 2001).

Oil and Gas Leases
Suspensions

BLM delay in conducting review of an application for permit to drill does not constitute a *de facto* suspension order under section 39 of the Mineral Leasing Act, 30 U.S.C. § 209 (1994), or excuse a lessee from submitting an application for a retroactive lease suspension on a date before the lease has expired.

Harvey E. Yates Co., et al., 156 IBLA 100 (Dec. 19, 2001).

Oil and Gas Leases
Suspensions

Where the lessee fails to file an application for permit to drill, a request that a lease be included in a unit held by production, or a timely application for lease extension, the lease expires and may not be retroactively suspended.

Harvey E. Yates Co., et al., 156 IBLA 100 (Dec. 19, 2001).

Oil and Gas Leases
Termination

A BLM decision terminating Federal oil and gas leases by operation of law for failure to timely pay rental is properly affirmed when the lessee fails to file a petition for reinstatement within 60 days after receipt of the Notice of Termination, pursuant to 30 U.S.C. § 188(d) and (e), and 43 C.F.R. § 3108.2-3(b)(1)(i) and (ii).

Forcenergy Inc., Kidd Family Partnership Ltd., 151 IBLA 3 (Oct. 15, 1999).

Oil and Gas Leases
Termination

Upon the termination of a communitization agreement to which a segregated oil and gas lease was committed, BLM properly concluded that the lease continued only for 2 years and so long thereafter as oil or gas was produced in paying quantities from or attributable to the leasehold, pursuant to the Mineral Leasing Act, *as amended*, 30 U.S.C. § 226(m) (1994), regardless of whether the lease was in an indefinite extended term, being held by continuing production on the base lands at the time of termination.

Celsius Energy Company (On Reconsideration), 154 IBLA 193 (Mar. 10, 2001).

Oil and Gas Leases
Termination

A noncompetitive oil and gas lease in its extended term by reason of production is properly deemed terminated by operation of law upon the cessation of production if the lessee does not initiate reworking or drilling operations within 60 days of the cessation of production and fails to establish that the lease contains a well capable of production in paying quantities.

International Metals & Petroleum Corp., 158 IBLA 15 (Dec. 3, 2002).

Oil and Gas Leases
Termination

On appeal from a determination by BLM that an oil and gas lease in its extended term by reason of production has terminated because a shut-in gas well is no longer capable of production in paying quantities, the lessee is entitled to notice and an opportunity for a hearing when a material issue of fact regarding the status of the well is raised by the record. Prior to any hearing, the case is properly remanded to BLM to allow a current supervised flow test of the well on the lease.

Robert W. Willingham, 164 IBLA 64 (Nov. 23, 2004).

Oil and Gas Leases
Termination

A Federal oil and gas lease in its extended term by reason of production is properly deemed terminated by operation of law upon cessation of production if the lessee does not initiate reworking or drilling operations within 60 days of the cessation of production and fails to establish that the lease contains a well capable of production in paying quantities.

Stove Creek Oil Inc., 162 IBLA 97 (July 1, 2004).

Oil and Gas Leases
Termination

Under the Mineral Leasing Act, if production ceases on a lease which is in an extended term by reason of production, the lease terminates by operation of law unless: (1) within 60 days after cessation of production, reworking or drilling operations are begun and thereafter conducted with reasonable diligence during the period of nonproduction; or (2) an order or consent of the Secretary suspending operations or production on the lease has been issued; or (3) the lease contains a well capable of producing oil or gas in paying quantities and the lessee places the well on a producing status within a reasonable time, not less than 60 days after notice to do so, and thereafter continues production unless and until the Secretary allows suspension.

Coronado Oil Company, 164 IBLA 107 (Nov. 30, 2004).

Oil and Gas Leases
Termination

A well capable of production in paying quantities generally requires a well which is actually in a condition to produce at the time in question. When production of oil and gas on a lease extended by production ceases because the well is producing water and is no longer capable of producing oil and gas in paying quantities, a finding that the lease terminated by cessation of production will be affirmed when the lessee failed to initiate reworking or drilling operations within 60 days thereafter since the lessee is not entitled to notice and a further reasonable period of not less than 60 days to produce the well.

Coronado Oil Company, 164 IBLA 107 (Nov. 30, 2004).

Oil and Gas Leases
Termination

No oil and gas lease in its extended term by reason of production on which there is a well capable of producing oil or gas in paying quantities shall expire unless the lessee is allowed a reasonable time of not less than 60 days after receipt of notice to place the well in a producing status. This notice may be applied to a well that was found by BLM to be capable of production in paying quantities upon completion but that was shut in awaiting a market with the consent of BLM.

Coronado Oil Company, 164 IBLA 309 (Jan. 31, 2005).

Oil and Gas Leases
Termination

In order to be considered capable of production in paying quantities, a well must be physically capable of producing a quantity of oil and/or gas sufficient to yield a profit after the payment of all the day-to-day costs incurred in operating the well and marketing the oil or gas. Actual production is not required if production can be obtained, but has not occurred because of a lack of pipelines, roads, or markets for the gas. A BLM decision finding wells not capable of production in paying quantities will be reversed where, although the gas from the wells has never been marketed, unrefuted evidence shows that the wells are capable of producing sufficient gas to yield the requisite profit.

Coronado Oil Company, 164 IBLA 309 (Jan. 31, 2005).

Oil and Gas Leases
Termination

A BLM decision rescinding its approval to shut in wells capable of production in paying quantities until a market is found and granting the lessee 60 days to place the wells into production will be affirmed where over 15 years have passed since the approval was granted and the lessee has not presented any evidence documenting past or current attempts to obtain a market for the CO_2 gas from the wells or that potential future markets for the CO_2 are more than speculative.

Coronado Oil Company, 164 IBLA 309 (Jan. 31, 2005).

Oil and Gas Leases
Termination

A noncompetitive oil and gas lease has a primary term of 10 years, and shall continue so long after its primary term as oil or gas is produced in paying quantities. 30 U.S.C. § 226(e) (2000). When production ceases on an oil and gas lease which is in an extended term by reason of production, the lease will terminate unless (1) within 60 days after cessation of production reworking or drilling operations are begun on the lease and thereafter conducted with reasonable diligence during the period of nonproduction, or so long as oil or gas is produced in paying quantities as a result of such operations; (2) an order or consent of the Secretary suspending operations or production on the lease has been requested and issued; or (3) the lease contains a well capable of producing oil or gas in paying quantities and the lessee places the well on a producing status within a reasonable time of not less than 60 days after notice to do so and thereafter continues production unless and until the Secretary allows production to be discontinued.

Two Bay Petroleum, Inc., 166 IBLA 329 (Sept. 2, 2005).

Oil and Gas Leases
Termination

When the record provided by BLM does not establish when a well produced oil, the value of that production, or the associated costs and expenses thereof, because that information was not submitted by the lessee to BLM or MMS as required by applicable regulations, and the information submitted by appellant on appeal is not supported by actual production, operations, or metering data it has or should have in its possession, appellant's motion for a hearing is properly denied, as there is no material issue of fact that cannot be resolved on the record before us.

Two Bay Petroleum, Inc., 166 IBLA 329 (Sept. 2, 2005).

Oil and Gas Leases
Termination

When none of the circumstances set forth in the Mineral Leasing Act, 30 U.S.C. § 226(i) (2000), that could save a lease in its extended term from termination because of cessation of production materializes in the 60 days following cessation of production, the lease terminates by operation of law effective as of the date production ceased, not 60 days after appellant receives the notice BLM has chosen to give lessees under 43 C.F.R. § 3107.2-2.

Two Bay Petroleum, Inc., 166 IBLA 329 (Sept. 2, 2005).

Oil and Gas Leases
Termination

When a company alleging a mineral interest subject to a unit agreement requests that BLM terminate the unit based upon the assumption that there had been, in the past, long periods of non-production from the unit, termination is properly denied when (1) the unit agreement does not contain any provision for automatic termination, (2) unitized substances were produced in paying quantities from the unit following its creation, (3) the unit agreement provides that it shall remain in effect so long thereafter as diligent operations are in progress for the restoration of production or discovery of new production, and (4) the unit operator is engaged in such operations.

Merrion Oil & Gas Corp., 169 IBLA 47 (May 10, 2006).

Oil and Gas Leases
Termination

A BLM decision rejecting a Class II petition for reinstatement of a terminated Federal oil and gas lease is properly affirmed when the lessee fails to file the petition on or before the earlier of 60 days after receipt of notice of termination from BLM or 15 months after termination of the lease, pursuant to 30 U.S.C. § 188(d) and (e) (2000) and 43 C.F.R. § 3108.2-3(b)(1)(i) and (ii).

Petro Energy, Inc., 172 IBLA 186 (Aug. 29, 2007).

Oil and Gas Leases
Termination

A petition for Class I reinstatement of an oil and gas lease that has terminated automatically by operation of law is properly denied when the lessee fails to show that the failure to pay on or before the anniversary date was justified or not due to a lack of reasonable diligence. Mailing a rental payment after the lease anniversary date does not constitute reasonable diligence, and unanticipated computer errors in the lessee's internal computer accounting system for lease payments do not justify late rental payment. In order to establish that a late rental payment was justified, one must demonstrate that the factors causing the late payment were beyond the lessee's control.

Western Energy Resources, 172 IBLA 395 (Oct. 2, 2007).

Oil and Gas Leases
Termination

In order to have been eligible for Class II reinstatement of an oil and gas lease, pursuant to the provisions of section 371(a) of the Energy Policy Act, Pub. L. No. 109-58, 119 Stat. 594, 734 (Aug. 8, 2005), the lessee had to file a petition for Class II reinstatement not later than 120 days following the August 8, 2005, enactment of that Act. A lessee cannot rely on BLM's failure to notify it of that deadline because it is deemed to have constructive knowledge of statutes.

Western Energy Resources, 172 IBLA 395 (Oct. 2, 2007).

Oil and Gas Leases
20-year Leases

A BLM decision rejecting an application for renewal of a sec. 14 oil and gas lease for failure to file the renewal lease forms within a time period established in a prior decision will be set aside when the lessee filed a timely application prior to lease expiration, BLM failed to transmit the renewal forms to the lessee until more than 15 months after the expiration date of the lease, and the lessee properly paid lease rental as required by BLM.

BHB Oil Company, 157 IBLA 187 (Sept. 11, 2002).

Oil and Gas Leases
Unit and Cooperative Agreements

For onshore operations, the Congressional grant of authority, found at 30 U.S.C. § 226(m) (1994), authorizes the Secretary to approve the combining of units and participating areas for conservation reasons.

Petrocorp., William H. Davis, 152 IBLA 77 (Mar. 24, 2000).

Oil and Gas Leases
Unit and Cooperative Agreements

A unit agreement may not be unilaterally reformed by BLM to include land which has not been committed to the unit agreement.

Petrocorp., William H. Davis, 152 IBLA 77 (Mar. 24, 2000).

Oil and Gas Leases
Unit and Cooperative Agreements

Once a unit operating agreement has become effective BLM lacks authority to amend the agreement without the parties' consent.

Petrocorp., William H. Davis, 152 IBLA 77 (Mar. 24, 2000).

Oil and Gas Leases
Unit and Cooperative Agreements

Paying quantities for purposes of a unit well includes quantities sufficient to repay the cost of drilling and producing operations with a reasonable profit. The costs of producing the well include the normal or usual handling, treating, measurement, and transportation costs which a lessee could be expected to pay to market leasehold production.

Rio De Viento, Inc., 153 IBLA 32 (July 18, 2000).

Oil and Gas Leases
Unit and Cooperative Agreements

A BLM decision approving an expansion to a participating area under a unit agreement based on a paying well determination for an exploratory well will be affirmed when the finding is based on a preponderance of the evidence. Appellant's burden of showing error on appeal is not met by showing BLM did not include the capital costs for construction of a unique gas processing plant required by discovery of a deposit of natural gas which is very deep, very high in temperature, and has abnormally high concentrations of sulfur dioxide in excess of 10 percent when it does not appear that BLM has included such capital costs in the paying well determination for any of the paying unit wells in the participating area or that any one of the paying unit wells could recoup such extraordinary costs.

Rio De Viento, Inc., 153 IBLA 32 (July 18, 2000).

Oil and Gas Leases
Unit and Cooperative Agreements

BLM correctly holds that an oil and gas company had improperly used the same reduced stripper oil well royalty rate for both oil and gas (and associated liquid hydrocarbon) production from a unit area, where the terms of the governing unit agreement (which controlled the governing royalty rate) did not provide for use of that reduced rate for gas production.

Amoco Production Co., 157 IBLA 203 (Sept. 24, 2002).

Oil and Gas Leases
Unit and Cooperative Agreements

BLM properly approves the selection of a successor unit operator according to the terms of a unit agreement which provides for selection by a majority of working interest owners according to their respective tract participation in the unitized land.

Meritage Energy Partners, LLC, 165 IBLA 204 (Apr. 7, 2005).

Oil and Gas Leases
Unit and Cooperative Agreements

A BLM decision terminating an oil and gas unit for failure to prosecute diligent drilling as required by the unit agreement will be affirmed on appeal where the unit operator neither met the target depth nor completed a well that produced in paying quantities at a lesser depth, and where the record established that the unit operator was not diligently prosecuting drilling operations, as evidenced by numerous periods of non-operation, and little progress was being made toward the target depth or toward establishing production in paying quantities at a lesser depth. While technical difficulties in operating in a wildcat area can be addressed in an extension of time or a suspension of operations, difficulties in funding the drilling of the well and complications associated therewith do not excuse the operator's failure to diligently drill the unit well.

Premco Western, Inc., 165 IBLA 328 (May 5, 2005).

Oil and Gas Leases
Unit and Cooperative Agreements

Designation of a unit operator relieves BLM from any obligation to communicate directly with working interest owners or others concerning general unit operations, such as approval of development plans and other matters related to operation of the unit. However, BLM may have an obligation to inform certain parties when the action concerns a matter other than general unit operations, such as unit expansion. Where the unit agreement requires the unit operator to notify each working interest owner, lessee, and lessor whose interests are affected by a proposed expansion and to allow such persons to file objections and then to forward those objections to BLM for its consideration, a BLM decision approving the expansion must be served on any person filing an objection because the filing of an objection makes that person a party to the proceeding leading up to BLM's decision.

Three Forks Ranch, Inc., 171 IBLA 323 (June 28, 2007).

Oil and Gas Leases
Unit and Cooperative Agreements

Under 43 C.F.R. § 3185.1, a party may request State Director Review in accordance with 43 C.F.R. § 3165.3(b), if it is adversely affected by a decision, order, or instruction issued under the unit agreement regulations. A person who has received, in accordance with provisions of the unit agreement, notice of the expansion of a unit and has filed objections to that expansion, may request State Director Review of a BLM decision approving expansion, if that person is adversely affected by the decision.

Three Forks Ranch, Inc., 171 IBLA 323 (June 28, 2007).

Oil and Gas Leases
Well Capable of Production

Paying quantities for purposes of a unit well includes quantities sufficient to repay the cost of drilling and producing operations with a reasonable profit. The costs of producing the well include the normal or usual handling, treating, measurement, and transportation costs which a lessee could be expected to pay to market leasehold production.

Rio De Viento, Inc., 153 IBLA 32 (July 18, 2000).

Oil and Gas Leases
Well Capable of Production

A BLM decision approving an expansion to a participating area under a unit agreement based on a paying well determination for an exploratory well will be affirmed when the finding is based on a preponderance of the evidence. Appellant's burden of showing error on appeal is not met by showing BLM did not include the capital costs for construction of a unique gas processing plant required by discovery of a deposit of natural gas which is very deep, very high in temperature, and has abnormally high concentrations of sulfur dioxide in excess of 10 percent when it does not appear that BLM has included such capital costs in the paying well determination for any of the paying unit wells in the participating area or that any one of the paying unit wells could recoup such extraordinary costs.

Rio De Viento, Inc., 153 IBLA 32 (July 18, 2000).

Oil and Gas Leases
Well Capable of Production

Under the Mineral Leasing Act, if production ceases on a lease which is in an extended term by reason of production, the lease terminates by operation of law unless: (1) within 60 days after cessation of production, reworking or drilling operations are begun and thereafter conducted with reasonable diligence during the period of nonproduction; or (2) an order or consent of the Secretary suspending operations or production on the lease has been issued; or (3) the lease contains a well capable of producing oil or gas in paying quantities and the lessee places the well on a producing status within a reasonable time, not less than 60 days after notice to

Coronado Oil Company, 164 IBLA 107 (Nov. 30, 2004).

Oil and Gas Leases
Well Capable of Production

A well capable of production in paying quantities generally requires a well which is actually in a condition to produce at the time in question. When production of oil and gas on a lease extended by production ceases because the well is producing water and is no longer capable of producing oil and gas in paying quantities, a finding that the lease terminated by cessation of production will be affirmed when the lessee failed to initiate reworking or drilling operations within 60 days thereafter since the lessee is not entitled to notice and a further reasonable period of not less than 60 days to produce the well.

Coronado Oil Company, 164 IBLA 107 (Nov. 30, 2004).

Oil and Gas Leases
Well Capable of Production

No oil and gas lease in its extended term by reason of production on which there is a well capable of producing oil or gas in paying quantities shall expire unless the lessee is allowed a reasonable time of not less than 60 days after receipt of notice to place the well in a producing status. This notice may be applied to a well that was found by BLM to be capable of production in paying quantities upon completion but that was shut in awaiting a market with the consent of BLM.

Coronado Oil Company, 164 IBLA 309 (Jan. 31, 2005).

Oil and Gas Leases
Well Capable of Production

In order to be considered capable of production in paying quantities, a well must be physically capable of producing a quantity of oil and/or gas sufficient to yield a profit after the payment of all the day-to-day costs incurred in operating the well and marketing the oil or gas. Actual production is not required if production can be obtained, but has not occurred because of a lack of pipelines, roads, or markets for the gas. A BLM decision finding wells not capable of production in paying quantities will be reversed where, although the gas from the wells has never been marketed, unrefuted evidence shows that the wells are capable of producing sufficient gas to yield the requisite profit.

Coronado Oil Company, 164 IBLA 309 (Jan. 31, 2005).

Oil and Gas Leases
Well Capable of Production

A BLM decision rescinding its approval to shut in wells capable of production in paying quantities until a market is found and granting the lessee 60 days to place the wells into production will be affirmed where over 15 years have passed since the approval was granted and the lessee has not presented any evidence documenting past or current attempts to obtain a market for the CO_2 gas from the wells or that potential future markets for the CO_2 are more than speculative.

Coronado Oil Company, 164 IBLA 309 (Jan. 31, 2005).

Oil and Gas Leases
Well Capable of Production

On appeal from a determination by BLM that an oil and gas lease in its extended term by reason of production has terminated because a shut-in gas well is no longer capable of production in paying quantities, the lessee is entitled to notice and an opportunity for a hearing when a material issue of fact regarding the status of the well is raised by the record. Prior to any hearing, the case is properly remanded to BLM to allow a current supervised flow test of the well on the lease.

Robert W. Willingham, 164 IBLA 64 (Nov. 23, 2004).

Oil and Gas Leases
Well Capable of Production

When a company alleging a mineral interest subject to a unit agreement requests that BLM terminate the unit based upon the assumption that there had been, in the past, long periods of non-production from the unit, termination is properly denied when (1) the unit agreement does not contain any provision for automatic termination, (2) unitized substances were produced in paying quantities from the unit following its creation, (3) the unit agreement provides that it shall remain in effect so long thereafter as diligent operations are in progress for the restoration of production or discovery of new production, and (4) the unit operator is engaged in such operations.

Merrion Oil & Gas Corp., 169 IBLA 47 (May 10, 2006).

Oil Shale
Mining Claims

Subsection(d)of the Energy Policy Act, 30 U.S.C. § 242(d) (2000), provides a procedural mechanism for formally ascertaining and resolving the status of oil shale mining claims. In establishing opportunities to affirmatively declare one's intentions, it does not abolish the basic necessity of maintaining a claim in conformity with the law until patent issues. That necessity extends to and includes the two-year period allowed for the filing of an application for limited patent.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Oil Shale
Mining Claims

All persons who hold unpatented mining claims do so by timely fulfilling the requirements of relevant law necessary to maintain the claims. The phrase "maintains or elects to maintain unpatented claims" in subsection (d) of the Energy Policy Act is structured to reflect the elective aspects of the law, but does not negate the fundamental necessity of complying with the mining law and with sec. 314 of the Federal Land Policy and Management Act, 43 U.S.C. § 1744 (2000), as amended by the Energy Policy Act with respect to oil shale claims, to maintain one's possessory right as against the United States, nor does it create an exemption to that obligation. Oil shale mining claims for which an election to proceed to limited patent has been filed must be maintained until such time as patent may be issued, including during the 2-year period before the deadline for filing the application expires.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Oil Shale
Mining Claims

Oil shale claim holders subject to subsection (c)(3) or (d) of the Energy Policy Act are required to maintain their claims by complying with the mining law as amended by that Act, which terminated the obligation to perform annual labor and now requires those oil shale claimants to pay a fee of $550 per claim per year to maintain their claims.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Oil Shale
Mining Claims

In enacting the Energy Policy Act, Congress established an affirmative obligation to pay $550 per year per oil shale claim to maintain such claims, a default in which subjects the claims to voidance. Congress did not mandate the conclusive, self-executing forfeiture by operation of law that attends failure to timely file a notice of election, failure to timely apply for limited patent, or failure to timely notify the Department in writing of a subsequent election to maintain a claim. Instead, BLM properly provides notice of the failure to comply with the Energy Policy Act and a reasonable opportunity to resolve such failure before it can issue a final decision determining that a claim is null and void.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Oil Shale
Mining Claims

The Energy Policy Act's oil shale maintenance fee of "$550 per claim per year" is not merely a matter of convenience. It is instead a substantive matter essential to maintaining the possessory right to an oil shale claim as against the United States, and payment of the fee is mandatory.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Oil Shale
Mining Claims

When no stay of BLM's decisions voiding unpatented oil shale mining claims pursuant to the Energy Policy Act was sought or granted, they were effective as of the close of the appeal period, and in accordance with the decisions, those mining claims were void and ceased to exist. In that circumstance, payment of yearly claim fees while the appeals were pending before this Board would be directly contrary to, and inconsistent with, the voidance decisions.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234, 256 (Dec. 22, 2003).

Oil Shale
Mining Claims

When a decision declaring unpatented oil shale claims null and void pursuant to the Energy Policy Act is reversed by this Board, the claims are restored to the claim holder *nunc pro tunc*, as if the decision had never been issued. Upon reinstatement of the oil shale claims, the obligation to maintain them as provided by the Energy Policy Act is also revived, including the obligation to pay the maintenance fees "per claim per year" for each year of the claim's existence.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234, 257 (Dec. 22, 2003).

Oil Shale
Mining Claims

Because the Energy Policy Act does not expressly provide for automatic forfeiture or conclusive abandonment of an oil shale claim for failure to comply with a mandatory requirement, the appropriate course of action is to provide a party an opportunity to comply with that Act. Where a party fails or refuses to come into compliance after receiving notice of maintenance fees that are due, BLM properly may declare such oil shale claims null and void.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (Dec. 22, 2003).

Oil Shale
Mining Claims

The $100 claim rental fee established by the Interior Department and Related Agencies Appropriations Act of 1993 (Rental Fee Act), Pub. L. No. 102-381, 106 Stat. 1378-79 (Oct. 5, 1992), applied to all unpatented mining claims, mill sites, and tunnel sites. As to oil shale claims, the Rental Fee Act applied only to those oil shale claims for which patent applications had been filed and accepted for processing by the Department by October 24, 1992, the date the Energy Policy Act of 1992, 30 U.S.C. § 242 (2000), was enacted, for which no first half final certificate has been issued. Such claims are to be maintained in accordance with the requirements of applicable law prior to the enactment of the Energy Policy Act until such time as patent may be issued. The Rental Fee Act required payment of the $100 fee for each claim for the 1993 and 1994 assessment years on or before August 31, 1993, to avoid conclusive abandonment of the claims.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover IV), 160 IBLA 261 (Dec. 22, 2003).

Oil Shale
Mining Claims

Oil shale claims which are subject to the provisions of the Energy Policy Act, 30 U.S.C. § 242(c)(1) and (2) (2000), must be maintained in accordance with the requirements of applicable law before the EPA was enacted.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover IV), 160 IBLA 261 (Dec. 22, 2003).

Oil Shale
Mining Claims

Under the Rental Fee Act, August 31, 1993, was the last date a claim holder could avoid conclusive abandonment of his unpatented mining claims by paying the rental fee. That deadline is to be distinguished from the obligation to pay the rental fees, which was established as of the effective date of the Rental Fee Act. Subsection (c)(3) of the Energy Policy Act plainly provides that claim holders subject to subsection (c)(1) and (2) are to continue to maintain their claims in accordance with the requirements of applicable law. Such claim holders were therefore required to pay rental fees for the 1993 and 1994 assessment years on or before August 31, 1993, to avoid the conclusive presumption of abandonment of their oil shale claims.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover IV), 160 IBLA 261 (Dec. 22, 2003).

Oil Shale
Mining Claims

The validity of the Rental Fee Act and the Energy Policy Act does not depend on the validity of the regulations adopted by the Department to implement them. A regulation cannot create authority where none has been conferred by Congress, and where Congress has enacted a statute, a regulation cannot exceed, diminish, or negate the authority thus granted.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover IV), 160 IBLA 261 (Dec. 22, 2003).

Oil Shale
Mining Claims

Where an oil shale application for patent was filed in October 1989 and BLM took no action to reject it until March 1993, a patent application had been filed and accepted for processing by the Department by October 24, 1992, as specified by the Energy Policy Act, 30 U.S.C. § 242(c)(1) (2000). By meeting this statutory criterion, the applicant fell into the category of persons who thereafter must maintain their claims "in accordance with the requirements of applicable law prior to the enactment of [the Energy Policy] Act." 30 U.S.C. § 242(c)(2) (2000).

Jerry D. Grover d.b.a. Kingston Rust Development (Grover V), 160 IBLA 318 (Jan. 22, 2004).

Oil Shale
Mining Claims

Payment of a $100 rental fee for each oil shale claim on or before August 31, 1994, was required for the 1993 assessment year that ended at noon on September 1, 1993, and the 1994 assessment year that began at noon on September 1, 1993. Pub. L. No. 102-381, 106 Stat. 1378-79 (1992). The failure to pay the claim rental fees on or before August 31, 1994, conclusively constituted abandonment of the claim. That consequence is self-executing, and the Department is without authority to excuse lack of compliance with the rental fee requirement, to extend the time for compliance, or to afford any relief from such statutory consequence.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover V), 160 IBLA 318 (Jan. 22, 2004).

Oil Shale
Mining Claims

Prior to July 1993, 43 C.F.R. § 3833.5(d) (1992) required personal notice to claim holders of record and "owners whose names show on annual filings" of contest proceedings or actions initiated by the United States. The regulation was amended in July 1993, and now requires BLM to look only to its official recordation files to ascertain owners when serving process in contest or other proceedings. The regulation does not constitute or establish an independent basis for attacking the sufficiency of notice required by and provided pursuant to the Energy Policy Act, 30 U.S.C. § 242 (2000).

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VI), 161 IBLA 26 (Mar. 10, 2004).

Oil Shale
Mining Claims

Actual notice of the requirements of the Energy Policy Act was provided by BLM and by this Board in prior decisions construing the Act in appeals filed by appellant or his predecessor in interest. Nothing in the Act mandates renewed personal notice for each claim held by an individual claim holder after he has received actual and constructive notice of the Act's requirements.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VI), 161 IBLA 26 (Mar. 10, 2004).

Oil Shale
Mining Claims

Where oil shale applications for limited patent were filed and accepted for processing on May 13, 1993, *after* October 24, 1992, the effective date of the Energy Policy Act, the claims are subject to the election provisions of the Act, 30 U.S.C. § 242(d) (2000), and must be maintained until such time as patent may be issued by, among other things, paying $550 per claim per year. 30 U.S.C. § 242(e) (2000). Where BLM's decisions treated appellant's oil shale claims as if the patent applications had been pending before the Department *on or before* October 24, 1992, which instead would have required appellant to maintain the claims in accordance with the requirements of applicable law prior to enactment of the EPA by paying a $100 claim maintenance fee, the decisions are properly reversed.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VI), 161 IBLA 26 (Mar. 10, 2004).

Oil Shale
Mining Claims

In *Jerry D. Grover d.b.a. Kingston Rust Development (Grover III)*, 160 IBLA 234 (2003), this Board clearly described what was necessary to comply with the Energy Policy Act of 1992 (EPA), 30 U.S.C. § 242 (2000). All holders of oil shale claims, except those who had filed patent applications and received first half final certificates as of the date the EPA was enacted, are required to pay a $550 fee per claim per year to maintain possession as against the United States until such time as patent may issue or the claim is otherwise invalidated. When it is undisputed that appellant failed to pay the fees mandated by the EPA after written notice and an opportunity to do so, exercising its *de novo* review authority, the Board properly affirms a BLM decision declaring oil shale mining claims null and void on the basis of that failure to comply with the EPA.

Jerry D. Grover d.b.a. Kingston Rust Development (Grover VII), 163 IBLA 310 (Nov. 2, 2004).

Outer Continental Shelf Lands Act
Generally

An MMS decision not to extend a deadline for completion of repairs/replacement of corroded structures on two OCS platforms will be affirmed on appeal if it is supported by substantial evidence and not shown to be in error or otherwise contrary to law. The continued presence of those conditions violated applicable regulations requiring the lessee to protect health, safety, property, and the environment by maintaining equipment in a safe condition (30 C.F.R. § 250.107), to assure the structural integrity of the platforms for the safe conduct of operations (30 C.F.R. § 250.900(a)), and to protect equipment against the effects of corrosion (30 C.F.R. § 907(d)).

Pacific Offshore Operators, Inc., et al., 165 IBLA 62 (Mar. 3, 2005).

Outer Continental Shelf Lands Act
Generally

An MMS decision setting a deadline for completion of repair/replacement of platform equipment and/or structures will be set aside if the basis for the decision is not found in the record. In the absence of a stated rationale and evidence supporting the decision, the Board cannot reasonably conclude that the decision is not arbitrary or capricious and appellants are afforded no way to challenge the decision.

Pacific Offshore Operators, Inc., et al., 165 IBLA 62 (Mar. 3, 2005).

Outer Continental Shelf Lands Act
Oil and Gas Leases

MMS appropriately assessed civil penalties against a Federal offshore oil and gas lessee who authorized welding and burning activities in a manner that did not comply with rules applicable to such practices on the Outer Continental Shelf. The fact that such activities may have taken place in association with well abandonment does not exempt them from safety regulations governing welding and burning practices during production operations.

W & T Offshore, Inc., 164 IBLA 193 (Dec. 20, 2004).

Outer Continental Shelf Lands Act
Oil and Gas Leases

MMS properly assesses a civil penalty when a lessee does not have the records required by 30 C.F.R. § 250.804(b) to show that safety-system devices have been inspected and tested at specified intervals.

Blue Dolphin Exploration Company, 166 IBLA 131 (July 8, 2005).

Outer Continental Shelf Lands Act

Oil and Gas Leases

An MMS decision assessing a civil penalty for each day an outer continental shelf oil and gas lessee failed to ensure that an automatic shutdown valve on a pipeline delivering production to a platform properly operated to shut down the pipeline at the activation of the emergency shut down system, in violation of 30 C.F.R. § 250.154 (1997), will be affirmed under section 24(b) of the Outer Continental Shelf Lands Act, *as amended*, 43 U.S.C. § 1350(b) (2000).

Seneca Resources Corporation, 167 IBLA 1 (Sept. 15, 2005).

Outer Continental Shelf Lands Act
Oil and Gas Leases

MMS properly assesses a civil penalty against a Federal offshore oil and gas lessee, pursuant to 43 U.S.C. § 1350(b) (2000) and 30 C.F.R. § 250.1404(b), where the record establishes that the emergency shutdown stations on an offshore oil and gas platform were inoperable, in violation of Departmental regulation, constituting a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment.

Petro Ventures, Inc., 167 IBLA 315 (Dec. 30, 2005).

Outer Continental Shelf Lands Act
Oil and Gas Leases

MMS properly takes into consideration the circumstances of the case when deciding on the dollar amount of a civil penalty. MMS' decision regarding the civil penalty amount will be upheld when supported by a record showing that MMS gave due consideration to all relevant factors and acted on the basis of a rational connection between the facts found and the choice made.

Petro Ventures, Inc., 167 IBLA 315 (Dec. 30, 2005).

Outer Continental Shelf Lands Act
Oil and Gas Leases

The Minerals Management Service properly assesses a civil penalty, pursuant to section 24(b) of the Outer Continental Shelf Lands Act, *as amended*, 43 U.S.C. § 1350(b) (2000), where the holder of an Outer Continental Shelf oil and gas lease fails to inspect a crane operating on its fixed offshore platform once every 12 months, as required by 30 C.F.R. § 250.108(a) (2002).

The Houston Exploration Company, 169 IBLA 166 (June 22, 2006).

Outer Continental Shelf Lands Act
Oil and Gas Leases

When production in paying quantities ceases on an oil and gas lease which has been continued beyond its initial term by such production pursuant to section 8 of the Outer Continental Shelf Lands Act, *as amended*, 43 U.S.C. § 1337(b)(2000), the lease expires by operation of law unless production in paying quantities is resumed, drilling or well reworking is undertaken, or a suspension of operations or production is approved by the Department within 180 days.

Kerr-McGee Oil & Gas Corp., 172 IBLA 195 (Aug. 29, 2007).

Outer Continental Shelf Lands Act
Oil and Gas Leases

When operations cease and extraordinary events occur or force majeure conditions exist which adversely affect or could adversely affect an Outer Continental Shelf oil and gas lessee's ability to resume operations within 180 days of ceasing operations on that lease to avoid lease termination by operation of law, the lessee or operator must apply for and secure from the Department a suspension of operations or production within that 180-day period.

Kerr-McGee Oil & Gas Corp., 172 IBLA 195 (Aug. 29, 2007).

Outer Continental Shelf Lands Act
Oil and Gas Leases

"Production in paying quantities," for the purpose of continuing a lease beyond its initial term under section 8 of the Outer Continental Shelf Lands Act, *as amended*, 43 U.S.C. § 1337(b)(2000), means sufficient production to yield a net profit when revenue from the lease is reduced by normal expenses, including royalties and direct lease operating costs.

Kerr-McGee Oil & Gas Corp., 172 IBLA 195 (Aug. 29, 2007).

Outer Continental Shelf Lands Act
Oil and Gas Leases

Where the record establishes that, during a loss of well-control event, a diverter was inoperable from a remote control station when in "test" mode and the crew lacked sufficient knowledge and training concerning use and operation of the diverter system, safety regulations promulgated pursuant to the Outer Continental Shelf Lands Act were violated. Such violations constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment, justifying the assessment of civil penalties without regard to notice and an opportunity for corrective action.

BP Exploration & Production, Inc., 172 IBLA 372 (Sept. 28, 2007).

Patents of Public Lands
Generally

A patent is the means by which legal title to public land passes out of Federal ownership. The patent is both evidence of the lands identified to be conveyed and declaratory of the title conveyed.

Beau Hickory & Patricia L. Tinnell, 160 IBLA 166 (Oct. 23, 2003).

Patents of Public Lands
Generally

Title to public lands is granted by patent, not by the status reflected in land records. The grantee of a patent and the successors thereof are on constructive notice of the contents of the patent. Local tax assessment records neither purport to be title nor convey it. Appellants' reliance on local tax records to establish their claim of ownership therefore is misplaced.

Beau Hickory & Patricia L. Tinnell, 160 IBLA 166 (Oct. 23, 2003).

Patents of Public Lands
Corrections

A homestead entry patent may be amended, pursuant to section 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (2000), when the applicant demonstrates by a preponderance of the evidence that the patent did not convey lands that the applicant and the United States mutually intended to convey by the patent. Unless otherwise shown, equity and justice favor such correction.

Ramona & Boyd Lawson, 159 IBLA 184 (June 4, 2003).

Patents of Public Land
Corrections

Under section 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (2000), the Secretary has authority to correct errors in patents and conveyance documents where an error in fact requires correction and considerations of equity and justice favor such correction. Where an 1887 patent issued for a lode mining claim on its face did not make reference to a millsite by name, lot, survey number or description; the millsite survey number or description was not incorporated into the land description in the patent; and where Departmental records confirm that the separate mineral entry for the millsite was canceled by a final Departmental decision in 1894, BLM properly denies relief under section 316 of FLPMA. Absent proof of error in the patent or conveyancing document, this Board will affirm the decision denying relief.

Beau Hickory & Patricia L. Tinnell, 160 IBLA 166 (Oct. 23, 2003).

Patents of Public Lands
Corrections

An applicant seeking a patent correction pursuant to 43 U.S.C. § 1746 (2000) must establish that an error in fact was made. No error is established in the Department's issuance of a regular (non-Indian) homestead certificate under the Homestead Act of 1862 to applicant's predecessor, now asserted to have been an Indian, when his entry was made after the enactment of sec. 6 of the Indian General Allotment Act of 1887, *i.e.*, when it might have been made under the general homestead law, and nothing in the predecessor's homestead record indicated his Indian status or an intent to have patent issue under the Indian Homestead Act of July 4, 1884, with restrictions on alienation, rather than under the Homestead Act of 1862, with no restrictions on alienation.

Ray M. Chavarria, 165 IBLA 161 (Mar. 31, 2005).

Patents of Public Lands
Corrections

Section 6 of the Indian General Allotment Act of 1887 declared every native born Indian who had taken up residence separate and apart from his tribe and adopted the habits of civilized life to be a citizen of the United States and entitled to all the rights, privileges and immunities of such citizens, which included the privilege to make a homestead entry under the provisions of homestead laws just as any other citizen could. When the entryman's application sought entry after enactment of sec. 6 of the Indian General Allotment Act of 1887 as a native born citizen of the United States under the Homestead Act of 1862; his entry application, affidavits and final proof made no mention of Indian status; and both the entryman and then his wife, after he died, paid all fees and commissions required for regular homestead applications, no error is established in Department's issuance of homestead patent under the Homestead Act of 1862.

Ray M. Chavarria, 165 IBLA 161 (Mar. 31, 2005).

Patents of Public Lands
Corrections

An applicant seeking to correct a patent pursuant to 43 U.S.C. § 1746 (Supp. 2003) must establish that an error in fact was made. No error is established in the President's issuance of a certificate under the Homestead Act of 1862 to the applicant's predecessor, subject to a mineral reservation to the United States, when the patentee agreed in writing to a reservation of the mineral estate. The argument of a successor in interest to a patent that the Government made mistakes in issuing the patent 70 years previously in pursuit of the desire to reform the patent for personal gain does not constitute an "error in the conveyance document" subject to correction under FLPMA section 316.

Steve H. Crooks and Era Lea Crooks, 167 IBLA 39 (Sept. 27, 2005).

Patents of Public Lands
Effect

BLM properly declares lode mining claims null and void ab initio where they were located entirely on lands which were not open to entry under the United States mining

laws at the time of location either because they had been patented as mining claims or granted to the State of Idaho as part of grants of school sections. The fact that the State may have, on a date following the putative location of the claims, applied for other lands in lieu of lands within the section is irrelevant where such application was subsequently rejected and withdrawn, since the aborted lieu selection process did not, in the absence of publication and clear-listing, result in any waiver by the State of its rights in the lands in the section or in any lands being returned to the ownership of the United States.

Aberdeen Idaho Mining Co., 155 IBLA 358 (Oct. 1, 2001).

Patents of Public Lands
Effect

While the effect of the issuance of a patent by the United States is to transfer the legal title from the United States and to remove from the jurisdiction of the Department the consideration of all disputed questions concerning the rights to lands, that rule is not without qualification, and in a case involving the Secretary of the Interior's special fiduciary responsibility to Alaska Natives, it has been held that the Department retains the responsibility of making an initial determination as to the validity of a Native allotment claim to patented land as a prerequisite to deciding whether or not the Government should bear the burden of going forward with a suit to annul the patent and thereby restore adjudicatory jurisdiction over the land in question to the Department. However, when an individual, who does not stand in any special legal relationship with the Department, seeks to overturn an Alaska Native village eligibility determination approved by the Secretary, which has been the basis for transfer of lands to the village corporation, and the individual has no conflicting claim to the lands, the rationale for the exception does not exist.

Omar Stratman v. Leisnoi, Inc., 157 IBLA 302 (Oct. 29, 2002).

Patents of Public Lands
Effect

Suits by the United States to vacate and annul any patent must, in accordance with 43 U.S.C. § 1166 (1994), be brought within 6 years after the date of issuance of such patents. Where land conveyances to an Alaska Native village corporation were made by patents and interim conveyances more than 6 years ago and title has been quieted in that corporation, the statutory limitation bars further Departmental involvement at any level, regardless of the possible merits of a challenge to the village's eligibility by an individual with no special relationship to the Department and no adverse claim to any of the land transferred to the Native village corporation.

Omar Stratman v. Leisnoi, Inc., 157 IBLA 302 (Oct. 29, 2002).

Patents of Public Lands
Effect

A railroad patent passes fee simple title to public land from the United States to the grantee. After a patent has issued, questions of property rights are governed by State law. Where public land in Arizona was patented to the Santa Fe and Pacific Railroad Company and later conveyed subject to both a general mineral reservation and a reservation of "gravel and ballast" for "railroad purposes," under State law, sand, gravel, and ballast are excluded from the general mineral reservation in the deed.

Alfred Jay Schritter, 171 IBLA 123 (Feb. 21, 2007).

Patents of Public Lands
Reservations

Where the term of a communications site right-of-way was defined to coincide with the expiration of a Federal Communications Commission license to operate an FM radio station and did not otherwise specify that the license must be maintained by the right-of-way grantee, and the record shows that a valid license has been in place since 1981, a BLM decision holding that the right-of-way automatically terminated will be reversed.

Dan Bradshaw, 161 IBLA 116 (Apr. 7, 2004).

Patents of Public Lands
Reservations

The phrase *subject to* when used in a conveyance means "subordinate to", "subservient to", "limited by", or "charged to", and it serves to put a purchaser on notice that he is receiving less than a fee simple. An *exception* in a deed withdraws from the description of the property conveyed the property excepted therefrom. An *exception* thus is *in esse* at the time of the conveyance, and title remains in the grantor. In contrast, a *reservation* technically is a conveyance of the grantor's entire interest in property by which an interest that did not previously exist as an independent right or interest is simultaneously created and vested in the grantor. When a patent contains a clause *excepting and reserving to* the United States certain identified rights-of-way and easements, while also conveying the patented lands *subject to* other provisions, the patent will be construed as excepting the lands within the boundaries of the rights-of-way and easements from the description of the land conveyed by the patent.

Dan Bradshaw, 161 IBLA 116 (Apr. 7, 2004).

Patents of Public Lands
Reservations

Where BLM has patented lands excepting and reserving to the United States a communication site right-of-way, BLM may not divest the United States of land thus retained without first complying with the provisions of sec. 508 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1768 (2000), by determining that retention of Federal control is no longer necessary to assure that (1) the purpose of Title V of the Act will be carried out, based on the effect on the public interest, (2) the terms and conditions of the right-of-way will be complied with, and (3) the lands affected will be protected.

Dan Bradshaw, 161 IBLA 116 (Apr. 7, 2004).

Patents of Public Lands
Reservations

When a patent conveys lands "subject to . . . all communication site and related facility rights-of-way, granted or to be granted" in accordance with documents referred to in the patent that describe areas that "will be reserved for communications site use" and state "[i]t is understood that patents issued for the above described lands will

provide for continued use of the communication sites," the patent reserved an interest in lands for use as communication sites and those areas are public lands over which BLM has jurisdiction to grant rights-of-way for communication sites.

AZ Spectrum Wireless, 161 IBLA 311 (May 17, 2004).

Patents of Public Lands
Reservations

Sand and gravel are covered by the reservation of "oil, gas, and all other mineral deposits" in patents granted under the Small Tract Act, 43 U.S.C. § 682a (1970). Removal of sand and gravel from land patented under that Act for commercial purposes constitutes a trespass.

New West Materials, 164 IBLA 126 (Dec. 2, 2004).

Patents of Public Lands
Reservations

A BLM decision determining that an easement segment was not reserved in the interim conveyance and patent conveying selected lands to a Native corporation will be reversed where, although the easement language in the interim conveyance and in the patent do not explicitly describe the segment at issue and the maps associated with the interim conveyance are ambiguous as to the existence of the easement, the map incorporated into the patent as part of the conformance process clearly depicts the easement segment and establishes that the easement segment was reserved in the patent. The patent's clear reservation of the easement segment precludes BLM from determining that the easement segment never existed.

State of Alaska, 167 IBLA 156 (Oct. 27, 2005).

Patents of Public Lands
Suits to Cancel

Where land described in a Native allotment application has been patented, the *Aguilar* Stipulated Procedures require a hearing before a BLM hearing officer, whose decision is final for the Department and not subject to appeal to the Board of Land Appeals. Where the parcel only in part describes lands conveyed out of U.S. ownership and a hearing on the entire parcel is required, Government contest procedures may properly be used. Despite the potential overlap in issues in such proceedings, the fundamental character of the proceeding with respect to the patented land is no more than investigatory. Because the *Aguilar* procedures make no provision for review by the Board of such an investigatory determination, the Board properly dismisses an appeal from the administrative law judge's determination made pursuant to the *Aguilar* Stipulated Procedures.

United States V. Heirs of Harlan L. Mahle, 171 IBLA 330 (June 29, 2007).

Payments
Generally

The Minerals Management Service is authorized under 30 C.F.R. § 218.202 to impose a late payment charge where royalty payments for coal from Federal coal leases are untimely. The imposition of late payment charges is appropriate to compensate the Government for loss of use of funds due but not paid. A late payment charge is properly assessed against the lessee for late payment of royalties when payment for coal production under a coal supply agreement is delayed because the purchaser is in bankruptcy.

Colowyo Coal Company L.P., 154 IBLA 31 (Oct. 30, 2000).

Payments
Generally

Appellant's lease and applicable regulations specified that royalty would be determined by major portion analysis. Even though the Department did not perform such analysis until compelled to do so years after production had occurred by agreement settling litigation in *Kauley v. Lujan*, appellant knew or should have known that its Indian lease gas production was being valued by a method other than major portion analysis, and consequently, it was on notice that it could be responsible for additional royalties.

Sanguine Limited, 155 IBLA 277 (July 26, 2001).

Payments
Generally

Where nonpayment or underpayment of royalties by the end of the month following the month in which the production occurred is established, MMS properly assesses interest for late payment of royalties under section 111(a) of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. § 1721(a) (1994). That result is not changed when the impetus for recalculating royalties is an agreement between the Federal government and Indian lessors settling class action litigation years after the production in question had occurred.

Sanguine Limited, 155 IBLA 277 (July 26, 2001).

Phosphate Leases and Permits
Leases

Departmental regulation 43 C.F.R. § 3511.25 provides that BLM will "notify" lessees of solid minerals other than coal or oil shale of proposed readjusted lease terms before the end of each 20-year period of the lease, and further provides: "If we do not timely notify you of readjusted terms, those leases continue for another 20-year period under the same terms and conditions." Where a lessee received the terms of a phosphate lease readjustment 5 days after the 20-year term of the lease had expired, BLM failed to "timely notify" the lessee of the readjusted terms, and the lease is properly administered for another 20-year period under the same terms and conditions, even though BLM *transmitted* the terms of the readjustment prior to the end of the lease term.

Melvin E. Leslie, 161 IBLA 110 (Mar. 17, 2004).

Potassium Leases and Permits
Royalties

The Secretarial Order requires that potash enclaves be identified based on existing economics, but since the record fails to demonstrate how (if at all) royalties and royalty rate reductions were considered by BLM in identifying potash enclaves, BLM must determine on remand whether and, if so, how best to consider royalties and royalty reductions in its enclave decisionmaking under the Secretarial Order.

IMC Kalium Carlsbad, Inc., Potash Association of New Mexico; Yates Petroleum Corporation; Pogo Producing Company; Bureau of Land Management, 170 IBLA 25 (Sept. 7, 2006).

Powersite Lands

A mining claim located prior to August 11, 1955, on land subject to a powersite classification is null and void ab initio, and an attempt to amend the location is an action that has no legal effect.

Daddy Del's L.L.C., 151 IBLA 229 (Dec. 15, 1999).

Powersite Lands

BLM improperly declares a placer mining claim located on land subject to a powersite reservation null and void when the claimants, following notice from BLM, failed to submit a location notice properly marked to indicate that it was filed pursuant to the Mining Claims Rights Restoration Act of 1955, *as amended*, 30 U.S.C. §§ 621-625 (1994), as required by 43 C.F.R. § 3734.1(a), since the failure to do so does not affect the validity of the claim but only when mining may occur on the claimed land.

Allen C. Kroeze, 153 IBLA 140 (Aug. 16, 2000).

Powersite Lands

The Mining Claims Rights Restoration Act of 1955, *as amended*, 30 U.S.C. §§ 621-625 (2000), which opened powersite withdrawals for entry under the mining laws, provides that the locator of a placer claim under the Act may not conduct any mining operations for 60 days after filing a notice of location pursuant to 30 U.S.C. § 623 (2000) and that, if the Department decides to hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land, the suspension of operations will continue until the hearing has been held and the Department has issued an appropriate order providing for one of the following alternatives: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator restore the surface of the claim to the condition it was in prior to mining; or (3) a general permission to engage in placer mining.

United States v. Donald E. Eno, 171 IBLA 69 (Feb. 13, 2007).

Powersite Lands

To determine whether mining would substantially interfere with other uses of powersite lands within the meaning of the Mining Claims Rights Restoration Act of 1955, *as amended*, 30 U.S.C. § 621 (2000), the Department is required to engage in a weighing or balancing of the benefits of mining against the injury mining would cause to other uses of the land. Mining may be allowed where the benefits of placer mining outweigh the detriment that placer mining causes to other uses. Central to the balancing test is the concept that the competing uses must be substantial if they are to be used to prohibit placer mining. Thus, even if the Secretary determines that placer mining would substantially interfere with other uses of the land, he may still appropriately grant a general permission to engage in placer mining operations if the competing surface uses have less significance than the proposed placer mining operation. The importance of the competing uses, which must be compared and judged on whatever grounds are relevant in the individual case, need not be economically quantifiable and may include the preservation of cultural, geological, or scenic resources.

United States v. Donald E. Eno, 171 IBLA 69 (Feb. 13, 2007).

Practice Before the Department
Persons Qualified to Practice

Under 43 C.F.R. § 4.410(a), "[a]ny party to a case who is adversely affected by a [BLM] decision . . . shall have a right of appeal to the Board." An appeal brought by an organization is properly dismissed where the organization fails to identify any members who had been adversely affected by BLM's decision or where the person representing the organization does not, in response to a challenge, produce evidence independent from his own declaration that he has authority to do so. However, where the individual who filed both the protest and the appeal as a purported officer of the organization has been personally adversely affected by BLM's decision, that individual may be recognized as having filed an appeal on his or her own behalf.

Las Vegas Valley Action Committee et al., 156 IBLA 110 (Dec. 19, 2001).

Precedent and Authority
Bureau of Land Management

BLM Instruction Memoranda are not binding on the Interior Board of Land Appeals.

Union Oil Company of California, 158 IBLA 265 (Feb. 21, 2003).

Public Lands
Generally

A decision to limit use of a recreational site to day-use-only (no overnight camping) will be affirmed (1) where BLM took a hard look at the environmental consequences as opposed to reaching conclusions unaided by preliminary investigation, identified relevant areas of environmental concern, and made a convincing case that environmental impact is insignificant; (2) where BLM's decision is supported by valid reasons clearly set out in the supporting documentation; and (3) where those reasons are not challenged on appeal.

Lee and Jody Sprout, Dick and Shauna Sprout, 160 IBLA 9 (July 29, 2003).

Public Lands
Generally

Lands patented without a mineral reservation which are subsequently acquired by the United States by deed which is accepted by the Secretary of Agriculture for inclusion in a national forest are not subject to the location of mining claims in the absence of a legislative provision authorizing mineral entry. A decision declaring mining claims located on such acquired lands null and void ab initio is properly affirmed.

Northern Nevada Natural Mining, et al., 161 IBLA 318 (May 19, 2004).

Public Lands
Generally

FLPMA establishes that BLM must manage the public lands for multiple uses by the public, including outdoor recreation. FLPMA does not contain any *per se* prohibition of particular types of off-road vehicle use; rather, BLM regulates and establishes criteria for the use and operation of such vehicles on the public lands under its regulations at 43 C.F.R. Subpart 8340. The Board will not reverse under FLPMA a BLM decision to create a jeep trail in a recreation area, and to close others in nearby sensitive environmentally protected areas, where such action was expressly envisioned in the relevant land use planning documents.

Colorado Mountain Club, et al., 161 IBLA 371 (June 4, 2004).

Public Lands
Generally

A party challenging a finding of no significant impact based on an environmental assessment has the burden of showing an error of law, error of material fact, or that the environmental analysis failed to consider a substantial environmental question of material significance to the proposed action.

Armando Fernandez, Coachella Valley Collection Service, 165 IBLA 41 (Feb. 23, 2005).

Public Lands
Generally

BLM is required to designate all public lands as either open, limited, or closed to off-road vehicle (ORV) use, and approval of a resource management plan, revision, or amendment constitutes formal designation of ORV use areas. Operation of ORVs is permitted on areas and trails designated as open to ORV use, and in areas designated as "limited" in conformity with the terms and conditions of the orders designating them as limited, but is prohibited on areas and trails closed to ORV use. Although the regulations define "closed area" as "an area where off-road vehicle use is prohibited," they also provide that use of ORVs in closed areas may be allowed for certain reasons, but only with the approval of the authorized officer.

Arizona State Association of 4-wheel Drive Clubs, Inc., 165 IBLA 153 (Mar. 29, 2005).

Public Lands
Generally

A BLM determination concerning authorization of ORV use will be affirmed if the decision is supported by the record, absent compelling reasons for modification or reversal. When BLM found that increasing ORV use of a canyon, due to the mistaken perception that it was open to general ORV use, had caused unacceptable impacts to riparian values and appellant has provided no evidence that is sufficient to overcome this conclusion, an decision rejecting a special recreation permit for use of the canyon will be affirmed.

Arizona State Association of 4-wheel Drive Clubs, Inc., 165 IBLA 153 (Mar. 29, 2005).

Public Lands
Generally

The Secretary of the Interior is authorized and obligated to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands have been or remain to be disposed of by the United States. An island in a navigable river that has been omitted from a public land survey remains public land and may be surveyed and disposed of by the United States.

State of South Dakota, 166 IBLA 210 (July 27, 2005).

Public Lands
Generally

FLPMA establishes that BLM must manage the public lands for multiple uses by the public, including outdoor recreation. FLPMA does not contain any per se prohibition of off-road vehicle use. The Board will not reverse, as violative of FLPMA, a BLM decision to designate an off-highway vehicle trail and to close others in sensitive, environmentally protected areas, where such action was expressly envisioned in relevant land use planning documents.

Forest Guardians, 168 IBLA 323 (Apr. 3, 2006).

Public Lands
Generally

A BLM management decision implementing a resource management plan will be affirmed if the decision adequately considers all relevant factors including environmental considerations, reflects a reasoned analysis, and is supported by the record, absent a showing of clear reasons for modification or reversal. Mere differences of opinion regarding proper management of public lands will not overcome an amply supported BLM management decision.

Rainer Huck, et al., 168 IBLA 365 (Apr. 18, 2006).

Public Lands
Appraisals

BLM's determination of the annual rental for an airport lease on public lands, based on its appraisal of the fair market rental value of the lease, will be upheld where the lessee fails to demonstrate, by a preponderance of the evidence, that the appraisal was flawed in its methodology, analysis, or conclusions, or otherwise fails to demonstrate that BLM did not properly assess the fair market rental value.

Spanish Springs Pilots Association, Inc., 167 IBLA 284 (Dec. 28, 2005).

Public Lands
Disposals of
Generally

The Recreation and Public Purposes Act authorizes the Secretary, in his discretion, to sell or lease tracts of public lands for recreational or public purposes under certain conditions. A Recreation and Public Purpose lease/purchase application properly may be rejected by BLM on the basis that the lands sought are not identified for disposal in the applicable management plan.

Nevada Pacific Consortium, 158 IBLA 108 (Dec. 31, 2002).

Public Lands
Disposals Of
Generally

Where the term of a communications site right-of-way was defined to coincide with the expiration of a Federal Communications Commission license to operate an FM radio station and did not otherwise specify that the license must be maintained by the right-of-way grantee, and the record shows that a valid license has been in place since 1981, a BLM decision holding that the right-of-way automatically terminated will be reversed.

Dan Bradshaw, 161 IBLA 116 (Apr. 7, 2004).

Public Lands
Disposals Of
Generally

The phrase *subject to* when used in a conveyance means "subordinate to", "subservient to", "limited by", or "charged to", and it serves to put a purchaser on notice that he is receiving less than a fee simple. An *exception* in a deed withdraws from the description of the property conveyed the property excepted therefrom. An *exception* thus is *in esse* at the time of the conveyance, and title remains in the grantor. In contrast, a *reservation* technically is a conveyance of the grantor's entire interest in property by which an interest that did not previously exist as an independent right or interest is simultaneously created and vested in the grantor. When a patent contains a clause *excepting and reserving to* the United States certain identified rights-of-way and easements, while also conveying the patented lands *subject to* other provisions, the patent will be construed as excepting the lands within the boundaries of the rights-of-way and easements from the description of the land conveyed by the patent.

Dan Bradshaw, 161 IBLA 116 (Apr. 7, 2004).

Public Lands
Disposals Of
Generally

Where BLM has patented lands excepting and reserving to the United States a communication site right-of-way, BLM may not divest the United States of land thus retained without first complying with the provisions of sec. 508 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1768 (2000), by determining that retention of Federal control is no longer necessary to assure that (1) the purpose of Title V of the Act will be carried out, based on the effect on the public interest, (2) the terms and conditions of the right-of-way will be complied with, and (3) the lands affected will be protected.

Dan Bradshaw, 161 IBLA 116 (Apr. 7, 2004).

Public Lands
Jurisdiction Over

The Secretary of the Interior has both the authority and the duty to consider and determine what lands are public lands of the United States, including a determination of navigability of a river to ascertain whether title to the land underlying the river is in the United States or whether title passed to a state upon its admission into the Union. The bed of a non-navigable river is usually deemed to be the property of the adjoining landowners; under the "equal footing doctrine," title to land beneath navigable waters passed to the State upon its admission into the Union. Where the record shows that a portion of a river is non-navigable, and the State of California has treated it as non-navigable by statute, BLM did not err in deciding that the lands in the bed of that non-navigable river remained under the ownership of the United States at the time of California Statehood, provided that their uplands were owned by the United States.

Western Aggregates, LLC, 169 IBLA 64 (May 17, 2006).

Public Lands
Leases and Permits

Under the Materials Act of 1947, *as amended*, 30 U.S.C. §§ 601-604 (1994), and its implementing regulations, 43 C.F.R. Part 3600, BLM has considerable discretion to dispose, by sale or other means, of mineral materials from the public lands. A BLM decision, made in the exercise of its discretionary authority, generally will not be overturned by the Board unless it is arbitrary and capricious, and thus not supported on any rational basis.

Moffat County Road Department, 158 IBLA 221 (Jan. 24, 2003).

Public Lands
Leases and Permits

When a species is not listed as threatened or endangered under the Endangered Species Act, 16 U.S.C. §§ 1531-44 (1994), but is listed as a "state threatened species" under Colorado law, recognizing Colorado law as authority for including a stipulation providing for time limitations on sand and gravel operations in a free use permit for the protection of that species is a proper exercise of BLM's discretion.

Moffat County Road Department, 158 IBLA 221 (Jan. 24, 2003).

Public Lands
Leases and Permits

Where the record of decision for the governing resource management plan supports the restriction of resource development activities on critical raptor nest buffer zones from February 1 through July 30, a stipulation in a free use permit limiting, *inter alia*, removal of rock between April 1 and July 30, for purposes of protecting western burrowing owl nesting habitat, will be affirmed.

Moffat County Road Department, 158 IBLA 221 (Jan. 24, 2003).

Public Lands
Leases and Permits

Paleontological resources on public lands are owned by the United States. The Federal Land Policy and Management Act of 1976 (FLPMA) provides general authority for BLM to manage and protect paleontological resources on public lands. BLM's paleontological use permit program arises from section 302(b) of FLPMA, 43 U.S.C. § 1732(b) (2000), and, among other authorities, 43 C.F.R. § 8365.1-5, which states: "On all public lands, unless otherwise authorized, no person shall; (1) Willfully deface, disturb, remove or destroy any scientific, cultural, archaeological or historic resource, natural object or area.

The Board of Regents of the University of Oklahoma, 165 IBLA 231 (Apr. 13, 2005).

Public Lands
Leases and Permits

Decisions involving paleontological use permits are committed to the discretion of the Secretary, through BLM, and the exercise of that discretion must have a rational basis. When the record reveals extensive evidence supporting a disputed finding in such a decision, there is a rational basis for the finding, and that portion of the decision will be affirmed.

The Board of Regents of the University of Oklahoma, 165 IBLA 231 (Apr. 13, 2005).

Public Lands
Leases and Permits

BLM may impose administrative sanctions for permit violations even in the absence of specific regulatory provisions establishing such sanctions, so long as BLM provides notice of the possible range of sanctions. A decision imposing sanctions without such notice must be reversed.

The Board of Regents of the University of Oklahoma, 165 IBLA 231 (Apr. 13, 2005).

Public Lands
Leases and Permits

BLM's determination of the annual rental for an airport lease on public lands, based on its appraisal of the fair market rental value of the lease, will be upheld where the lessee fails to demonstrate, by a preponderance of the evidence, that the appraisal was flawed in its methodology, analysis, or conclusions, or otherwise fails to demonstrate that BLM did not properly assess the fair market rental value.

Spanish Springs Pilots Association, Inc., 167 IBLA 284 (Dec. 28, 2005).

Public Lands
Leases and Permits

Cultural resource use permits are issued pursuant to section 302(b) of FLPMA, 43 U.S.C. § 1732(b) (2000), among other authorities. Decisions involving permits issued under that provision are committed to the discretion of the Secretary, through BLM, and the exercise of that discretion must have a rational basis. A decision refusing to renew a permit must have a rational basis and be supported by facts of record demonstrating that an action is not arbitrary, capricious, or an abuse of discretion. An appellant bears the burden of proof to show, by a preponderance of the evidence, that a challenged decision to reject a permit renewal application is in error. Where BLM has decided not to renew a cultural resource use permit because of repeated instances of unrecorded or under-recorded sites, that decision is properly affirmed where the holder of the permit has not explained why the specific sites in question were not reported or were under-reported in a manner that is consistent with applicable professional standards.

Archaeological Services by Laura Michalik, 169 IBLA 90 (May 25, 2006).

Public Lands
Special Use Permits

An authorized officer's exercise of discretionary authority to deny a special recreation permit should have a rational basis supported by facts of record so as not to be arbitrary, capricious, or an abuse of discretion. BLM may deny a special recreation permit if the proposed activity conflicts with BLM objectives, responsibilities, or programs for management of the public lands.

Frank Robbins, d.b.a. High Island Ranch, 154 IBLA 93 (Dec. 18, 2000).

Public Lands
Special Use Permits

The drilling of a water well on a private inholding to supply a source of water to support camping within the inholding and the use of the land for the purpose of stargazing are "reasonable" uses of the land within the meaning of § 708 of the California Desert Protection Act of 1994, 16 U.S.C. § 410aaa-78 (1994).

Wilderness Watch, 156 IBLA 17 (Nov. 8, 2001).

Public Lands
Special Use Permits

Under the express provisions of § 519 of the California Desert Protection Act, 16 U.S.C. § 410aaa-59 (1994), rules and regulations applicable solely to Federal lands within the boundaries of wilderness areas established by that Act are not applicable to private inholdings unless or until such inholdings are acquired by the United States.

Wilderness Watch, 156 IBLA 17 (Nov. 8, 2001).

Public Lands
Special Use Permits

So long as BLM provides "adequate" access to inholdings within the meaning of § 708 of the California Desert Protection Act of 1994, 16 U.S.C. § 410aaa-78 (1994), the degree and manner of access provided is within BLM's sound discretion.

Wilderness Watch, 156 IBLA 17 (Nov. 8, 2001).

Public Lands
Special Use Permits

Denial of an application for a special recreation permit when the proposed use conflicts with BLM objectives, responsibilities, or programs for management of the public lands is a matter of discretion with the authorized officer under 43 C.F.R. § 8372.3. Any exercise of discretionary authority must have a rational basis supported by facts of record so that it is not arbitrary, capricious, or an abuse of discretion. BLM's denial of applications from a person who fails to disclose information required on the application form, whose conduct and reputation are inconsistent with BLM policies for administering the special recreation permit program, and who has been convicted of Lacey Act violations will be upheld when supported by the record.

William D. Danielson, 153 IBLA 72 (July 26, 2000).

Public Lands
Special Use Permits

An appellant must demonstrate that, when finding that its proposed action will not result in significant adverse impact on the human environment, BLM erred in its analysis or acted contrary to any law to prevail on appeal. A BLM decision to approve amendment of a special recreation permit to authorize a jet boat race on a Federally–designated wild and scenic river will be affirmed when the record adequately supports the decision, demonstrates that BLM took a hard look at the potential environmental impacts of its decision, and makes a convincing case that no significant impact will likely result, in accordance with section 102(2) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2) (1994).

Klamath–Siskiyou Wildlands Center, 153 IBLA 110 (Aug. 7, 2000).

Public Lands
Special Use Permits

Bona fide purchaser protection is generally limited to a purchaser of title to the land in good faith, for value, and without notice of an earlier unrecorded equitable interest or claim. A party holding a special use permit authorizing use of Federal lands for a specific purpose, subject to valid claims, has no claim of title to the land and, hence, is not entitled to protection as a bona fide purchaser against adjudication of outstanding claims of title.

Erling Skaflestad, Bonnie Skaflestad, 155 IBLA 141 (June 27, 2001).

Public Lands
Special Use Permits

A party engaged in "commercial use," as that term is defined in 43 C.F.R. § 8372.0-5(a) (2000), must obtain a special recreation permit. The nonprofit status of any organization under the Internal Revenue Code does not control the distinction between commercial and non-commercial use under that rule. Collection by a permittee of fees, charges, and other compensation which are not strictly a sharing of, or which are in excess of, actual expenses incurred for the purposes of a permitted use of public lands shall make the use commercial. The land user may not avoid a commercial designation by claiming that it receives fees which do not exceed actual expenses while omitting from its calculations other compensation received for the activity on public land.

Camp Redcloud, Inc., 162 IBLA 84 (June 29, 2004).

Public Lands
Special Use Permits

A party may not obtain a waiver of fees due for a special recreation permit when its use of the public lands is primarily for recreation purposes.

Camp Redcloud, Inc., 162 IBLA 84 (June 29, 2004).

Public Lands
Special Use Permits

The holder of a special recreation permit issued for commercial use (mine tours) on the public lands is required to maintain a policy of liability insurance sufficient to protect the public and the United States.

Cristian Miclea d/b/a Albedo, 163 IBLA 72 (Sept. 7, 2004).

Public Lands
Special Use Permits

A decision cancelling a special recreation permit issued for commercial use is properly affirmed where maintenance of liability insurance is a condition of permit issuance and the permit holder allows its liability insurance to lapse for nonpayment of the premium without notifying BLM.

Cristian Miclea d/b/a Albedo, 163 IBLA 72 (Sept. 7, 2004).

Public Lands
Special Use Permits

In preparing a programmatic environmental assessment to assess whether an environmental impact statement (EIS) is required under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2000), an agency must take a "hard look" at the proposal being addressed and identify relevant areas of environmental concern so that it can make an informed determination as to whether the environmental impact is insignificant or impacts will be reduced to insignificance by mitigation measures A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is based on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action.

Southern Utah Wilderness Alliance, 164 IBLA 33 (Nov. 16, 2004).

Public Lands
Special Use Permits

A decision permitting guided vehicle tours over designated roads, ways, or trails within a wilderness study area is properly set aside when the record shows that such routes cross through and parallel to riparian/wetland zones and have caused damage to such resources, and fails to disclose what information BLM had before it when it concluded that the addition of tour traffic would have no significant impact on riparian/wetland areas on the designated travel routes.

Southern Utah Wilderness Alliance, 164 IBLA 33 (Nov. 16, 2004).

Public Lands
Special Use Permits

A programmatic environmental assessment analyzing the impacts of guided vehicle tours to as yet unidentified archaeological or historic sites which are or may become eligible for inclusion on the National Register of Historic Places, to be permitted at some future date, does not constitute "undertaking" for purposes of triggering consultation with the State Historic Preservation Officer (SHPO) pursuant to the Utah State Protocol Agreement between BLM and the SHPO.

Southern Utah Wilderness Alliance, 164 IBLA 33 (Nov. 16, 2004).

Public Lands
Special Use Permits

Officials of BLM exercise their discretionary authority when adjudicating applications for special recreation permits. When a rational basis for the decision is established in the record, the Board will not ordinarily substitute its judgment for that of the BLM officials delegated the authority to exercise that discretion, and the decision is ordinarily affirmed.

Pronto Pics, Inc. 165 IBLA 90 (Mar. 15, 2005).

Public Lands
Special Use Permits

Special recreation permits for instructor training in rock climbing, backpacking, canyoneering, initiative games, and general wilderness travel skills are not prohibited in wilderness areas established by the California Desert Protection Act, which authorizes commercial services in such areas. The Board may affirm BLM's approval of such a permit where the appellant has not shown that BLM's decision to approve it, accompanied by an EA and FONSI, violates that statute or the Wilderness Act or is arbitrary or an abuse of discretion.

Thomas S. Budlong, Jerry D. Boggs, Brian Webb, 165 IBLA 193 (Apr. 6, 2005).

Public Lands
Special Use Permits

The rules at 43 C.F.R. Subpart 2932 provide the discretion to BLM to grant or deny an application for a special recreation permit. 43 C.F.R. § 2932.26. They do not provide BLM the authority to reject in advance hypothetical applications that have not been submitted or permit terms which have not been set forth in an application.

Rock Crawlers Association of America, 167 IBLA 232 (Nov. 23, 2005).

Public Lands
Special Use Permits

When contemporaneous reports and maps prepared by Bureau of Land Management employees and subsequent affidavits by the employees are sufficient to establish facts to support a decision finding an appellant to have violated 43 C.F.R. § 8372.0-7(a) by using public lands for commercial recreation without a special recreation permit, and the appellant does not present evidence which refutes the facts, the decision will be affirmed.

Frank Robbins, d.b.a. High Island Ranch, 167 IBLA 239 (Nov. 30, 2005).

Public Lands
Special Use Permits

The sanctions for unauthorized commercial recreation use of the public lands are set forth in the regulations governing special recreation permits at 43 C.F.R. § 8372.0-7 (b) (2000). A decision applying the trespass regulation at 43 C.F.R. § 2920.1-2, which pertains to uses not authorized under any other law or regulation, to assess administrative costs, fair market value rental, and a willful trespass penalty for unauthorized commercial recreation use will be vacated.

Frank Robbins, d.b.a. High Island Ranch, 167 IBLA 239 (Nov. 30, 2005).

Public Lands
Special Use Permits

Anyone organizing an event that poses an appreciable risk of damage to public land or related water resource values must apply for and receive a special recreation permit from BLM. A not-for-profit motorcycle club promoting a competitive group event on public lands requiring a special recreation permit falls within the class of persons or groups subject to section 304(b) of FLPMA, 43 U.S.C. § 1734(b) (2000), and its implementing regulations at 43 C.F.R. Subpart 2932, and is not entitled to a waiver of cost recovery fees pursuant to 43 C.F.R. § 2932.34.

Bookcliff Rattlers Motorcycle Club, 171 IBLA 6 (Dec. 20, 2006).

Public Lands
Special Use Permits

The regulation at 43 C.F.R. § 2932.31(e)(2) authorizes BLM to recover the costs of issuing a special recreation permit which requires more than 50 hours of BLM staff time to process. The application of that regulation to a not-for-profit motorcycle club that has filed an application for a special recreation permit to hold a competitive motorcycle race on public lands is consistent with its statutory basis and is not unreasonable.

Bookcliff Rattlers Motorcycle Club, 171 IBLA 6 (Dec. 20, 2006).

Public Lands
Special Use Permits

Where BLM makes use of computer spreadsheets or other documentation to accumulate data upon which a cost estimate for a special recreation permit is based, it must reveal underlying data sufficient for the applicant to ascertain the justification for BLM's conclusions; otherwise, an applicant has no basis upon which to understand and accept BLM's decision or, in the alternative, to appeal and dispute it.

Bookcliff Rattlers Motorcycle Club, 171 IBLA 6 (Dec. 20, 2006).

Public Lands
Special Use Permits

Where the record as supplemented on appeal demonstrates that BLM's technical experts carefully documented the underlying rationale for their cost recovery estimates with respect to a special recreation permit and application for a competitive motorcycle race on public lands, and the appellant did not show by a preponderance of the evidence that the estimates calculated by BLM experts are based on an error in methodology, data, or analysis or are otherwise unreasonable, BLM's estimates of cost recovery are properly affirmed.

Bookcliff Rattlers Motorcycle Club, 171 IBLA 6 (Dec. 20, 2006).

Public Records

The notation on public records of a request for withdrawal has a segregative effect on land contained within the boundaries of a previously located mining claim. While the notation does not preclude the taking of samples of pre-existing discoveries to demonstrate validity of the claims, it does prevent activity that constitutes further exploration to expose a valuable mineral deposit not exposed prior to segregation or withdrawal. A segregation does not grant a mining claimant a perpetual right to explore within the boundaries of its mining claims.

United States v. E. K. Lehmann & Associates of Montana, Inc., et al., 161 IBLA 40 (Mar. 16, 2004).

Public Records

When land on which a mining claim is located is withdrawn from mineral entry, the claimant may enter the claims to verify pre-existing discoveries to demonstrate validity of the claims, but may not engage in activity that constitutes further exploration to expose a valuable mineral deposit not exposed prior to withdrawal.

United States v. Steve Hicks, 162 IBLA 73 (June 29, 2004).

Public Records

The notation rule directs that mining claims located at a time when BLM's records indicate that the lands on which they are located are segregated from mineral entry are void regardless of whether the underlying segregation was proper. Where public land records have been noted to show that a parcel of land is not open to entry under the public land laws, the parcel is not available for entry until such time as the notation is removed and the land is restored to entry, even if the original notation was made in error or the segregative effect is void, voidable, or has terminated or expired.

Michael L. Carver, et al, 163 IBLA 77 (Sept. 8, 2004).

Public Records

A presumption of regularity supports the official acts of public officers; absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. In the absence of evidence to the contrary, it is appropriate to presume that BLM officials noted the public land records to reflect the existence of a temporary segregation on January 19, 2000, where those records indicate that such notation was made at that time.

Michael L. Carver, et al, 163 IBLA 77 (Sept. 8, 2004).

Public Records

The validity of the segregation of lands embracing contested mining claims for purposes of a land exchange is not justiciable. Even if the segregation was justiciable, under the notation rule, no rights incompatible with the use so noted in BLM's land records can attach until the record is changed to show that the land is no longer segregated.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Public Records

The segregative effect of a proposed land exchange automatically terminates 5 years from the date the segregation is noted on the public land records, but the termination does not instantly restore the lands to the operation of public land laws, including the mining laws. To effectuate the opening of lands to the operation of the public land laws requires a change in the status of the lands noted on the public land records. Lands may not be appropriated under the mining laws prior to the date and time of restoration and opening, and any such attempted appropriation vests no rights against the United States. 43 C.F.R. § 2091.1(b). An opening order may be issued at any time, but is required when the opening date is not specified in the document creating the segregation. 43 C.F.R. § 2091.07(b).

Pilot Plant, Inc., et al., 168 IBLA 169 (Mar. 16, 2006).

Public Records

Under the notation rule, mining claims located at a time when BLM's records indicate that the lands on which they are located are segregated from mineral entry are void regardless of whether the underlying segregation was proper. The land is not available for entry until such time as the notation is removed and the land is restored to entry, even if the original notation was made in error or the segregative effect is void, voidable, or has terminated or expired. 43 C.F.R. § 2091.1(b).

Pilot Plant, Inc., et al., 168 IBLA 169 (Mar. 16, 2006).

Public Records

Under the notation rule, a mining claim located at a time when BLM's official public land records indicate that the lands on which the claim is located is segregated from mineral entry is void regardless of whether the underlying segregation was proper. The land is not available for entry until such time as the notation is removed and the land is restored to entry, even if the original notation was made in error, or the segregative effect is void or voidable, or has terminated or expired.

Joe R. Young, 171 IBLA 142 (Feb. 27, 2007).

Public Sales
Bidding

BLM properly cancels a sale of a parcel of public land offered at a competitive sale and declares the bid deposit forfeited in accordance with 43 C.F.R. § 2711.3-1(d) where payment of the full bid price is not submitted to BLM prior to the expiration of 180 days from the date of the sale.

El monte Bindery Systems, Inc., 164 IBLA 243 (Jan. 6, 2005).

Public Sales
Sales Under Special Statutes

Under the Minnesota Public Lands Improvement Act of 1990, Pub. L. No. 101-442, Congress intended to divest the United States of ownership of a multitude of unmanageable small islands and upland areas generally omitted from the original surveys of Minnesota, and authorize conveyance either to the State or to persons claiming ownership of those lands. The Act requires only that a claimant make a good faith assertion of ownership that is meritorious. The Bureau of Land Management's rejection of a claim under the Act, based upon the application of a limited number of particular factors as the exclusive evidence of a good faith assertion of ownership, is properly reversed where a claimant produces other credible evidence of a good faith assertion of ownership.

Steven L. Abel, Trustee of the Erma Tomalino Trust, 164 IBLA 212 (Dec. 28, 2004).

Railroad Grant Lands

Where an applicant submits no explanation for a 100-year delay in applying for a patent pursuant to the Transportation Act of 1940, and where the land has long been devoted to a particular public purpose, such as inclusion in a forest reserve, BLM properly denies the patent application in accordance with the doctrine of laches.

Southern Pacific Transportation Co.; Edgar O. Rhoads, 156 IBLA 136 (Dec. 31, 2001).

Railroad Grant Lands

Reliance on imprecise notations in federal land records will not operate to divest the United States of title to land. 43 C.F.R. § 1810.3(c).

Southern Pacific Transportation Co.; Edgar O. Rhoads, 156 IBLA 136 (Dec. 31, 2001).

Railroad Grant Lands

A railroad patent passes fee simple title to public land from the United States to the grantee. After a patent has issued, questions of property rights are governed by State law. Where public land in Arizona was patented to the Santa Fe and Pacific Railroad Company and later conveyed subject to both a general mineral reservation and a reservation of "gravel and ballast" for "railroad purposes," under State law, sand, gravel, and ballast are excluded from the general mineral reservation in the deed.

Alfred Jay Schritter, 171 IBLA 123 (Feb. 21, 2007).

Recreation and Public Purposes Act

A recreation and public purposes classification, issued pursuant to the Recreation Act of 1926, *as amended*, 43 U.S.C. § 869 (1994), segregates lands from entry and settlement in conformity with its terms until such time as the classification is expressly revoked.

Betty J. (Thompson) Bonin, 151 IBLA 16 (Oct. 20, 1999).

Recreation and Public Purposes Act

The Bureau of Land Management has discretion under the Recreation and Public Purposes Act, 43 U.S.C. § 869-1 (1994), to reject an application to lease public lands if it determines that the public interest is best served by that rejection. Mere differences of opinion provide no basis for reversal and the Board will affirm a decision exercising this authority if the decision is reasonable and supported by the record.

Lamina Animal Association Club, 153 IBLA 126 (Aug. 11, 2000).

Recreation and Public Purposes Act

The Recreation and Public Purposes Act authorizes the Secretary, in his discretion, to sell or lease tracts of public lands for recreational or public purposes under certain conditions. A Recreation and Public Purpose lease/purchase application properly may be rejected by BLM on the basis that the lands sought are not identified for disposal in the applicable management plan.

Nevada Pacific Consortium, 158 IBLA 108 (Dec. 31, 2002).

Recreation and Public Purposes Act

When a patent conveys lands "subject to . . . all communication site and related facility rights-of-way, granted or to be granted" in accordance with documents referred to in the patent that describe areas that "will be reserved for communications site use" and state "[i]t is understood that patents issued for the above described lands will provide for continued use of the communication sites," the patent reserved an interest in lands for use as communication sites and those areas are public lands over which BLM has jurisdiction to grant rights-of-way for communication sites.

AZ Spectrum Wireless, 161 IBLA 311 (May 17, 2004).

Regulations
Generally

Responsibility for satisfying the rental fee requirement of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, Pub. L. No. 102-381, 106 Stat. 1374, 1378-79 (1992), resides with the owner of the unpatented mining claim, mill site, or tunnel site, as Congress has mandated that failure to make the annual payment of the claim rental fee as required by the Act shall conclusively constitute an abandonment of the unpatented mining claim, mill site, or tunnel site. Failure to pay the fee in accordance with the Act and implementing regulations results in a conclusive presumption of abandonment. Neither the claimant's lack of actual knowledge of the statutory requirement to pay rental fees nor BLM's failure to advise the claimant of that statutory requirement excuses the claimant's lack of compliance with the rental fee requirement, since all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Sandra E. Garrand, 152 IBLA 139 (Apr. 3, 2000).

Regulations
Generally

Estoppel will not lie when the legal consequences of an action are clearly set forth in statute and/or regulation, and when the application of estoppel would afford a right not authorized by law. Thus, there is no requirement in law or regulation compelling BLM authorities to give prior notice to a potential lessee that the lease it seeks is about to expire at the conclusion of its primary term and that a further extension of the lease term may be obtained only if a certain course is followed by the current lessee.

RMOC Holdings LLC, 152 IBLA 149 (Apr. 21, 2000).

Regulations
Generally

The regulation at 30 C.F.R. § 206.159(c)(1) (1992) provides that prior to or at the same time as claiming a gas processing allowance on Form MMS-2014, a lessee must submit page one of the initial Form MMS-4109. The regulation at 30 C.F.R. § 206.159(d)(1) provides that failure to timely file Form MMS-4109 subjects a lessee to

forfeiture of processing allowances taken on Form MMS-2014 until such time as lessee cures the failure to submit page one of Form MMS-4109.

Alexander Energy Corporation, 153 IBLA 238 (Aug. 31, 2000).

Regulations
Generally

When appellant timely requested a hearing on the record of the August 19, 1999, Notice of Noncompliance (NON) it received when it apparently did not comply with the Order to Perform (OTP) pursuant to the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1719 (2000), as implemented by the provisions of 30 C.F.R. Part 241, appellant was entitled to contest its underlying liability, which is predicated on its alleged failure to undertake the actions set forth in the OTP to remedy an alleged violation of a statute, regulation, rule, order, or lease or permit term within the time specified therein. Appellant's right to contest its underlying liability necessarily encompasses the right to defend the NON by showing the nature and extent of its compliance, including defenses based on flaws in the service, or in the basis and substance of the OTP that might excuse compliance. Nothing in FOGRMA or the regulations supports or provides that the scope of a hearing on the record of a NON under Part 241 can be cut off or curtailed by the failure to appeal the OTP under Part 290. The two appeal procedures are separate.

Merit Energy Company v. Minerals Management Service, 172 IBLA 137 (Aug. 3, 2007).

Regulations
Generally

In a hearing on the record of a Notice of Civil Penalty, a party can challenge only the amount of a civil penalty if it did not previously request a hearing on the record of a NON under 30 C.F.R. § 241.54. When a hearing on the record of the NON is not requested under § 241.54, the party may not contest its underlying liability for civil penalties. 30 C.F.R. § 241.56(a). Consequently, if a party is to have any opportunity to contest its underlying liability, it must do so in a timely requested hearing on the record of a NON. Because the OTP alleged violations and directed appellant to undertake corrective action and furnished the basis for issuance of the NON when appellant apparently took no corrective action within the period specified, the only failure that could finally cut off appellant's right to challenge the OTP under Part 241 would be a failure to timely request a hearing on the record of the NON.

Merit Energy Company v. Minerals Management Service, 172 IBLA 137 (Aug. 3, 2007).

Regulations
Generally

The regulation at 30 C.F.R. § 290.111(a) broadly defines "official correspondence" to include "all RMP [Royalty Management Program, Minerals Management Service] orders that are appealable." Such official correspondence is to be served on the "addressee of record," who is defined by reference to the subject matter of the correspondence. In (b)(4), the subject matter is "official correspondence in connection with reviews and audits of payor records"; in (b)(7), the subject matter is "official correspondence including orders, demands, invoices, or decisions, and other actions identified with payors reporting to the RMP Auditing and Financial System not identified above." The qualifying phrase "not identified above" refers to the six categories of addressees, which are defined solely by the subject matter of the correspondence, not the particular caption of the correspondence or action that such correspondence demands or induces. Official correspondence may take the more specific form of "orders, demands, invoices, or decisions, and other actions," but because of the definition of "official correspondence," they all in general constitute "orders" issued by RMP that are appealable under 30 C.F.R. Parts 243 and 290. More than one category can be applicable in any given situation, and service under any other applicable category is equally valid. 30 C.F.R. § 290.111(b)(8).

Merit Energy Company v. Minerals Management Service, 172 IBLA 137 (Aug. 3, 2007).

Regulations
Applicability

As enacted by Congress, the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312, originally required mining claimants to pay claim maintenance fees on or before August 31 of each year for the years 1994 through 1998, and regulations implementing this legislation provided that the requirement to pay a claim maintenance fee did not apply to any claim located after September 29, 1998. However, on October 21, 1998, Congress passed the Omnibus Consolidated and Emergency Supplemental Appropriations Act for 1999 which contained a provision requiring payment of the maintenance fee of $100 per claim on or before September 1 of each year for the years 1999 through 2001 and that statute made clear that the maintenance fee was required for each claim whether located *before or after* October 21, 1998.

Flynn C. Johnson, 155 IBLA 24 (May 1, 2001).

Regulations
Force and Effect as Law

A BLM instruction memorandum is not a regulation, has no legal force or effect, and is not binding on the Board or the public at large.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Regulations
Force and Effect as Law

When a federal agency issues a directive concerning the future exercise of its discretionary power, for purposes of the APA, 5 U.S.C. § 553, its directive will either constitute a substantive rule, for which notice-and-comment procedures are required, or a general statement of policy, for which they are not.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Regulations
Force and Effect as Law

When an agency applies a policy in a particular situation, it must be prepared to support the policy just as if the policy statement had never been issued. An agency cannot

escape its responsibility to present evidence and reasoning supporting its substantive rules by announcing binding precedent in the form of a general statement of policy.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Regulations
Force and Effect as Law

If a directive denies the decisionmaker the discretion in the area of its coverage, the statement is binding, and creates rights or obligations. For the purposes of 5 U.S.C. § 553, whether a statement is a rule with binding effect depends on whether the statement constrains the agency's discretion. Even though an agency may assert that a statement is not binding, the courts have recognized that the agency's pronouncements can, as a practical matter, have a binding effect. If an agency acts as if a document is controlling and treats the document in the same manner as it treats a regulation or published rule, or bases enforcement actions on the policies or interpretations formulated in the document, or leads private parties or other authorities to believe that they must comply with the terms of the document, the agency document is, for all practical purposes, binding.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Regulations
Force and Effect as Law

A BLM instruction memorandum is not a regulation, has no legal force or effect, and is not binding on the Board or the public at large.

Wyoming Outdoor Council, et al., 171 IBLA 153 (Mar. 29, 2007).

Regulations
Interpretation

It is within the authority of the Department to interpret its own regulations. An MMS regulatory change increasing the general bonding requirement for Outer Continental Shelf producers to $500,000 will be upheld when the record shows the regulatory change was duly promulgated and the agency provided in the decision record a reasoned analysis for the change and its application to the facts of appellant's case.

Pacific Operators Offshore, Inc., 154 IBLA 100 (Dec. 20, 2000).

Regulations
Interpretation

As enacted by Congress, the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312, originally required mining claimants to pay claim maintenance fees on or before August 31 of each year for the years 1994 through 1998, and regulations implementing this legislation provided that the requirement to pay a claim maintenance fee did not apply to any claim located after September 29, 1998. However, on October 21, 1998, Congress passed the Omnibus Consolidated and Emergency Supplemental Appropriations Act for 1999 which contained a provision requiring payment of the maintenance fee of $100 per claim on or before September 1 of each year for the years 1999 through 2001 and that statute made clear that the maintenance fee was required for each claim whether located *before or after* October 21, 1998.

Flynn C. Johnson, 155 IBLA 24 (May 1, 2001).

Regulations
Interpretation

The Board will not enforce an interpretation of 43 C.F.R. §§ 3715.5-1 and 5-2 that holds a current occupant liable for removal of structures and other materials from the public lands where the current occupant clearly establishes that the structures, etc., existed on site at the time his or her occupancy commenced, as a reasonably prudent prospective or current occupant could reasonably interpret the regulatory language to indicate that he or she is responsible for removing only structures and materials he or she placed there.

James R. McColl, 159 IBLA 167 (May 29, 2003).

Rent

In challenging a BLM decision increasing rental pursuant to 43 C.F.R. § 2801.1-2(d)(7)(iv) for a communication site right-of-way, an appellant bears the burden of demonstrating by a preponderance of the evidence that BLM's appraisal methodology was erroneous, that BLM used inappropriate data or erred in its calculations, or that the annual rental arrived at by BLM deviated from the fair market value of the right-of-way. Where BLM issues a decision setting a communications site rental pursuant to 43 C.F.R. § 2803.1-2(d)(7)(iv), it must ensure that its decision is supported by a rational basis and that such basis is reflected in the administrative record accompanying the decision.

Lone Pine Television, Inc., 158 IBLA 86 (Dec. 26, 2002).

Rent

A BLM decision increasing rent above the schedule rate based upon an appraisal pursuant to 43 C.F.R. § 2801.1-2(d)(7)(iv) will be reversed when that appraisal fails to establish sufficient familiarity with the communication site being appraised and the communication uses thereon or to disclose information regarding the comparable data utilized, thereby precluding independent verification of the lease data, effective challenge as to the accuracy of the data and appraisal, and meaningful review by the Board.

Lone Pine Television, Inc., 158 IBLA 86 (Dec. 26, 2002).

Rent

An appraisal establishing fair market rental value rental of a Federal communication site right-of- ay grant is properly prepared under standards governing Federal

appraisals; such an appraisal is not affected by the measure of schedule rent established at 43 C.F.R. § 2803.1-2(d)(3).

Lone Pine Television, Inc., 158 IBLA 86 (Dec. 26, 2002).

Rent

A BLM decision increasing annual rental for a communications site lease, as determined by appraisal in accordance with 43 C.F.R. § 2803.1-2(d)(7)(iv), will be set aside where BLM fails to provide an administrative record adequately supporting its fair market rental value determination.

Scott Schmidt, Century El Centro Cellular Corp., 158 IBLA 183 (Jan. 13, 2003).

Rent

Where rental of a Federal communications site lease must be determined by appraising its fair market value, such appraisal must be prepared under standards governing Federal appraisals. The appraisal is not governed by the measure of schedule rent established at 43 C.F.R. § 2803.1-2(d)(3).

Scott Schmidt, Century El Centro Cellular Corp., 158 IBLA 183 (Jan. 13, 2003).

Rent

BLM properly requires payment of an annual rental for a non-linear right-of-way for an irrigation wastewater pump, pipeline, and pond, where the right-of-way holder fails to show error in BLM's appraisal or that the annual rental is not the fair market rental value of the right-of-way.

George A. Weitz, Inc., Kurt Weitz, 158 IBLA 194 (Jan. 14, 2003).

Rent

BLM properly denies a request for a refund of rental fees paid for a right-of-way where it determines that the right-of-way is not for an electric or telephone facility or an extension therefrom, and is thus not exempt from such fees under section 504(g) of the Federal Land Policy and Management Act of 1976, *as amended*, 43 U.S.C. § 1764 (g) (1994 or 2000) and implementing regulations at 43 C.F.R. § 2803.1-2(b)(1)(iii). Right-of-way grants for access roads, conveyor routes, haul roads, or railroads for the conveyance of coal do not constitute authorizations for "electric or telephone facilities"; nor do they constitute authorizations for extensions from such facilities.

Blue Mountain Energy, Inc., 162 IBLA 108 (July 2, 2004).

Rent

BLM must ensure that a decision increasing rental for a communication site right-of-way is supported by a rational basis, set forth in the written decision and demonstrated in the administrative record accompanying the decision. Although BLM may, pursuant to its policy for implementing 43 C.F.R. § 2803.1-2(d)(2)(i), assess a higher rental schedule rate for a communication site right-of-way based upon a modification combining two or more Ranally Metro Areas published in the "Rand McNally Commercial Atlas and Marketing Guide," it is nonetheless incumbent upon BLM to develop an administrative record that provides a rational basis for doing so.

Citicasters Co, 166 IBLA 111 (June 24, 2005).

Rent

BLM's determination of the annual rental for an airport lease on public lands, based on its appraisal of the fair market rental value of the lease, will be upheld where the lessee fails to demonstrate, by a preponderance of the evidence, that the appraisal was flawed in its methodology, analysis, or conclusions, or otherwise fails to demonstrate that BLM did not properly assess the fair market rental value.

Spanish Springs Pilots Association, Inc., 167 IBLA 284 (Dec. 28, 2005).

Res Judicata

A 1936 GLO decision denying approval of a 1935 assignment became final in the absence of a timely appeal. Parties may resubmit a request for approval of an assignment, notwithstanding that a similar request had previously been finally rejected. However, such request for reconsideration of approval of the assignment is properly denied where no showing has been made that the circumstances cited by GLO for disapproval (failure to file affidavits showing the qualifications of the assignees or a $5,000 lease bond) no longer exist, and where intervening rights of others and changes in circumstances have arisen over 60 years that render approval inequitable.

Heirs of Mrs. M. H. Crawford, 151 IBLA 118 (Nov. 29, 1999).

Res Judicata

Where the State of Alaska fails to appeal a decision finding a native allotment to be legislatively approved the State may not subsequently challenge any of the predicate facts determined by BLM in its initial decision.

State of Alaska Department of Transportation & Public Facilities, 154 IBLA 57 (Nov. 21, 2000).

Res Judicata

Under the doctrine of administrative finality–the administrative counterpart of the doctrine of res judicata–when a party has had an opportunity to obtain review within the Department and no appeal was taken, or an appeal was taken and the decision was affirmed, the decision may not be reconsidered in later proceedings except upon a showing of compelling legal or equitable reasons, such as violations of basic rights of the parties or the need to prevent an injustice.

Erling Skaflestad, Bonnie Skaflestad, 155 IBLA 141 (June 27, 2001).

Res Judicata

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 administrative proceedings except upon a showing of compelling legal or equitable reasons.

Douglas E. Noland, 156 IBLA 35 (Nov. 21, 2001).

Res Judicata

The regulation at 43 C.F.R. § 4.470(b) is a codification of the doctrine of "administrative finality," the administrative counterpart of *res judicata*, which normally precludes reconsideration in a subsequent case of matters finally resolved for the Department in an earlier appeal. A precondition for the application of the doctrine is that the matter raised in the subsequent proceeding was one distinctly put in issue and directly determined in the earlier appeal, as reflected in the language of 43 C.F.R. § 4.470(b) providing that a party who fails to appeal a BLM final grazing decision be barred thereafter from challenging "the matters adjudicated in that final decision." Where a party failed to appeal a final BLM grazing decision rejecting his application for a grazing permit on the grounds that the permitted use he sought was not available (but not mentioning cancellation of his grazing preference), that party's successor-in-interest is not barred under 43 C.F.R. § 4.470(b) from appealing a subsequent final BLM decision declaring the party's grazing preference canceled for failure to comply with the notice requirements of 43 C.F.R. § 4110.2-3.

James G. Katsilometes v. Bureau of Land Management, 157 IBLA 230 (Oct. 4, 2002).

Res Judicata

When the base rate for rental of a communication site right-of-way has been approved on appeal to the Board, the doctrine of administrative finality precludes reviewing it in a subsequent appeal.

AZ Spectrum Wireless, 161 IBLA 311 (May 17, 2004).

Res Judicata

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.

Mack Wiehl (Heir of Alfred M. Wiehl), 169 IBLA 25 (May 3, 2006).

Resource Management Plans

BLM has authority to eliminate specific parcels from leasing even where they had been designated in a Resource Management Plan as generally suitable for leasing.

Richard D. Sawyer, 160 IBLA 158 (Oct. 22, 2003).

Rights-of-Way
Generally

The burden is on a right-of-way applicant, who appeals a BLM decision denying his application, to demonstrate by a preponderance of the evidence that BLM erred in rejecting the right-of-way. That burden is not met where the right-of-way is rejected because it would be incompatible with a national scenic trail closed to motorized traffic and where the possibility of other access exists. An applicant does not gain entitlement to a particular right-of-way because alternate access may be difficult or expensive.

Kirk Brown, 151 IBLA 221 (Dec. 13, 1999).

Rights-of-Way
Generally

The holder of a right-of-way which has terminated because it is no longer used for communication site purposes and has been abandoned is generally responsible for removal of structures erected on the right-of-way and reclamation of the site. When the record on appeal from a decision requiring removal of improvements presents a question of whether the right-of-way has been abandoned and whether appellant is the owner of the improvements thereon, the case will be remanded.

California Department of Forestry and Fire Protection, 152 IBLA 290 (May 30, 2000).

Rights-of-Way
Generally

An appellant appealing denial of an application for a right-of-way across public land must show that the decision was premised either on a clear error of law or a demonstrable error of fact.

Natural Guardian LP, 152 IBLA 295 (May 31, 2000).

Rights-of-Way
Generally

A highway right-of-way grant for land which was withdrawn and the withdrawal then converted to an easement reserved for highway purposes is a valid existing right to which a native allotment is subject, where the use and occupancy began after the land was withdrawn.

State of Alaska Department of Transportation & Public Facilities, 154 IBLA 57 (Nov. 21, 2000).

Rights-of-Way
Generally

Rights-of-way issued under Title V of the Federal Land Policy and Management Act of 1976, *as amended*, 43 U.S.C. § 1761 (1994), and implementing regulations, 43 C.F.R. Part 2800, do not give the right-of-way holder the rights of a private landowner to the public land subject to the ROW grant.

Tom Watson, 154 IBLA 140 (Feb. 5, 2001).

Rights-of-Way
Generally

A right-of-way grant for a road and parking area, sought by the applicant on public lands for the purposes of accessing his private property across a river, does not authorize use of the right-of-way for purposes other than those expressly sought and received. A right-of-way sought for parking vehicles on Federal land for purposes of crossing a river cable to private land does not include a use for storage of personal property.

Tom Watson, 154 IBLA 140 (Feb. 5, 2001).

Rights-of-Way
Generally

A right-of-way holder's assertion that he used Federal property for certain uses prior to acquisition of the right-of-way, does not change the nature of the use applied for and received in the right-of-way grant.

Tom Watson, 154 IBLA 140 (Feb. 5, 2001).

Rights-of-Way
Generally

The burden is on a right-of-way applicant, who appeals a BLM decision denying his first two preferences in his right-of-way application, to demonstrate by a preponderance of the evidence that BLM erred in rejecting the preferred access routes. That burden is not met where the preferred access routes are rejected because they would be incompatible with protection of values within an ACEC through which each of the preferred routes would traverse and where the possibility of other access exists. An applicant does not gain entitlement to a particular right-of-way because alternate access may be difficult or more expensive.

D. J. Laughlin, 154 IBLA 159 (Feb. 28, 2001).

Rights-of-Way
Generally

"*Continuous Use*." "*Public Road*." Where a party seeking to continue to use an existing road running across Federally-owned lands as an access road to his privately-owned lands makes no written showing that the road was cognizable under section 8 of R.S. § 2477 and concedes that the road is not a "public road" (a fact inconsistent with the existence of an R.S. § 2477 right-of-way), the Board should not pursue the matter on his behalf and there is no valid reason to remand the matter for consideration of the existence of an R.S. § 2477 right-of-way. "Continuous use," even if established, is insufficient to qualify a road under R.S. § 2477.

John T. Alexander, 157 IBLA 1 (July 17, 2002).

Rights-of-Way
Generally

By virtue of 43 C.F.R. § 2801.3(e), BLM lacks authority to issue any right-of-way under FLPMA to an applicant until trespass issues concerning the applicant are settled.

John T. Alexander, 157 IBLA 1 (July 17, 2002).

Rights-of-Way
Generally

NEPA applies only to actions a Federal agency proposes to take and specifies procedures designed to produce relevant information concerning the environmental consequences of the Federal action proposed, before that action is taken. Departmental regulation 43 C.F.R. § 2802.4(d) mandates a completed EA in any case in which BLM determines to issue a requested right-of-way. Even when an EA is completed pursuant to 43 C.F.R. § 2802.4(d), BLM retains its discretionary authority to deny a right-of-way application.

Bear River Development Corporation, et al., 157 IBLA 37 (July 19, 2002).

Rights-of-Way
Generally

Where a ROW holder providing private two-way radio service to members of the community, including businesses which serve the public good, demonstrates total loss of a business facility and equipment due to accidental fire, BLM must examine the specific financial data presented to determine whether the fair market rental charge will create an "undue hardship" on the applicant's ability to successfully operate.

Gifford Engineering, Inc., 157 IBLA 277 (Oct. 24, 2002).

Rights of Way
Generally

Pursuant to 43 C.F.R. § 2803.1-2(b)(2)(ii), a reduction or waiver of rental for a communication site right-of-way may be granted when the holder provides without charge, or at a reduced rate, a valuable benefit to the public. BLM may reduce or waive rental payments for a communication site right-of-way pursuant to 43 C.F.R. § 2803.1-2(b)

(2)(iv) if BLM determines that the imposition of the fair market rental value would cause undue hardship on the right-of-way holder and it is in the public interest to do so.

Lone Pine Television, Inc., 158 IBLA 86 (Dec. 26, 2002).

Rights-of-Way
Generally

In order to prevail on a challenge to a rental determination assessed by BLM for a communication site right-of-way and calculated pursuant to the rental schedule established in 43 C.F.R. § 2803.1-2(d), an appellant bears the burden of demonstrating that BLM used inappropriate data or erred in its calculations, or otherwise erred in applying the rental schedule to its particular right-of-way. Conclusory statements challenging BLM's rental determination that lack a factual basis do not satisfy the burden of proof which necessarily rests with an appellant.

Treasure Valley Broadcasting Company, 165 IBLA 113 (Mar. 22, 2005).

Rights-of-Way
Generally

BLM may reduce rental payments for a communication site right-of-way if it determines that the imposition of the fair market value rental would cause an undue hardship on the right-of-way holder or applicant, and it is in the public interest to do so.

Treasure Valley Broadcasting Company, 165 IBLA 113 (Mar. 22, 2005).

Rights-of-Way
Generally

BLM must ensure that a decision increasing rental for a communication site right-of-way is supported by a rational basis, set forth in the written decision and demonstrated in the administrative record accompanying the decision. Although BLM may, pursuant to its policy for implementing 43 C.F.R. § 2803.1-2(d)(2)(i), assess a higher rental schedule rate for a communication site right-of-way based upon a modification combining two or more Ranally Metro Areas published in the "Rand McNally Commercial Atlas and Marketing Guide," it is nonetheless incumbent upon BLM to develop an administrative record that provides a rational basis for doing so.

Citicasters Co, 166 IBLA 111 (June 24, 2005).

Rights-of-Way
Generally

A BLM decision to close certain routes identified on U.S. Forest Service maps as "primitive roads" or "forest roads" in an area of critical environmental concern (ACEC) will be affirmed despite assertions that closing the roads will hamper access by fire control vehicles to residential areas bordering the ACEC where the record contains no evidence that such roads ever were or could be used by such vehicles or for health and safety purposes.

Charles W. Nolen, 168 IBLA 152 (Apr. 7, 2006).

Rights-of-Way
Generally

When BLM offers a right-of-way (ROW) grant to a ROW applicant pursuant to certain terms and conditions, such an offer is an action proposed to be taken, *i.e.* issuance of a ROW grant. An applicant receiving such an offer who disagrees with the terms and conditions of the offer may protest those terms and conditions, in accordance with 43 C.F.R. § 4.450-2. However, if the applicant appeals the offering of the grant to this Board, we may adjudicate the case on its merits when no useful purpose would be served by remanding the case to BLM.

Mark Patrick Heath, 172 IBLA 162 (Aug. 23, 2007).

Rights-of-Way
Generally

Under section 504(g) of the Federal Land Policy and Management Act, 43 U.S.C. § 1764(g) (2000), the holder of a right-of-way (ROW) shall pay annually in advance the fair market value thereof as determined by the Secretary. Rent is not an administrative fee, but the price the holder of a ROW pays to use Federal land. The fair market value of the rent is established using sound business management principles and comparable commercial practices. 43 C.F.R. § 2806.10(a). BLM typically bases rental amounts for linear ROWs on a per-acre fee schedule, but may use an alternate means to compute the rent if it is determined by comparable commercial practices or an appraisal would be 10 or more times the rent from the schedule.

Bradley and Ramona Henspeter, 172 IBLA 273 (Sept. 12, 2007).

Rights-of-Way
Generally

Where the annual rent for an individual holding a ROW is greater than $100, the holder has the option of paying the rent annually or at multi-year intervals. 43 C.F.R. § 2806.23(a)(2)(i). The regulation at 43 C.F.R. § 2806.14 specifies the circumstances under which the holder of a ROW may be exempted from the obligation to pay rent. The regulation at 43 C.F.R. § 2806.15 specifies the circumstances under which BLM may waive or reduce the rent. No error is shown because BLM did not establish a different payment frequency, exempt appellants from the obligation to pay rent for the ROW, or reduce the rent where appellants have not requested such action.

Bradley and Ramona Henspeter, 172 IBLA 273 (Sept. 12, 2007).

Rights-of-Way
Act of February 25, 1920

A decision determining rental for a pipeline right-of-way issued pursuant to sec. 28 of the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 185 (2000), based on an appraisal of fair market value will be affirmed unless the appellant demonstrates error in the appraisal method or result. In the absence of such a showing, a BLM appraisal may be rebutted only by another appraisal.

Alaska Pipeline Company, Enstar Natural Gas Company, 164 IBLA 149 (Dec. 2, 2004).

Rights-of-Way
Act of February 25, 1920

Letter Decisions determining rental for a pipeline right-of-way issued pursuant to sec. 28 of the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 185 (2000), based upon an appraisal of fair market rental value, will be set aside and remanded where the administrative record does not adequately support the appraisal method and result.

Alyeska Pipeline Service Company, 167 IBLA 112 (Oct. 13, 2005).

Rights-of-Way
Act of February 25, 1920

Letter Decisions based upon an appraisal prepared by an outside contractor jointly for BLM and the State of Alaska for the Trans-Alaska Pipeline System will be set aside and remanded when the outside contractor accepted a special instruction from BLM and the State dictating that rental be calculated using an "encumbrance of rights" factor of 100 percent, and the administrative record does not provide a rational basis for the special instruction.

Alyeska Pipeline Service Company, 167 IBLA 112 (Oct. 13, 2005).

Rights-of-Way
Act of February 25, 1920

BLM erred in assessing rentals based on its Calendar Year 2003 Communication Uses Rental Schedule (BLM Information Bulletin No. 2003-005) for communi-cation sites which are defined as "related facilities" by the Agreement and Grant of Right-of-Way for the Trans-Alaska Pipeline System (TAPS Agreement), or by a related Grant of Right-of-Way for Communication Site expressly made subject to the TAPS Agreement, which were issued pursuant to section 28 of the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 185 (2000), and section 203(b) and (c) of the Trans-Alaska Pipeline Authorization Act of 1973, 43 U.S.C. § 1652(b) and (c) (2000). Such communication sites are exempt from the nationwide rental schedules established by BLM (*see* 43 C.F.R. § 2803.1-2(d)(1)), and rental for such communi-cation sites should be assessed at fair market rental value in accordance with Section 8 of the TAPS Agreement and 43 C.F.R. § 2803.1-2(a), rather than based upon nationwide rental schedules established by BLM.

Alyeska Pipeline Service Company, 167 IBLA 298 (Dec. 29, 2005).

Rights-of-Way
Act of October 21, 1976 (FLPMA)

Sec. 504 of FLPMA and 43 C.F.R. § 2808.1(a) require a right-of-way applicant to reimburse the United States for reasonable administrative and other costs incurred in processing the application and in monitoring construction and operation pursuant to the right-of-way. BLM's decision assessing an application processing fee as "Category II" complies with 43 C.F.R. § 2808.2-1(a)(2) and is properly affirmed where the application is one for which (1) data necessary to comply with the National Environmental Policy Act of 1969 are available in BLM's office or from data furnished by the applicant and (2) one field examination is required to verify existing data.

John T. Alexander, 157 IBLA 1 (July 17, 2002).

Rights-of-Way
Act of October 21, 1976 (FLPMA)

"*Continuous Use*." "*Public Road*." Where a party seeking to continue to use an existing road running across Federally-owned lands as an access road to his privately-owned lands makes no written showing that the road was cognizable under section 8 of R.S. § 2477 and concedes that the road is not a "public road" (a fact inconsistent with the existence of an R.S. § 2477 right-of-way), the Board should not pursue the matter on his behalf and there is no valid reason to remand the matter for consideration of the existence of an R.S. § 2477 right-of-way. "Continuous use," even if established, is insufficient to qualify as a road under R.S. § 2477.

John T. Alexander, 157 IBLA 1 (July 17, 2002).

Rights-of-Way
Act of October 21, 1976 (FLPMA)

By virtue of 43 C.F.R. § 2801.3(e), BLM lacks authority to issue any right-of-way under FLPMA to an applicant until trespass issues concerning the applicant are settled.

John T. Alexander, 157 IBLA 1 (July 17, 2002).

Rights-of-Way
Applications

A right-of-way application for a road and utilities corridor project is properly rejected by a joint BLM and U.S. Forest Service decision pursuant to section 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1994), where the record shows the decision to be a reasoned analysis of the facts involved, made with due regard for the public interest.

Kirk Brown, 151 IBLA 221 (Dec. 13, 1999).

Rights-of-Way

Applications

The Council on Environmental Quality regulations provide at 40 C.F.R. § 1506.5(c) that the contractor preparing an EIS be chosen solely by the lead agency in order to avoid any conflict of interest. It is a violation of that regulation for BLM to approve three contractors and allow the right-of-way applicant to select the contractor. Such a violation, however, is a *de minimis* error if the objectivity and integrity of the NEPA process is otherwise maintained.

Northern Alaska Environmental Center, et al., 153 IBLA 253 (Sept. 18, 2000).

Rights-of-Way
Applications

NEPA requires that an EIS consider alternatives to the proposed action and Federal agencies are required to use, to the fullest extent possible, the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment. Where BLM has identified and carefully assessed the reasonable alternatives, the action will be affirmed.

Northern Alaska Environmental Center, et al., 153 IBLA 253 (Sept. 18, 2000).

Rights-of-Way
Applications

BLM properly declines to approve the sale proponent's proposed access route for a mineral materials sale pursuant to the Materials Act of 1947, *as amended*, 30 U.S.C. §§ 601-604 (1994), when BLM's chosen alternative route will disturb less land and avoid the potential adverse impact on a nearby residential community from noise and air pollution, and when BLM has considered the greater cost of that route to the proponent, and the proponent fails to demonstrate that BLM acted in an arbitrary and capricious fashion, or contrary to any applicable Federal statute or regulation.

International Sand & Gravel Corp., 153 IBLA 295 (Sept. 26, 2000).

Rights-of-Way
Applications

A right-of-way application for a preferred access road, or a closely related alternative, partially through an area of critical environmental concern is properly rejected and a longer alternative approved by BLM pursuant to section 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1994), where the record shows the decision to be a reasoned analysis of the facts involved, made with due regard for the public interest.

D. J. Laughlin, 154 IBLA 159 (Feb. 28, 2001).

Rights-of-Way
Applications

Section 501(a)(6) of FLPMA, 43 U.S.C. § 1761(a)(6) (1994), grants the Secretary of the Interior the discretionary authority to issue rights-of-way over, upon, under, or through public lands for roads, trails, or other means of transportation. The Departmental regulation at 43 C.F.R. § 2802.4 lists reasons for denying an application for a right-of-way to use public lands, and this Board will affirm a BLM decision rejecting a right-of-way application if the record demonstrates that the rejection decision is based on a reasoned analysis of the facts and was made with due regard for the public interest. The mere fact that the holder of an existing right-of-way objects to the issuance of a subordinate right-of-way is not sufficient reason for rejecting a right-of-way application.

Douglas E. Noland, 156 IBLA 35 (Nov. 21, 2001).

Rights-of-Way
Applications

Sec. 504 of FLPMA and 43 C.F.R. § 2808.1(a) require a right-of-way applicant to reimburse the United States for reasonable administrative and other costs incurred in processing the application and in monitoring construction and operation pursuant to the right-of-way. BLM's decision assessing an application processing fee as "Category II" complies with 43 C.F.R. § 2808.2-1(a)(2) and is properly affirmed where the application is one for which (1) data necessary to comply with the National Environmental Policy Act of 1969 are available in BLM's office or from data furnished by the applicant and (2) one field examination is required to verify existing data.

John T. Alexander, 157 IBLA 1 (July 17, 2002).

Rights-of-Way
Applications

A BLM finding of no significant impact (FONSI) for a grant of public-land rights-of-way for surface facilities, access road, telephone line, and power line in connection with underground coal mining operations based on an analysis set forth in an environmental assessment will be upheld when the record reveals that BLM has taken a hard look at the environmental impacts and establishes a rational basis for the FONSI.

Southern Utah Wilderness Alliance, 163 IBLA 142 (Sept. 22, 2004).

Rights-of-Way
Applications

Section 504(g) of the Federal Land Policy and Management Act of 1976, *as amended* (FLPMA), 43 U.S.C. § 1764(g) (2000), and section 28(*l*) of the Mineral Leasing Act, *as amended* (MLA), 30 U.S.C. § 185(*l*) (2000), require a right-of-way applicant to reimburse the United States for the reasonable administrative and other costs incurred in processing the application and in related inspection and monitoring of the right-of-way. BLM regulations for FLPMA and MLA rights-of-ways establish cost recovery categories based upon the expenditure of government resources in processing the applications. BLM decisions determining that applications for an access road right-of-way issued pursuant to FLPMA, and for an oil and gas pipeline right-of-way issued under the MLA, covering exactly the same ground, both fall under cost recovery Category III will be set aside and remanded where (1) BLM's decisions do not explain how BLM determined that two field examinations were required for each application, and (2) the

supplementary record provided by BLM documenting the performed field examinations does not establish what examinations actually took place for each right-of-way application and/or were necessary to verify the data available in the BLM office or furnished by the applicant.

Yates Petroleum Corp., 163 IBLA 300 (Oct. 29, 2004).

Rights-of-Way
Applications

Under section 501(a)(6) of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1761(a)(6) (2000), a decision to issue a right-of-way is discretionary. When BLM uses its discretionary authority to reject an application for a land use authorization or impose a condition upon a land use authorization, it must provide a rational basis for its decision.

Mark Patrick Heath, 163 IBLA 381 (Nov. 10, 2004).

Rights-of-Way
Applications

Section 501(a) of the Federal Land Policy and Management Act of 1976, *as amended*, 43 U.S.C. § 1761(a) (2000), grants the Secretary of the Interior discretionary authority to issue rights-of-way. However, this authority does not extend to the grant of a right-of-way across a valid mining claim located prior to July 23, 1955, because claimants who located prior to that date gained the exclusive right of possession and enjoyment of the surface of the claim.

Nevada Pacific Mining Co., 164 IBLA 384 (Feb. 10, 2005).

Rights-of-Way
Applications

Under section 501(a)(6) of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1761(a)(6) (2000), a decision to issue a right-of-way is discretionary. When BLM uses its discretionary authority to reject an application for a land use authorization, it must provide a rational basis for its decision. A BLM decision rejecting a right-of-way application will be affirmed when the record shows that BLM balanced the application against resource values of concern, including preservation of the wild and scenic characteristics of the area, and concluded that the application is inconsistent with applicable land use plans.

Wiley F. & L'Marie Beaux, 171 IBLA 58 (Jan. 31, 2007).

Rights-of-Way
Applications

In denying a right-of-way application for the upgrading of an existing road in a wild and scenic river study area, BLM may not, according to section 12(b) of the Wild and Scenic Rivers Act, 16 U.S.C. § 1283(b) (2000), and the implementing regulations at 43 C.F.R. Subpart 8351, abrogate any existing rights of the private party without the consent of said party.

Wiley F. & L'Marie Beaux, 171 IBLA 058 (Jan. 31, 2007).

Rights-of-Way
Appraisals

A BLM decision increasing rental rate above the schedule rent because the appraised rent exceeds the schedule rent by more than a factor of five will be vacated and the case remanded for reappraisal where the appraisal fails to establish sufficient familiarity with the communication site being appraised and the communication uses thereon.

Kitchens Productions, Inc., 152 IBLA 336 (June 23, 2000).

Rights-of-Way
Appraisals

Where an appraisal determined fair market rental value based on analysis of Los Angeles Basin Data and comparable telecommunication site leases but did not disclose any of the particulars of such data, thereby precluding independent verification of the lease data, effective challenge as to the accuracy of the data and appraisal, and meaningful review by the Board, a BLM decision increasing rental based on an appraisal is properly vacated and remanded for reappraisal.

Kitchens Productions, Inc., 152 IBLA 336 (June 23, 2000).

Rights-of-Way
Appraisals

It is incumbent upon BLM to ensure that its decision is supported by a rational basis, and that such basis is stated in the written decision and is demonstrated in the administrative record accompanying the decision. The recipient of the decision is entitled to a reasoned and factual explanation providing a basis for understanding and accepting the decision or, alternatively, for appealing and disputing it before the Board.

Kitchens Productions, Inc., 152 IBLA 336 (June 23, 2000).

Rights-of-Way
Appraisals

A BLM appraisal of the fair market rental value of a right-of-way for a petroleum byproducts removal plant site will be affirmed where the appraisal was based on a market survey of comparable rentals and the right-of-way holder has neither demonstrated error in that methodology nor shown that the resulting rental charges are excessive.

Wesfrac, Inc., 153 IBLA 164 (Aug. 22, 2000).

Rights-of-Way
Appraisals

An annual rental charge for a right-of-way will be affirmed where an analysis of the record establishes that the BLM decision setting the rental was in accordance with the underlying appraisal on which the new rental was based and an adequate explanation for BLM's actions is provided.

Southern California Sunbelt Developers, Inc., 154 IBLA 115 (Jan. 12, 2001).

Rights-of-Way
Appraisals

The regulations provide that annual rental payments for communication uses of rights-of-ways will be based on "rental payment schedules." 43 C.F.R. § 2803.1-2(d). However, other methods may be used to establish rental payments for communication uses, including when the State Director concurs in a determination made by the authorized officer that the expected rent exceeds the scheduled rent by five times. 43 C.F.R. § 2803.1-2(d)(7)(iv). When BLM has determined the "expected rent" on the basis of an appraisal containing multiple deficiencies, and, even assuming the validity of the appraisal, a proper calculation of the expected rent based on that appraisal does not exceed the scheduled rent by five times, BLM's decision imposing rental on that basis will be reversed and the case remanded for imposition of rent based on the scheduled amount.

KHWY, Inc., 155 IBLA 6 (Apr. 30, 2001).

Rights-of-Way
Appraisals

BLM may not rely on an appraisal for determining expected rent in accordance with 43 C.F.R. § 2801.1-2(d)(7)(iv), when that appraisal fails to disclose any information regarding the comparable data utilized, thereby precluding independent verification of the lease data, effective challenge as to the accuracy of the data and appraisal, and meaningful review by the Board.

KHWY, Inc., 155 IBLA 6 (Apr. 30, 2001).

Rights-of-Way
Appraisals

The holder of a ROW under FLPMA is entitled to be notified of a decision establishing a rental rate, provided a copy of the appraisal, and given an opportunity to appeal.

Gifford Engineering, Inc., 157 IBLA 277 (Oct. 24, 2002).

Rights-of-Way
Appraisals

In challenging a BLM decision increasing rental pursuant to 43 C.F.R. § 2801.1-2(d)(7)(iv) for a communication site right-of-way, an appellant bears the burden of demonstrating by a preponderance of the evidence that BLM's appraisal methodology was erroneous, that BLM used inappropriate data or erred in its calculations, or that the annual rental arrived at by BLM deviated from the fair market value of the right-of-way. Where BLM issues a decision setting a communications site rental pursuant to 43 C.F.R. § 2803.1-2(d)(7)(iv), it must ensure that its decision is supported by a rational basis and that such basis is reflected in the administrative record accompanying the decision.

Lone Pine Television, Inc., 158 IBLA 86 (Dec. 26, 2002).

Rights-of-Way
Appraisals

A BLM decision increasing rent above the schedule rate based upon an appraisal pursuant to 43 C.F.R. § 2801.1-2(d)(7)(iv) will be reversed when that appraisal fails to establish sufficient familiarity with the communication site being appraised and the communication uses thereon or to disclose information regarding the comparable data utilized, thereby precluding independent verification of the lease data, effective challenge as to the accuracy of the data and appraisal, and meaningful review by the Board.

Lone Pine Television, Inc., 158 IBLA 86 (Dec. 26, 2002).

Rights-of-Way
Appraisals

An appraisal establishing fair market rental value rental of a Federal communication site right-of-way grant is properly prepared under standards governing Federal appraisals; such an appraisal is not affected by the measure of schedule rent established at 43 C.F.R. § 2803.1-2(d)(3).

Lone Pine Television, Inc., 158 IBLA 86 (Dec. 26, 2002).

Rights-of-Way
Appraisals

A BLM decision increasing annual rental for a communications site lease, as determined by appraisal in accordance with 43 C.F.R. § 2803.1-2(d)(7)(iv), will be set aside where BLM fails to provide an administrative record adequately supporting its fair market rental value determination.

Scott Schmidt, Century El Centro Cellular Corp., 158 IBLA 183 (Jan. 13, 2003).

Rights-of-Way
Appraisals

Where rental of a Federal communications site lease must be determined by appraising its fair market value, such appraisal must be prepared under standards governing Federal appraisals. The appraisal is not governed by the measure of schedule rent established at 43 C.F.R. § 2803.1-2(d)(3).

Scott Schmidt, Century El Centro Cellular Corp., 158 IBLA 183 (Jan. 13, 2003).

Rights-of-Way
Appraisals

BLM properly requires payment of an annual rental for a non-linear right-of-way for an irrigation wastewater pump, pipeline, and pond, where the right-of-way holder fails to show error in BLM's appraisal or that the annual rental is not the fair market rental value of the right-of-way.

George A. Weitz, Inc., Kurt Weitz, 158 IBLA 194 (Jan. 14, 2003).

Rights-of-Way
Appraisals

BLM erred in assessing rentals based on its Calendar Year 2003 Communication Uses Rental Schedule (BLM Information Bulletin No. 2003-005) for communication sites which are defined as "related facilities" by the Agreement and Grant of Right-of-Way for the Trans-Alaska Pipeline System (TAPS Agreement), or by a related Grant of Right-of-Way for Communication Site expressly made subject to the TAPS Agreement, which were issued pursuant to section 28 of the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 185 (2000), and section 203(b) and (c) of the Trans-Alaska Pipeline Authorization Act of 1973, 43 U.S.C. § 1652(b) and (c) (2000). Such communication sites are exempt from the nationwide rental schedules established by BLM (*see* 43 C.F.R. § 2803.1-2(d)(1)), and rental for such communication sites should be assessed at fair market rental value in accordance with Section 8 of the TAPS Agreement and 43 C.F.R. § 2803.1-2(a), rather than based upon nationwide rental schedules established by BLM.

Alyeska Pipeline Service Company, 167 IBLA 298 (Dec. 29, 2005).

Rights- of-Way
Cancellation

Termination of a right-of-way grant for failure of the holder to comply with the terms and conditions thereof requires notice by BLM of the violation and a reasonable opportunity for the holder to cure the noncompliance. When a decision terminating a communications site right-of-way is based on a sheriff's sale of the equipment used on the right-of-way and the holder has taken action to redeem his ownership interest, the decision is properly set aside and remanded pending the outcome of redemption proceedings.

Arden Casper and Tel-Car, Inc., 151 IBLA 160 (Nov. 30, 1999).

Rights-of-Way
Cancellation

The holder of a right-of-way which has terminated because it is no longer used for communication site purposes and has been abandoned is generally responsible for removal of structures erected on the right-of-way and reclamation of the site. When the record on appeal from a decision requiring removal of improvements presents a question of whether the right-of-way has been abandoned and whether appellant is the owner of the improvements thereon, the case will be remanded.

California Department of Forestry and Fire Protection, 152 IBLA 290 (May 30, 2000).

Rights-of-Way
Cancellation

A highway right-of-way grant for land which was withdrawn and the withdrawal then converted to an easement reserved for highway purposes is a valid existing right to which a native allotment is subject, where the use and occupancy began after the land was withdrawn.

State of Alaska Department of Transportation & Public Facilities, 154 IBLA 57 (Nov. 21, 2000).

Rights-of-Way
Cancellation

Before suspending or terminating a right-of-way grant for failure to comply with grant terms and conditions or applicable law or regulations, BLM must give the holder written notice that such action is contemplated and state the grounds therefor, and must allow the holder a reasonable opportunity to cure such noncompliance. 43 U.S.C. § 1766 (2000); 43 C.F.R. § 2803.4(d).

Dan Bradshaw, 161 IBLA 116 (Apr. 7, 2004).

Rights-of-Way
Federal Land Policy and Management Act of 1976

Rights-of-way granted for electric or telephone facilities financed or eligible for financing under the Rural Electrification Act of 1936 are exempt from payment of rental under 43 U.S.C. § 1764(g) (1994), as amended by Pub. L. No. 98-300 and Pub. L. No. 104-333, and payments of rental for such rights-of-way are properly refunded.

Blue Mountain Energy, Inc., 151 IBLA 10 (Oct. 19, 1999).

Rights-of-Way
Federal Land Policy and Management Act of 1976

A right-of-way grant issued pursuant to the Federal Land Policy and Management Act of 1976 expires by its own terms when renewal is not tendered in accordance with the grant and regulations. When a grant provides for renewal, the renewal of the grant is governed by 43 C.F.R. § 2803.6-5(a). Absent an express determination of nonuse, a written request for renewal of the right-of-way grant is not necessary.

Charles E. Gibbs, 151 IBLA 98 (Nov. 23, 1999).

Rights-of-Way
Federal Land Policy and Management Act of 1976

A right-of-way application for a road and utilities corridor project is properly rejected by a joint BLM and U.S. Forest Service decision pursuant to section 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1994), where the record shows the decision to be a reasoned analysis of the facts involved, made with due regard for the public interest.

Kirk Brown, 151 IBLA 221 (Dec. 13, 1999).

Rights-of-Way
Federal Land Policy and Management Act of 1976

An EA for a proposed action properly considers the indirect effects caused by the action which, although later in time or further removed, are reasonably foreseeable. Thus, the impacts of connected actions conducted by private parties which would not occur without the supporting Federal action are appropriately considered in an EA.

Defenders of Wildlife, 152 IBLA 1 (Feb. 17, 2000).

Rights-of-Way
Federal Land Policy and Management Act of 1976

A decision to issue a right-of-way for a power line to supply electricity for the reopening of an open pit mining operation on private land based on an EA and FONSI will be upheld when the record establishes a reasonable basis for the FONSI. An appeal challenging the scope of the EA for failure to consider all the impacts of the mining operation will be denied when it appears from the record that the mining operation would proceed in the absence of approval of the right-of-way.

Defenders of Wildlife, 152 IBLA 1 (Feb. 17, 2000).

Rights-of-Way
Federal Land Policy and Management Act of 1976

Pursuant to section 102(2) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2) (1994), and its implementing regulations (40 C.F.R. Chapter V), BLM is required to consider a reasonable range of alternatives to a proposed action, including a no-action alternative. An EA which considers a range of alternatives and gives reasons for BLM rejection of alternatives not selected will be upheld when it appears that BLM assessed alternatives in a manner that will avoid or minimize the adverse effects of the proposed action.

Defenders of Wildlife, 151 IBLA 1 (Feb. 17, 2000).

Rights-of-Way
Federal Land Policy and Management Act of 1976

A BLM decision increasing rental rate above the schedule rent because the appraised rent exceeds the schedule rent by more than a factor of five will be vacated and the case remanded for reappraisal where the appraisal fails to establish sufficient familiarity with the communication site being appraised and the communication uses thereon.

Kitchens Productions, Inc., 152 IBLA 336 (June 23, 2000).

Rights-of-Way
Federal Land Policy and Management Act of 1976

Where an appraisal determined fair market rental value based on analysis of Los Angeles Basin Data and comparable telecommunication site leases but did not disclose any of the particulars of such data, thereby precluding independent verification of the lease data, effective challenge as to the accuracy of the data and appraisal, and meaningful review by the Board, a BLM decision increasing rental based on an appraisal is properly vacated and remanded for reappraisal.

Kitchens Productions, Inc., 152 IBLA 336 (June 23, 2000).

Rights-of-Way
Federal Land Policy and Management Act of 1976

It is incumbent upon BLM to ensure that its decision is supported by a rational basis, and that such basis is stated in the written decision and is demonstrated in the administrative record accompanying the decision. The recipient of the decision is entitled to a reasoned and factual explanation providing a basis for understanding and accepting the decision or, alternatively, for appealing and disputing it before the Board.

Kitchens Productions, Inc., 152 IBLA 336 (June 23, 2000).

Rights-of-Way
Federal Land Policy and Management Act of 1976

Section 503 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1763 (1994), authorizes issuance of rights-of-way, such as roads and overhead

transmission lines, in common, where practical, to minimize adverse environmental impacts and the proliferation of separate rights-of-way. It also provides for the designation of right-of-way corridors. Under 43 C.F.R. § 2806.1, the designation of rights-of-way corridors does not preclude the granting of separate rights-of-way over, upon, under or through, the public lands where the authorized officer determines that confinement to a corridor is not appropriate.

Northern Alaska Environmental Center, et al., 153 IBLA 253 (Sept. 18, 2000).

Rights-of-Way
Federal Land Policy and Management Act of 1976

Rights-of-way issued under Title V of the Federal Land Policy and Management Act of 1976, *as amended*, 43 U.S.C. § 1761 (1994), and implementing regulations, 43 C.F.R. Part 2800, do not give the right-of-way holder the rights of a private landowner to the public land subject to the ROW grant.

Tom Watson, 154 IBLA 140 (Feb. 5, 2001).

Rights-of-Way
Federal Land Policy and Management Act of 1976

A right-of-way grant for a road and parking area, sought by the applicant on public lands for the purposes of accessing his private property across a river, does not authorize use of the right-of-way for purposes other than those expressly sought and received. A right-of-way sought for parking vehicles on Federal land for purposes of crossing a river cable to private land does not include a use for storage of personal property.

Tom Watson, 154 IBLA 140 (Feb. 5, 2001).

Rights-of-Way
Federal Land Policy and Management Act of 1976

A right-of-way holder's assertion that he used Federal property for certain uses prior to acquisition of the right-of-way, does not change the nature of the use applied for and received in the right-of-way grant.

Tom Watson, 154 IBLA 140 (Feb. 5, 2001).

Rights-of-Way
Federal Land Policy and Management Act of 1976

A right-of-way application for a preferred access road, or a closely related alternative, partially through an area of critical environmental concern is properly rejected and a longer alternative approved by BLM pursuant to section 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1994), where the record shows the decision to be a reasoned analysis of the facts involved, made with due regard for the public interest.

D. J. Laughlin, 154 IBLA 159 (Feb. 28, 2001).

Rights-of-Way
Federal Land Policy and Management Act of 1976

BLM may not rely on an appraisal for determining expected rent in accordance with 43 C.F.R. § 2801.1-2(d)(7)(iv), when that appraisal fails to disclose any information regarding the comparable data utilized, thereby precluding independent verification of the lease data, effective challenge as to the accuracy of the data and appraisal, and meaningful review by the Board.

KHWY, Inc., 155 IBLA 6 (Apr. 30, 2001).

Rights-of-Way
Federal Land Policy and Management Act of 1976

Section 501(a)(6) of FLPMA, 43 U.S.C. § 1761(a)(6) (1994), grants the Secretary of the Interior the discretionary authority to issue rights-of-way over, upon, under, or through public lands for roads, trails, or other means of transportation. The Departmental regulation at 43 C.F.R. § 2802.4 lists reasons for denying an application for a right-of-way to use public lands, and this Board will affirm a BLM decision rejecting a right-of-way application if the record demonstrates that the rejection decision is based on a reasoned analysis of the facts and was made with due regard for the public interest. The mere fact that the holder of an existing right-of-way objects to the issuance of a subordinate right-of-way is not sufficient reason for rejecting a right-of-way application.

Douglas E. Noland, 156 IBLA 35 (Nov. 21, 2001).

Rights-of-Way
Federal Land Policy and Management Act of 1976

Sec. 504 of FLPMA and 43 C.F.R. § 2808.1(a) require a right-of-way applicant to reimburse the United States for reasonable administrative and other costs incurred in processing the application and in monitoring construction and operation pursuant to the right-of-way. BLM's decision assessing an application processing fee as "Category II" complies with 43 C.F.R. § 2808.2-1(a)(2) and is properly affirmed where the application is one for which (1) data necessary to comply with the National Environmental Policy Act of 1969 are available in BLM's office or from data furnished by the applicant and (2) one field examination is required to verify existing data.

John T. Alexander, 157 IBLA 1 (July 17, 2002).

Rights-of-Way
Federal Land Policy and Management Act of 1976

"*Continuous Use*." "*Public Road*." Where a party seeking to continue to use an existing road running across Federally-owned lands as an access road to his privately-owned lands makes no written showing that the road was cognizable under section 8 of R.S. § 2477 and concedes that the road is not a "public road" (a fact inconsistent with the existence of an R.S. § 2477 right-of-way), the Board should not pursue the matter on his behalf and there is no valid reason to remand the matter for consideration of the existence of an R.S. § 2477 right-of-way. "Continuous use," even if established, is insufficient to qualify a road under R.S. § 2477.

John T. Alexander, 157 IBLA 1 (July 17, 2002).

Rights-of-Way
Federal Land Policy and Management Act of 1976

By virtue of 43 C.F.R. § 2801.3(e), BLM lacks authority to issue any right-of-way under FLPMA to an applicant until trespass issues concerning the applicant are settled.

John T. Alexander, 157 IBLA 1 (July 17, 2002).

Rights-of-Way
Federal Land Policy and Management Act of 1976

Where the term of a communications site right-of-way was defined to coincide with the expiration of a Federal Communications Commission license to operate an FM radio station and did not otherwise specify that the license must be maintained by the right-of-way grantee, and the record shows that a valid license has been in place since 1981, a BLM decision holding that the right-of-way automatically terminated will be reversed.

Dan Bradshaw, 161 IBLA 116 (Apr. 7, 2004).

Rights-of-Way
Federal Land Policy and Management Act of 1976

The phrase *subject to* when used in a conveyance means "subordinate to", "subservient to", "limited by", or "charged to", and it serves to put a purchaser on notice that he is receiving less than a fee simple. An *exception* in a deed withdraws from the description of the property conveyed the property excepted therefrom. An *exception* thus is *in esse* at the time of the conveyance, and title remains in the grantor. In contrast, a *reservation* technically is a conveyance of the grantor's entire interest in property by which an interest that did not previously exist as an independent right or interest is simultaneously created and vested in the grantor. When a patent contains a clause *excepting and reserving to* the United States certain identified rights-of-way and easements, while also conveying the patented lands *subject to* other provisions, the patent will be construed as excepting the lands within the boundaries of the rights-of-way and easements from the description of the land conveyed by the patent.

Dan Bradshaw, 161 IBLA 116 (Apr. 7, 2004).

Rights-of-Way
Federal Land Policy and Management Act of 1976

Where BLM has patented lands excepting and reserving to the United States a communication site right-of-way, BLM may not divest the United States of land thus retained without first complying with the provisions of sec. 508 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1768 (2000), by determining that retention of Federal control is no longer necessary to assure that (1) the purpose of Title V of the Act will be carried out, based on the effect on the public interest, (2) the terms and conditions of the right-of-way will be complied with, and (3) the lands affected will be protected.

Dan Bradshaw, 161 IBLA 116 (Apr. 7, 2004).

Rights-of-Way
Federal Land Policy and Management Act of 1976

When a patent conveys lands "subject to . . . all communication site and related facility rights-of-way, granted or to be granted" in accordance with documents referred to in the patent that describe areas that "will be reserved for communications site use" and state "[i]t is understood that patents issued for the above described lands will provide for continued use of the communication sites," the patent reserved an interest in lands for use as communication sites and those areas are public lands over which BLM has jurisdiction to grant rights-of-way for communication sites.

AZ Spectrum Wireless, 161 IBLA 311 (May 17, 2004).

Rights-of-Way
Federal Land Policy and Management Act of 1976

BLM properly denies a request for a refund of rental fees paid for a right-of-way where it determines that the right-of-way is not for an electric or telephone facility or an extension therefrom, and is thus not exempt from such fees under section 504(g) of the Federal Land Policy and Management Act of 1976, *as amended*, 43 U.S.C. § 1764 (g) (1994 or 2000) and implementing regulations at 43 C.F.R. § 2803.1-2(b)(1)(iii). Right-of-way grants for access roads, conveyor routes, haul roads, or railroads for the conveyance of coal do not constitute authorizations for "electric or telephone facilities"; nor do they constitute authorizations for extensions from such facilities.

Blue Mountain Energy, Inc., 162 IBLA 108 (July 2, 2004).

Rights-of-Way
Federal Land Policy and Management Act of 1976

Section 504(g) of the Federal Land Policy and Management Act of 1976, *as amended* (FLPMA), 43 U.S.C. § 1764(g) (2000), and section 28(*l*) of the Mineral Leasing Act, *as amended* (MLA), 30 U.S.C. § 185(*l*) (2000), require a right-of-way applicant to reimburse the United States for the reasonable administrative and other costs incurred in processing the application and in related inspection and monitoring of the right-of-way. BLM regulations for FLPMA and MLA rights-of-way establish cost recovery categories based upon the expenditure of government resources in processing the applications. BLM decisions determining that applications for an access road right-of-way issued pursuant to FLPMA, and for an oil and gas pipeline right-of-way issued under the MLA, covering exactly the same ground, both fall under cost recovery Category III will be set aside and remanded where (1) BLM's decisions do not explain how BLM determined that two field examinations were required for each application, and (2) the supplementary record provided by BLM documenting the performed field examinations does not establish what examinations actually took place for each right-of-way application and/or were necessary to verify the data available in the BLM office or furnished by the applicant.

Yates Petroleum Corp., 163 IBLA 300 (Oct. 29, 2004).

Rights-of-Way
Federal Land Policy and Management Act of 1976

Under section 501(a)(6) of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1761(a)(6) (2000), a decision to issue a right-of-way is discretionary. When BLM uses its discretionary authority to reject an application for a land use authorization or impose a condition upon a land use authorization, it must provide a rational basis for its decision.

Mark Patrick Heath, 163 IBLA 381 (Nov. 10, 2004).

Rights-of-Way
Federal Land Policy and Management Act of 1976

Section 501(a) of the Federal Land Policy and Management Act of 1976, *as amended*, 43 U.S.C. § 1761(a) (2000), grants the Secretary of the Interior discretionary authority to issue rights-of-way. However, this authority does not extend to the grant of a right-of-way across a valid mining claim located prior to July 23, 1955, because claimants who located prior to that date gained the exclusive right of possession and enjoyment of the surface of the claim.

Nevada Pacific Mining Co., 164 IBLA 384 (Feb. 10, 2005).

Rights-of-Way
Federal Land Policy and Management Act of 1976

Under section 501(a)(6) of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1761(a)(6) (2000), a decision to issue a right-of-way is discretionary. When BLM uses its discretionary authority to reject an application for a land use authorization, it must provide a rational basis for its decision. A BLM decision rejecting a right-of-way application will be affirmed when the record shows that BLM balanced the application against resource values of concern, including preservation of the wild and scenic characteristics of the area, and concluded that the application is inconsistent with applicable land use plans.

Wiley F. & L'Marie Beaux, 171 IBLA 58 (Jan. 31, 2007).

Rights-of-Way
Federal Land Policy and Management Act of 1976

In denying a right-of-way application for the upgrading of an existing road in a wild and scenic river study area, BLM may not, according to section 12(b) of the Wild and Scenic Rivers Act, 16 U.S.C. § 1283(b) (2000), and the implementing regulations at 43 C.F.R. Subpart 8351, abrogate any existing rights of the private party without the consent of said party.

Wiley F. & L'Marie Beaux, 171 IBLA 58 (Jan. 31, 2007).

Rights-of-Way
Federal Land Policy and Management Act

Under section 504(g) of the Federal Land Policy and Management Act, 43 U.S.C. § 1764(g) (2000), the holder of a right-of-way (ROW) shall pay annually in advance the fair market value thereof as determined by the Secretary. Rent is not an administrative fee, but the price the holder of a ROW pays to use Federal land. The fair market value of the rent is established using sound business management principles and comparable commercial practices. 43 C.F.R. § 2806.10(a). BLM typically bases rental amounts for linear ROWs on a per-acre fee schedule, but may use an alternate means to compute the rent if it is determined by comparable commercial practices or an appraisal would be 10 or more times the rent from the schedule.

Bradley and Ramona Henspeter, 172 IBLA 273 (Sept. 12, 2007).

Rights-of-Way
Nature of Interest Granted

A right-of-way grant for a road and parking area, sought by the applicant on public lands for the purposes of accessing his private property across a river, does not authorize use of the right-of-way for purposes other than those expressly sought and received. A right-of-way sought for parking vehicles on Federal land for purposes of crossing a river cable to private land does not include a use for storage of personal property.

Tom Watson, 154 IBLA 140 (Feb. 5, 2001).

Rights-of-Way
Nature of Interest Granted

A right-of-way holder's assertion that he used Federal property for certain uses prior to acquisition of the right-of-way, does not change the nature of the use applied for and received in the right-of-way grant.

Tom Watson, 154 IBLA 140 (Feb. 5, 2001).

Rights-of-Way
Oil and Gas Pipelines

A BLM appraisal of the fair market rental value of a right-of-way for a petroleum byproducts removal plant site will be affirmed where the appraisal was based on a market survey of comparable rentals and the right-of-way holder has neither demonstrated error in that methodology nor shown that the resulting rental charges are excessive.

Wesfrac, Inc., 153 IBLA 164 (Aug. 22, 2000).

Rights-of-Way
Oil and Gas Pipelines

Where BLM approves a right-of-way for a pipeline based on an environmental assessment which discusses impacts from the pipeline on a case-by-case basis in conjunction with its consideration of associated road development, the decision to approve the pipeline right-of-way may be affirmed.

Southern Utah Wilderness Alliance, 159 IBLA 220 (June 16, 2003).

Rights-of-Way
Oil and Gas Pipelines

Section 504(g) of the Federal Land Policy and Management Act of 1976, *as amended* (FLPMA), 43 U.S.C. § 1764(g) (2000), and section 28(*l*) of the Mineral Leasing Act, *as amended* (MLA), 30 U.S.C. § 185(*l*) (2000), require a right-of-way applicant to reimburse the United States for the reasonable administrative and other costs incurred in processing the application and in related inspection and monitoring of the right-of-way. BLM regulations for FLPMA and MLA rights-of-way establish cost recovery categories based upon the expenditure of government resources in processing the applications. BLM decisions determining that applications for an access road right-of-way issued pursuant to FLPMA, and for an oil and gas pipeline right-of-way issued under the MLA, covering exactly the same ground, both fall under cost recovery Category III will be set aside and remanded where (1) BLM's decisions do not explain how BLM determined that two field examinations were required for each application, and (2) the supplementary record provided by BLM documenting the performed field examinations does not establish what examinations actually took place for each right-of-way application and/or were necessary to verify the data available in the BLM office or furnished by the applicant.

Yates Petroleum Corp., 163 IBLA 300 (Oct. 29, 2004).

Rights-of-Way
Oil and Gas Pipelines

A decision determining rental for a pipeline right-of-way issued pursuant to sec. 28 of the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 185 (2000), based on an appraisal of fair market value will be affirmed unless the appellant demonstrates error in the appraisal method or result. In the absence of such a showing, a BLM appraisal may be rebutted only by another appraisal.

Alaska Pipeline Company, Enstar Natural Gas Company, 164 IBLA 149 (Dec. 2, 2004).

Rights-of-Way
Oil and Gas Pipelines

Letter Decisions determining rental for a pipeline right-of-way issued pursuant to sec. 28 of the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 185 (2000), based upon an appraisal of fair market rental value, will be set aside and remanded where the administrative record does not adequately support the appraisal method and result.

Alyeska Pipeline Service Company, 167 IBLA 112 (Oct. 13, 2005).

Rights-of-Way
Oil and Gas Pipelines

Letter Decisions based upon an appraisal prepared by an outside contractor jointly for BLM and the State of Alaska for the Trans-Alaska Pipeline System will be set aside and remanded when the outside contractor accepted a special instruction from BLM and the State dictating that rental be calculated using an "encumbrance of rights" factor of 100 percent, and the administrative record does not provide a rational basis for the special instruction.

Alyeska Pipeline Service Company, 167 IBLA 112 (Oct. 13, 2005).

Rights-of-Way
Oil and Gas Pipelines

BLM erred in assessing rentals based on its Calendar Year 2003 Communication Uses Rental Schedule (BLM Information Bulletin No. 2003-005) for communication sites which are defined as "related facilities" by the Agreement and Grant of Right-of-Way for the Trans-Alaska Pipeline System (TAPS Agreement), or by a related Grant of Right-of-Way for Communication Site expressly made subject to the TAPS Agreement, which were issued pursuant to section 28 of the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 185 (2000), and section 203(b) and (c) of the Trans-Alaska Pipeline Authorization Act of 1973, 43 U.S.C. § 1652(b) and (c) (2000). Such communication sites are exempt from the nationwide rental schedules established by BLM (*see* 43 C.F.R. § 2803.1-2(d)(1)), and rental for such communication sites should be assessed at fair market rental value in accordance with Section 8 of the TAPS Agreement and 43 C.F.R. § 2803.1-2(a), rather than based upon nationwide rental schedules established by BLM.

Alyeska Pipeline Service Company, 167 IBLA 298 (Dec. 29, 2005).

Rights-of-Way
Revised Statutes Sec. 2477

The existence of a right-of-way for a road across public lands under section 8 of the Act of July 26, 1866 (R.S. § 2477), repealed by section 706(a) of the Federal Land Policy and Management Act of 1976, depends on evidence showing historical use and dedication to a public purpose. Normally the existence of an R.S. § 2477 road is a question of state law for adjudication by state courts.

Erik and Tina Barnes, National Wildlife Federation, et al., 151 IBLA 128 (Nov. 30, 1999).

Rights-of-Way
Revised Statutes Sec. 2477

"*Continuous Use*." "*Public Road*." Where a party seeking to continue to use an existing road running across Federally-owned lands as an access road to his privately-owned lands makes no written showing that the road was cognizable under section 8 of R.S. § 2477 and concedes that the road is not a "public road" (a fact inconsistent with the existence of an R.S. § 2477 right-of-way), the Board should not pursue the matter on his behalf and there is no valid reason to remand the matter for consideration of the existence of an R.S. § 2477 right-of-way. "Continuous use," even if established, is insufficient to qualify a road under R.S. § 2477.

John T. Alexander, 157 IBLA 1 (July 17, 2002).

Rights-of-Way
Revised Statutes Sec. 2477

Although BLM lacks primary jurisdiction to make determinations on the validity of the rights-of-way granted under R. S. 2477, it may properly determine the validity of R. S. 2477 rights-of-way for its own purposes. The need to consider whether lands are within the purview of R. S. 2477 arises when BLM has an administrative concern that requires inquiry into the status of a claimed R. S. 2477 right-of-way. Such review is necessary when it is asserted that BLM has closed an R. S. 2477 right-of-way.

Charles W. Nolen, 168 IBLA 152 (Apr. 7, 2006).

Rights-of-Way
Revised Statutes Sec. 2477

Where BLM has repeatedly notified State and County Governments of its intention to close specific roads in an area of critical environmental concern; where those Governments have not come forward to assert any interests in the closed roads under R. S. 2477; and where the record indicates that they have instead claimed the only roads they consider to fall under the purview of R. S. 2477, a strong presumption arises that the roads closed do not fall within the purview of R. S. 2477. Where a party asserting that some of the closed roads have met the criteria and the recognition of the different agencies as R. S. 2477 roads fails to sustain its burden to show evidence of public use under State law, BLM's decision is properly affirmed on appeal.

Charles W. Nolen, 168 IBLA 152 (Apr. 7, 2006).

Rights-of-Way
Revised Statutes Sec. 2477

Where there is no evidence that an area covered by a fence that is part of a grazing exclosure has ever been adjudicated to be a "road" under R.S. 2477, either administratively within the Department or in a court of competent jurisdiction, there is no basis to upset the requirement that a grazer maintain the exclosure. Unsupported assertions of rights under R. S. 2477, particularly by non-Governmental persons or entities, do not prevent BLM from taking steps to manage the public lands.

Tabor Creek Cattle Company v. Bureau of Land Management, 170 IBLA 1 (Aug. 29, 2006).

Roaming Horses and Burros Act

A Private Maintenance and Care Agreement for adopted wild horses may be summarily cancelled by BLM upon good and sufficient evidence that the terms of the agreement have been violated. BLM may rely upon an observed deteriorating condition of the animals themselves and credible reports of third parties in deciding to repossess the animals and cancel a Private Maintenance and Care Agreement. Where photographs taken on the day of the inspection provide sufficient evidence of the deteriorating condition of the animals, and appellant has submitted no countervailing evidence that would warrant reversal of a decision to cancel the Private Maintenance and Care Agreement and repossess the horses, the decision will be affirmed.

Jerry Dixson, 165 IBLA 125 (Mar. 22, 2005).

Roaming Horses and Burros Act

A decision to remove excess wild horses to the extent necessary to reach the appropriate management level required to preserve a thriving natural ecological balance on the range will be affirmed when the decision is based on a reasoned analysis of rangeland monitoring data.

Thomas M. Berry, 162 IBLA 221 (July 27, 2004).

Roaming Horses and Burros Act

BLM may properly cancel private maintenance and care agreements for wild horses and repossess the horses when there is sufficient evidence of improper care of the adopted animals to establish that the adopter violated the terms of the agreements.

Elizabeth Box, 166 IBLA 50 (June 14, 2005).

Roaming Horses and Burros Act

Photographic evidence or a report from a veterinarian or a BLM official will ordinarily constitute sufficient evidence of the adopter's treatment of the adopted animal.

Elizabeth Box, 166 IBLA 50 (June 14, 2005).

Roaming Horses and Burros Act

Credible reports by third parties regarding the condition of adopted animals may be used in conjunction with proof of the deteriorating condition of the animals to provide support to a BLM finding of substandard care.

Elizabeth Box, 166 IBLA 50 (June 14, 2005).

Rules of Practice
Generally

Where the record demonstrates that the core issues of appellants' protest were decided against appellants in a U.S. District Court opinion which was affirmed by the Ninth

Circuit Court of Appeals, and the remaining reason for appeal to this Board cannot prevail, it is appropriate to rule on the merits of the appeal and deny a request for a stay as moot.

The Wilderness Society, Great Bear Foundation, 151 IBLA 346 (Jan. 28, 2000).

Rules of Practice
Generally

Pursuant to 43 C.F.R. § 8372.3, approval of an application and subsequent issuance of a special recreation permit is discretionary with the authorized officer. To withstand administrative review, however, an exercise of discretionary authority must have a rational basis and be supported by facts of record demonstrating that an action is not arbitrary, capricious, or an abuse of discretion. Thus, decisions imposing sanctions for violation of permit terms, waiving permit terms, or excusing noncompliance will be upheld, unless it is shown that the decision was arbitrary, capricious, or based upon a mistake of fact or law.

Judy K. Stewart d.b.a. Western Wilderness Outdoor Adventure, 153 IBLA 245 (Sept. 5, 2000).

Rules of Practice
Generally

Where appellant neither acknowledges the evidence nor directly responds to it, and fails to submit any evidence to support its version of relevant events, appellant has not demonstrated that the decision is arbitrary, capricious, or based on a mistake of fact or law. In such a case, BLM has discharged its burden of demonstrating by a preponderance of credible evidence that appellant violated applicable Conditions and Standard Stipulations of its special recreation permit. A decision denying an application for an SRP will be affirmed where the decision to do so is supported by facts of record and there are no compelling reasons for modifying or reversing it, and in those cases where the basis for the decision is clear from the record and unrefuted by appellant, we will not substitute our judgment for that of the BLM official exercising his or her discretion.

Judy K. Stewart d.b.a. Western Wilderness Outdoor Adventure, 153 IBLA 245 (Sept. 5, 2000).

Rules of Practice
Generally

When, on appeal of a timber sale, key issues regarding implementation of the Northwest Forest Plan and compliance with the Aquatic Conservation Strategy and the Endangered Species Act of 1973 have been decided in Federal court by an agreement settling litigation, or by the preparation of further environmental documentation, and those issues that remain must await the development of a new site-specific consultation process and the issuance of new biological opinions, BLM's decision denying appellant's protest and authorizing commercial thinning will be vacated and the case remanded to BLM for further action after reconsultation and issuance of new biological opinions.

Umpqua Watersheds, Inc., In re Johnson Creek Commercial Thinning Project, 163 IBLA 94 (Sept. 9, 2004).

Rules of Practice
Generally

When wells that were the subject of a protest of the issuance of Applications for Permit to Drill have been drilled, the appeal ordinarily will be dismissed as moot because there is no further relief that can be granted on appeal. Where the appeal raises issues which are capable of repetition and may yet evade review, the Board properly determines to adjudicate the appeal even though the relief sought by an appellant cannot be granted for the particular event.

Colorado Environmental Coalition, The Wilderness Society, 165 IBLA 221 (Apr. 8, 2005).

Rules of Practice
Generally

Regulation 43 C.F.R. § 4160.1(a) provides that "[p]roposed decisions" by BLM concerning authorized grazing on the public lands "shall be served on any affected applicant, permittee or lessee, and any agent and lien holder of record . . . by certified mail or personal delivery." Further, 43 C.F.R. § 4160.2 provides a right to protest such a proposed decision by any applicant, permittee, lessee, or other interested public either "in person or in writing to the authorized officer within 15 days after receipt of such decision."

Stephen Miller v. Bureau of Land Management, James G. Katsilometes v. Bureau of Land Management, 165 IBLA 386 *(*May 10, 2005).

Rules of Practice
Generally

Delivery of a notice of certified mail to a person's last address of record does not establish the date of delivery of the document being sent by certified mail. It is only (1) when someone accepts delivery of the item by signing the certified mail return receipt card or (2) the certified mail is returned to BLM by the U.S. Postal Service as undeliverable, for whatever reason, that the "person will be deemed to have received the communication" within the meaning of 43 C.F.R. § 1810.2(b). When BLM sends a proposed grazing decision by certified mail to a person's last address of record, which is a post office box, the date the notice of certified mail is placed in the box does not establish the date of receipt for purposes of 43 C.F.R. § 4160.2.

Stephen Miller v. Bureau of Land Management, James G. Katsilometes v. Bureau of Land Management, 165 IBLA 386 *(*May 10, 2005).

Rules of Practice
Generally

When, during the pendency of an appeal, the arguments raised by an appellant have been addressed in other Board decisions, or by Federal courts, whether or not the appellant was a party thereto, or in other Board adjudication to which it was a party, and the appellant fails to show that those arguments remain viable, the Board may dispose of such arguments in summary fashion.

Wyoming Outdoor Council, Biodiversity Conservation Alliance, 172 IBLA 289 (Sept. 20, 2007).

Rules of Practice
Appeals
Generally

The Department has provided that an adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with Departmental grazing regulations found at 43 C.F.R. Part 4100. 43 C.F.R. § 4.478(b). In this manner, the Department has considerably narrowed the scope of review of BLM grazing decisions by an Administrative Law Judge and by this Board.

Kay Kayser-Meyring v. Bureau of Land Management, 152 IBLA 39 (Mar. 1, 2000).

Rules of Practice
Appeals
Generally

Where BLM notifies prospective applicants for grazing use and preference that, if leased property is offered as base property to qualify for grazing use, the term of the lease must be for 3 years, as set forth in a BLM State Range Administration Policy, and an applicant offers base property land leased for less than 3 years, the Administrative Law Judge's decision finding that the applicant failed to qualify for grazing use and that BLM improperly awarded grazing use to the applicant will be affirmed.

Kay Kayser-Meyring v. Bureau of Land Management, 152 IBLA 39 (Mar. 1, 2000).

Rules of Practice
Appeals
Dismissal

A motion by BLM to dismiss an appeal of a natural gas development project by an overriding royalty interest holder in Federal oil and gas leases will be denied when the holder demonstrates that he is a party to the case and that design features of the approved project may preclude natural gas well development on tracts in which he holds an interest and potentially reduce overriding royalties received.

Fred E. Payne, Randy D. Leader, 159 IBLA 69 (May 20, 2003).

Rules of Practice
Appeals
Generally

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 administrative proceedings except upon a showing of compelling legal or equitable reasons.

Douglas E. Noland, 156 IBLA 35 (Nov. 21, 2001).

Rules of Practice
Appeals
Generally

The Board will properly decline to rule on a request for an advisory opinion.

Great Western Drilling Co.; Davoil, Inc., 156 IBLA 42 (Nov. 28, 2001).

Rules of Practice
Appeals
Generally

The Board will properly decline to rule on a request for an advisory opinion.

Bowers Oil and Gas, Inc., 152 IBLA 12 (Feb. 24, 2000).

Rules of Practice
Appeals
Generally

When an administrative law judge has erred in determining that the Government failed to present a prima facie case in support of the charges in a mining claim contest and both parties have presented their cases at the hearing on the complaint, the Board may exercise its *de novo* review authority and proceed to review all the evidence to decide whether the contestee overcame the Government's prima facie case by a preponderance of the evidence.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Rules of Practice
Appeals
Generally

Where an operator requested State Director Review of a District Office letter responding to its demand for a decision on its plan of operations, and such letter offered several courses of action, including completing review of the original mining plan of operations, the State Director could have denied review as premature. However, where the State Director issues a decision which affirms that the plan of operations cannot be processed as it was submitted and allows the operator 30 days to decide to modify the plan or suggest other alternatives to the proposed plan of operations or the plan shall be deemed denied, the State Director's decision constitutes an appealable decision.

Mount Royal Joint Venture, 153 IBLA 90 (July 31, 2000).

Rules of Practice
Appeals
Generally

Where, after receiving a letter from BLM advising that it will resume processing a proposed mining plan of operations, an appellant contends that BLM in the past had deliberately delayed taking action thereon, appellant's allegations will be rejected as moot.

Mount Royal Joint Venture, 153 IBLA 90 (July 31, 2000).

Rules of Practice
Appeals
Generally

Where the State of Alaska fails to appeal a decision finding a native allotment to be legislatively approved the State may not subsequently challenge any of the predicate facts determined by BLM in its initial decision.

State of Alaska Department of Transportation & Public Facilities, 154 IBLA 57 (Nov. 21, 2000).

Rules of Practice
Appeals
Generally

Where the Board has previously held that various millsites were null and void and that decision constitutes the final determination of the matter for the Department, the correctness of that determination is not subject to attack before the Board in a collateral proceeding arising out of BLM's actions in implementing the Board decision, absent compelling legal or equitable considerations.

Robert C. Lefaivre, 155 IBLA 137 (June 20, 2001).

Rules of Practice
Appeals
Generally

While a postmark on an envelope containing a notice of appeal raises a rebuttable presumption that the document was mailed on the date of the postmark, where the evidence of record establishes a reasonable likelihood that the document was mailed prior to that date, the Board may ignore the postmark and find, consistent with 43 C.F.R. § 4.401(a), that the document in question was transmitted or probably transmitted within the period required and, accordingly, waive a delay in the actual filing of the notice of appeal.

Pamela Neville, 155 IBLA 303 (Aug. 29, 2001).

Rules of Practice
Appeals
Generally

The regulation at 43 C.F.R. § 1.3 does not stand alone and necessarily must be read in conjunction with 43 C.F.R. § 1.5. When an individual "signs a paper in practice before the Department," it constitutes an averment that the individual is one of those persons identified in 43 C.F.R. § 1.3 who is therefore authorized to appear before the Department. The certification effected by the act of signing a paper in practice before the Department ordinarily will be sufficient to permit the individual to practice, absent facts or circumstances which call the certification into question.

Klamath Siskiyou Wildlands Center, Siskiyou Project, 155 IBLA 347 (Sept. 27, 2001).

Rules of Practice
Appeals
Generally

When BLM challenges a certification that a person is qualified to practice before the Department, it has the burden of coming forward with affirmative allegations, which if true, would demonstrate that the individual is not authorized to practice before the Department to justify going behind the legal effect of the certification established by 43 C.F.R. § 1.5. That burden is not carried merely by expressing general doubt as to the person's authority or inviting the Board to probe it as a fishing exercise or litigation stratagem, because such a practice would completely vitiate the mandate of 43 C.F.R. § 1.5. When BLM formally moves to dismiss the appeal, affirmatively alleges that the individual is not authorized to practice, and articulates the specific facts and reasoning which support its motion, BLM has met its burden.

Klamath Siskiyou Wildlands Center, Siskiyou Project, 155 IBLA 347 (Sept. 27, 2001).

Rules of Practice
Appeals
Generally

Where the director of the organization appealing a BLM decision submits a declaration averring that the individual who has appeared to represent the organization works sufficient hours to be regarded as a full-time employee in response to BLM's motion to dismiss, and BLM offers no further evidence or argument challenging the sufficiency of the declaration, authority to practice before the Department will be established, as provided by 43 C.F.R. § 1.3(b)(3)(iii).

Klamath Siskiyou Wildlands Center, Siskiyou Project, 155 IBLA 347 (Sept. 27, 2001).

Rules of Practice
Appeals
Generally

Where on appeal from a BLM decision rejecting a Native allotment application because the application was not pending before the Department on Dec. 18, 1971, the Board determines that there is a question of fact whether the application was pending on that date, the Board will set aside the BLM decision and refer the case for a hearing before an Administrative Law Judge. Evidence that a BIA employee may have accepted an allotment application prior to Dec. 18, 1971, establishes a question of fact as to whether the application was "pending before the Department" on that date.

Timothy Afcan, Sr., 157 IBLA 210 (Sept. 25, 2002).

Rules of Practice
Appeals
Generally

As an appellate tribunal, the Board of Land Appeals does not exercise supervisory authority over BLM except in the context of deciding an appeal over which the Board has jurisdiction. The Board will decline to render advisory opinions on questions not involved in a properly-filed appeal.

Nevada Outdoor Recreation Association, 158 IBLA 207 (Jan. 22, 2003).

Rules of Practice
Appeals
Generally

As the Board has no jurisdictional authority concerning matters covered by an action or decision of the Secretary except in the limited circumstance of determining whether the Secretary's determination was properly applied and implemented, we must uphold the processing by BLM of a mineral patent application deemed "grandfathered" by Secretarial finding from a statutory moratorium otherwise barring such processing.

Ulf T. Teigen, Mona A. Teigen (On Reconsideration), 159 IBLA 142 (May 27, 2003).

Rules of Practice
Appeals
Generally

Affidavits attesting to a timely filing of a Native allotment application on December 18, 1971, standing alone, may not be sufficient to establish that such filing occurred. However, affidavits may be sufficient to raise a material factual question as to whether the application was timely filed.

Alice D. Brean, 159 IBLA 310 (July 14, 2003).

Rules of Practice
Appeals
Generally

Where on appeal from a BLM decision rejecting a Native allotment application because the application was not pending before the Department on December 18, 1971, the Board determines that there is a question of fact whether the application was pending on that date, the Board will set aside the BLM decision and refer the case for a hearing before an Administrative Law Judge.

Alice D. Brean, 159 IBLA 310 (July 14, 2003).

Rules of Practice
Appeals
Generally

In a mining contest, the Government establishes a prima facie case when a mineral examiner testifies that he has examined a claim and found mineral values insufficient to support a finding of discovery. In proper circumstances the Government may establish a prima facie case even though its witnesses were not physically present on the mining claims. The Government's prima facie case is not defeated by a claimant's assertion that the mineral examiner did not physically visit the claim, when the claimant fails to submit evidence that a site visit would have affected the outcome of a mineral report which was based on evidence derived from sampling during a field examination of the claims in question by another mineral examiner.

United States of America v. Barbara Winkley, 160 IBLA 126 (Oct. 15, 2003).

Rules of Practice
Appeals
Generally

The Government may revisit conclusions in a mineral report prior to the time a patent issues, and is not estopped from reconsidering a claim's validity by a prior conclusion favorable to a mining claimant. The Government is not bound by a prior conclusion that a mining claim is valid where the initial analysis was based on isolated, high value samples and mineral prices which did not properly reflect the existing market.

United States of America v. Barbara Winkley, 160 IBLA 126 (Oct. 15, 2003).

Rules of Practice
Appeals

Generally

After a hearing considering a mining claim contest complaint, the Board may review the decision of the administrative law judge to determine whether it is consistent with law and whether conclusions regarding the evidence are consistent with the facts of record. If not, the Board may exercise its de novo review authority to review and consider the evidence of record and issue a decision consistent with applicable law.

United States v. E. K. Lehmann & Associates of Montana, Inc., et al., 161 IBLA 40 (Mar. 16, 2004).

Rules of Practice
Appeals
Generally

In a mining contest, the Government establishes a prima facie case when a mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery. The determination of whether or not the Government has presented a prima facie case is to be made solely on the evidence adduced during the Government's case-in-chief. When the Government presents a prima facie case, the burden shifts to the contestee to rebut that case by a preponderance of the evidence. Where the issue is the validity of a mining claim, and not a patent, a contestee must preponderate on the matters placed at issue by the Government's case.

United States v. E. K. Lehmann & Associates of Montana, Inc., et al., 161 IBLA 40 (Mar. 16, 2004).

Rules of Practice
Appeals
Generally

Under 43 C.F.R. § 4.411(a), a party to a case who is adversely affected by a decision of an officer of BLM may appeal to the Board of Land Appeals by filing a notice of appeal in the office of the officer who made the decision within 30 days after the date of service. A notice of decision published by BLM in a newspaper, providing that an appeal of the decision had to be filed "within 30 days after the publication of this notice," does not establish a date of service from which the 30-day appeal period can be calculated.

Oregon Natural Resources Council, Hells Canyon Preservation Council, 161 IBLA 323 (May 25, 2004).

Rules of Practice
Appeals
Generally

The procedures governing wildfire management decisions affecting forests are set forth at 43 C.F.R. § 5003.1(b). Appeals of such decisions are to the Board of Land Appeals, which is required under 43 C.F.R. § 4.416 to decide such appeals within 60 days after all pleadings have been filed, and within 180 days after the appeal is filed. Other BLM decisions governing or relating to forest management proceed through the protest and appeal process of 43 C.F.R. § 5003.1(a), 43 C.F.R. § 5003.2, and 43 C.F.R. § 5003.3.

Oregon Natural Resources Council, Hells Canyon Preservation Council, 161 IBLA 323 (May 25, 2004).

Rules of Practice
Appeals
Generally

When BLM provides in a decision record approving a fuels treatment project, and subsequent notice thereof, for a right of appeal to the Board of Land Appeals, pursuant to 43 C.F.R. Part 4, but explains on appeal that the project will be implemented through a timber sale contract and a stewardship contract and that the timber sale contract will be subject to the protest and appeal procedures of 43 C.F.R. Subpart 5300, the Board will grant BLM's motion to dismiss, as premature, an appeal of the decision record, as it relates to activities to be conducted pursuant to a timber sale contract.

Oregon Natural Resources Council, Hells Canyon Preservation Council, 161 IBLA 323 (May 25, 2004).

Rules of Practice
Appeals
Generally

Under 43 C.F.R. § 5003.1(b), BLM may make a wildfire management decision effective immediately or on a date certain when it determines that "vegetation, soil, or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire." In the absence of such a determination, a wildfire management decision is automatically stayed in accordance with 43 C.F.R. § 4.21(a). Regardless, 43 C.F.R. § 4.21(b) clearly is applicable to wildfire management decisions whether or not such a decision is made effective immediately.

Oregon Natural Resources Council, Hells Canyon Preservation Council, 161 IBLA 323 (May 25, 2004).

Rules of Practice
Appeals
Generally

A duly promulgated regulation has the force and effect of law and the Board is bound to apply the regulations in its adjudication. Under the regulation at 43 C.F.R. § 4.1105(a)(5), the permittee of a surface coal mining operation that is the subject of a determination on informal review under 30 C.F.R. § 842.15(d) is a party entitled under 43 C.F.R. § 4.1109(a)(1) to service of a copy of an appeal by a person who is or may be adversely affected by such a determination.

Richard S. & Cathy L. Maddock (On Reconsideration), 167 IBLA 200 (Nov. 15, 2005).

Rules of Practice
Appeals

Generally

Under 43 C.F.R. § 4.411, a party to a case who is adversely affected by a decision of an officer of BLM may appeal to the Board of Land Appeals by filing a notice of appeal in the office of the officer who made the decision within 30 days after the date of service. The Board has no jurisdiction to consider challenges to BLM actions raised after the time for appealing those actions. To the extent those actions are raised as further evidence of the alleged error in a BLM decision properly appealed to the Board, consideration of such evidence must attend a finding that BLM erred in undertaking the challenged action.

Defenders of Wildlife, Wyoming Outdoor Council, 169 IBLA 117 (May 31, 2006).

Rules of Practice
Appeals
Generally

As an appellate tribunal, the Board of Land Appeals does not exercise supervisory authority over BLM except in the context of deciding an appeal over which the Board has jurisdiction. The Board will decline to render advisory opinions on questions not involved in a properly filed appeal.

Defenders of Wildlife, Wyoming Outdoor Council, 169 IBLA 117 (May 31, 2006).

Rules of Practice
Appeals
Generally

After a hearing considering a mining claim contest complaint, the Board may review the decision of the Administrative Law Judge to determine whether it is consistent with law and whether conclusions regarding the evidence are consistent with the facts of record. If the Board concludes that the Judge improperly dismissed the contest for the Government's failure to present a prima facie case, and the parties have submitted their entire cases at a hearing, the Board may exercise its de novo review authority to consider the evidence of record and issue a decision consistent with applicable law.

United States v. Pitkin Iron Corporation, et al., 170 IBLA 352 (Nov. 29, 2006).

Rules of Practice
Appeals
Board of Land Appeals

On appeal from a decision of an Administrative Law Judge, the Board of Land Appeals possesses all of the powers which the Judge had in making his initial decision. Accordingly, where the record establishes that an Administrative Law Judge applied the wrong standard of proof to the detriment of an appellant, it is within the authority of the Board to review the record *de novo* and apply the correct legal standard without remanding the matter to the Hearings Division.

Riddle Ranches, Inc. v. Bureau of Land Management, 152 IBLA 119 (Apr. 3, 2000).

Rules of Practice
Appeals
Board of Land Appeals

Whether the Board will, in any given appeal, exercise its full *de novo* review authority is a matter committed to its discretion. Where the parties allege and make a preliminary showing that, subsequent to a hearing, new information has come to light which directly bears on the matter at issue, the Board will normally decline to exercise its *de novo* review authority and will, instead, remand the matter to the Hearings Division for a new fact-finding hearing.

Riddle Ranches, Inc. v. Bureau of Land Management, 152 IBLA 119 (Apr. 3, 2000).

Rules of Practice
Appeals
Burden of Proof

The burden is on a right-of-way applicant, who appeals a BLM decision denying his application, to demonstrate by a preponderance of the evidence that BLM erred in rejecting the right-of-way. That burden is not met where the right-of-way is rejected because it would be incompatible with a national scenic trail closed to motorized traffic and where the possibility of other access exists. An applicant does not gain entitlement to a particular right-of-way because alternate access may be difficult or expensive.

Kirk Brown, 151 IBLA 221 (Dec. 13, 1999).

Rules of Practice
Appeals
Burden of Proof

When BLM imposes a condition of approval to an operator's request to plug and abandon a well, in order to protect a fresh water zone from contamination by gas or saline water from deeper formations, and the operator asserts that such a condition is unnecessary, the operator must show by a preponderance of the evidence that the condition is excessive in order to prevail.

Grynberg Petroleum Co., 152 IBLA 300 (June 8, 2000).

Rules of Practice
Appeals
Burden of Proof

When, on the basis of differing interpretations of the same geological data, the operator of an oil and gas well and BLM disagree on the proper procedure to be used in

plugging and abandoning an oil and gas well, the Secretary is entitled to rely on the reasoned opinions and conclusions of his technical experts in the field, absent a showing by a preponderance of the evidence that such opinions are erroneous.

Grynberg Petroleum Co., 152 IBLA 300 (June 8, 2000).

Rules of Practice
Appeals
Burden of Proof

The burden is on a right-of-way applicant, who appeals a BLM decision denying his first two preferences in his right-of-way application, to demonstrate by a preponderance of the evidence that BLM erred in rejecting the preferred access routes. That burden is not met where the preferred access routes are rejected because they would be incompatible with protection of values within an ACEC through which each of the preferred routes would traverse and where the possibility of other access exists. An applicant does not gain entitlement to a particular right-of-way because alternate access may be difficult or more expensive.

D. J. Laughlin, 154 IBLA 159 (Feb. 28, 2001).

Rules of Practice
Appeals
Burden of Proof

Where a lessee of a small tract lease challenges provisions in the lease renewal decision prohibiting assignments and limiting the duration of the lease to the lifetime of the lessee, the burden is upon the lessee to prove, by a preponderance of the evidence, that BLM committed a material error in its factual analysis or that the determination is contrary to the relevant laws and regulations.

Franklyn Dorhofer, Edward J. McGowan, et al., 155 IBLA 51 (May 8, 2001).

Rules of Practice
Appeals
Burden of Proof

The regulation at 43 C.F.R. § 1.3 does not stand alone and necessarily must be read in conjunction with 43 C.F.R. § 1.5. When an individual "signs a paper in practice before the Department," it constitutes an averment that the individual is one of those persons identified in 43 C.F.R. § 1.3 who is therefore authorized to appear before the Department. The certification effected by the act of signing a paper in practice before the Department ordinarily will be sufficient to permit the individual to practice, absent facts or circumstances which call the certification into question.

Klamath Siskiyou Wildlands Center, Siskiyou Project, 155 IBLA 347 (Sept. 27, 2001).

Rules of Practice
Appeals
Burden of Proof

When BLM challenges a certification that a person is qualified to practice before the Department, it has the burden of coming forward with affirmative allegations, which if true, would demonstrate that the individual is not authorized to practice before the Department to justify going behind the legal effect of the certification established by 43 C.F.R. § 1.5. That burden is not carried merely by expressing general doubt as to the person's authority or inviting the Board to probe it as a fishing exercise or litigation stratagem, because such a practice would completely vitiate the mandate of 43 C.F.R. § 1.5. When BLM formally moves to dismiss the appeal, affirmatively alleges that the individual is not authorized to practice, and articulates the specific facts and reasoning which support its motion, BLM has met its burden.

Klamath Siskiyou Wildlands Center, Siskiyou Project, 155 IBLA 347 (Sept. 27, 2001).

Rules of Practice
Appeals
Burden of Proof

Where the director of the organization appealing a BLM decision submits a declaration averring that the individual who has appeared to represent the organization works sufficient hours to be regarded as a full-time employee in response to BLM's motion to dismiss, and BLM offers no further evidence or argument challenging the sufficiency of the declaration, authority to practice before the Department will be established, as provided by 43 C.F.R. § 1.3(b)(3)(iii).

Klamath Siskiyou Wildlands Center, Siskiyou Project, 155 IBLA 347 (Sept. 27, 2001).

Rules of Practice
Appeals
Burden of Proof

Where BLM challenges an organization's standing to appeal on the ground that it is not a party to the case, the question of whether an individual is an officer who may represent the organization is properly taken under advisement pending briefing and resolution of the standing issue, which may moot that question.

Klamath Siskiyou Wildlands Center. Siskiyou Project, 155 IBLA 347 (Sept. 27, 2001).

Rules of Practice
Appeals
Burden of Proof

A party appealing the denial of a protest of a timber sale may raise an issue pertaining to the prospectus for the timber sale, dated subsequent to the environmental assessment (EA), the finding of no significant impact, and the decision record, when there is no basis for concluding that the party should have been alerted to the issue by the scoping notice or EA.

In re North Trail Timber Sale, 169 IBLA 258 (July 13, 2006).

Rules of Practice
Appeals
Burden of Proof

BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges. When BLM issues a decision taking actions affecting the grazing privileges of a livestock permittee, those actions may be regarded as arbitrary, capricious, or inequitable only if they are not supportable on any rational basis, and an appellant seeking relief from such a decision has the burden to establish by a preponderance of the evidence that the decision is unreasonable or improper.

Gino Foianini v. Bureau of Land Management, 171 IBLA 244 (May 7, 2007).

Rules of Practice
Appeals
Burden of Proof

A BLM decision establishing an Appropriate Management Level for wild horses will be affirmed on appeal when the decision is based upon a reasoned analysis of rangeland monitoring data, climate, and wild horse health conditions and the appellant fails to show that BLM committed an error in ascertaining, collecting, or interpreting such data.

Wild Horse Organized Assistance, 172 IBLA 128 (Aug. 2, 2007).

Rules of Practice
Appeals
Burden of Proof

When, during the pendency of an appeal, the arguments raised by an appellant have been addressed in other Board decisions, or by Federal courts, whether or not the appellant was a party thereto, or in other Board adjudication to which it was a party, and the appellant fails to show that those arguments remain viable, the Board may dispose of such arguments in summary fashion.

Wyoming Outdoor Council, Biodiversity Conservation Alliance, 172 IBLA 289 (Sept. 20, 2007).

Rules of Practice
Appeals
Dismissal

Since 30 C.F.R. Part 290 gives the Board jurisdiction only over appeals of decisions of the Director, MMS, a direct appeal to the Board of a decision of an MMS official will be dismissed for lack of jurisdiction where the appellant has not first obtained review of the decision by the Director, MMS.

KMF Mineral Resources, Inc., 151 IBLA 35 (Oct. 21 1999).

Rules of Practice
Appeals
Dismissal

A motion to dismiss an appeal for failure to timely serve the Solicitor is properly denied in the absence of any showing of prejudice.

Bowers Oil and Gas, Inc., 152 IBLA 12 (Feb. 24, 2000).

Rules of Practice
Appeals
Dismissal

An appeal to the Board is properly dismissed when the statement of reasons fails to affirmatively point out any ground of error in the decision from which the appeal is taken and addresses a decision over which the Board has no appellate jurisdiction.

Nevada Outdoor Recreation Association, Inc., 153 IBLA 8 (July 13, 2000).

Rules of Practice
Appeals
Dismissal

An appeal of a decision implementing a land exchange is properly dismissed as moot when it is filed after legal title to the land has been transferred, BLM no longer has jurisdiction over the lands transferred out of Government ownership, and appellant's requested relief cannot be afforded.

Michael V. McLucas, 154 IBLA 42 (Nov. 2, 2000).

Rules of Practice
Appeals
Dismissal

A notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing on a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Southern California Sunbelt Developers, Inc., 154 IBLA 115 (Jan. 12, 2001).

Rules of Practice

Appeals
Dismissal

A motion to dismiss as untimely an appeal from a BLM decision issuing a geothermal resources lease is properly denied where the record demonstrates that the appellant was not served with a copy of the decision; the lease thereafter terminated by operation of law; and the appeal was filed within 30 days from the date of its receipt of the Board's subsequent decision reinstating the lease.

St. James Village, Inc., et al., 154 IBLA 150 (Feb. 22, 2001).

Rules of Practice
Appeals
Dismissal

Under 43 C.F.R. § 4.410(a), "[a]ny party to a case who is adversely affected by a [BLM] decision . . . shall have a right of appeal to the Board." An appeal brought by an organization is properly dismissed where the organization fails to identify any members who had been adversely affected by BLM's decision or where the person representing the organization does not, in response to a challenge, produce evidence independent from his own declaration that he has authority to do so. However, where the individual who filed both the protest and the appeal as a purported officer of the organization has been personally adversely affected by BLM's decision, that individual may be recognized as having filed an appeal on his or her own behalf.

Las Vegas Valley Action Committee et al., 156 IBLA 110 (Dec. 19, 2001).

Rules of Practice
Appeals
Dismissal

Departmental regulation 43 C.F.R. § 4.410 provides a right of appeal to the Board to any party adversely affected by a decision of an officer of the Bureau of Land Management but not the agencies of other Departments. When BLM issues a decision approving issuance of an airport lease to enable the operator of an airport to extend runways from land owned by the airport onto public land based in part on an environmental assessment approved by the Federal Aviation Administration, and the party appealing BLM's decision alleges injury arising from airport operations, that party will be deemed to have been adversely affected by the FAA decision rather than that of BLM. On appeal, the Board will only consider those adverse effects and issues which the appellant has identified that have a nexus to BLM's decision that is distinct from the issues decided by the FAA.

Las Vegas Valley Action Committee et al., 156 IBLA 110 (Dec. 19, 2001).

Rules of Practice
Appeals
Dismissal

A decision dismissing an appeal of an invoice issued by Minerals Management Service as untimely is properly reversed when the invoice was not accompanied by an order in mandatory terms explaining the payor's obligation and providing notice of the right of appeal.

Xanadu Exploration Company, 157 IBLA 183 (Sept. 3, 2002).

Rules of Practice
Appeals
Dismissal

Standing to appeal requires that a party to the case be adversely affected by a decision of the authorized officer. 43 C.F.R. § 4.410(a). An appeal of a recommendation by the U.S. Fish and Wildlife Service to redefine the boundaries of an interim conveyance to enhance wildlife protection is properly dismissed in the absence of a decision by BLM to implement the recommendation.

Nevada Outdoor Recreation Association, 158 IBLA 207 (Jan. 22, 2003).

Rules of Practice
Appeals
Dismissal

The timely filing of a notice of appeal is a jurisdictional requirement, and if an appeal is not timely filed, the Board of Land Appeals does not have jurisdiction to consider it and, pursuant to 43 C.F.R. § 4.411(b), the officer issuing the decision must close the case. If an appeal is properly filed, however, the office issuing the decision loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal, until jurisdiction over it is restored by Board action disposing of the appeal. Any adjudicative action taken by the office issuing the decision relating to the subject matter of the appeal after the filing of a timely appeal is a nullity since the office will have acted without jurisdiction.

American Petroleum Energy Company, 160 IBLA 59 (Aug. 28, 2003).

Rules of Practice
Appeals
Dismissal

Pursuant to 43 C.F.R. § 4.411(b), "the notice of appeal must give the serial number or other identification of the case." A timely filed notice of appeal that mistakenly uses the docket number of an MMS matter involving a different appellant that was settled several years before the notice of appeal was submitted, but correctly identifies the name of the party filing the appeal, the date of the order being appealed, and the nature of the order being appealed contains sufficient "other identification of the case" to meet the regulatory requirement. An MMS decision dismissing the appeal as untimely based on the lack of a correct serial number is a nullity and will be vacated by the Board.

American Petroleum Energy Company, 160 IBLA 59 (Aug. 28, 2003).

Rules of Practice
Appeals
Dismissal

When MMS issues an order to pay additional royalty, indicating that it is subject to immediate appeal, but places the order and bill for collection on hold pending additional review, the appeal period for the order does not begin to run until MMS notifies the appellant that the hold has been lifted, and an MMS decision dismissing as untimely an appeal to the Commissioner of Indian Affairs timely filed within 30 days of receipt of the notice of the lifting of the hold will be reversed and the case remanded for adjudication of the merits of the appeal.

American Petroleum Energy Company, 160 IBLA 59 (Aug. 28, 2003).

Rules of Practice
Appeals
Dismissal

The Board will dismiss an appeal from a BLM decision dismissing a protest of a dependent resurvey where the appellant fails to demonstrate that he has been adversely affected by such dismissal since he has no legally cognizable interest which will be affected by the resurvey. The appeal is also properly dismissed where a quarter corner to the survey is surrounded by private land.

John D. Wayne d/b/a Basin Surveying, Inc., 161 IBLA 140 (Apr. 13, 2004).

Rules of Practice
Appeals
Dismissal

Jurisdiction of the Board to consider an appeal is governed by Departmental appeal regulations at 43 C.F.R. Part 4. The failure to file an appeal within 30 days of receipt of a decision reserving a public access easement under section 17(b) of the Alaska Native Claims Settlement Act requires dismissal of an appeal of that decision. Once a party has had an opportunity to challenge such a decision, further consideration of the issue in a subsequent appeal is barred by administrative finality.

Seldovia Native Association, 161 IBLA 279 (May 12, 2004).

Rules of Practice
Appeals
Dismissal

A notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Susan J. Kayler, Tom Traw, 162 IBLA 245 (July 29, 2004).

Rules of Practice
Appeals
Dismissal

Pursuant to 43 C.F.R. § 4.470, an appeal of a BLM final grazing decision must be filed within 30 days after the date the person appealing receives the decision. Notwithstanding the characterization of an appeal from such a decision as a cross appeal, the timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Steven G. Kimber v. Bureau of Land Management, 164 IBLA 70 (Nov. 24, 2004).

Rules of Practice
Appeals
Dismissal

The Board does not have proper authority to oversee a State program approved by the Environmental Protection Agency under the Resource Conservation and Recovery Act, and will not present a forum for arguments against the State's exercise of such delegated authority. Where an appeal requires the Board to intervene in the State's, or EPA's, implementation of authority under that statute, it will be dismissed.

Great Basin Mine Watch, 164 IBLA 87 (Sept. 26, 2003).

Rules of Practice
Appeals
Dismissal

An appeal by a party who failed to file a statement of reasons or provide any explanation for the failure to file one is properly dismissed.

Southern Utah Wilderness Alliance, et al., 164 IBLA 118 (Nov. 30, 2004).

Rules of Practice
Appeals
Dismissal

An appeal from a decision denying a protest of the inclusion of parcels in an oil and gas lease sale will be dismissed as moot if the leases issued for those parcels have terminated.

Southern Utah Wilderness Alliance, et al., 164 IBLA 118 (Nov. 30, 2004).

Rules of Practice
Appeals
Dismissal

The Board of Land Appeals decides appeals involving the use and disposition of public lands and their resources. The Board is without jurisdiction to decide survey disputes that do not involve public lands or resources.

Benton C. Cavin, 166 IBLA 78 (June 22, 2005).

Rules of Practice
Appeals
Dismissal

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.

Mack Wiehl (Heir of Alfred M. Wiehl), 169 IBLA 25 (May 3, 2006).

Rules of Practice
Appeals
Dismissal

A party challenging BLM's decision to approve a timber sale based on a finding of no significant impact has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal. If the appealed decision is the denial of a protest, the appellant must affirmatively point out error in the protest decision.

In re North Trail Timber Sale, 169 IBLA 258 (July 13, 2006).

Rules of Practice
Appeals
Dismissal

A party appealing the denial of a protest of a timber sale may raise an issue pertaining to the prospectus for the timber sale, dated subsequent to the environmental assessment (EA), the finding of no significant impact, and the decision record, when there is no basis for concluding that the party should have been alerted to the issue by the scoping notice or EA.

In re North Trail Timber Sale, 169 IBLA 258 (July 13, 2006).

Rules of Practice
Appeals
Dismissal

Designation of a unit operator relieves BLM from any obligation to communicate directly with working interest owners or others concerning general unit operations, such as approval of development plans and other matters related to operation of the unit. However, BLM may have an obligation to inform certain parties when the action concerns a matter other than general unit operations, such as unit expansion. Where the unit agreement requires the unit operator to notify each working interest owner, lessee, and lessor whose interests are affected by a proposed expansion and to allow such persons to file objections and then to forward those objections to BLM for its consideration, a BLM decision approving the expansion must be served on any person filing an objection because the filing of an objection makes that person a party to the proceeding leading up to BLM's decision.

Three Forks Ranch, Inc., 171 IBLA 323 (June 28, 2007).

Rules of Practice
Appeals
Effect of

When an appeal is taken from an OSM decision, that office loses jurisdiction over the matter until jurisdiction is restored by final disposition of the appeal by the appellate body. When, subsequent to an appeal, OSM renders additional conclusions, the Board would normally remand the matter to OSM to recover jurisdiction and properly adopt and render those conclusions. However, where the record in an appeal already contains a clear statement by OSM of its conclusions on each site-specific issue, as well as full briefing by the parties, no purpose would be served by remanding the matter and the Board may exercise its de novo authority to consider whether OSM's conclusions should be adopted.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000).

Rules of Practice
Appeals
Effect of

When an appeal is filed with the Board of Land Appeals, subject matter jurisdiction is lodged with the Board, suspending the authority of the deciding official to exercise further decisionmaking jurisdiction over matters directly relating to the subject of the appeal. However, it does not have the effect of suspending the deciding official's authority to act on matters that are functionally independent from the subject of the appeal.

McMurry Oil Co., 153 IBLA 391 (Oct. 11, 2000).

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 administrative proceedings except upon a showing of compelling legal or equitable reasons.

Douglas E. Noland, 156 IBLA 35 (Nov. 21, 2001).

Rules of Practice
Appeals
Effect of

Upon the filing of an appeal, it is incumbent upon BLM to forward the complete, original case file to the Board within the time frame and manner provided by BLM *Manual* 1841.15A.

Terrence Timmins, 158 IBLA 318 (Mar. 26, 2003).

Rules of Practice
Appeals
Effect of

The timely filing of a notice of appeal is a jurisdictional requirement, and if an appeal is not timely filed, the Board of Land Appeals does not have jurisdiction to consider it and, pursuant to 43 C.F.R. § 4.411(b), the officer issuing the decision must close the case. If an appeal is properly filed, however, the office issuing the decision loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal, until jurisdiction over it is restored by Board action disposing of the appeal. Any adjudicative action taken by the office issuing the decision relating to the subject matter of the appeal after the filing of a timely appeal is a nullity since the office will have acted without jurisdiction.

American Petroleum Energy Company, 160 IBLA 59 (Aug. 28, 2003).

Rules of Practice
Appeals
Effect of

Pursuant to 43 C.F.R. § 4.411(b), "the notice of appeal must give the serial number or other identification of the case." A timely filed notice of appeal that mistakenly uses the docket number of an MMS matter involving a different appellant that was settled several years before the notice of appeal was submitted, but correctly identifies the name of the party filing the appeal, the date of the order being appealed, and the nature of the order being appealed contains sufficient "other identification of the case" to meet the regulatory requirement. An MMS decision dismissing the appeal as untimely based on the lack of a correct serial number is a nullity and will be vacated by the Board.

American Petroleum Energy Company, 160 IBLA 59 (Aug. 28, 2003).

Rules of Practice
Appeals
Effect of

BLM has the general authority to carry out its management obligations without Board permission, but BLM has no jurisdiction unilaterally to reverse a decision under appeal and grant relief. Instead, BLM should seek a remand of the matter and issue a new decision.

Benton C. Cavin, 166 IBLA 78 (June 22, 2005).

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.

Mack Wiehl (Heir of Alfred M. Wiehl), 169 IBLA 25 (May 3, 2006).

Rules of Practice: Appeals
Appeals
Failure to Appeal

The regulation at 43 C.F.R. § 4.470(b) is a codification of the doctrine of "administrative finality," the administrative counterpart of *res judicata*, which normally precludes reconsideration in a subsequent case of matters finally resolved for the Department in an earlier appeal. A precondition for the application of the doctrine is that the matter raised in the subsequent proceeding was one distinctly put in issue and directly determined in the earlier appeal, as reflected in the language of 43 C.F.R. § 4.470(b) providing that a party who fails to appeal a BLM final grazing decision be barred thereafter from challenging "the matters adjudicated in that final decision." Where a party failed to appeal a final BLM grazing decision rejecting his application for a grazing permit on the grounds that the permitted use he sought was not available (but not mentioning cancellation of his grazing preference), that party's successor-in-interest is not barred under 43 C.F.R. § 4.470(b) from appealing a subsequent final BLM decision declaring the party's grazing preference canceled for failure to comply with the notice requirements of 43 C.F.R. § 4110.2-3.

James G. Katsilometes v. Bureau of Land Management, 157 IBLA 230 (Oct. 4, 2002).

Rules of Practice
Appeals
Hearings

A BLM decision assessing fees and damages for the unauthorized use of public land will be set aside and referred for a hearing where the record contains significant unresolved factual and legal issues concerning whether the subject land was created by accretion or avulsion and who has title to the land.

Sydney Dowton, 154 IBLA 291 (Apr. 19, 2001).

Rules of Practice
Appeals
Hearings

When the record before the Board on appeal discloses the existence of material issues of fact unresolved by the record, the decision is properly set aside and the case referred to an administrative law judge for an evidentiary hearing.

Samedan Oil Corp., Aera Energy LLC, 163 IBLA 63 (Sept. 7, 2004).

Rules of Practice
Appeals
Hearings

When the record before the Board on appeal discloses the existence of material issues of fact unresolved by the record, the decision is properly set aside and the case referred to an administrative law judge for an evidentiary hearing.

Mark Patrick Heath, 163 IBLA 381 (Nov. 10, 2004).

Rules of Practice
Appeals
Hearings

Although the Board has discretionary authority to order a hearing before an administrative law judge, it normally will order a hearing when an appellant presents an issue of material fact requiring resolution through the introduction of testimony and other evidence not readily obtainable through ordinary appeals procedures. Where an appellant seeks to elicit testimony which could not be probative of whether lands constituted the "smallest practicable tract . . . enclosing land actually used in connection with the administration of [a] Federal installation," within the meaning of ANCSA section 3(e), the Board will not order a hearing to determine whether the lands were public lands withdrawn for Native village selection under ANCSA section 11(a)(1). 43 U.S.C. §§ 1602(e) and 1610(a)(1) (2000).

Kawerak, Inc., 165 IBLA 94 (Mar. 18, 2005).

Rules of Practice
Appeals
Hearings

Where, on appeal from a BLM decision rejecting a Native allotment application for untimeliness, appellant presents evidence consisting of her affidavit, attesting to timely filing, and a map, purportedly identifying parcels of land claimed by Native applicants (including appellant), such evidence is sufficient to raise a factual question as to whether appellant's Native allotment application was pending before the Department on December 18, 1971. In such a situation, the Board will set aside the BLM decision and refer the case for hearing before an Administrative Law Judge.

Hilma M. McKinnon, 166 IBLA 180 (July 12, 2005).

Rules of Practice
Appeals
Hearings

Although there is no right to a hearing before an administrative law judge on a protest against a survey, a BLM decision dismissing a protest against a survey of an island will be set aside and referred for a hearing where the record discloses significant unresolved factual issues as to whether the island was actually in existence at the time of the admission to the Union of the state within which the island is situated.

State of South Dakota, 166 IBLA 210 (July 27, 2005).

Rules of Practice
Appeals
Jurisdiction

Since 30 C.F.R. Part 290 gives the Board jurisdiction only over appeals of decisions of the Director, MMS, a direct appeal to the Board of a decision of an MMS official will be dismissed for lack of jurisdiction where the appellant has not first obtained review of the decision by the Director, MMS.

KMF Mineral Resources, Inc., 151 IBLA 35 (Oct. 21 1999).

Rules of Practice
Appeals
Jurisdiction

The Office of Hearings and Appeals does not have authority to review the merits of biological opinions issued by the FWS under section 7 of the Endangered Species Act, 16 U.S.C. § 1536 (1994). BLM properly limits activity on a private inholding in a wilderness area where the limitations imposed are directed by an FWS biological opinion in order to prevent adverse impacts on wildlife.

National Wildlife Federation, et al., Erik and Tina Barnes, 151 IBLA 104 (Nov. 24, 1999).

Rules of Practice
Appeals
Jurisdiction

The Board will dismiss an appeal from a BLM decision rendered pursuant to the Stipulated Procedures for Implementation of Order approved by the Federal district court in *Aguilar v. United States*, No. A76–271 (D. Alaska Feb. 9, 1983), as a decision rendered pursuant to those stipulations is final for the Department of the Interior.

Wassilie Roberts, Goodnews River Lodge, Inc., 153 IBLA 1 (July 11, 2000).

Rules of Practice
Appeals
Jurisdiction

The issue of passage of title would be properly before the Board on the appeal by a Native of a BLM decision ruling that the land claimed by a Native had been conveyed to a third party. However, that issue cannot be raised in an appeal to this Board from a determination rendered pursuant to the *Aguilar* proceedings.

Wassilie Roberts, Goodnews River Lodge, Inc., 153 IBLA 1 (July 11, 2000).

Rules of Practice
Appeals
Jurisdiction

The Board has no jurisdiction to review a BLM decision that there will be fire rehabilitation when that decision was made within the context of a land use plan. Therefore, BLM need not consider a no-action alternative when it concludes that alternative is not in conformance with approved land use plans. However, the Board has jurisdiction to review a BLM decision implementing the rehabilitation plan.

Southern Utah Wilderness Alliance, 154 IBLA 275 (Apr. 16, 2001).

Rules of Practice
Appeals
Jurisdiction

The Board of Land Appeals will not entertain an appeal when no effective relief can be afforded an appellant. Where a challenged interim decision has been superceded by a final multiple use decision, this Board will decline to entertain the appeal with respect to the interim decision because no effective relief is available.

Von L. and Marian Sorensen v. Bureau of Land Management, 155 IBLA 207 (July 18, 2001).

Rules of Practice
Appeals
Jurisdiction

Where an appellant opposes BLM's choice among alternatives in a record of decision on the basis of an environmental assessment and asks that the Board implement the appellant's choice of alternatives, the Board will not entertain the appeal when: (1) reversal would require a new NEPA process rather than implementation of appellant's choice and (2) a subsequent BLM decision has already supplanted the record of decision in question.

Von L. and Marian Sorensen v. Bureau of Land Management, 155 IBLA 207 (July 18, 2001).

Rules of Practice
Appeals
Jurisdiction

A well-recognized exception to the rule of mootness is that the Board will not dismiss an appeal when an issue raised by the appeal is capable of repetition, yet evading review. A decision on appeal does not fall into this exception where the appellant did not appeal a subsequent BLM decision supplanting the decision at issue.

Von L. and Marian Sorensen v. Bureau of Land Management, 155 IBLA 207 (July 18, 2001).

Rules of Practice
Appeals
Jurisdiction

The Bureau of Land Management has jurisdiction to issue a decision ruling that mining claims were located on lands that had, at the time of location, been patented to the State of Idaho. The Board of Land Appeals has jurisdiction to hear an appeal from such decision.

Aberdeen Idaho Mining Co., 155 IBLA 358 (Oct. 1, 2001).

Rules of Practice
Appeals
Jurisdiction

Departmental regulation 43 C.F.R. § 4.410 provides a right of appeal to the Board to any party adversely affected by a decision of an officer of the Bureau of Land

Management but not the agencies of other Departments. When BLM issues a decision approving issuance of an airport lease to enable the operator of an airport to extend runways from land owned by the airport onto public land based in part on an environmental assessment approved by the Federal Aviation Administration, and the party appealing BLM's decision alleges injury arising from airport operations, that party will be deemed to have been adversely affected by the FAA decision rather than that of BLM. On appeal, the Board will only consider those adverse effects and issues which the appellant has identified that have a nexus to BLM's decision that is distinct from the issues decided by the FAA.

Las Vegas Valley Action Committee et al., 156 IBLA 110 (Dec. 19, 2001).

Rules of Practice
Appeals
Jurisdiction

On appeal from a BLM decision authorizing a sand and gravel mining project, the Board may review whether BLM considered the potential impact to threatened and endangered species or their habitat. However, it lacks jurisdiction to review the merits of a biological opinion issued by USFWS, as a result of consultation regarding a species, which serves, in part, as a basis for BLM's decision.

Sierra Club, Angeles Chapter, Santa Clarita Group, et al., 156 IBLA 144 (Jan. 8, 2002).

Rules of Practice
Appeals
Jurisdiction

A decision rejecting an Indian Allotment application is properly affirmed where the land sought to be entered has been classified for retention in public ownership in the applicable resource management plan. The Board has no jurisdiction to review such a land-use plan or the classifications contained therein.

Jane Delorme, et al., 158 IBLA 260 (Feb. 3, 2003).

Rules of Practice
Appeals
Jurisdiction

Under the Endangered Species Act (ESA), BLM is obligated to ensure that an authorized action is not likely to jeopardize the continued existence of a threatened or endangered species or result in the destruction or adverse modification of its habitat. The Act imposes the same obligation for species that have been proposed for listing. Compliance with the ESA is also an element of complying with NEPA. In evaluating whether BLM took the requisite "hard look" at the environmental impacts of a proposed action that NEPA requires, the Board properly considers whether BLM considered the potential impacts on listed or proposed species or their habitat that the ESA mandates. However, the Board lacks jurisdiction to review the merits of a biological opinion issued by the U.S. Fish and Wildlife Service as a result of formal consultation regarding a species, which opinion serves, in part, as a basis for BLM's decisionmaking.

Wyoming Outdoor Council, James M. Walsh, 159 IBLA 388 (July 25, 2003).

Rules of Practice
Appeals
Jurisdiction

The Board does not have proper authority to oversee a State program approved by the Environmental Protection Agency under the Resource Conservation and Recovery Act, and will not present a forum for arguments against the State's exercise of such delegated authority. Where an appeal requires the Board to intervene in the State's, or EPA's, implementation of authority under that statute, it will be dismissed.

Great Basin Mine Watch, 160 IBLA 87 (Sept. 26, 2003).

Rules of Practice
Appeals
Jurisdiction

The Department of the Interior has no jurisdiction to adjudicate questions concerning title to land conveyed out of United States' ownership. The Department may, however, investigate to determine whether to recommend litigation to recover the land, and such investigation may be conducted in such manner as suits its own convenience.

Lillian Pitka, Heirs of Alfred Jacobs, 164 IBLA 50 (Nov. 17, 2004).

Rules of Practice
Appeals
Jurisdiction

The *Aguilar* Stipulations define the limited administrative mechanism used to conduct investigations of Native allotment applications involving lands conveyed out of United States' ownership.

Lillian Pitka, Heirs of Alfred Jacobs, 164 IBLA 50 (Nov. 17, 2004).

Rules of Practice
Appeals
Jurisdiction

When BLM investigates a Native allotment application for land patented to a Native corporation and rejects the application because it was legally defective and incapable of being corrected, pursuant to *Aguilar* Stipulation No. 1, the Board has no role in that process and an appeal of BLM's decision is properly dismissed.

Lillian Pitka, Heirs of Alfred Jacobs, 164 IBLA 50 (Nov. 17, 2004).

Rules of Practice
Appeals
Jurisdiction

The Board properly dismisses an appeal by a state from a decision of the Director, Minerals Management Service, granting an appeal by a lessee or its designee from an MMS order to pay royalty on production from a Federal onshore oil and gas lease, because the regulations at 43 C.F.R. Part 4, Subpart J, which implement the time limits and rule of decision of 30 U.S.C. § 1724(h) (2000), do not provide any opportunity for states to appeal from a decision of the Director, MMS, rescinding or modifying an MMS or delegated state order under 30 C.F.R. § 290.108, and because 43 C.F.R. § 4.906(b)(3) specifically provides that, in the absence of an appeal by the lessee or its designee, the MMS Director's decision constitutes the final decision of the Department, thus depriving the Board of jurisdiction to entertain the appeal.

California State Controller, 166 IBLA 5 (May 18, 2005).

Rules of Practice
Appeals
Jurisdiction

The Board will dismiss an appeal, filed pursuant to 43 C.F.R. § 4.478(a), from an order of an administrative law judge granting or denying a petition for a stay of the effect of a BLM grazing decision when the appellant challenging the stay order fails to comply with the general appeal regulations of the Board that require an appeal from a decision of an administrative law judge to be filed within 30 days following the date of service of the decision on the appellant. In such circumstances, the Board is deprived of jurisdiction to adjudicate the appeal.

Western Watersheds Project v. Bureau of Land Management, 166 IBLA 30 (June 9, 2005).

Rules of Practice
Appeals
Jurisdiction

The Board of Land Appeals decides appeals involving the use and disposition of public lands and their resources. The Board is without jurisdiction to decide survey disputes that do not involve public lands or resources.

Benton C. Cavin, 166 IBLA 78 (June 22, 2005).

Rules of Practice
Appeals
Jurisdiction

Where BLM's administrative record does not contain a date-stamped copy verifying that BLM timely received contestees' answer to a Government contest complaint, but the record contains substantial corroborating evidence establishing that it is more probable than not that the document was received timely, the legal presumption of regularity, which would ordinarily operate to force a conclusion that the Answer was untimely, is rebutted, and the Office of Hearings and Appeals retains jurisdiction to adjudicate the contest.

United States v. Lyle I. Thompson, et al., 168 IBLA 64 (Mar. 16, 2006).

Rules of Practice
Appeals
Jurisdiction

As a general rule, the Board of Land Appeals has authority to review decisions by BLM relating to the use and disposition of the public lands. *See* 43 C.F.R. § 4.1(b)(3), 4.410(a). However, the Board does not have jurisdiction to review appeals of decisions to approve or amend a resource management plan, which is designed to guide and control future management actions.

Friends of Living Oregon Waters et al., 171 IBLA 271 (May 21, 2007).

Rules of Practice
Appeals
Jurisdiction

Whether the Board of Land Appeals exercises jurisdiction over a BLM action as an implementation decision depends upon the effect of that action. If it is in the nature of a direction to BLM's employees, so that an action would be required to produce an adverse effect, the Board does not have jurisdiction. Thus, a BLM decision adopting a management plan providing for guidance and direction regarding recreation activities along a wild and scenic river is not within the jurisdiction of the Board of Land Appeals because it does not implement those actions.

Friends of Living Oregon Waters et al., 171 IBLA 271 (May 21, 2007).

Rules of Practice
Appeals
Mootness

When, on appeal of a timber sale, key issues regarding implementation of the Northwest Forest Plan and compliance with the Aquatic Conservation Strategy and the Endangered Species Act of 1973 have been decided in Federal court by an agreement settling litigation, or by the preparation of further environmental documentation, and those issues that remain must await the development of a new site-specific consultation process and the issuance of new biological opinions, BLM's decision denying appellant's protest and authorizing commercial thinning will be vacated and the case remanded to BLM for further action after reconsultation and issuance of new

biological opinions.

Umpqua Watersheds, Inc., In re Johnson Creek Commercial Thinning Project, 163 IBLA 94 (Sept. 9, 2004).

Rules of Practice
Appeals
Mootness

When events occurring subsequent to the filing of an appeal preclude the Board from granting appellant any relief as to certain issues raised in the appeal, the appeal is properly dismissed as moot as to those issues.

Armando Fernandez, Coachella Valley Collection Service, 165 IBLA 41 (Feb. 23, 2005).

Rules of Practice
Appeals
Mootness

When wells that were the subject of a protest of the issuance of Applications for Permit to Drill have been drilled, the appeal ordinarily will be dismissed as moot because there is no further relief that can be granted on appeal. Where the appeal raises issues which are capable of repetition and may yet evade review, the Board properly determines to adjudicate the appeal even though the relief sought by an appellant cannot be granted for the particular event.

Colorado Environmental Coalition, The Wilderness Society, 165 IBLA 221 (Apr. 8, 2005).

Rules of Practice
Appeals
Motions

One appealing the decision of a BLM State Director dismissing a protest of a competitive oil and gas lease sale may petition for a stay of that decision and the petition must show sufficient justification for granting the stay based on the standards set forth in 43 C.F.R. § 3165.4(c).

Wyoming Outdoor Council, et al., 153 IBLA 379 (Oct. 6, 2000).

Rules of Practice
Appeals
Protests

An appellant that has not been provided the opportunity to comment on the FEIS prior to approval by BLM and the Forest Service of separate mining plans of operations for their respective lands (because of the failure to issue the FEIS 30 days prior to the issuance of the ROD), but who comments as soon as the FEIS is made available and within 30 days of issuance, is a "party to a case" within the meaning of 43 C.F.R. § 4.410(a) for purposes of appeal. An appellant who is a party to the case and who can show that he could be adversely affected by the agency decisionmaking will have standing to appeal.

Newmont Mining Corp., 151 IBLA 190 (Dec. 6, 1999).

Rules of Practice
Appeals
Protests

A decision of an administrative law judge dismissing a grazing appeal for lack of standing is properly set aside where the party appealing is adversely affected by a BLM final grazing decision rejecting his protest.

James G. Katsilometes v. Bureau of Land Management, 157 IBLA 230 (Oct. 4, 2002).

Rules of Practice
Appeals
Protests

A protest against BLM's yearly issuance of permits for grazing use for cattle is properly considered as a protest under 43 C.F.R. § 4.450-2. Where such protest challenges BLM's authority to issue permits for grazing cattle under the governing resource
management plan, it raises an issue that is capable of repetition and is therefore not moot, even though the time is past when BLM's action can be redressed by canceling any permit improperly issued in a particular year. Where, by confessing error in a proceeding before the Hearings Division, BLM effectively denies the protest without explanation, the matter is properly remanded to BLM for further consideration.

James G. Katsilometes v. Bureau of Land Management, 157 IBLA 230 (Oct. 4, 2002).

Rules of Practice
Appeals
Protests

When BLM offers a right-of-way (ROW) grant to a ROW applicant pursuant to certain terms and conditions, such an offer is an action proposed to be taken, *i.e.* issuance of a ROW grant. An applicant receiving such an offer who disagrees with the terms and conditions of the offer may protest those terms and conditions, in accordance with 43 C.F.R. § 4.450-2. However, if the applicant appeals the offering of the grant to this Board, we may adjudicate the case on its merits when no useful purpose would be served by remanding the case to BLM.

Mark Patrick Heath, 172 IBLA 162 (Aug. 23, 2007).

Rules of Practice
Appeals
Reconsideration

The Board of Land Appeals has the authority under 43 C.F.R. § 4.403 to grant a petition for reconsideration in extraordinary circumstances for sufficient reason. A petition for reconsideration filed by BLM seeking to have the Board reconsider its determination that the agency failed to take the requisite hard look at the environmental consequences of coalbed methane extraction and development and relevant leasing alternatives before deciding to offer three parcels of land for oil and gas leasing will be denied when BLM fails to satisfy the requirements of 43 C.F.R. § 4.403.

Wyoming Outdoor Council, et al., (On Reconsideration), 157 IBLA 259 (Oct. 15, 2002).

Rules of Practice
Appeals
Reconsideration

While the Board is reluctant to grant a petition for reconsideration on the basis of new information submitted with the petition and unaccompanied by an explanation as to why it was not provided prior to the decision which the party seeks to have reconsidered, extraordinary circumstances arise where error exists in the premise upon which the decision to be reconsidered was grounded and, in the absence of reconsideration, the result would ignore a decision by the Secretary.

Ulf T. Teigen, Mona A. Teigen (On Reconsideration), 159 IBLA 142 (May 27, 2003).

Rules of Practice
Appeals
Reconsideration

A petition for reconsideration of a Board decision declaring a mining claim invalid for lack of discovery of a valuable mineral deposit is properly denied, when the petitioner merely asserts that the Board erred in its economic analysis by using the percentage of wages offered by BLM as labor overhead costs, because those costs do not reflect the expenses for a self-employed miner, but fails to offer any evidence of what his labor overhead costs, as a self-employed miner, will be. The burden is not on an administrative law judge or this Board to select a percentage of labor overhead expenses for the self-employed miner in such a situation.

United States v. Davy Lee Waters et al. (On Reconsideration), 159 IBLA 248 (June 17, 2003).

Rules of Practice
Appeals
Reconsideration

Under 43 C.F.R. § 4.403, "[t]he Board may reconsider a decision in extraordinary circumstances for sufficient reason." A petition for reconsideration of a Board decision affirming the rejection of desert land entry applications does not satisfy the regulation and will be denied when the petitioners merely restate arguments previously made.

Dona Jeanette, Ong Carie L. Nash (On Reconsideration), 166 IBLA 65 (June 14, 2005).

Rules of Practice
Appeals
Reconsideration

Where, in their statement of reasons for appealing a willful mineral trespass decision, appellants expressly waived their opportunity to challenge the trespass charge, and they did not subsequently retreat from that waiver while the appeal was pending before the Board, they cannot claim on reconsideration that they were deprived of the opportunity to present their case as support for their petition for reconsideration.

Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson (On Reconsideration), 171 IBLA 33 (Jan. 12, 2007).

Rules of Practice
Appeals
Reconsideration

A party cannot create new information and argument for purposes of seeking reconsideration of a Board decision upholding a BLM willful mineral trespass decision by submitting a declaration composed of unsupported general assertions and denials that are inconsistent with the party's testimony in a related mining contest and information submitted to other government agencies. Where petitioners possess and have always possessed the information and evidence that might have been marshaled to support their appeal and the record also shows that they expressly waived their opportunity to submit such information and evidence, they have failed to demonstrate "extraordinary circumstances" or "sufficient reason" and reconsideration is properly denied.

Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson (On Reconsideration), 171 IBLA 33 (Jan. 12, 2007).

Rules of Practice
Appeals
Reconsideration

Where petitioners expressly waived their opportunity to challenge a willful mineral trespass charge in their statement of reasons for their underlying appeal and they never attempted to present any issues relating to the trespass while the appeal was pending before this Board, reconsideration of the Board's decision upholding BLM's willful mineral trespass decision to recalculate the measure of damages on the basis of a nonwillful instead of a willful trespass is properly denied.

Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson (On Reconsideration), 171 IBLA 33 (Jan. 12, 2007).

Rules of Practice
Appeals

Service on Adverse Party

Under 43 C.F.R. § 4.413, an appellant is required to serve a copy of the notice of appeal and any statement of reasons, written arguments, or briefs on each adverse party named in the decision from which the appeal is taken. If the decision being appealed does not name any adverse parties, no service obligation arises.

Wyoming Outdoor Council, et al., 153 IBLA 379 (Oct. 6, 2000).

Rules of Practice
Appeals
Service on Adverse Party

Departmental regulation 43 C.F.R. § 4.22(b) requires that a copy of each document filed in a proceeding before the Office of Hearings and Appeals be served by the filing party on the other party or parties in the case, and that regulation, together with 43 C.F.R. § 4.27(b), prohibit written communications concerning the merits of a proceeding between any party to the proceeding, including BLM, and the Board, unless a copy of the written communication is served on all other parties to the case.

Center for Native Ecosystems, 161 IBLA 135 (Apr. 9, 2004).

Rules of Practice
Appeals
Service on Adverse Party

Under 43 C.F.R. § 4.411, a proceeding before the Board is initiated by the filing of a notice of appeal in the office of the agency official who made the decision being appealed. Before the notice of appeal is filed, there is no proceeding before the Board, and the service obligations of 43 C.F.R. § 4.22(b) and 4.27(b) do not apply. The administrative record relating to a decision appealed to the Board is created before the Board proceeding is initiated. As a result, it is not "filed" in the Board proceeding.

Center for Native Ecosystems, 161 IBLA 135 (Apr. 9, 2004).

Rules of Practice
Appeals
Service on Adverse Party

BLM is not required to serve an appellant with the administrative record that was in existence before the appellant initiated a proceeding before the Board. That administrative record consists of public records, of which the Board is entitled to take official notice under 43 C.F.R. § 4.24(b), and those records are also open to inspection by the public. Where BLM has provided an appellant an opportunity to inspect an administrative record, a motion to compel service will be denied.

Center for Native Ecosystems, 161 IBLA 135 (Apr. 9, 2004).

Rules of Practice
Appeals
Standing to Appeal

An appellant that has not been provided the opportunity to comment on the FEIS prior to approval by BLM and the Forest Service of separate mining plans of operations for their respective lands (because of the failure to issue the FEIS 30 days prior to the issuance of the ROD), but who comments as soon as the FEIS is made available and within 30 days of issuance, is a "party to a case" within the meaning of 43 C.F.R. § 4.410(a) for purposes of appeal. An appellant who is a party to the case and who can show that he could be adversely affected by the agency decisionmaking will have standing to appeal.

Newmont Mining Corp., 151 IBLA 190 (Dec. 6, 1999).

Rules of Practice
Appeals
Standing to Appeal

A motion to dismiss an appeal of the record of decision approving a coal bed methane project for lack of standing based on the assertion that the appellant is not adversely affected because the decision does not approve any on-the-ground operations will be denied when the decision approves a massive development on public lands with on-the-ground consequences.

William E. Love, 151 IBLA 309 (Jan. 13, 2000).

Rules of Practice
Appeals
Standing to Appeal

A former spouse has no standing to appeal from a decision rejecting a certification of exemption from the payment of rental fees filed on behalf of her husband, where her husband has not, himself, sought review of that determination.

Sandra E. Garrand, 152 IBLA 139 (Apr. 3, 2000).

Rules of Practice
Appeals
Standing to Appeal

Standing to appeal requires that a party to the case be adversely affected by the decision appealed from. To the extent that an appellant is challenging actions studied by BLM but not implemented in the decision appealed, the appeal is properly dismissed.

Emerald Trail Riders Association, 152 IBLA 210 (Apr. 28, 2000).

Rules of Practice
Appeals
Standing to Appeal

Under 43 C.F.R. § 4.410(a), in order to have standing to appeal a BLM decision dismissing a protest to the offering of all parcels at a competitive oil and gas lease sale, the appellant must be a party to the case and be adversely affected by the dismissal decision. Dismissal of the protest establishes that the appellant is a party to the case; however, the appellant may appeal the dismissal only as to those parcels for which it can establish that it is adversely affected.

Wyoming Outdoor Council, et al., 153 IBLA 379 (Oct. 6, 2000).

Rules of Practice
Appeals
Standing to Appeal

Where a coal lease readjustment stipulation merely informs the operator/lessee of Federal coal leases that at some time in the future the Department might seek to obtain damages on the basis of royalty that would have been payable on coal bypassed in violation of the operator/lessee's obligation to seek maximum economic recovery, but there is presently no alleged violation of that obligation nor any decision imposing royalty, a dispute does not exist and the case is not ripe for review.

Chevron U.S.A. Inc., 154 IBLA 88 (Dec. 18, 2000).

Rules of Practice
Appeals
Standing to Appeal

To have standing to appeal a decision to the Board of Land Appeals, under 43 C.F.R. § 4.410, a party must both be adversely affected by the decision and be a "party to the case" by having participated in BLM decision-making leading to the decision sought to be reviewed.

Legal and Safety Employer Research Inc., et al., 154 IBLA 167 (Feb. 28, 2001).

Rules of Practice
Appeals
Standing to Appeal

Under 43 C.F.R. § 4.410(a), "[a]ny party to a case who is adversely affected by a [BLM] decision . . . shall have a right of appeal to the Board." An appeal brought by an organization is properly dismissed where the organization fails to identify any members who had been adversely affected by BLM's decision or where the person representing the organization does not, in response to a challenge, produce evidence independent from his own declaration that he has authority to do so. However, where the individual who filed both the protest and the appeal as a purported officer of the organization has been personally adversely affected by BLM's decision, that individual may be recognized as having filed an appeal on his or her own behalf.

Las Vegas Valley Action Committee et al., 156 IBLA 110 (Dec. 19, 2001).

Rules of Practice
Appeals
Standing to Appeal

Departmental regulation 43 C.F.R. § 4.410 provides a right of appeal to the Board to any party adversely affected by a decision of an officer of the Bureau of Land Management but not the agencies of other Departments. When BLM issues a decision approving issuance of an airport lease to enable the operator of an airport to extend runways from land owned by the airport onto public land based in part on an environmental assessment approved by the Federal Aviation Administration, and the party appealing BLM's decision alleges injury arising from airport operations, that party will be deemed to have been adversely affected by the FAA decision rather than that of BLM. On appeal, the Board will only consider those adverse effects and issues which the appellant has identified that have a nexus to BLM's decision that is distinct from the issues decided by the FAA.

Las Vegas Valley Action Committee et al., 156 IBLA 110 (Dec. 19, 2001).

Rules of Practice
Appeals
Standing to Appeal

A decision of an administrative law judge dismissing a grazing appeal for lack of standing is properly set aside where the party appealing is adversely affected by a BLM final grazing decision rejecting his protest.

James G. Katsilometes v. Bureau of Land Management, 157 IBLA 230 (Oct. 4, 2002).

Rules of Practice
Appeals
Standing to Appeal

Suits by the United States to vacate and annul any patent must, in accordance with 43 U.S.C. § 1166 (1994), be brought within six years after the date of issuance of such patents. Where land conveyances to an Alaska Native village corporation were made by patents and interim conveyances more than six years ago and title has been quieted in that corporation, the statutory limitation bars further Departmental involvement at any level, regardless of the possible merits of a challenge to the village's eligibility by an individual with no special relationship to the Department and no adverse claim to any of the land transferred to the Native village corporation.

Omar Stratman v. Leisnoi, Inc., 157 IBLA 302 (Oct. 29, 2002).

Rules of Practice
Appeals
Standing to Appeal

Standing to appeal requires that a party to the case be adversely affected by a decision of the authorized officer. 43 C.F.R. § 4.410(a). An appeal of a recommendation by the U.S. Fish and Wildlife Service to redefine the boundaries of an interim conveyance to enhance wildlife protection is properly dismissed in the absence of a decision by BLM to implement the recommendation.

Nevada Outdoor Recreation Association, 158 IBLA 207 (Jan. 22, 2003).

Rules of Practice
Appeals
Standing to Appeal

A motion by BLM to dismiss an appeal of a natural gas development project by an overriding royalty interest holder in Federal oil and gas leases will be denied when the holder demonstrates that he is a party to the case and that design features of the approved project may preclude natural gas well development on tracts in which he holds an interest and potentially reduce overriding royalties received.

Fred E. Payne, Randy D. Leader, 159 IBLA 69 (May 20, 2003).

Rules of Practice
Appeals
Standing to Appeal

Under 43 C.F.R. § 4.410(a), a party to a case who is adversely affected by a BLM decision has a right of appeal to the Board. Where an organization commented on an environmental assessment and protested a finding of no significant impact, and submitted affidavits of members showing that they would be adversely affected by a BLM decision, the Board will not dismiss the appeal for lack of standing.

Southern Utah Wilderness Alliance, 159 IBLA 220 (June 16, 2003).

Rules of Practice
Appeals
Standing to Appeal

In order to become a "party to a case" involving BLM's consideration of a land exchange pursuant to section 206 of FLPMA, a third party must file a timely protest of the proposed exchange as provided in 43 C.F.R. § 2201.7-1(b) following BLM's issuance of a notice of its decision. Where a party fails to do so, its appeal from a subsequent BLM decision denying timely-filed protests by other parties and proceeding with the exchange is properly dismissed for lack of standing under 43 C.F.R. § 4.410(a), as it was not a party to the case.

Committee for Idaho's High Desert, 159 IBLA 370 *(*July 16, 2003).

Rules of Practice
Appeals
Standing to Appeal

Under 43 C.F.R. § 4.410(a), a party to a case who is adversely affected by a BLM decision has a right of appeal to the Board. A party challenging a BLM decision to go forward with a lease sale is not adversely affected by BLM's failure to notify nominees of oil and gas leases of its decision 7 days prior to the sale, when the Instruction Memorandum requires notice to the nominee at that juncture only if BLM decides to suspend leasing of the nominee's chosen parcel. A party opposing the lease sale does not have standing to champion the rights of a nominee for a lease, particularly when those rights were not implicated by BLM.

Southern Utah Wilderness Alliance, 160 IBLA 225 (Dec. 11, 2003).

Rules of Practice
Appeals
Standing to Appeal

The Board will dismiss an appeal from a BLM decision dismissing a protest of a dependent resurvey where the appellant fails to demonstrate that he has been adversely affected by such dismissal since he has no legally cognizable interest which will be affected by the resurvey. The appeal is also properly dismissed where a quarter corner to the survey is surrounded by private land.

John D. Wayne d/b/a Basin Surveying, Inc., 161 IBLA 140 (Apr. 13, 2004).

Rules of Practice
Appeals
Standing to Appeal

Standing to appeal to the Board under the appeal regulations at 43 C.F.R. § 4.410 requires that a party to the case be adversely affected by a decision of the authorized officer. When any adverse impact is contingent upon some future authorization which is uncertain, an appeal is properly dismissed as premature.

Seldovia Native Association, 161 IBLA 279 (May 12, 2004).

Rules of Practice
Appeals

Standing to Appeal

Under 43 C.F.R. § 4.410(a), in order to have standing to appeal a BLM decision dismissing a protest to the offering of multiple parcels at a competitive oil and gas lease sale, the appellant must be a party to the case and be adversely affected by the dismissal decision. Dismissal of the protest establishes that the appellant is a party to the case; however, the appellant may appeal the dismissal only as to those parcels for which it can establish that it is adversely affected.

Center for Native Ecosystems, Forest Guardians, 163 IBLA 86 (Sept. 7, 2004).

Rules of Practice
Appeals
Standing to Appeal

The regulations at 43 C.F.R. § 4.410(d) provide that "[a] party to a case is adversely affected, as set forth in paragraph (a) of this section, when that party has a legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest." While use of the land in question may constitute such a legally cognizable interest, a legally cognizable interest must exist as of the time of issuance of the decision being appealed in order to have standing to appeal under 43 C.F.R. § 4.410(a). Thus, when an appellant asserts use of the land in question in support of its standing to appeal, the asserted use must have taken place on or before the date of issuance of the decision being appealed.

Center for Native Ecosystems, Forest Guardians, 163 IBLA 86 (Sept. 7, 2004).

Rules of Practice
Appeals
Standing to Appeal

Board of Land Appeals regulations at 43 C.F.R. § 4.410(a) require that the appellant be a party to the case and be adversely affected by a decision. Where the appellant fails to identify specific facts giving rise to a conclusion of adverse effect, the appeal will be dismissed for lack of standing. The appellant fails to show standing to appeal a decision regarding the placement of excess horses removed from and no longer located on the public lands, by alleging impacts to its members' interest in seeing horses remain on the public lands.

The Fund for Animals, Inc., 163 IBLA 172 (Sept. 24, 2004).

Rules of Practice
Appeals
Standing to Appeal

Under 43 C.F.R. § 4.410(a), in order to have standing to appeal a BLM decision dismissing protests to the inclusion of various parcels in notices of competitive oil and gas lease sales, the appellant must be a party to the case and be adversely affected by the dismissal decision. A party may appeal the dismissals only as to those individual parcels for which it can establish that it is adversely affected. Appeals to competitive oil and gas lease sales are properly dismissed for lack of standing where appellants fail to show any cognizable legal interest that was adversely affected as to any of the lease parcels included within the sales.

Western Slope Environmental Resource Council, et al., 163 IBLA 262 (Oct. 28, 2004)

Rules of Practice
Appeals
Standing to Appeal

Under 43 C.F.R. § 4.410(a), in order to have standing to appeal a BLM decision dismissing protests to the inclusion of various parcels in a notice of competitive oil and gas lease sale, the appellant must be a party to the case and be adversely affected by the dismissal action. Dismissal of the protest establishes that an appellant is a party to the case. Evidence that one or more members of an appellant organization uses each parcel to which the appeal relates establishes that the appellant is adversely affected by the decision being appealed as to that particular parcel.

Southern Utah Wilderness Alliance, the Natural Resources Defense Council, 164 IBLA 1 (Nov. 10, 2004)

Rules of Practice
Appeals
Standing to Appeal

In order to have a right to appeal a BLM decision, a person or organization must be a "party to a case" and must be "adversely affected" by the decision. 43 C.F.R. § 4.410 (a). A party may show adverse effect through evidence of use of the lands in question. A party may also show it is adversely affected by setting forth a legally cognizable interest, in resources or in other land, affected by a decision and showing how the decision has caused or is substantially likely to cause injury to those interests. 43 C.F.R. § 4.410(d).

The Coalition of Concerned National Park Retirees, et al., 165 IBLA 79 (Mar. 14, 2005).

Rules of Practice
Appeals
Standing to Appeal

A party who claims a property interest in land affected by a BLM decision approving for conveyance land that has been selected by a Native village corporation and who has participated in administrative proceedings leading to that decision has a right of appeal to the Board under 43 C.F.R. § 4.410(b) (2002).

Kawerak, Inc., 165 IBLA 94 (Mar. 18, 2005).

Rules of Practice
Appeals
Standing to Appeal

Where petitioner's mining claim was located for the same building stone which is to be disposed of as a common variety mineral material pursuant to a sales contract issued under the Materials Act, *as amended*, 30 U.S.C. §§ 601-604 (2000), and the sale tract is within petitioner's mining claim, petitioner is a party to the case and adversely affected by BLM's decision, and therefore has standing to appeal the material sale.

Cambrillic Natural Stone Unique Minerals, Inc. (On Reconsideration), 165 IBLA 140 (Mar. 28, 2005).

Rules of Practice
Appeals
Standing to Appeal

Departmental regulation 43 C.F.R. § 4.410(b) limits standing to appeal a decision relating to a land selection pursuant to the Alaska Native Claims Settlement Act (ANCSA) to parties claiming a property interest in land affected by the decision. The State of Alaska's reversionary interest in land below the ordinary high water line, which it had transferred to a municipal corporation on the understanding an easement to it had been reserved, and the State's interest in submerged lands beyond the transferred land together constitute a sufficient property interest to sustain the State's standing to appeal a BLM decision determining that no public easement providing access to the submerged lands had been reserved in an ANCSA land conveyance to a Native corporation.

State of Alaska, 167 IBLA 156 (Oct. 27, 2005).

Rules of Practice
Appeals
Standing to Appeal

The Board has no jurisdiction to review Bureau of Land Management policies outlined in a letter setting forth stated future plans with respect to applications it might receive for use of a particular site, in the absence of an actual application pending before the agency upon which an appealable decision is rendered.

Rock Crawlers Association of America, 167 IBLA 232 (Nov. 23, 2005).

Rules of Practice
Appeals
Standing to Appeal

Under 43 C.F.R. § 4.410(a), in order to have standing to appeal a BLM decision dismissing protests to a competitive oil and gas lease sale of various parcels of land, the appellant must be a party to the case and have a legally cognizable interest that is adversely affected by the BLM decision. A party may establish it is adversely affected through evidence of use of the land in question or by setting forth interests in resources or in other land or its resources affected by the decision and showing how the decision has caused or is substantially likely to cause injury to those interests.

Colorado Environmental Coalition, et al., 171 IBLA 256 (May 9, 2007)

Rules of Practice
Appeals
Standing to Appeal

An appellant must establish that he will, or is substantially likely to, suffer injury or harm to a legally cognizable interest in order to be adversely affected by a BLM decision. The interest need not be an economic or a property interest and, generally, it is sufficient that an organization show that its members use the public land in question. Stipulations and mitigation measures added to a permit may serve to minimize environmental impacts or prevent significant environmental impacts from occurring, but do not mean that the action approved will have no effect on the land, waters, or wildlife of the area and, therefore, do not preclude an appellant from being adversely affected by a decision to issue a permit to undertake the action.

Missouri Coalition for the Environment, Heartwood, 172 IBLA 226 (Sept. 5, 2007).

Rules of Practice
Appeals
Statement of Reasons

An appeal by a party who failed to file a statement of reasons or provide any explanation for the failure to file one is properly dismissed.

Southern Utah Wilderness Alliance, et al., 164 IBLA 118 (Nov. 30, 2004).

Rules of Practice
Appeals
Stay

Where the record demonstrates that the core issues of appellants' protest were decided against appellants in a U.S. District Court opinion which was affirmed by the Ninth Circuit Court of Appeals, and the remaining reason for appeal to this Board cannot prevail, it is appropriate to rule on the merits of the appeal and deny a request for a stay as moot.

The Wilderness Society, Great Bear Foundation, 151 IBLA 346 (Jan. 28, 2000).

Rules of Practice
Appeals
Stay

One appealing the decision of a BLM State Director dismissing a protest of a competitive oil and gas lease sale may petition for a stay of that decision and the petition must show sufficient justification for granting the stay based on the standards set forth in 43 C.F.R. § 3165.4(c).

Wyoming Outdoor Council, et al., 153 IBLA 379 (Oct. 6, 2000).

Rules of Practice
Appeals
Timely Filing

A decision dismissing an appeal to the Director, Minerals Management Service (or to the Commissioner of Indian Affairs with respect to Indian leases), filed more than 30 days after service of the order appealed from will be affirmed when the grace period is not applicable.

Apache Corporation, 152 IBLA 30 (Mar. 1, 2000).

Rules of Practice
Appeals
Timely Filing

A notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing on a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Southern California Sunbelt Developers, Inc., 154 IBLA 115 (Jan. 12, 2001).

Rules of Practice
Appeals
Timely Filing

A motion to dismiss as untimely an appeal from a BLM decision issuing a geothermal resources lease is properly denied where the record demonstrates that the appellant was not served with a copy of the decision; the lease thereafter terminated by operation of law; and the appeal was filed within 30 days from the date of its receipt of the Board's subsequent decision reinstating the lease.

St. James Village, Inc., et al., 154 IBLA 150 (Feb. 22, 2001).

Rules of Practice
Appeals
Timely Filing

While a postmark on an envelope containing a notice of appeal raises a rebuttable presumption that the document was mailed on the date of the postmark, where the evidence of record establishes a reasonable likelihood that the document was mailed prior to that date, the Board may ignore the postmark and find, consistent with 43 C.F.R. § 4.401(a), that the document in question was transmitted or probably transmitted within the period required and, accordingly, waive a delay in the actual filing of the notice of appeal.

Pamela Neville, 155 IBLA 303 (Aug. 29, 2001).

Rules of Practice
Appeals
Timely Filing

A decision dismissing an appeal of an invoice issued by Minerals Management Service as untimely is properly reversed when the invoice was not accompanied by an order in mandatory terms explaining the payor's obligation and providing notice of the right of appeal.

Xanadu Exploration Company, 157 IBLA 183 (Sept. 3, 2002).

Rules of Practice
Appeals
Timely Filing

The timely filing of a notice of appeal is a jurisdictional requirement, and if an appeal is not timely filed, the Board of Land Appeals does not have jurisdiction to consider it and, pursuant to 43 C.F.R. § 4.411(b), the officer issuing the decision must close the case. If an appeal is properly filed, however, the office issuing the decision loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal, until jurisdiction over it is restored by Board action disposing of the appeal. Any adjudicative action taken by the office issuing the decision relating to the subject matter of the appeal after the filing of a timely appeal is a nullity since the office will have acted without jurisdiction.

American Petroleum Energy Company, 160 IBLA 59 (Aug. 28, 2003).

Rules of Practice
Appeals
Timely Filing

Pursuant to 43 C.F.R. § 4.411(b), "the notice of appeal must give the serial number or other identification of the case." A timely filed notice of appeal that mistakenly uses the docket number of an MMS matter involving a different appellant that was settled several years before the notice of appeal was submitted, but correctly identifies the name of the party filing the appeal, the date of the order being appealed, and the nature of the order being appealed contains sufficient "other identification of the case" to meet the regulatory requirement. An MMS decision dismissing the appeal as untimely based on the lack of a correct serial number is a nullity and will be vacated by the Board.

American Petroleum Energy Company, 160 IBLA 59 (Aug. 28, 2003).

Rules of Practice
Appeals
Timely Filing

When MMS issues an order to pay additional royalty, indicating that it is subject to immediate appeal, but places the order and bill for collection on hold pending additional review, the appeal period for the order does not begin to run until MMS notifies the appellant that the hold has been lifted, and an MMS decision dismissing as untimely an appeal to the Commissioner of Indian Affairs timely filed within 30 days of receipt of the notice of the lifting of the hold will be reversed and the case remanded for adjudication of the merits of the appeal.

American Petroleum Energy Company, 160 IBLA 59 (Aug. 28, 2003).

Rules of Practice
Appeals
Timely Filing

A notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Susan J. Kayler, Tom Traw, 162 IBLA 245 (July 29, 2004).

Rules of Practice
Appeals
Timely Filing

Proof that a document was faxed (evidenced by sender's transmission log) is not the equivalent of proof of receipt. A request for State Director review is not considered properly filed until received by the office of the appropriate State Director.

National Wildlife Federation et al., 162 IBLA 263 (Aug. 13, 2004).

Rules of Practice
Appeals
Timely Filing

Designation of a unit operator relieves BLM from any obligation to communicate directly with working interest owners or others concerning general unit operations, such as approval of development plans and other matters related to operation of the unit. However, BLM may have an obligation to inform certain parties when the action concerns a matter other than general unit operations, such as unit expansion. Where the unit agreement requires the unit operator to notify each working interest owner, lessee, and lessor whose interests are affected by a proposed expansion and to allow such persons to file objections and then to forward those objections to BLM for its consideration, a BLM decision approving the expansion must be served on any person filing an objection because the filing of an objection makes that person a party to the proceeding leading up to BLM's decision.

Three Forks Ranch, Inc., 171 IBLA 323 (June 28, 2007).

Rules of Practice
Evidence

When following a hearing in a mining claim contest, the administrative law judge bases his validity determination on his own economic analysis of mining the claim, utilizing the testimony and exhibits provided by the parties' expert witnesses, and that analysis involves choices of what evidence to rely on based on the judge's weighing of sometimes conflicting evidence, the Board has a long-standing reluctance to overturn the judge's findings. The basis for this deference is the fact that the judge who presides over a hearing has the opportunity to observe the witnesses and is in the best position to evaluate the weight to be given to conflicting testimony. Nevertheless, the Board will closely examine the judge's findings in order to ensure that they are legally sound and supported by the record.

United States v. Geoffrey J. Garcia, Charlotte M. Garcia, 161 IBLA 235 (May 5, 2004).

Rules of Practice
Evidence

Although this Board has *de novo* review authority, we ordinarily will not disturb a Judge's findings of fact based on credibility determinations where they are supported by substantial evidence. The basis for this deference is the fact that the Judge who presides over a hearing has the opportunity to observe the demeanor of the witnesses and is in the best position to judge the weight to be given to conflicting testimony.

United States v. Robert W. and Marjorie E. Miller, 165 IBLA 342 (May 9, 2005).

Rules of Practice
Evidence

When contemporaneous reports and maps prepared by Bureau of Land Management employees and subsequent affidavits by the employees are sufficient to establish facts to support a decision finding an appellant to have violated 43 C.F.R. § 8372.0-7(a) by using public lands for commercial recreation without a special recreation permit, and the appellant does not present evidence which refutes the facts, the decision will be affirmed.

Frank Robbins, d.b.a. High Island Ranch, 167 IBLA 239 (Nov. 30, 2005).

Rules of Practice
Evidence

While the Board generally accords substantial deference to the findings of an Administrative Law Judge with respect to conflicting evidence, such deference is not absolute, and the Board will closely examine the judge's findings in order to ensure that they are legally sound and supported by the record.

United States v. Lyle I. Thompson, et al., 168 IBLA 64 (Mar. 16, 2006).

Rules of Practice
Evidence

Where the testimony of an expert is excluded and an offer of proof under 43 C.F.R. § 4.435 shows that no new facts would have been presented and that the matters on which the expert would have testified were thoroughly raised by others, the affected party has failed to establish prejudice or that the Administrative Law Judge otherwise abused her discretion in excluding this expert's testimony.

IMC Kalium Carlsbad, Inc., Potash Association of New Mexico; Yates Petroleum Corporation; Pogo Producing Company; Bureau of Land Management, 170 IBLA 25 (Sept. 7, 2006).

Rules of Practice
Evidence

Evidence may be introduced to establish or challenge the credibility of testifying witnesses, but such evidence should be considered only in the context of testimony relevant to the facts at issue in the hearing.

Frank Robbins and High Island Ranch v. Bureau of Land Management, 170 IBLA 219 (Sept. 26, 2006).

Rules of Practice
Evidence

Where the evidence demonstrates that the extent or quality of common variety sand and gravel within a mining claim was not established on or before July 23, 1955, the Administrative Law Judge did not err in finding it unnecessary to reach the issue of marketability, including the hypothetical market.

Clark County v. Nevada Pacific Company, Inc., 172 IBLA 316 (Sept. 27, 2007).

Rules of Practice
Government Contests

When, at the conclusion of the Government's case-in-chief, the contestee moves to dismiss, the administrative law judge does not err in taking the motion under advisement when the contestee is not forced to choose between presenting its case or standing on the motion. If the contestee voluntarily presents its case while the motion to dismiss is pending, the evidence tendered by contestee may properly be considered, not for curing possible deficiencies in the Government's prima facie case, but for the purpose of determining whether this evidence, in the context of all the other evidence of record, will establish the validity or invalidity of its claim.

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Rules of Practice
Government Contests

Where a Government contest complaint against a mining claim contains charges which, if proven, would render the claim invalid, and the contestee fails to file a timely answer to the complaint, the allegations of the complaint will be taken as admitted by the contestee and the claim is properly declared null and void under the Department's regulations governing such contests.

Robert W. Gossum, 158 IBLA 1 (Oct. 31, 2002).

Rules of Practice
Government Contests

When a Native Allotment Act applicant does not respond to a Government contest complaint within 30 days, as required by 43 C.F.R. § 4.450-6, the Bureau of Land Management properly takes the allegations of the complaint as admitted and rejects the application without a hearing, in accordance with 43 C.F.R. § 4.450-7.

Katherine E. Mathis, 160 IBLA 277 (Jan. 15, 2004).

Rules of Practice
Government Contests

Where a Government contest complaint against a mining claim contains charges which, if proven, would render the claim invalid, and the contestee fails to file a timely answer to the complaint, the allegations of the complaint will be taken as admitted by the contestee and the claim is properly declared null and void under the Department's regulations governing such contests, which allow no exception for appellant's alleged reasons of inadvertence and excusable neglect.

Eric E. Wieler, et al., 160 IBLA 284 (Jan. 20, 2004).

Rules of Practice
Government Contests

When the Government contests a Native allotment application, it bears the burden of going forward with evidence sufficient to establish a prima facie case that the Native allotment applicant did not satisfy the use and occupancy requirements of the Act of May 17, 1906, *as amended*, 43 U.S.C. §§ 270-1 through 270-3 (1970), whereupon the ultimate burden of persuasion rests with the applicant to overcome that case by a preponderance of the evidence. In determining whether the Government has established a prima facie case, an administrative law judge may properly consider the evidence offered by the Government in its case-in-chief together with the evidence presented by a Native village corporation, which, claiming an interest in the land at issue adverse to the applicant, had properly been allowed to intervene in support of the Government's position as a full party in the proceeding.

United States v. Heirs of Pat P. Pestrikoff, 167 IBLA 361 (Feb. 2, 2006).

Rules of Practice

Government Contests

An administrative law judge properly denies a Native allotment application when he correctly concludes that the evidence presented by the Government and the intervenor at a hearing into the validity of the application, considered together, established a prima facie case that the applicant had not satisfied the use and occupancy requirements of the Native Allotment Act, where the applicant, with full knowledge of the potential consequences of the decision, declines to offer any evidence rebutting that case before the close of the hearing record.

United States V. Heirs of Pat P. Pestrikoff, 167 IBLA 361 (Feb. 2, 2006).

Rules of Practice
Government Contests

Where BLM's administrative record does not contain a date-stamped copy verifying that BLM timely received contestees' answer to a Government contest complaint, but the record contains substantial corroborating evidence establishing that it is more probable than not that the document was received timely, the legal presumption of regularity, which would ordinarily operate to force a conclusion that the Answer was untimely, is rebutted, and the Office of Hearings and Appeals retains jurisdiction to adjudicate the contest.

United States v. Lyle I. Thompson, et al., 168 IBLA 64 (Mar. 16, 2006).

Rules of Practice
Government Contests

When the Government alleges that a mining claim is invalid because it was located for a common variety of stone, the Government must present sufficient evidence to establish a prima facie case that the deposit does not possess a unique property giving it a distinct and special value. When the Government's prima facie case has been made, the claimant bears the ultimate burden of persuasion to show by a preponderance of the evidence that the deposit in question is an uncommon variety, and therefore locatable.

United States v. Pitkin Iron Corporation, et al., 170 IBLA 352 (Nov. 29, 2006).

Rules of Practice
Government Contests

When the Government alleges that a mining claim is invalid because it was located for a common variety of decorative stone, the Government must present sufficient evidence to establish a prima facie case that the mineral deposit does not possess a unique property giving it a distinct and special value. When the Government's prima facie case has been made, the claimant has the ultimate burden of persuasion to show by a preponderance of the evidence that the mineral deposit in question is an uncommon variety, and therefore locatable. When the claimant fails to satisfy that burden, the claim is properly declared null and void.

United States v. Roland G. & Frances W. Knipe, 170 IBLA 161 (Sept. 25, 2006).

Rules of Practice
Hearings

Departmental regulations do not guarantee every recipient of an adverse BLM decision the right to a hearing. The language of 43 U.S.C. § 1732(c) (1994), allowing for revocation or suspension of a special recreation use permit after "notice and hearing," does not require a formal hearing before an administrative law judge; a special recreation permittee's hearing rights under that section are satisfied when the permittee is given notice of BLM's adverse decision and afforded the right to appeal to the Interior Board of Land Appeals. Although a hearing may be ordered when a question of fact is presented that cannot be resolved on the basis of a written case record, as supplemented by documents or affidavits submitted on appeal, the burden of proof lies with the party requesting the hearing to show adequate evidence or offer of proof to raise adequate doubt that a hearing should be ordered.

Obsidian Services Inc, 155 IBLA 239 (July 19, 2001).

Rules of Practice
Hearings

Although the Board has discretionary authority to order a hearing before an administrative law judge, it normally will order a hearing when an appellant presents an issue of material fact requiring resolution through the introduction of testimony and other evidence not readily obtainable through ordinary appeals procedures. Where an appellant seeks to elicit testimony which could not be probative of whether lands constituted the "smallest practicable tract . . . enclosing land actually used in connection with the administration of [a] Federal installation," within the meaning of ANCSA section 3(e), the Board will not order a hearing to determine whether the lands were public lands withdrawn for Native village selection under ANCSA section 11(a)(1). 43 U.S.C. §§ 1602(e) and 1610(a)(1) (2000).

Kawerak, Inc., 165 IBLA 94 (Mar. 18, 2005).

Rules of Practice
Hearings

When the Government alleges that a mining claim is invalid because it was located for a mineral named in the Common Varieties Act, the Government must present sufficient evidence to establish a prima facie case that the mineral deposit does not possess a unique property giving it a distinct and special value. When the Government's prima facie case has been made, the claimant has the ultimate burden of persuasion to show by a preponderance of the evidence that a discovery of uncommon building stone has been made and is present within the limits of the claim.

United States v. Lyle I. Thompson, et al., 168 IBLA 64 (Mar. 16, 2006).

Rules of Practice
Hearings

When the Government alleges that a mining claim is invalid because it was located for a common variety of decorative stone, the Government must present sufficient evidence to establish a prima facie case that the mineral deposit does not possess a unique property giving it a distinct and special value. When the Government's prima facie case has been made, the claimant has the ultimate burden of persuasion to show by a preponderance of the evidence that the mineral deposit in question is an uncommon variety, and therefore locatable. When the claimant fails to satisfy that burden, the claim is properly declared null and void.

United States v. Roland G. & Frances W. Knipe, 170 IBLA 161 (Sept. 25, 2006).

Rules of Practice
Hearings

An Administrative Law Judge has no authority to invalidate an otherwise valid BLM grazing trespass decision based on proof of improper motive on the part of a BLM official or employee involved in the development or issuance of the decision.

Frank Robbins and High Island Ranch v. Bureau of Land Management, 170 IBLA 219 (Sept. 26, 2006).

Rules of Practice
Hearings

Evidence may be introduced to establish or challenge the credibility of testifying witnesses, but such evidence should be considered only in the context of testimony relevant to the facts at issue in the hearing.

Frank Robbins and High Island Ranch v. Bureau of Land Management, 170 IBLA 219 (Sept. 26, 2006).

Rules of Practice
Hearings

When the Government alleges that a mining claim is invalid because it was located for a common variety of stone, the Government must present sufficient evidence to establish a prima facie case that the deposit does not possess a unique property giving it a distinct and special value. When the Government's prima facie case has been made, the claimant bears the ultimate burden of persuasion to show by a preponderance of the evidence that the deposit in question is an uncommon variety, and therefore locatable.

United States v. Pitkin Iron Corporation, et al., 170 IBLA 352 (Nov. 29, 2006).

Rules of Practice
Supervisory Authority of the Secretary

As the Board has no jurisdictional authority concerning matters covered by an action or decision of the Secretary except in the limited circumstance of determining whether the Secretary's determination was properly applied and implemented, we must uphold the processing by BLM of a mineral patent application deemed "grandfathered" by Secretarial finding from a statutory moratorium otherwise barring such processing.

Ulf T. Teigen, Mona A. Teigen (On Reconsideration), 159 IBLA 142 (May 27, 2003).

Rules of Practice
Supervisory Authority of the Secretary

The Board does not exercise supervisory authority over BLM and, therefore, may modify a BLM decision only to correct an underlying error of law or fact in the context of a challenge to the merits of that BLM decision.

Southern Utah Wilderness Alliance, 172 IBLA 183 (Aug. 24, 2007)

Rules of Practice
Supervisory Authority of the Secretary

The Board of Land Appeals has authority to review information submitted on appeal to demonstrate the sufficiency of BLM's NEPA analysis and to permit that information to "cure," if necessary, an otherwise perceived deficiency in that analysis, since, when the Board ultimately acts in deciding an appeal, its decision becomes the "agency" decision for the purposes of any court review. However, such exercise of our de novo review authority is discretionary with the Board and it should be used with caution and not to mask any substantial defect which may have occurred in the NEPA analysis.

Southern Utah Wilderness Alliance. Natural Resources Defense Council, Wilderness Society Utah Chapter of the Sierra Club, 157 IBLA 150 (Aug. 22, 2002)

School Lands
Generally

The validity of a lode mining claim located partially on school grant lands depends on whether the discovery point is on land open to mineral location.

Ed Nazelrod, 151 IBLA 374 (Feb. 4, 2000)

School Lands
Grants of Land

BLM properly declares lode mining claims null and void ab initio where they were located entirely on lands which were not open to entry under the United States mining laws at the time of location either because they had been patented as mining claims or granted to the State of Idaho as part of grants of school sections. The fact that the State may have, on a date following the putative location of the claims, applied for other lands in lieu of lands within the section is irrelevant where such application was subsequently rejected and withdrawn, since the aborted lieu selection process did not, in the absence of publication and clear-listing, result in any waiver by the State of its rights in the lands in the section or in any lands being returned to the ownership of the United States.

Aberdeen Idaho Mining Co., 155 IBLA 358 (Oct. 1, 2001)

Secretary of the Interior

The Board of Land Appeals has authority to review information submitted on appeal to demonstrate the sufficiency of BLM's NEPA analysis and to permit that information to "cure," if necessary, an otherwise perceived deficiency in that analysis, since, when the Board ultimately acts in deciding an appeal, its decision becomes the "agency" decision for the purposes of any court review. However, such exercise of our de novo review authority is discretionary with the Board and it should be used with caution and not to mask any substantial defect which may have occurred in the NEPA analysis.

Southern Utah Wilderness Alliance Natural Resources Defense Council Wilderness Society Utah Chapter of the Sierra Club, 157 IBLA 150 (Aug. 22, 2002)

Secretary of the Interior

As the Board has no jurisdictional authority concerning matters covered by an action or decision of the Secretary except in the limited circumstance of determining whether the Secretary's determination was properly applied and implemented, we must uphold the processing by BLM of a mineral patent application deemed "grandfathered" by Secretarial finding from a statutory moratorium otherwise barring such processing.

Ulf T. Teigen, Mona A. Teigen (On Reconsideration), 159 IBLA 142 (May 27, 2003)

Secretary of the Interior

The Secretary of the Interior has both the authority and the duty to consider and determine what lands are public lands of the United States, including a determination of navigability of a river to ascertain whether title to the land underlying the river is in the United States or whether title passed to a state upon its admission into the Union. The bed of a non-navigable river is usually deemed to be the property of the adjoining landowners; under the "equal footing doctrine," title to land beneath navigable waters passed to the State upon its admission into the Union. Where the record shows that a portion of a river is non-navigable, and the State of California has treated it as non-navigable by statute, BLM did not err in deciding that the lands in the bed of that non-navigable river remained under the ownership of the United States at the time of California Statehood, provided that their uplands were owned by the United States.

Western Aggregates, LLC, 169 IBLA 64 (May 17, 2006)

Segregation

Where the public land records have been noted to show that a specific parcel of land is not open to entry and settlement under the various public land laws, including the Alaska Native Allotment Act, such lands are not available until such time as the notation is removed and the land restored to entry, even if the original notation was made in error.

Betty J. (Thompson) Bonin, 151 IBLA 16 (Oct. 20, 1999)

Small Tract Act
Generally

Sand and gravel are covered by the reservation of "oil, gas, and all other mineral deposits" in patents granted under the Small Tract Act, 43 U.S.C. § 682a (1970). Removal of sand and gravel from land patented under that Act for commercial purposes constitutes a trespass.

New West Materials, 164 IBLA 126 (Dec. 2, 2004)

Small Tract Act
Sales

Sand and gravel are covered by the reservation of "oil, gas, and all other mineral deposits" in patents granted under the Small Tract Act, 43 U.S.C. § 682a (1970). Removal of sand and gravel from land patented under that Act for commercial purposes constitutes a trespass.

New West Materials, 164 IBLA 126 (Dec. 2, 2004)

Sodium Leases and Permits
Royalties

The royalty rate for products mined and disposed of under sodium leases must be imposed on the "gross value of the sodium compounds and other related products at the point of shipment to market," which means the gross value of a "secondary product" for sale in an established market is based, where the primary product from which it is derived is not sold, on the contract unit price of the secondary product less deductions allowed for the purchase price of reagents which are chemically combined with the primary product.

FMC Wyoming Corp., 154 IBLA 128 (Jan. 31, 2001)

Special Use Permits

Denial of an application for a special recreation permit when the proposed use conflicts with BLM objectives, responsibilities, or programs for management of the public lands is a matter of discretion with the authorized officer under 43 C.F.R. § 8372.3. Any exercise of discretionary authority must have a rational basis supported by facts of record so that it is not arbitrary, capricious, or an abuse of discretion. BLM's denial of applications from a person who fails to disclose information required on the application form, whose conduct and reputation are inconsistent with BLM policies for administering the special recreation permit program, and who has been convicted of Lacey Act violations will be upheld when supported by the record.

William D. Danielson, 153 IBLA 72 (July 26, 2000)

Special Use Permits

An appellant must demonstrate that, when finding that its proposed action will not result in significant adverse impact on the human environment, BLM erred in its analysis or acted contrary to any law to prevail on appeal. A BLM decision to approve amendment of a special recreation permit to authorize a jet boat race on a Federally-designated wild and scenic river will be affirmed when the record adequately supports the decision, demonstrates that BLM took a hard look at the potential environmental impacts of its decision, and makes a convincing case that no significant impact will likely result, in accordance with section 102(2) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2) (1994).

Klamath–Siskiyou Wildlands Center, 153 IBLA 110 (Aug. 7, 2000)

Special Use Permits

Regulations governing special recreation permits are set forth in 43 C.F.R. Subpart 8372. The regulations state that the holder of an SRP is prohibited from violating the conditions and stipulations governing its terms, 43 C.F.R. § 8372.0-7(a)(2), and although the regulations do not specify administrative sanctions for violations, if BLM notifies the permittee of those sanctions, it may impose them for violations. Appellant received such notification in the form of Standard Stipulation No. 6, which reserved to BLM the right to place a permittee on probation, to suspend or revoke an SRP, or to refuse to issue a permit in subsequent years for violations.

Judy K. Stewart d.b.a. Western Wilderness Outdoor Adventure, 153 IBLA 245 (Sept. 5, 2000)

Special Use Permits

Pursuant to 43 C.F.R. § 8372.3, approval of an application and subsequent issuance of a special recreation permit is discretionary with the authorized officer. To withstand administrative review, however, an exercise of discretionary authority must have a rational basis and be supported by facts of record demonstrating that an action is not arbitrary, capricious, or an abuse of discretion. Thus, decisions imposing sanctions for violation of permit terms, waiving permit terms, or excusing noncompliance will be upheld, unless it is shown that the decision was arbitrary, capricious, or based upon a mistake of fact or law.

Judy K. Stewart d.b.a. Western Wilderness Outdoor Adventure, 153 IBLA 245 (Sept. 5, 2000)

Special Use Permits

Where appellant neither acknowledges the evidence nor directly responds to it, and fails to submit any evidence to support its version of relevant events, appellant has not demonstrated that the decision is arbitrary, capricious, or based on a mistake of fact or law. In such a case, BLM has discharged its burden of demonstrating by a preponderance of credible evidence that appellant violated applicable Conditions and Standard Stipulations of its special recreation permit. A decision denying an application for an SRP will be affirmed where the decision to do so is supported by facts of record and there are no compelling reasons for modifying or reversing it, and in those cases where the basis for the decision is clear from the record and unrefuted by appellant, we will not substitute our judgment for that of the BLM official exercising his or her discretion.

Judy K. Stewart d.b.a. Western Wilderness Outdoor Adventure, 153 IBLA 245 (Sept. 5, 2000)

Special Use Permits

An authorized officer's exercise of discretionary authority to deny a special recreation permit should have a rational basis supported by facts of record so as not to be arbitrary, capricious, or an abuse of discretion. BLM may deny a special recreation permit if the proposed activity conflicts with BLM objectives, responsibilities, or programs for management of the public lands.

Frank Robbins, d.b.a. High Island Ranch, 154 IBLA 93 (Dec. 18, 2000)

Special Use Permits

Departmental regulations do not guarantee every recipient of an adverse BLM decision the right to a hearing. The language of 43 U.S.C. § 1732(c) (1994), allowing for revocation or suspension of a special recreation use permit after "notice and hearing," does not require a formal hearing before an administrative law judge; a special recreation permittee's hearing rights under that section are satisfied when the permittee is given notice of BLM's adverse decision and afforded the right to appeal to the Interior Board of Land Appeals. Although a hearing may be ordered when a question of fact is presented that cannot be resolved on the basis of a written case record, as supplemented by documents or affidavits submitted on appeal, the burden of proof lies with the party requesting the hearing to show adequate evidence or offer of proof to raise adequate doubt that a hearing should be ordered.

Obsidian Services Inc., 155 IBLA 239 (July 19, 2001)

Special Use Permits

BLM properly revokes a special recreation permit being held on a "probationary" basis where the record shows that the public health and safety have been endangered by the permittee's activities twice within a 10-month period in that one person has died and two more have been subjected to deadly force; that the permittee committed violations of SRP terms; that the permittee failed to pay permit fees; and that the permittee's liability insurance carrier notified BLM that its coverage was canceled and no notice of replacement coverage was provided by the permittee. BLM properly examines the entirety of the probationary permittee's past performance in determining whether to revoke the SRP.

Obsidian Services Inc., 155 IBLA 239 (July 19, 2001)

Special Use Permits

The drilling of a water well on a private inholding to supply a source of water to support camping within the inholding and the use of the land for the purpose of stargazing are "reasonable" uses of the land within the meaning of § 708 of the California Desert Protection Act of 1994, 16 U.S.C. § 410aaa-78 (1994).

Wilderness Watch, 156 IBLA 17 (Nov. 8, 2001)

Special Use Permits

Under the express provisions of § 519 of the California Desert Protection Act, 16 U.S.C. § 410aaa-59 (1994), rules and regulations applicable solely to Federal lands within the boundaries of wilderness areas established by that Act are not applicable to private inholdings unless or until such inholdings are acquired by the United States.

Wilderness Watch, 156 IBLA 17 (Nov. 8, 2001)

Special Use Permits

So long as BLM provides "adequate" access to inholdings within the meaning of § 708 of the California Desert Protection Act of 1994, 16 U.S.C. § 410aaa-78 (1994), the degree and manner of access provided is within BLM's sound discretion.

Wilderness Watch, 156 IBLA 17 (Nov. 8, 2001)

Special Use Permits

Pursuant to 43 C.F.R. § 8372.3 (1999), approval of an application and subsequent issuance of a special recreation permit for a competitive motorcycle race is discretionary with BLM. BLM may properly consider a history of lack of compliance in other permits previously issued to the applicant for competitive motorcycle races. An applicant's previous failures to comply with permit conditions designed to protect Federally-owned lands provides a good and sufficient basis for BLM to deny a subsequent application for a similar use. Thus, BLM properly refuses to issue a permit for a competitive motorcycle race to a party with a documented history of permit violations that have damaged Federally-owned lands.

Dirt, Inc., et al., 162 IBLA 55 (June 24, 2004)

Special Use Permits

A distinction is properly drawn between an application for a new special recreation permit (SRP) and other cases involving cancellation of or failure to renew SRPs issued for a number of years. Where an applicant applies for an SRP for a single event and BLM rejects that application, BLM lacks authority to announce in the decision rejecting that application that future applications for similar events will be denied for the upcoming 3 years.

Dirt, Inc., et al., 162 IBLA 55 (June 24, 2004)

Special Use Permits

A party engaged in "commercial use," as that term is defined in 43 C.F.R. § 8372.0-5(a) (2000), must obtain a special recreation permit. The nonprofit status of any organization under the Internal Revenue Code does not control the distinction between commercial and non-commercial use under that rule. Collection by a permittee of fees, charges, and other compensation which are not strictly a sharing of, or which are in excess of, actual expenses incurred for the purposes of a permitted use of public lands shall make the use commercial. The land user may not avoid a commercial designation by claiming that it receives fees which do not exceed actual expenses while omitting from its calculations other compensation received for the activity on public land.

Camp Redcloud, Inc., 162 IBLA 84 (June 29, 2004)

Special Use Permits

A party may not obtain a waiver of fees due for a special recreation permit when its use of the public lands is primarily for recreation purposes.

Camp Redcloud, Inc., 162 IBLA 84 (June 29, 2004)

Special Use Permits

The holder of a special recreation permit issued for commercial use (mine tours) on the public lands is required to maintain a policy of liability insurance sufficient to protect the public and the United States.

Cristian Miclea d/b/a Albedo, 163 IBLA 72 (Sept. 7, 2004)

Special Use Permits

A decision cancelling a special recreation permit issued for commercial use is properly affirmed where maintenance of liability insurance is a condition of permit issuance and the permit holder allows its liability insurance to lapse for nonpayment of the premium without notifying BLM.

Cristian Miclea d/b/a Albedo, 163 IBLA 72 (Sept. 7, 2004)

Special Use Permits

The holder of a special recreation permit is prohibited from violating the conditions and stipulations governing its terms. 43 C.F.R. § 8372.0-7(a)(2) (2000). Approval of an application and subsequent issuance of a special recreation permit is discretionary with the authorized officer. 43 C.F.R. § 8372.3 (2000). An exercise of BLM's discretionary authority to refuse to renew a special recreation permit must have a rational basis and be supported by facts of record demonstrating that an action is not arbitrary, capricious, or an abuse of discretion. An appellant appearing before the Department bears the burden of proof to show, by a preponderance of the evidence, that a challenged decision to reject a special recreation permit renewal application is in error.

Larry Amos d/b/a Winterhawk Outfitters, Inc., 163 IBLA 181 (Sept. 29, 2004)

Special Use Permits

Where the official BLM record reveals that a permittee has failed timely to file post use and trip use reports with the BLM, as required by a special recreation permit, a BLM decision not to renew the permit will be found to be supported by facts of record and to have a rational basis.

Larry Amos d/b/a Winterhawk Outfitters, Inc., 163 IBLA 181 (Sept. 29, 2004)

Special Use Permits

In preparing a programmatic environmental assessment to assess whether an environmental impact statement (EIS) is required under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2000), an agency must take a "hard look" at the proposal being addressed and identify relevant areas of environmental concern so that it can make an informed determination as to whether the environmental impact is insignificant or impacts will be reduced to insignificance by mitigation measures. A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is based on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action.

Southern Utah Wilderness Alliance, 164 IBLA 33 (Nov. 16, 2004)

Special Use Permits

A decision permitting guided vehicle tours over designated roads, ways, or trails within a wilderness study area is properly set aside when the record shows that such routes cross through and parallel to riparian/wetland zones and have caused damage to such resources, and fails to disclose what information BLM had before it when it concluded that the addition of tour traffic would have no significant impact on riparian/wetland areas on the designated travel routes.

Southern Utah Wilderness Alliance, 164 IBLA 33 (Nov. 16, 2004)

Special Use Permits

A programmatic environmental assessment analyzing the impacts of guided vehicle tours to as yet unidentified archaeological or historic sites which are or may become eligible for inclusion on the National Register of Historic Places, to be permitted at some future date, does not constitute "undertaking" for purposes of triggering consultation with the State Historic Preservation Officer (SHPO) pursuant to the Utah State Protocol Agreement between BLM and the SHPO.

Southern Utah Wilderness Alliance, 164 IBLA 33 (Nov. 16, 2004)

Special Use Permits

The holder of a special recreation permit is prohibited from violating the conditions and stipulations governing its terms. 43 C.F.R. § 8372.0-7(a)(2) (2000). An exercise of BLM's discretionary authority to refuse to renew a special recreation permit must have a rational basis and be supported by facts of record demonstrating that an action is not arbitrary, capricious, or an abuse of discretion. Such a decision is not supported by a rational basis if it is founded on asserted violations of an operating plan never expressly incorporated into or referenced in a permit, or on rating the performance of a former permittee under a permit never applied for or issued.

Randall G. Nelson, 164 IBLA 182 (Dec. 20, 2004)

Special Use Permits

In the absence of express regulatory authority or permit language, the Board will not compel BLM to find a special recreation permit to be in "inactive" status so as to preserve a former permittee's ability to apply for a permit in the future, when the permittee did not apply for or receive a permit to hold "inactive."

Randall G. Nelson, 164 IBLA 182 (Dec. 20, 2004)

Special Use Permits

Officials of BLM exercise their discretionary authority when adjudicating applications for special recreation permits. When a rational basis for the decision is established in the record, the Board will not ordinarily substitute its judgment for that of the BLM officials delegated the authority to exercise that discretion, and the decision is ordinarily affirmed.

Pronto Pics, Inc., 165 IBLA 90 (Mar. 15, 2005)

Special Use Permits

BLM is required to designate all public lands as either open, limited, or closed to off-road vehicle (ORV) use, and approval of a resource management plan, revision, or amendment constitutes formal designation of ORV use areas. Operation of ORVs is permitted on areas and trails designated as open to ORV use, and in areas designated as "limited" in conformity with the terms and conditions of the orders designating them as limited, but is prohibited on areas and trails closed to ORV use. Although the regulations define "closed area" as "an area where off-road vehicle use is prohibited," they also provide that use of ORVs in closed areas may be allowed for certain reasons, but only with the approval of the authorized officer.

Arizona State Association of 4-wheel Drive Clubs, Inc., 165 IBLA 153 (Mar. 29, 2005)

Special Use Permits

A BLM determination concerning authorization of ORV use will be affirmed if the decision is supported by the record, absent compelling reasons for modification or reversal. When BLM found that increasing ORV use of a canyon, due to the mistaken perception that it was open to general ORV use, had caused unacceptable impacts to riparian values and appellant has provided no evidence that is sufficient to overcome this conclusion, an decision rejecting a special recreation permit for use of the canyon will be affirmed.

Arizona State Association of 4-wheel Drive Clubs, Inc., 165 IBLA 153 (Mar. 29, 2005)

Special Use Permits

Special recreation permits for instructor training in rock climbing, backpacking, canyoneering, initiative games, and general wilderness travel skills are not prohibited in wilderness areas established by the California Desert Protection Act, which authorizes commercial services in such areas. The Board may affirm BLM's approval of such a permit where the appellant has not shown that BLM's decision to approve it, accompanied by an EA and FONSI, violates that statute or the Wilderness Act or is arbitrary or an abuse of discretion.

Thomas S. Budlong, Jerry D. Boggs, Brian Webb, 165 IBLA 193 (Apr. 6, 2005)

Special Use Permits

Paleontological resources on public lands are owned by the United States. The Federal Land Policy and Management Act of 1976 (FLPMA) provides general authority for BLM to manage and protect paleontological resources on public lands. BLM's paleontological use permit program arises from section 302(b) of FLPMA, 43 U.S.C. § 1732(b) (2000), and, among other authorities, 43 C.F.R. § 8365.1-5, which states: "On all public lands, unless otherwise authorized, no person shall; (1) Willfully deface, disturb, remove or destroy any scientific, cultural, archaeological or historic resource, natural object or area."

The Board of Regents of the University of Oklahoma, 165 IBLA 231 (Apr. 13, 2005)

Special Use Permits

Decisions involving paleontological use permits are committed to the discretion of the Secretary, through BLM, and the exercise of that discretion must have a rational basis. When the record reveals extensive evidence supporting a disputed finding in such a decision, there is a rational basis for the finding, and that portion of the decision will be affirmed.

The Board of Regents of the University of Oklahoma, 165 IBLA 231 (Apr. 13, 2005)

Special Use Permits

BLM may impose administrative sanctions for permit violations even in the absence of specific regulatory provisions establishing such sanctions, so long as BLM provides notice of the possible range of sanctions. A decision imposing sanctions without such notice must be reversed.

The Board of Regents of the University of Oklahoma, 165 IBLA 231 (Apr. 13, 2005)

Special Use Permits

The rules at 43 C.F.R. Subpart 2932 provide the discretion to BLM to grant or deny an application for a special recreation permit. 43 C.F.R. § 2932.26. They do not provide BLM the authority to reject in advance hypothetical applications that have not been submitted or permit terms which have not been set forth in an application.

Rock Crawlers Association of America, 167 IBLA 232 (Nov. 23, 2005)

Special Use Permits

When contemporaneous reports and maps prepared by Bureau of Land Management employees and subsequent affidavits by the employees are sufficient to establish facts to support a decision finding an appellant to have violated 43 C.F.R. § 8372.0-7(a) by using public lands for commercial recreation without a special recreation permit, and the appellant does not present evidence which refutes the facts, the decision will be affirmed.

Frank Robbins, d.b.a. High Island Ranch, 167 IBLA 239 (Nov. 30, 2005)

Special Use Permits

The sanctions for unauthorized commercial recreation use of the public lands are set forth in the regulations governing special recreation permits at 43 C.F.R. § 8372.0-7 (b) (2000). A decision applying the trespass regulation at 43 C.F.R. § 2920.1-2, which pertains to uses not authorized under any other law or regulation, to assess administrative costs, fair market value rental, and a willful trespass penalty for unauthorized commercial recreation use will be vacated.
Frank Robbins, d.b.a. High Island Ranch, 167 IBLA 239 (Nov. 30, 2005)

Special Use Permits

Cultural resource use permits are issued pursuant to section 302(b) of FLPMA, 43 U.S.C. § 1732(b) (2000), among other authorities. Decisions involving permits issued under that provision are committed to the discretion of the Secretary, through BLM, and the exercise of that discretion must have a rational basis. A decision refusing to renew a permit must have a rational basis and be supported by facts of record demonstrating that an action is not arbitrary, capricious, or an abuse of discretion. An appellant bears the burden of proof to show, by a preponderance of the evidence, that a challenged decision to reject a permit renewal application is in error. Where BLM has decided not to renew a cultural resource use permit because of repeated instances of unrecorded or underrecorded sites, that decision is properly affirmed where the holder of the permit has not explained why the specific sites in question were not reported or were underreported in a manner that is consistent with applicable professional standards.

Archaeological Services by Laura Michalik, 169 IBLA 90 (May 25, 2006)

Special Use Permits

Anyone organizing an event that poses an appreciable risk of damage to public land or related water resource values must apply for and receive a special recreation permit from BLM. A not-for-profit motorcycle club promoting a competitive group event on public lands requiring a special recreation permit falls within the class of persons or groups subject to section 304(b) of FLPMA, 43 U.S.C. § 1734(b) (2000), and its implementing regulations at 43 C.F.R. Subpart 2932, and is not entitled to a waiver of cost recovery fees pursuant to 43 C.F.R. § 2932.34.

Bookcliff Rattlers Motorcycle Club, 171 IBLA 6 (Dec. 20, 2006)

Special Use Permits

The regulation at 43 C.F.R. § 2932.31(e)(2) authorizes BLM to recover the costs of issuing a special recreation permit which requires more than 50 hours of BLM staff time to process. The application of that regulation to a not-for-profit motorcycle club that has filed an application for a special recreation permit to hold a competitive motorcycle race on public lands is consistent with its statutory basis and is not unreasonable.

Bookcliff Rattlers Motorcycle Club, 171 IBLA 6 (Dec. 20, 2006)

Special Use Permits

Where BLM makes use of computer spreadsheets or other documentation to accumulate data upon which a cost estimate for a special recreation permit is based, it must reveal underlying data sufficient for the applicant to ascertain the justification for BLM's conclusions; otherwise, an applicant has no basis upon which to understand and accept BLM's decision or, in the alternative, to appeal and dispute it.

Bookcliff Rattlers Motorcycle Club, 171 IBLA 6 (Dec. 20, 2006)

Special Use Permits

Where the record as supplemented on appeal demonstrates that BLM's technical experts carefully documented the underlying rationale for their cost recovery estimates with respect to a special recreation permit and application for a competitive motorcycle race on public lands, and the appellant did not show by a preponderance of the evidence that the estimates calculated by BLM experts are based on an error in methodology, data, or analysis or are otherwise unreasonable, BLM's estimates of cost recovery are properly affirmed.

Bookcliff Rattlers Motorcycle Club, 171 IBLA 6 (Dec. 20, 2006)

Standing

Because the regulation at 30 C.F.R. § 842.11(b)(1)(ii)(B) establishes the ten-day notice process as a formal communication between OSM and a State's designated regulatory authority, an applicant/operator's vehicle to pursue a complaint against OSM's issuance of a ten-day notice is to seek administrative review of the resulting notice of violation and cessation order pursuant to 30 C.F.R. § 843.16 and 43 C.F.R. § 4.1161.

Lonesome Pine Energy Co., Inc. v. OSM (On Reconsideration), 156 IBLA 182 (Jan. 25, 2002)

State Grants

Land which has been conveyed to a state without a reservation of minerals to the United States is not available for the location of mining claims, and a mining claim located on such land after it is so conveyed is null and void ab initio. The locator of a lode mining claim partly located on school grant lands acquires no surface or mineral rights for that portion of the claims. However, where the record is unclear as to the exact situs of the claim on the ground and the claim may partially cover land which is open to mineral entry, the case will be remanded to BLM to first determine the location of the claim and then to adjudicate the claim accordingly.

Ed Nazelrod, 151 IBLA 374 (Feb. 4, 2000)

State Grants

BLM properly declares lode mining claims null and void ab initio where they were located entirely on lands which were not open to entry under the United States mining laws at the time of location either because they had been patented as mining claims or granted to the State of Idaho as part of grants of school sections. The fact that the State may have, on a date following the putative location of the claims, applied for other lands in lieu of lands within the section is irrelevant where such application was subsequently rejected and withdrawn, since the aborted lieu selection process did not, in the absence of publication and clear-listing, result in any waiver by the State of its rights in the lands in the section or in any lands being returned to the ownership of the United States.

Aberdeen Idaho Mining Co., 155 IBLA 358 (Oct. 1, 2001)

State Lands

BLM properly declares lode mining claims null and void ab initio where they were located entirely on lands which were not open to entry under the United States mining laws at the time of location either because they had been patented as mining claims or granted to the State of Idaho as part of grants of school sections. The fact that the State may have, on a date following the putative location of the claims, applied for other lands in lieu of lands within the section is irrelevant where such application was subsequently rejected and withdrawn, since the aborted lieu selection process did not, in the absence of publication and clear-listing, result in any waiver by the State of its rights in the lands in the section or in any lands being returned to the ownership of the United States.

Aberdeen Idaho Mining Co., 155 IBLA 358 (Oct. 1, 2001)

State Laws

A right to federal lands cannot be created by state law pertaining to adverse possession of non-federal land. Where the basis for a claimant's asserted title to federal land is derived from state law, the claim is not cognizable under the Color of Title Act, *as amended*, 43 U.S.C. § 1068 (1994).

Archie Ledon Cole, 155 IBLA 202 (July 18, 2001)

State Laws

Nevada State law prescribes a time and formal procedure for disclaiming a testamentary devise or bequest, absent which the devise or bequest is deemed accepted. When the heirs of a deceased mill site claimant do not aver or proffer evidence that they have complied with such State law or otherwise show that the statute does not apply to them, the Board properly may assume that they accepted their inheritance of the mill site and the personal property on it and are legally responsible for removing it.

Betty Dungey, Mary Humphries, Peggy Ruesch, 165 IBLA 1 (Feb. 17, 2005)

State Laws

As used in 43 C.F.R. § 3715.7-1, the pronouns "you" and "your" include persons who acquire property on a mining claim or mill site by transfer, contract, agreement, or by exercise or operation of law, and who exercise or assert dominion and control over that property.
Betty Dungey, Mary Humphries, Peggy Ruesch, 165 IBLA 1 (Feb. 17, 2005)

State Laws

When appellants paid the annual maintenance fee for a mill site, they exercised and asserted dominion and control over the mill site to retain possession as against the United States and avoid the consequence of conclusive forfeiture that attends the failure to timely pay the fee or obtain a small miner waiver certification. Where appellants also failed to produce evidence showing that they timely disclaimed the interests in personal property on the mill site that they acquired by operation of law, a notice of noncompliance for failing to remove their property will be upheld.

Betty Dungey, Mary Humphries, Peggy Ruesch, 165 IBLA 1 (Feb. 17, 2005)

State Laws

Since a potash enclave under the Secretarial Order must be identified based on potash ore that is mineable under existing economics and "known to exist," whereas a "life-of-the-mine reserve" (LMR) under state law does not consider economics and is based only on the "reasonable belief" of a potash lessee, BLM abrogates its duties under the Secretarial Order to consider economics and resources known to exist by relying exclusively upon LMR determinations to identify a potash enclave.

IMC Kalium Carlsbad, Inc., Potash Association of New Mexico; Yates Petroleum Corporation; Pogo Producing Company; Bureau of Land Management, 170 IBLA 25 (Sept. 7, 2006)

State Laws

A railroad patent passes fee simple title to public land from the United States to the grantee. After a patent has issued, questions of property rights are governed by State law. Where public land in Arizona was patented to the Santa Fe and Pacific Railroad Company and later conveyed subject to both a general mineral reservation and a reservation of "gravel and ballast" for "railroad purposes," under State law, sand, gravel, and ballast are excluded from the general mineral reservation in the deed.

Alfred Jay Schritter, 171 IBLA 123 (Feb. 21, 2007)

State Laws

Where the record fails to support a finding that BLM erred in determining (1) that the owner of a mineral estate on lands acquired by the United States was removing sand, gravel, and common earthen material, and (2) that such material was not reserved under the general mineral clause of the relevant deed, Arizona law dictates a finding that the material removed was not included in appellant's mineral estate, but rather was included in the surface estate held by the United States.

Alfred Jay Schritter, 171 IBLA 123 (Feb. 21, 2007)

Statute of Limitations

The 6-year statute of limitations for the commencement by the United States of civil actions for money damages, found at 28 U.S.C. § 2415(a) (1994), does not limit administrative action within the Department. MMS orders to recalculate and pay additional royalty due under an Indian lease are administrative actions not subject to the statute of limitations.

Union Texas Petroleum Energy Corporation, 153 IBLA 170 (Aug. 25, 2000)

Statute of Limitations

Statutes of limitations directed at "any action to recover penalties" (30 U.S.C. § 1755 (1994)), or any "action for money damages" (28 U.S.C. § 2415 (a)(1994)) establishing time limits for commencement of judicial actions, initiated by the filing of a complaint in a court of competent jurisdiction, do not limit administrative proceedings within the Department of the Interior.

Williams Production Company, 154 IBLA 283 (Apr. 19, 2001)

Statute of Limitations

Late payment charges are not a penalty; they are assessed to compensate the lessor for the time value of money owing and not timely paid.

Sanguine Limited, 155 IBLA 277 (July 26, 2001)

Statute of Limitations

A statute establishing time limitations for commencement of judicial actions for damages on behalf of the United States does not limit administrative proceedings within the Department of the Interior to determine an obligation to pay royalties, demands for additional royalty, or demands for interest on late royalty payments.

Sanguine Limited, 155 IBLA 277 (July 26, 2001)

Statute of Limitations

The 6-year statute of limitations for the commencement by the United States of civil actions for money damages, found at 28 U.S.C. § 2415(a) (2000), does not limit administrative actions within the Department. Orders by MMS to recalculate and pay additional royalties due under Indian leases are administrative actions not subject to the statute of limitations.

Union Oil Company of California, 167 IBLA 263 (Dec. 28, 2005)

Statute of Limitations

The 6-year statute of limitations for the commencement by the United States of civil actions for money damages, found at 28 U.S.C. § 2415(a) (2000), does not limit administrative actions within the Department. Orders by MMS to recalculate and pay additional royalties due under Indian leases are administrative actions not subject to the statute of limitations.

Western Energy Company, 172 IBLA 258 (Sept. 12, 2007)

Statutes

Responsibility for satisfying the rental fee requirement of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, Pub. L. No. 102-381, 106 Stat. 1374, 1378-79 (1992), resides with the owner of the unpatented mining claim, mill site, or tunnel site, as Congress has mandated that failure to make the annual payment of the claim rental fee as required by the Act shall conclusively constitute an abandonment of the unpatented mining claim, mill site, or tunnel site. Failure to pay the fee in accordance with the Act and implementing regulations results in a conclusive presumption of abandonment. Neither the claimant's lack of actual knowledge of the statutory requirement to pay rental fees nor BLM's failure to advise the claimant of that statutory requirement excuses the claimant's lack of compliance with the rental fee requirement, since all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Sandra E. Garrand, 152 IBLA 139 (Apr. 3, 2000)

Statutes

Estoppel will not lie when the legal consequences of an action are clearly set forth in statute and/or regulation, and when the application of estoppel would afford a right not authorized by law. Thus, there is no requirement in law or regulation compelling BLM authorities to give prior notice to a potential lessee that the lease it seeks is about to expire at the conclusion of its primary term and that a further extension of the lease term may be obtained only if a certain course is followed by the current lessee.

RMOC Holdings LLC, 152 IBLA 149 (Apr. 21, 2000)

Statutes

Private legislation providing an exception from a legal requirement for one individual or company does not invalidate the application of that legal requirement to any other party.

David G. Kukowski, 169 IBLA 19 (Apr. 25, 2006)

Statutory Construction
Generally

Section 11 of the Act of December 22, 1974, 25 U.S.C. 640d-10 (1994), as amended by sec. 4 of Public Law 96-305, the Navajo and Hopi Indian Relocation Amendments Act of 1980, and sec. 105(b) of Public Law 98-603, the San Juan Basin Wilderness Protection Act of 1984, does not authorize the Navajo Tribe or the Office of Navajo and Hopi Indian Relocation to "de-select" lands selected by the Tribe in 1986 and "re-select" other lands in 1996.

San Juan Coal Co., 155 IBLA 389 (Nov. 6, 2001)

Statutory Construction
Generally

Section 905(b) of ANILCA, 43 U.S.C. § 1634(b) (1994), requires BLM to exercise its discretion to eliminate conflicts between two or more allotment applications which exist due to overlapping land descriptions. Neither section 905(b) of ANILCA nor its legislative history permits BLM to mandate agreement where there is none, and any agreement accepted by BLM must be, to the extent practicable, consistent with prior use of the allotted lands and beneficial to the affected parties.

Shirley Nielsen, 158 IBLA 26 (Dec. 3, 2002)

Statutory Construction
Generally

Under 43 C.F.R. § 4.1294(b), OSM may award appropriate costs and expenses, including attorney fees, to any person, other than a permittee or his representative,

who initiates or participates in any proceeding under SMCRA, and who prevails in whole or in part, achieving at least some degree of success on the merits, upon a finding that such person made a substantial contribution to a full and fair determination of the issues. Under 43 C.F.R. § 4.1295, the award includes all costs, expenses, and attorney fees reasonably incurred as a result of initiating or participating in a proceeding under the Act, as well as those reasonably incurred in seeking the award.

Angus E. Peyton v. Office of Surface Mining Reclamation and Enforcement, 158 IBLA 335 (Apr. 8, 2003)

Statutory Construction
Generally

Section 525(e) of SMCRA, 30 U.S.C. § 1275(e) (2000), authorizes an award of "all costs and expenses (including attorney fees) as determined by the Secretary to have been reasonably incurred" for or in connection with a person's participation in an administrative proceeding under the Act. In section 701 of SMCRA "permit applicant" or "applicant" and "permittee" are separately defined as "a person applying for a permit," and "person holding a permit," respectively. 30 U.S.C. § 1291(16) and (18) (2000). The definition of a "person" who may qualify for costs, expenses, and attorney fees under section 701(19) of SMCRA, 30 U.S.C. § 1275(e)(2000), includes non-permittees. Accordingly, a non-permittee seeking reversal of an Applicant Violator System link applied as a result of an alleged offending relationship with a violator coal company is a person who may properly petition for an award of costs and expenses, including attorney fees, under 43 C.F.R. § 4.1294(b).

Angus E. Peyton v. Office of Surface Mining Reclamation and Enforcement, 158 IBLA 335 (Apr. 8, 2003)

Statutory Construction
Generally

Sand and gravel are covered by the reservation of "oil, gas, and all other mineral deposits" in patents granted under the Small Tract Act, 43 U.S.C. § 682a (1970). Removal of sand and gravel from land patented under that Act for commercial purposes constitutes a trespass.

New West Materials, 164 IBLA 126 (Dec. 2, 2004)

Statutory Construction
Generally

A petition for an award of costs and expenses, including attorney fees, filed pursuant to sec. 525(e) of the Surface Mining Control and Reclamation Act of 1977, will be granted where petitioner establishes his entitlement to an award by showing a causal nexus between his administrative appeal of OSM's determination that his name be placed in the AVS with a recommendation that he be denied future permits and a decision issued by an administrative law judge granting temporary and permanent relief and by the Interior Board of Land Appeals reversing OSM's decision.

David Ruth, 164 IBLA 253 (Jan. 6, 2005)

Statutory Construction
Administrative Construction

It is within the authority of the Department to interpret its own regulations. An MMS regulatory change increasing the general bonding requirement for Outer Continental Shelf producers to $500,000 will be upheld when the record shows the regulatory change was duly promulgated and the agency provided in the decision record a reasoned analysis for the change and its application to the facts of appellant's case.

Pacific Operators Offshore, Inc., 154 IBLA 100 (Dec. 20, 2000)

Stock-Raising Homesteads
Notice of Intent to Locate Mining Claims

On or after Oct. 13, 1993, mining claims cannot be located on lands patented under the Stock Raising Homestead Act, *as amended*, until a person who intends to enter such lands to explore for or locate a mining claim has first filed a notice of intent to locate with the proper BLM state office and served a copy of that notice upon the surface owners of record.

American Colloid Co. Bentonite Corp., 154 IBLA 7 (Oct. 16, 2000)

Stock-Raising Homesteads
Notice of Intent to Locate Mining Claims

Where BLM's regulation and notice form relating to the location of mining claims on lands patented under the Stock Raising Homestead Act, *as amended*, require only the name of the person filing the notice, and the name of the person managing exploration and claim location activities, a properly filed and served notice which does not identify either the name of the mining association or the names and addresses of the individual members is valid, and a decision declaring the mining claims located by the mining association null and void by reason of such alleged defect will be reversed.

American Colloid Co., Bentonite Corp., 154 IBLA 7 (Oct. 16, 2000)

Stock-Raising Homesteads
Notice of Intent to Locate Mining Claims

Even where a mining association is formed before any mining claims have been located, nothing prevents an agent from acting on behalf of the association. There is no statutory or regulatory provision which prohibits the location of a mining claim or the doing of any acts required to complete the appropriation by an agent, and the fact that the locator acted through an agent in such matters does not invalidate the location. Thus, 43 C.F.R. § 3832.1 expressly provides that agents may make locations for qualified locators.

American Colloid Co., Bentonite Corp., 154 IBLA 7 (Oct. 16, 2000)

Stock-Raising Homesteads

Notice of Intent to Locate Mining Claims

When lands are segregated from entry under the mining laws, such a segregation attaches to the mineral estate of lands patented under the Stock Raising Homestead Act, which are included within the lands described in the segregation, and although it has no effect on mining claims covering part of that mineral estate, if those claims are forfeited by operation of law for failure to pay the maintenance fees while the segregation is still effective, the segregation automatically becomes effective, *eo instanti*, as to the mineral estate covered by those claims, thus closing it to future mineral entry for the period of the segregation. A notice of intent to locate mining claims on such mineral lands, filed while the segregation is still effective, must be rejected.

National Cement Company of California, 156 IBLA 131 (Dec. 31, 2001)

Stock Raising Homesteads
Notice of Intent to Locate Mining Claims

Minerals are reserved in patents issued pursuant to the Stock-Raising Homestead Act, *as amended*, 43 U.S.C. § 299 (1970). Parties holding mineral rights have the right to occupy so much of the surface as may be required for all purposes reasonably incident to mining and removing the minerals. To obtain approval for mining from the Secretary, a qualified person must, *inter alia*, file a plan of operations which includes procedures for minimizing damage to crops and improvements and for minimizing disruption of grazing and other land uses. The Secretary must serve the plan of operations on surface owners for a 45-day comment period. Patents under the Stock-Raising Homestead Act do not reserve any right in a mining claimant for a recreational opportunity that is superior to the uses the owner of the surface might make of the land.

Susan J. Kayler, Tom Traw, 162 IBLA 245 (July 29, 2004)

Stock-Raising Homesteads
Notice of Intent to Locate Mining Claims

BLM does not have the discretion to reject a Notice of Intent to Locate mining claims on Stock-Raising Homestead Act lands under regulations at 43 C.F.R. Part 3838 for the sole reason that it was submitted by the owner of the surface estate.

Margaret L. Berggren, Margaret L. Berggren, Trustee, Scott Ranch Trust, 171 IBLA 297 (June 5, 2007)

Submerged Lands

Where BLM terminates seven public easements, which had been reserved to guarantee access to three lakes pursuant to section 17(b) of ANSCA, 43 U.S.C. § 1616(b) (1976), on the basis of a determination that the lakes are non-navigable and not major waterways and therefore that the easements do not provide access to publicly owned lands or major waterways, and the record does not support BLM's determination, the Board will remand the cases to BLM. Should BLM wish to proceed with decisions regarding the easements under 43 C.F.R. § 2650.4-7(a)(13), it must render an initial determination of navigability of the lakes as an aid to deciding whether the easements may be terminated.

State of Alaska, Louis and Marion Collier, 168 IBLA 334 (Apr. 6, 2006)

Submerged Lands Act
Generally

Where BLM terminates seven public easements, which had been reserved to guarantee access to three lakes pursuant to section 17(b) of ANSCA, 43 U.S.C. § 1616(b) (1976), on the basis of a determination that the lakes are non-navigable and not major waterways and therefore that the easements do not provide access to publicly owned lands or major waterways, and the record does not support BLM's determination, the Board will remand the cases to BLM. Should BLM wish to proceed with decisions regarding the easements under 43 C.F.R. § 2650.4-7(a)(13), it must render an initial determination of navigability of the lakes as an aid to deciding whether the easements may be terminated.

State of Alaska, Louis and Marion Collier, 168 IBLA 334 (Apr. 6, 2006)

Surface Mining Control and Reclamation Act of 1977
Generally

Under 30 C.F.R. § 700.11(b), a surface coal mining operation was not exempt from regulation under SMCRA under the "2-acre exemption" where that operation, together with any "related" operations, had an affected area of 2 acres or more. Under 30 C.F.R. § 700.11(b)(2), operations were deemed "related" if (1) they occur within 12 months of each other; (2) they are "physically related"; and (3) they are under "common control." The "physically related site" criteria, which were promulgated in 30 C.F.R. § 700.11(b)(2) on July 2, 1982 (47 Fed. Reg. 33431), could be applied retroactively to determine whether operations in 1981 were eligible for the 2-acre exemption.

Paul Funk v. Office of Surface Mining Reclamation and Enforcement, 151 IBLA 245 (Dec. 17, 1999)

Surface Mining Control and Reclamation Act of 1977
Generally

A State permittee with a 2-acre permit obtained in good faith and after the submission of accurate and complete information, and upon which he relied in carrying out mining operations, was protected from OSM citation for violations occurring prior to the date of the OSM reversal of the 2-acre permit pursuant to 30 C.F.R. § 700.11(c).

Paul Funk v. Office of Surface Mining Reclamation and Enforcement, 151 IBLA 245 (Dec. 17, 1999)

Surface Mining Control and Reclamation Act of 1977
Generally

Under 30 C.F.R. § 842.11(b)(1)(i), OSM has "reason to believe" that a violation exists if the facts alleged by an informant in a citizen's complaint would, if true, constitute a violation of SMCRA, Departmental regulations at 30 C.F.R. Ch. VII, the applicable State program, or "any condition of a permit or exploration approval." Once a citizen's complaint gives OSM reason to believe that a violation has occurred, OSM's obligation is to respond to the citizen's complaint by issuing a 10-day notice to the State. Neither OSM's perception of the "complexity" of the issues or the desire to conduct "policy review and outreach" justifies a refusal to address the site-specific allegations of

violations in a citizen's complaint.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Generally

When an appeal is taken from an OSM decision, that office loses jurisdiction over the matter until jurisdiction is restored by final disposition of the appeal by the appellate body. When, subsequent to an appeal, OSM renders additional conclusions, the Board would normally remand the matter to OSM to recover jurisdiction and properly adopt and render those conclusions. However, where the record in an appeal already contains a clear statement by OSM of its conclusions on each site-specific issue, as well as full briefing by the parties, no purpose would be served by remanding the matter and the Board may exercise its de novo authority to consider whether OSM's conclusions should be adopted.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Generally

The mere fact that individuals have self-reported data showing noncompliance with effluent limitations is not "reason to believe" a violation exists, because under the self-reporting regulations at 30 C.F.R. §§ 816.41(e)(2) and 817.41(e)(2), the company bears an obligation to correct the effluent discharge to meet its hydrologic plan. It is not until this obligation to correct is ignored that OSM has "reason to believe" that a violation exists. But where a citizen provides evidence of consistent and repeated monthly reports from the same discharge point, OSM has "reason to believe" that a violation exists and is required to issue a 10-day notice to the State agency.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Generally

Failure to obtain an NPDES permit from the State or Federal authority responsible for implementation of the Clean Water Act is an enforceable violation of Federal and State SMCRA program rules, and a citizen's complaint alleging that a permittee is operating a point source discharge without an NPDES permit would constitute "reason to believe" a violation of those rules exists.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Generally

The forfeiture of a bond does not provide a sufficient basis for OSM to decline to issue a 10-day notice to the State when a citizen has provided reason to believe that violations continue at a minesite.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Generally

Because a bond can be released only when all reclamation requirements are fully met, an allegation that a company with a released bond failed to retain an NPDES permit would not, standing alone, constitute "reason to believe" a violation exists.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Generally

When a citizen files a complaint that a State regulatory authority as a general matter is failing to carry out the "complete inspection" requirements of its program by failing to inspect every outfall for illegal discharges, that particular grievance is cognizable under the Federal takeover regulations at 30 C.F.R. § 733.12 and would thus be beyond this Board's jurisdiction.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Generally

When a surface coal mining operation owned or controlled by an applicant for a permit is currently in violation of its permit, the surface mining laws, or other laws (including those pertaining to air or water environmental protection), section 510(c) of SMCRA dictates that the requested permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected. Violations of the Clean Water Act justify blocking issuance of new permits.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Generally

When a citizen provides OSM with data from a State NPDES authority that a permittee is violating the Clean Water Act, OSM may not decline to issue a 10-day notice because of unspecified "doubts" about the data. Under 30 C.F.R. § 842.11(b), OSM has "reason to believe" a violation is occurring where the data, if true, would constitute a violation, and a 10-day notice must be issued to the State with respect to permittees alleged to be in violation. However, when a citizen files a complaint that a State regulatory authority as a general matter is failing to obtain permit blocks against operators who are in violation of the Clean Water Act, that particular grievance is

cognizable under the Federal takeover regulations at 30 C.F.R. § 733.12.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Generally

Section 521(a) of SMCRA, 30 U.S.C. § 1271(a) (1994), states that if "the Secretary has reason to believe that any person is in violation of any requirement of this chapter," then enforcement will be taken according to its further provisions, and 30 C.F.R. § 700.5 defines "person" as including "any agency, unit or instrumentality of Federal, State or local government." Where a citizen alleges that acid mine drainage is occurring at sites where the State has forfeited a permittee's bond, OSM's regulations provide no basis for excluding the allegation from the process established in 30 C.F.R. § 842.11(b). However, OSM cannot treat the State as a permittee.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Generally

Pursuant to OSM's oversight authority in states with approved programs having primary enforcement jurisdiction, OSM is required to conduct an inspection when it has reason to believe that a violation of the state program exists, it has given the state regulatory authority notice of the possible violation, and the state has failed to take appropriate action within 10 days to cause the violation to be corrected or show good cause for such failure.

Marion Docks, Inc. v. Office of Surface Mining Reclamation and Enforcement, 168 IBLA 47 (Feb. 23, 2006)

Surface Mining Control and Reclamation Act of 1977
Generally

On review of a state regulatory agency's response to a 10-day notice asserting that it has good cause under 30 C.F.R. § 842.11(b)(1)(ii) (B)(*4*)(*iv*) in that it is precluded by a ruling of a state administrative body of competent jurisdiction from citing an asserted violation, the standard of review applied by OSM is whether that ruling is arbitrary, capricious, or an abuse of discretion.

Marion Docks, Inc. v. Office of Surface Mining Reclamation and Enforcement, 168 IBLA 47 (Feb. 23, 2006)

Surface Mining Control and Reclamation Act of 1977
Generally

Pursuant to OSM's oversight authority in states with approved programs having primary enforcement jurisdiction, OSM is required to conduct an inspection when it has reason to believe that a violation of the state program exists, it has given the state regulatory authority notice of the possible violation, and the state has failed to take appropriate action within 10 days to cause the violation to be corrected or show good cause for such failure. On review of a state regulatory agency's response to a ten-day notice asserting that it has good cause under 30 C.F.R. § 842.11(b)(1)(ii) (B)(*4*)(*i*) in that the asserted violation does not exist, the standard of review applied by OSM is whether that ruling is arbitrary, capricious, or an abuse of discretion.

Richard S. & Cathy L. Maddock (On Reconsideration), 168 IBLA 303 (Mar. 30, 2006)

Surface Mining Control and Reclamation Act of 1977
Abatement
Generally

When, in response to a citizen's complaint, OSM has reasserted jurisdiction over a mine site following final bond release by the state regulatory authority and issued a notice of violation and a failure to abate cessation order for water being discharged from the disturbed areas of the site in excess of effluent limitations, it properly responds to a further complaint that it has not taken required alternative enforcement action under 30 C.F.R. § 845.15(b)(2) to ensure abatement by forwarding the matter to the Solicitor's Office for an injunctive relief referral to the U.S. Department of Justice, in accordance with established policy.

West Virginia Highlands Conservancy, 164 IBLA 260 (Jan. 11, 2005)

Surface Mining Control and Reclamation Act of 1977
Abatement
Generally

OSM may not decline to take additional enforcement action to address alleged violations for failing to obtain a National Pollution Discharge Elimination System permit and to engage in periodic monitoring and reporting concerning water discharges from a mine site, based on the fact that those alleged violations are subsumed in previous enforcement actions citing the operator for discharging water in excess of effluent limitations.

West Virginia Highlands Conservancy, 164 IBLA 260 (Jan. 11, 2005)

Surface Mining Control and Reclamation Act of 1977
Administrative Procedure
Generally

Under section 518 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1268 (1994), any party charged with a civil penalty may file a petition for discretionary review of a proposed assessment of that penalty. Under 43 C.F.R. § 4.1155 OSM has the burden of going forward to establish a prima facie case that a violation of pertinent requirements occurred. That burden in a challenge to a failure to abate cessation order involves providing evidence that conditions supporting the issuance of an imminent harm cessation order existed and that those facts remained unabated, justifying the existence of a failure to abate cessation order.

Paul Funk v. Office of Surface Mining Reclamation and Enforcement, 151 IBLA 245 (Dec. 17, 1999)

Surface Mining Control and Reclamation Act of 1977
Administrative Procedure
Generally

Because the regulation at 30 C.F.R. § 842.11(b)(1)(ii)(B) establishes the 10-day notice process as a formal communication between OSM and a State's designated regulatory authority, an applicant/operator's vehicle to pursue a complaint against OSM's issuance of a 10-day notice is to seek administrative review of the resulting notice of violation and cessation order pursuant to 30 C.F.R. § 843.16 and 43 C.F.R. § 4.1161.

Lonesome Pine Energy Co., Inc. v. OSM (On Reconsideration), 156 IBLA 182 (Jan. 25, 2002)

Surface Mining Control and Reclamation Act of 1977
Administrative Procedure
Generally

A duly promulgated regulation has the force and effect of law and the Board is bound to apply the regulations in its adjudication. Under the regulation at 43 C.F.R. § 4.1105(a)(5), the permittee of a surface coal mining operation that is the subject of a determination on informal review under 30 C.F.R. § 842.15(d) is a party entitled under 43 C.F.R. § 4.1109(a)(1) to service of a copy of an appeal by a person who is or may be adversely affected by such a determination.

Richard S. & Cathy L. Maddock (On Reconsideration), 167 IBLA 200 (Nov. 15, 2005)

Surface Mining Control and Reclamation Act of 1977
Administrative Procedure
Burden of Proof

OSM fails to make a prima facie case when it presents insufficient evidence to establish whether the mining operation in question was responsible for a disturbed area claimed incidental to the petitioner's mining operation or whether the disturbed area was the result of a preceding mining operation, and thus fails to establish essential facts from which it may be determined that a violation of pertinent requirements has occurred.

Paul Funk v. Office of Surface Mining Reclamation and Enforcement, 151 IBLA 245 (Dec. 17, 1999)

Surface Mining Control and Reclamation Act of 1977
Administrative Procedure
Burden of Proof

In a proceeding concerning an application for review of a notice of violation, the burden of going forward to establish a prima facie case rests with OSM. Although the ultimate burden of persuasion rests with the applicant for review, the notice of violation will be affirmed only where OSM meets its burden of establishing a prima facie case. OSM makes a prima facie case when it presents sufficient evidence to establish essential facts from which it may be determined that a violation has occurred. However, where the operator fails to meets its burden, the notice of violation will be sustained.

Lonesome Pine Energy Co., Inc. v. OSM (On Reconsideration), 156 IBLA 182 (Jan. 25, 2002)

Surface Mining Control and Reclamation Act of 1977
Administrative Procedure
Burden of Proof

When the Office of Surface Mining orders the revision of a permit and its decision is challenged by the permittee, the Office of Surface Mining bears the burden of presenting a prima facie case that the revision is reasonable and designed to ensure compliance with the Surface Mining Control and Reclamation Act of 1977 or regulatory program, whereupon the burden devolves to the permittee who has challenged the revision to overcome that case by a preponderance of the evidence. 43 C.F.R. § 4.1366 (b). Where the record contains ample evidence demonstrating the need for additional permit provisions governing disposal of materials on site and specifying how to ascertain the content of such materials, and where the permittee fails to show otherwise, OSM's permit revision order is properly affirmed.

Pacific Coast Coal Company v. Office of Surface Mining Reclamation and Enforcement, 158 IBLA 115 (Jan. 6, 2003)

Surface Mining Control and Reclamation Act of 1977
Administrative Procedure
Intervention

Any person having an interest which is or may be adversely affected by a notice or order or by any modification, vacation, or termination of such notice or order, may petition for review of the order within 30 days of receipt or within 30 days of its modification, vacation, or termination. When the petitioner 1) had a statutory right to initiate the proceeding in which he or she wishes to intervene, or 2) has an interest which is or may be adversely affected by the outcome of the proceeding, the person has the right to intervene.

Citizens Coal Council, 155 IBLA 331 (Sept. 6, 2001)

Surface Mining Control and Reclamation Act of 1977
Administrative Procedure
Intervention

An organization with a member whose interests could be adversely affected by the outcome of a proceeding to review a notice of violation issued under the Surface Mining Act is entitled to intervene in the proceeding.

Citizens Coal Council, 155 IBLA 331 (Sept. 6, 2001)

Surface Mining Control and Reclamation Act of 1977
Appeals

Generally

An operator's assertions of OSM's lack of jurisdiction over a portion of its mine site based on permit revisions approved by the state regulatory authority will be rejected where the record establishes the existence of violations of regulations governing topsoil, revegetation, and the 1 to 3 static safety factor on the mine site, which resulted from use of the mine site as a dump area for spoil from a road reconstruction project.

Lonesome Pine Energy Co., Inc. v. OSM (On Reconsideration), 156 IBLA 182 (Jan. 25, 2002)

Surface Mining Control and Reclamation Act of 1977
Appeals
Generally

Under 43 C.F.R. § 4.1281, any person who is or may be adversely affected by a written decision of the Director of OSM or his delegate may appeal to the Board, if the decision specifically grants such right of appeal. A letter from OSM to a person who has filed a citizen complaint informing him of preliminary results of a reinvestigation of his complaint relating to methane contamination of his water supply, which does not grant the right of appeal, is not an appealable decision under 43 C.F.R. § 4.1281.

Moses Tennant, 158 IBLA 293 (Mar. 11, 2003)

Surface Mining Control and Reclamation Act of 1977
Appeals
Generally

An appeal from an OSM decision closing its reinvestigation of a citizen complaint relating to methane contamination because the complainant would not authorize OSM to enter his property for the purposes of completing that reinvestigation will be affirmed when the appellant fails to establish any error in OSM's decision.

Moses Tennant, 158 IBLA 293 (Mar. 11, 2003)

Surface Mining Control and Reclamation Act of 1977
Appeals
Generally

A duly promulgated regulation has the force and effect of law and the Board is bound to apply the regulations in its adjudication. Under the regulation at 43 C.F.R. § 4.1105(a)(5), the permittee of a surface coal mining operation that is the subject of a determination on informal review under 30 C.F.R. § 842.15(d) is a party entitled under 43 C.F.R. § 4.1109(a)(1) to service of a copy of an appeal by a person who is or may be adversely affected by such a determination.

Richard S. & Cathy L. Maddock (On Reconsideration), 167 IBLA 200 (Nov. 15, 2005)

Surface Mining Control and Reclamation Act of 1977
Applicability
Generally

Under 30 C.F.R. § 700.11(b), a surface coal mining operation was not exempt from regulation under SMCRA under the "2-acre exemption" where that operation, together with any "related" operations, had an affected area of 2 acres or more. Under 30 C.F.R. § 700.11(b)(2), operations were deemed "related" if (1) they occur within 12 months of each other; (2) they are "physically related"; and (3) they are under "common control." The "physically related site" criteria, which were promulgated in 30 C.F.R. § 700.11(b)(2) on July 2, 1982 (47 Fed. Reg. 33431), could be applied retroactively to determine whether operations in 1981 were eligible for the 2-acre exemption.

Paul Funk v. Office of Surface Mining Reclamation and Enforcement, 151 IBLA 245 (Dec. 17, 1999)

Surface Mining Control and Reclamation Act of 1977
Applicability
Generally

A State permittee with a 2-acre permit obtained in good faith and after the submission of accurate and complete information, and upon which he relied in carrying out mining operations, was protected from OSM citation for violations occurring prior to the date of the OSM reversal of the 2-acre permit pursuant to 30 C.F.R. § 700.11(c).

Paul Funk v. Office of Surface Mining Reclamation and Enforcement, 151 IBLA 245 (Dec. 17, 1999)

Surface Mining Control and Reclamation Act of 1977
Applicability
Generally

The use of fill material from sources external to a mine site for reclamation of the mine site constitutes a "surface mining and reclamation activity" subject to the Surface Mining Control and Reclamation Act of 1977 and its implementing regulations.

Pacific Coast Coal Company v. Office of Surface Mining Reclamation and Enforcement, 158 IBLA 115 (Jan. 6, 2003)

Surface Mining Control and Reclamation Act of 1977
Applicability
Initial Regulatory Program

OSM properly terminates its jurisdiction, under the Surface Mining Control and Reclamation Act of 1977, *as amended*, 30 U.S.C. §§ 1201-1328 (2000), over a surface coal mining and reclamation operation or any increment thereof on Indian lands, pursuant to 30 C.F.R. § 700.11(d)(1), once the operator has, following the cessation of mining operations, completed reclamation and otherwise fully complied with the applicable requirements of the initial program regulations, 30 C.F.R. Chapter VII, Subchapter B. Termination may occur regardless of whether the affected lands remain thereafter subject to a mining lease, that was issued by the Indian tribe to the surface coal mining

operator, pursuant to the Indian Mineral Leasing Act of 1938, *as amended*, 25 U.S.C. §§ 396a-396g (2000).

Navajo Nation, 163 IBLA 245 (Oct. 26, 2004)

Surface Mining Control and Reclamation Act of 1977
Applicant Violator System
Generally

When a lessor that owns or controls coal requires a lessee to submit the lessee's mining plan for approval or disapproval, the lessor has the authority to determine the manner in which the lessee conducts the surface coal mining operation and is presumed to control the lessee under the definition in 30 C.F.R. § 773.5(b)(6).

Kentucky Resources Council, Inc., National Wildlife Federation, 155 IBLA 354 (Sept. 28, 2001)

Surface Mining Control and Reclamation Act of 1977
Applicant Violator System
Generally

A person who controls an entity that has incurred obligations under the Surface Mining Control and reclamation Act before the time the person had control of the entity is properly linked to those obligations in the Applicant Violator System.

Leroy B. Lackey, Jr. v. Office of Surface Mining, 158 IBLA 203 (Jan. 15, 2003)

Surface Mining Control and Reclamation Act of 1977
Applicant Violator System
Generally

Under the ruling in *National Mining Ass'n v. USDI*, 177 F. 3d 1 (D.C. Cir. 1999), and regulatory amendments promulgated by the Department at 30 C.F.R. § 773.12 and 774.11(c) in response to that decision, OSM is not authorized under SMCRA to engage in permit-blocking in circumstances where there are violations by an operation that the applicant once controlled but no longer does, in the absence of evidence of a demonstrated pattern of willful violations of SMCRA of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with its provisions. An OSM decision to place a person on its AVS with a recommendation that he be denied future permits will be reversed where that person's ownership and control of the entity with unresolved violations ended prior to OSM's initiating the permit block, and where there is no evidence of a demonstrated pattern of willful violations of SMCRA.

David Ruth v. Office of Surface Mining Reclamation and Enforcement, 158 IBLA 309 (Mar. 25, 2003)

Surface Mining Control and Reclamation Act of 1977
Applicant Violator System
Ownership and Control

OSM properly declines to take enforcement action against the lessor concerning outstanding violations of the surface mining law and regulations committed by its lessee where OSM determines that the lessor of privately-owned coal did not, within the meaning of 30 C.F.R. § 773.5(b)(6) (1994), "control" its lessee, who was engaged in surface coal mining operations under a lease contract, even though the lessor retained the unilateral right to terminate the contract by reason of the lessee's violations of the surface mining law and regulations without immediate recourse by the lessee, but retained no authority to exercise control over the manner in which the lessee generally conducted its operations.

Kentucky Resources Council, National Wildlife Federation, 160 IBLA 21 (Aug. 12, 2003)

Surface Mining Control and Reclamation Act of 1977
Attorney Fees/Costs and Expenses
Generally

Section 525(e) of SMCRA, 30 U.S.C. § 1275(e) (2000), authorizes an award of "all costs and expenses (including attorney fees) as determined by the Secretary to have been reasonably incurred" for or in connection with a person's participation in an administrative proceeding under the Act. A person seeking attorney fees is not required to record in great detail how each minute of time was expended, but the general subject matter of the expenditure should be identified. A good-faith petition for costs and expenses, including attorney fees, is one which excludes excessive, redundant, or unnecessary hours. The determination of an administrative law judge to grant a petition for costs and expenses, including attorney fees, will not be disturbed on appeal absent a showing of error or abuse of discretion.

Angus E. Peyton v. Office of Surface Mining Reclamation and Enforcement, 158 IBLA 335 (Apr. 8, 2003)

Surface Mining Control and Reclamation Act of 1977
Attorney Fees/Costs and Expenses
Generally

Under 43 C.F.R. § 4.1294(b), OSM may award appropriate costs and expenses, including attorney fees, to any person, other than a permittee or his representative, who initiates or participates in any proceeding under SMCRA, and who prevails in whole or in part, achieving at least some degree of success on the merits, upon a finding that such person made a substantial contribution to a full and fair determination of the issues. Under 43 C.F.R. § 4.1295, the award includes all costs, expenses, and attorney fees reasonably incurred as a result of initiating or participating in a proceeding under the Act, as well as those reasonably incurred in seeking the award.

Angus E. Peyton v. Office of Surface Mining Reclamation and Enforcement, 158 IBLA 335 (Apr. 8, 2003)

Surface Mining Control and Reclamation Act of 1977
Attorney Fees/Costs and Expenses
Generally

Section 525(e) of SMCRA, 30 U.S.C. § 1275(e) (2000), authorizes an award of "all costs and expenses (including attorney fees) as determined by the Secretary to have

been reasonably incurred" for or in connection with a person's participation in an administrative proceeding under the Act. In section 701 of SMCRA "permit applicant" or "applicant" and "permittee" are separately defined as "a person applying for a permit," and "person holding a permit," respectively. 30 U.S.C. § 1291(16) and (18) (2000). The definition of a "person" who may qualify for costs, expenses, and attorney fees under section 701(19) of SMCRA, 30 U.S.C. § 1275(e)(2000), includes non-permittees. Accordingly, a non-permittee seeking reversal of an Applicant Violator System link applied as a result of an alleged offending relationship with a violator coal company is a person who may properly petition for an award of costs and expenses, including attorney fees, under 43 C.F.R. § 4.1294(b).

Angus E. Peyton v. Office of Surface Mining Reclamation and Enforcement, 158 IBLA 335 (Apr. 8, 2003)

Surface Mining Control and Reclamation Act of 1977
Attorney Fees/Costs and Expenses
Generally

A proceeding to review a Notice of Violation under section 525(a) of the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1275(a), is an adversary adjudication under the Equal Access to Justice Act, 5 U.S.C. § 504(a)(1).

Pacific Coast Coal Company v. OSM, 164 IBLA 52 (Feb. 25, 2005)

Surface Mining Control and Reclamation Act
Attorney Fees/Costs and Expenses
Generally

A person who holds a permit under the Surface Mining Control and Reclamation Act and who prevails in a proceeding to review issuance of a notice of violation may apply either for fees and other expenses under the Equal Access to Justice Act, 5 U.S.C. § 504(a), or for costs and expenses, including attorney fees, under the Surface Mining Act, 30 U.S.C. § 1275(e).

Pacific Coast Coal Company v. OSM, 164 IBLA 52 (Feb. 25, 2005)

Surface Mining Control and Reclamation Act of 1977
Attorney Fees/Costs and Expenses
Generally

A petition for an award of costs and expenses, including attorney fees, filed pursuant to sec. 525(e) of the Surface Mining Control and Reclamation Act of 1977, will be granted where petitioner establishes his entitlement to an award by showing a causal nexus between his administrative appeal of OSM's determination that his name be placed in the AVS with a recommendation that he be denied future permits and a decision issued by an administrative law judge granting temporary and permanent relief and by the Interior Board of Land Appeals reversing OSM's decision.

David Ruth, 164 IBLA 253 (Jan. 6, 2005)

Surface Mining Control and Reclamation Act of 1977
Attorney Fees/Costs and Expenses
Generally

Under 43 C.F.R. § 4.1294, OSM may award appropriate costs and expenses, including attorney fees, to any person who participates in any proceeding under SMCRA and achieves some degree of success on the merits, upon a finding that such person made a substantial contribution to a full and fair determination of the issues. An intervenor claiming costs and expenses based upon its challenge to an application to review an NOV must make a substantial contribution which is separate and distinct from OSM's. A petition for an award will be denied where the record does not show that the petitioner made a substantial contribution to the full and fair determination of the issues or that it achieved some degree of success on the merits.

Citizens Coal Council, 168 IBLA 220 (Mar. 20, 2006)

Surface Mining Control and Reclamation Act of 1977
Attorney Fees/Costs and Expenses
Final Order

An order granting an Office of Surface Mining motion to remand an appeal of a decision on informal review denying a citizen complaint is a "final order" under 43 C.F.R. § 4.1290(a)(2).

West Virginia Highlands Conservancy, National Wildlife Federation, 155 IBLA 252 (July 25, 2001)

Surface Mining Control and Reclamation Act of 1977
Attorney Fees/Costs and Expenses
Standards for Award

Where a petitioner seeking attorney fees achieves substantial success on the merits of his claim, the fee award properly includes all time reasonably expended on the litigation including presentation of an alternative ground for success arising from the same facts and involving a related legal theory, even though the alternative argument was rejected.

David Ruth, 164 IBLA 253 (Jan. 6, 2005)

Surface Mining Control and Reclamation Act of 1977
Attorney Fees/Costs and Expenses
Standards for Award

An award of attorney fees, pursuant to section 525(e) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1275(e) (1994), and its implementing regulations, 43 C.F.R. §§ 4.1290 to 4.1296, is guided by the number of hours reasonably expended in prosecuting a citizen's complaint and request for informal review

before OSM and an appeal to the Board, all of which resulted in favorable action by OSM, as well as time spent in seeking the award. A fee award is also guided by the reasonable hourly rate for the work of the attorneys who prosecuted these actions.

Kentucky Resources Council, Inc., et al. v. Office of Surface Mining Reclamation and Enforcement, 151 IBLA 324 (Jan. 18, 2000)

Surface Mining Control and Reclamation Act of 1977
Attorney Fees/Costs and Expenses
Standards for Award

When a petitioner seeking attorney fees achieves substantial success on the merits of his claim, the fee award properly includes all time reasonably expended on the litigation including presentation of an alternative ground for success arising from the same facts and involving a related legal theory even though the alternative argument was rejected.

Kentucky Resources Council, Inc., et al. v. Office of Surface Mining Reclamation and Enforcement, 151 IBLA 324 (Jan. 18, 2000)

Surface Mining Control and Reclamation Act of 1977
Attorney Fees/Costs and Expenses
Standards for Award

A petition for an award of costs and expenses, including attorney fees, under 30 U.S.C. § 1275(e) (1994), and its implementing regulations, 43 C.F.R. §§ 1290-1296, will be denied where the petitioners fail to establish their entitlement to an award by showing a causal nexus between their formal appeal of OSM's determination that a Federal court injunction barred the agency from taking action on their citizen's complaint and the reclamation agreement reached by the State and an affiliate of the coal company named in the citizen's complaint which provided the ultimate relief sought in the complaint.

West Virginia Highlands Conservancy, et al., 152 IBLA 66 (Mar. 17, 2000)

Surface Mining Control and Reclamation Act of 1977
Attorney Fees/Costs and Expenses
Standards for Award

An award of attorney fees, pursuant to section 525(e) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1275(e) (1994), and its implementing regulations, 43 C.F.R. §§ 4.1290 to 4.1296, is guided by the number of hours reasonably expended in prosecuting a citizen's complaint and request for informal review before OSM and an appeal to the Board, all of which resulted in favorable action by OSM, as well as time spent in seeking the award. A fee award is also guided by the reasonable hourly rate for the work of the attorneys who prosecuted those actions.

National Wildlife Federation, Citizens' Coal Council, West Virginia Highlands Conservancy, 152 IBLA 352 (June 27, 2000)

Surface Mining Control and Reclamation Act of 1977
Attorney Fees/Costs and Expenses
Standards for Award

Where a petitioner seeking attorney fees achieves substantial success on the merits of his claim, the fee award properly includes all time reasonably expended on the litigation including presentation of an alternative ground for success arising from the same facts and involving a related legal theory even though the alternative argument was rejected.

National Wildlife Federation, Citizens' Coal Council, West Virginia Highlands Conservancy, 152 IBLA 352 (June 27, 2000)

Surface Mining Control and Reclamation Act of 1977
Attorney Fees/Costs and Expenses
Standards for Award

Where an award of attorney fees is sought from OSM under 30 U.S.C. § 1275(e) (1994), attorney fees must be computed at historic rates, *i.e.*, the rates in effect when the services were rendered, without any adjustment to compensate for delay in payment. Where, however, attorney fees are sought from a party other than OSM under 30 U.S.C. § 1275(e) (1994), use of current attorney rates may be appropriate to compensate the successful party for a delay in payment.

Wyoming Outdoor Council, 155 IBLA 220 (July 18, 2001)

Surface Mining Control and Reclamation Act of 1977
Attorney Fees/Costs and Expenses
Standards for Award

Where an award of attorney fees is sought for services performed by in-house counsel for an organization which is only partially involved in litigation, the award will be limited to the actual costs involved (*i.e.*, salary plus overhead), unless the monies awarded will be placed in a fund maintained for the purpose of supporting litigation. In the latter case, the reasonable value of the attorney's work will be measured by the market value of the services performed.

Wyoming Outdoor Council, 155 IBLA 220 (July 18, 2001)

Surface Mining Control and Reclamation Act of 1977
Attorney Fees/Costs and Expenses
Standards for Award

Under the appropriate circumstances, in-house counsel employed by a successful participant in an adversary proceeding brought under SMCRA may be eligible for an award of attorney fees under § 525(e) of SMCRA, 30 U.S.C. § 1275(e) (1994).

Wyoming Outdoor Council, 155 IBLA 220 (July 18, 2001)

Surface Mining Control and Reclamation Act of 1977
Attorney Fees/Costs and Expenses
Standards for Award

A petition for an award of costs and expenses, including attorney fees, filed pursuant to 43 C.F.R. § 4.1298(b), may be granted when there is a showing that petitioner prevails in whole or part, achieving at least some degree of success on the merits. If a petitioner fails to demonstrate some degree of success on the merits, the petition will properly be denied.

West Virginia Highlands Conservancy, National Wildlife Federation, 155 IBLA 252 (July 25, 2001)

Surface Mining Control and Reclamation Act of 1977
Attorneys' Fees/Costs and Expenses
Standards for Award

Sec. 525(e) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1275(e) (2000), authorizes the award of attorneys' fees "as determined by the Secretary to have been reasonably incurred" for or in connection with a person's participation in an administrative proceeding under the Act.

Larosa Fuel Company, Inc. v. Office of Surface Mining Reclamation and Enforcement, 159 IBLA 203 (June 9, 2003)

Surface Mining Control and Reclamation Act of 1977
Attorneys' Fees/Costs and Expenses
Standards for Award

When the regulatory authority terminates jurisdiction over an initial program permitted site in accordance with 30 C.F.R. § 700.11(d), that site is no longer considered a surface coal mining and reclamation operation, and, absent reassertion of jurisdiction, which would necessarily require a proper finding under 30 C.F.R. § 700.11(d)(2), the operator of that site would not be considered a "permittee," and would not be eligible for an award of costs and expenses, including attorneys' fee, as a permittee under 43 C.F.R. § 4.1294(c).

Larosa Fuel Company, Inc. v. Office of Surface Mining Reclamation and Enforcement, 159 IBLA 203 (June 9, 2003)

Surface Mining Control and Reclamation Act of 1977
Attorneys' Fees/Costs and Expenses
Standards for Award

Under 43 C.F.R. § 4.1294(b), a person who initiates or participates in a proceeding under the Surface Mining Control and Reclamation Act of 1977 may be eligible for an award of costs and expenses, including attorneys' fees, from OSM where that person prevails in whole or in part, achieving at least some degree of success on the merits. However, to be entitled to an award the regulation requires that the record show that the person made a substantial contribution to a full and fair determination of the issues.

Larosa Fuel Company, Inc. v. Office of Surface Mining Reclamation and Enforcement, 159 IBLA 203 (June 9, 2003)

Surface Mining Control and Reclamation Act of 1977
Attorneys' Fees/Costs and Expenses
Standards for Award

Under 43 C.F.R. § 4.1294(b), the phrase "any person, other than a permittee or his representative," may, in the proper circumstances, include a member of the coal mining industry, who is not the permittee in the proceeding for which an award of costs and expenses, including attorneys' fees, is sought.

Larosa Fuel Company, Inc. v. Office of Surface Mining Reclamation and Enforcement, 159 IBLA 203 (June 9, 2003)

Surface Mining Control and Reclamation Act of 1977
Attorney Fees/Costs and Expenses
Standards for Award

Where a petitioner seeking attorney fees achieves substantial success on the merits of his claim, the fee award properly includes all time reasonably expended on the litigation including presentation of an alternative ground for success arising from the same facts and involving a related legal theory, even though the alternative argument was rejected.

David Ruth, 164 IBLA 253 (Jan. 6, 2005)

Surface Mining Control and Reclamation Act of 1977
Attorneys' Fees/Costs and Expenses
Substantial Contribution

Under 43 C.F.R. § 4.1294(b), a person who initiates or participates in a proceeding under the Surface Mining Control and Reclamation Act of 1977 may be eligible for an award of costs and expenses, including attorneys' fees, from OSM where that person prevails in whole or in part, achieving at least some degree of success on the merits. However, to be entitled to an award the regulation requires that the record show that the person made a substantial contribution to a full and fair determination of the issues.

Larosa Fuel Company, Inc. V. Office of Surface Mining Reclamation and Enforcement, 159 IBLA 203 (June 9, 2003)

Surface Mining Control and Reclamation Act of 1977
Backfilling and Grading Requirements
Generally

An administrative law judge's decision vacating as premature a violation citing the operator for failure to eliminate spoil piles, for failure to return spoil to the mined-out surface area, failure to eliminate depressions, highwalls, and the disturbed area above highwall as required by 30 C.F.R. § 817.102(a)(2) and (b) and 30 C.F.R. § 817.107 (c), will be affirmed on appeal where the OSM enforcement of the regulatory backfilling and grading requirements was unreasonable and premature under circumstances of the case. Where the applicable regulation provided a 5-year period for vegetative success, where the approximate original contour had been achieved, and where the operator had not sought backfilling and grading Phase 1 bond release and the permit was undergoing active reclamation, issuance of NOV between 3 and 6 months after the initial backfilling and grading, before commencement of the next growing season after backfilling and grading, was unreasonable and premature.

Southern Appalachian Mining Co. v. Office of Surface Mining Reclamation and Enforcement, 153 IBLA 312 (Sept. 29, 2000)

Surface Mining Control and Reclamation Act of 1977
Backfilling and Grading Requirements
Generally

Where disposal on a mine site of clean fill from off-site sources is not authorized by the permit then in effect, such disposal constitutes a violation. However, where the permit is ambiguous as to whether on-site disposal of coal processing waste stockpiled at a coal processing plant was authorized, the ambiguity will be resolved in favor of the permittee.

Pacific Coast Coal Company v. Office of Surface Mining Reclamation and Enforcement, 158 IBLA 115 (Jan. 6, 2003)

Surface Mining Control and Reclamation Act of 1977
Backfilling and Grading Requirements
Generally

The use of fill material from sources external to a mine site for reclamation of the mine site constitutes a "surface mining and reclamation activity" subject to the Surface Mining Control and Reclamation Act of 1977 and its implementing regulations.

Pacific Coast Coal Company v. Office of Surface Mining Reclamation and Enforcement, 158 IBLA 115 (Jan. 6, 2003)

Surface Mining Control and Reclamation Act of 1977
Backfilling and Grading Requirements
Generally

A permittee is required to strictly adhere to the specific terms of the authorization set out in its approved permit. The Office of Surface Mining may properly approve permit modifications to ensure that fill material directly or incidentally utilized in mine reclamation meets applicable statutory and regulatory environmental standards and does not endanger the public health and safety, such as by restricting the sources of fill material that may be disposed on a site. Where a permittee places fill material from sites that are not approved in its permit on its mine site, a violation has occurred.

Pacific Coast Coal Company v. Office of Surface Mining Reclamation and Enforcement, 158 IBLA 115 (Jan. 6, 2003)

Surface Mining Control and Reclamation Act of 1977
Bonds
Generally

The forfeiture of a bond does not provide a sufficient basis for OSM to decline to issue a 10-day notice to the State when a citizen has provided reason to believe that violations continue at a minesite.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Bonds
Generally

Because a bond can be released only when all reclamation requirements are fully met, an allegation that a company with a released bond failed to retain an NPDES permit would not, standing alone, constitute "reason to believe" a violation exists.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Bonds
Release of

An operator's assertions of OSM's lack of jurisdiction over a portion of its mine site based on permit revisions approved by the state regulatory authority will be rejected where the record establishes the existence of violations of regulations governing topsoil, revegetation, and the 1 to 3 static safety factor on the mine site, which resulted from use of the mine site as a dump area for spoil from a road reconstruction project.

Lonesome Pine Energy Co., Inc. v. OSM (On Reconsideration), 156 IBLA 182 (Jan. 25, 2002)

Surface Mining Control and Reclamation Act of 1977
Bonds
Release of

Under 30 C.F.R. § 700.11(d)(2), the Office of Surface Mining Reclamation and Enforcement properly reasserts jurisdiction to issue a Notice of Violation to a permittee after the state regulatory authority terminated jurisdiction over the mine site, pursuant to a written determination under 30 C.F.R. § 700.11(d)(1), when the record shows that the state regulatory authority's written determination was based on a misrepresentation of a material fact because all requirements imposed under Subchapter B, Chapter VII, Title 30, of the Code of Federal Regulations had not been successfully completed.

Cheyenne Sales Co., Inc. v. Office of Surface Mining Reclamation and Enforcement, West Virginia Highlands Conservancy, Inc., Intervenor, 163 IBLA 30 (Sept. 2, 2004)

Surface Mining Control and Reclamation Act of 1977
Citizen's Complaints

Upon review of action taken by the state regulatory authority in response to a 10-day notice, OSM is obligated to conduct an inspection unless the state takes appropriate action to cause the violation to be corrected or shows good cause for failure to do so. "Good cause for failure to act" includes a finding that the alleged violation does not exist and OSM's standard on review of such a finding is whether the state regulatory authority's action or response to the 10-day notice is arbitrary, capricious, or an abuse of discretion under the state program.

Jim & Ann Tatum, 151 IBLA 286 (Jan. 5, 2000)

Surface Mining Control and Reclamation Act of 1977
Citizen's Complaints

When the record on appeal establishes that the state regulatory authority's response to a 10-day notice of a state regulatory program subsidence violation by an underground coal mining operation was arbitrary, capricious, and an abuse of discretion, the OSM decision upholding the state regulatory authority's action will be vacated and the case remanded for appropriate action.

Jim & Ann Tatum, 151 IBLA 286 (Jan. 5, 2000)

Surface Mining Control and Reclamation Act of 1977
Citizen's Complaints

A decision in response to a request for informal review of a decision on a citizen's complaint, conducted pursuant to 30 C.F.R. § 842.15 and 43 C.F.R. § 4.1280, will be affirmed on appeal where the Appellant fails to offer evidence to demonstrate error in the decision which was based on an investigation which resulted in preparation of a technical report containing opinions of Departmental experts finding that the alleged damage did not result from surface impacts of underground mining.

William Phillips, 152 IBLA 47 (Mar. 7, 2000)

Surface Mining Control and Reclamation Act of 1977
Citizen's Complaints

A petition for an award of costs and expenses, including attorney fees, under 30 U.S.C. § 1275(e) (1994), and its implementing regulations, 43 C.F.R. §§ 1290-1296, will be denied where the petitioners fail to establish their entitlement to an award by showing a causal nexus between their formal appeal of OSM's determination that a Federal court injunction barred the agency from taking action on their citizen's complaint and the reclamation agreement reached by the State and an affiliate of the coal company named in the citizen's complaint which provided the ultimate relief sought in the complaint.

West Virginia Highlands Conservancy, et al., 152 IBLA 66 (Mar. 17, 2000)

Surface Mining Control and Reclamation Act of 1977
Citizen's Complaint

Under 30 C.F.R. § 842.11(b)(1)(i), OSM has "reason to believe" that a violation exists if the facts alleged by an informant in a citizen's complaint would, if true, constitute a violation of SMCRA, Departmental regulations at 30 C.F.R. Ch. VII, the applicable State program, or "any condition of a permit or exploration approval." Once a citizen's complaint gives OSM reason to believe that a violation has occurred, OSM's obligation is to respond to the citizen's complaint by issuing a 10-day notice to the State. Neither OSM's perception of the "complexity" of the issues or the desire to conduct "policy review and outreach" justifies a refusal to address the site-specific allegations of violations in a citizen's complaint.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Citizen's Complaint

The mere fact that individuals have self-reported data showing noncompliance with effluent limitations is not "reason to believe" a violation exists, because under the self-reporting regulations at 30 C.F.R. §§ 816.41(e)(2) and 817.41(e)(2), the company bears an obligation to correct the effluent discharge to meet its hydrologic plan. It is not until this obligation to correct is ignored that OSM has "reason to believe" that a violation exists. But where a citizen provides evidence of consistent and repeated monthly reports from the same discharge point, OSM has "reason to believe" that a violation exists and is required to issue a 10-day notice to the State agency.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Citizen's Complaint

Failure to obtain an NPDES permit from the State or Federal authority responsible for implementation of the Clean Water Act is an enforceable violation of Federal and State SMCRA program rules, and a citizen's complaint alleging that a permittee is operating a point source discharge without an NPDES permit would constitute "reason to believe" a violation of those rules exists.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Citizen's Complaint

The forfeiture of a bond does not provide a sufficient basis for OSM to decline to issue a 10-day notice to the State when a citizen has provided reason to believe that violations continue at a minesite.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Citizen's Complaint

Because a bond can be released only when all reclamation requirements are fully met, an allegation that a company with a released bond failed to retain an NPDES permit would not, standing alone, constitute "reason to believe" a violation exists.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Citizen's Complaint

When a citizen files a complaint that a State regulatory authority as a general matter is failing to carry out the "complete inspection" requirements of its program by failing to inspect every outfall for illegal discharges, that particular grievance is cognizable under the Federal takeover regulations at 30 C.F.R. § 733.12 and would thus be beyond this Board's jurisdiction.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Citizen's Complaint

When a surface coal mining operation owned or controlled by an applicant for a permit is currently in violation of its permit, the surface mining laws, or other laws (including those pertaining to air or water environmental protection), section 510(c) of SMCRA dictates that the requested permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected. Violations of the Clean Water Act justify blocking issuance of new permits.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Citizen's Complaint

When a citizen provides OSM with data from a State NPDES authority that a permittee is violating the Clean Water Act, OSM may not decline to issue a 10-day notice because of unspecified "doubts" about the data. Under 30 C.F.R. § 842.11(b), OSM has "reason to believe" a violation is occurring where the data, if true, would constitute a violation, and a 10-day notice must be issued to the State with respect to permittees alleged to be in violation. However, when a citizen files a complaint that a State regulatory authority as a general matter is failing to obtain permit blocks against operators who are in violation of the Clean Water Act, that particular grievance is cognizable under the Federal takeover regulations at 30 C.F.R. § 733.12.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Citizen's Complaint

Section 521(a) of SMCRA, 30 U.S.C. § 1271(a) (1994), states that if "the Secretary has reason to believe that any person is in violation of any requirement of this chapter," then enforcement will be taken according to its further provisions, and 30 C.F.R. § 700.5 defines "person" as including "any agency, unit or instrumentality of Federal, State or local government." Where a citizen alleges that acid mine drainage is occurring at sites where the State has forfeited a permittee's bond, OSM's regulations provide no basis for excluding the allegation from the process established in 30 C.F.R. § 842.11(b). However, OSM cannot treat the State as a permittee.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Citizen's Complaints

An appeal from an OSM decision closing its reinvestigation of a citizen complaint relating to methane contamination because the complainant would not authorize OSM to enter his property for the purposes of completing that reinvestigation will be affirmed when the appellant fails to establish any error in OSM's decision.

Moses Tennant, 158 IBLA 293 (Mar. 11, 2003)

Surface Mining Control and Reclamation Act of 1977
Citizen's Complaints

Under 43 C.F.R. § 4.1281, any person who is or may be adversely affected by a written decision of the Director of OSM or his delegate may appeal to the Board, if the decision specifically grants such right of appeal. A letter from OSM to a person who has filed a citizen complaint informing him of preliminary results of a reinvestigation of his complaint relating to methane contamination of his water supply, which does not grant the right of appeal, is not an appealable decision under 43 C.F.R. § 4.1281.

Moses Tennant, 158 IBLA 293 (Mar. 11, 2003)

Surface Mining Control and Reclamation Act of 1977
Citizen's Complaints

Upon review of action taken by the State regulatory authority in response to a Ten-Day Notice, OSM is obligated to conduct an inspection unless the State takes

appropriate action to cause the violation to be corrected or shows good cause for failure to do so. OSM's standard on review of the State's findings is whether the State regulatory authority's action or response to the notice is arbitrary, capricious, or an abuse of discretion under the State program.

Danny Crump, 163 IBLA 351 (Nov. 8, 2004)

Surface Mining Control and Reclamation Act of 1977
Citizen's Complaints

When the possible violation cited by OSM in a 10-Day Notice is the failure to comply with the terms and conditions of the permit requiring mining in contiguous pits through a particular tract of land, the State regulatory authority's response in issuing a notice of violation will be considered to be arbitrary, capricious, or an abuse of discretion, when the notice describes the violation as a failure to mine in accordance with the approved mining plan, and the record indicates that allowing mining to continue west of the tract does not conform to the approved plan, but the abatement action in the notice is only to prohibit mining by auxiliary methods to the north and east of the tract.

Danny Crump, 163 IBLA 351 (Nov. 8, 2004)

Surface Mining Control and Reclamation Act of 1977
Citizen's Complaints

Under 30 U.S.C. § 1271(a)(1) (2000), when a citizen's complaint gives OSM a reason to believe that any person is in violation of any requirement of the Surface Mining Control and Reclamation Act or any permit condition required by that Act, OSM must notify the State regulatory authority. If the State regulatory authority fails within 10 days after notification to take appropriate action to cause the violation to be corrected or to show good cause for such failure and transmit notification of its action, OSM must immediately order a Federal inspection of the surface coal mining operation at which the alleged violation is occurring.

West Virginia Highlands Conservancy, 165 IBLA 395 (May 13, 2005)

Surface Mining Control and Reclamation Act of 1977
Citizen's Complaints

Under 30 C.F.R. § 842.11(b)(1)(ii)(B)(*4*)(*iii*), the State regulatory authority's lack of jurisdiction over an alleged violation or operation under the State program constitutes good cause for not taking enforcement action. When a State responds to a 10-day notice by stating that its release of a bond for an initial program permit prior to the adoption of 30 C.F.R. § 700.11(d) in 1988 terminated its jurisdiction over the operation and OSM desires to challenge that termination, OSM must establish, consistent with 30 C.F.R. § 700.11(d)(2), that the written determination leading to the termination of jurisdiction was based on fraud, collusion, or misrepresentation of a material fact.

West Virginia Highlands Conservancy, 165 IBLA 395 (May 13, 2005)

Surface Mining Control and Reclamation Act of 1977
Citizen's Complaint

In a jurisdiction where the State is the primary regulatory authority, OSM is required in its oversight capacity to con-duct an inspection under 30 C.F.R. § 842.11(b)(1)(ii)(B)(*1*) whenever it has reason to believe as a result of a citizen's complaint that a permittee is in violation of a State program and the State regulatory authority has failed to take appropriate action in response to a ten-day notice to cause the violation to be corrected or to show good cause for such failure.

West Virginia Highlands Conservancy, Inc., 166 IBLA 39 (June 9, 2005)

Surface Mining Control and Reclamation Act of 1977
Citizen's Complaint

When a citizen's complaint does not allege a site-specific violation of the surface mining reclamation program, but rather asserts that a State is not conducting the inspections required to enforce its approved program, that complaint is cognizable under the Federal takeover regulations at 30 C.F.R. § 733.12 and must be presented to the OSM Director under that rule. It may not be presented as a "supplement" to a prior citizen's complaint to which OSM has previously responded.

West Virginia Highlands Conservancy, Inc., 166 IBLA 39 (June 9, 2005)

Surface Mining Control and Reclamation Act of 1977
Citizen's Complaints

Where OSM declines to take enforcement action in response to a citizen's complaint because it finds that the State's response to the Ten-Day Notice (TDN) was appropriate, any party appealing OSM's decision must establish, by a preponderance of the evidence, that the State's regulatory action or response to the TDN was arbitrary, capricious, or an abuse of discretion.

John L. Stenger, 170 IBLA 206 (Sept. 25, 2006)

Surface Mining Control and Reclamation Act of 1977
Citizen's Complaints

Where OSM has not complied with the SMCRA requirement to inform the State regulatory authority of specific aspects of a citizen complaint and has failed to make an independent investigation into each allegation, the matter may be remanded to OSM with instructions to issue a 10-Day Notice (TDN) to the State on the unconsidered allegations to allow the State an opportunity to respond to the allegations in the first instance. However, the failure to notify the State in the initial TDN may be regarded as harmless where a subsequent Federal inspection revealed that the condition complained of did not exist and where issuing the TDN would not have altered subsequent regulatory analysis and conclusions.

John L. Stenger, 170 IBLA 206 (Sept. 25, 2006)

Surface Mining Control and Reclamation Act of 1977
Civil Penalties
Discretionary Review

Under section 518 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1268 (1994), any party charged with a civil penalty may file a petition for discretionary review of a proposed assessment of that penalty. Under 43 C.F.R. § 4.1155 OSM has the burden of going forward to establish a prima facie case that a violation of pertinent requirements occurred. That burden in a challenge to a failure to abate cessation order involves providing evidence that conditions supporting the issuance of an imminent harm cessation order existed and that those facts remained unabated, justifying the existence of a failure to abate cessation order.

Paul Funk v. Office of Surface Mining Reclamation and Enforcement, 151 IBLA 245 (Dec. 17, 1999)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

Upon review of action taken by the state regulatory authority in response to a 10-day notice, OSM is obligated to conduct an inspection unless the state takes appropriate action to cause the violation to be corrected or shows good cause for failure to do so. "Good cause for failure to act" includes a finding that the alleged violation does not exist and OSM's standard on review of such a finding is whether the state regulatory authority's action or response to the 10-day notice is arbitrary, capricious, or an abuse of discretion under the state program.

Jim & Ann Tatum, 151 IBLA 286 (Jan. 5, 2000)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

Assuming actions by a surface coal mining operation result in the diminution of a person's water supply, the operator is responsible for replacement of that water supply, in accordance with section 720(a)(2) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1309a(a)(2) (1994), only if that water supply constitutes a "drinking, domestic, or residential water supply."

Jim & Ann Tatum, 151 IBLA 286 (Jan. 5, 2000)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

Under 30 C.F.R. § 842.11(b)(1)(i), OSM has "reason to believe" that a violation exists if the facts alleged by an informant in a citizen's complaint would, if true, constitute a violation of SMCRA, Departmental regulations at 30 C.F.R. ch. VII, the applicable State program, or "any condition of a permit or exploration approval." Once a citizen's complaint gives OSM reason to believe that a violation has occurred, OSM's obligation is to respond to the citizen's complaint by issuing a 10-day notice to the State. Neither OSM's perception of the "complexity" of the issues or the desire to conduct "policy review and outreach" justifies a refusal to address the site-specific allegations of violations in a citizen's complaint.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

The mere fact that individuals have self-reported data showing noncompliance with effluent limitations is not "reason to believe" a violation exists, because under the self-reporting regulations at 30 C.F.R. §§ 816.41(e)(2) and 817.41(e)(2), the company bears an obligation to correct the effluent discharge to meet its hydrologic plan. It is not until this obligation to correct is ignored that OSM has "reason to believe" that a violation exists. But where a citizen provides evidence of consistent and repeated monthly reports from the same discharge point, OSM has "reason to believe" that a violation exists and is required to issue a 10-day notice to the State agency.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

Failure to obtain an NPDES permit from the State or Federal authority responsible for implementation of the Clean Water Act is an enforceable violation of Federal and State SMCRA program rules, and a citizen's complaint alleging that a permittee is operating a point source discharge without an NPDES permit would constitute "reason to believe" a violation of those rules exists.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

The forfeiture of a bond does not provide a sufficient basis for OSM to decline to issue a 10-day notice to the State when a citizen has provided reason to believe that violations continue at a minesite.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

Because a bond can be released only when all reclamation requirements are fully met, an allegation that a company with a released bond failed to retain an NPDES permit would not, standing alone, constitute "reason to believe" a violation exists.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

When a citizen files a complaint that a State regulatory authority as a general matter is failing to carry out the "complete inspection" requirements of its program by failing to inspect every outfall for illegal discharges, that particular grievance is cognizable under the Federal takeover regulations at 30 C.F.R. § 733.12 and would thus be beyond this Board's jurisdiction.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

When a surface coal mining operation owned or controlled by an applicant for a permit is currently in violation of its permit, the surface mining laws, or other laws (including those pertaining to air or water environmental protection), section 510(c) of SMCRA dictates that the requested permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected. Violations of the Clean Water Act justify blocking issuance of new permits.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

When a citizen provides OSM with data from a State NPDES authority that a permittee is violating the Clean Water Act, OSM may not decline to issue a 10-day notice because of unspecified "doubts" about the data. Under 30 C.F.R. § 842.11(b), OSM has "reason to believe" a violation is occurring where the data, if true, would constitute a violation, and a 10-day notice must be issued to the State with respect to permittees alleged to be in violation. However, when a citizen files a complaint that a State regulatory authority as a general matter is failing to obtain permit blocks against operators who are in violation of the Clean Water Act, that particular grievance is cognizable under the Federal takeover regulations at 30 C.F.R. § 733.12.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

Section 521(a) of SMCRA, 30 U.S.C. § 1271(a) (1994), states that if "the Secretary has reason to believe that any person is in violation of any requirement of this chapter," then enforcement will be taken according to its further provisions, and 30 C.F.R. § 700.5 defines "person" as including "any agency, unit or instrumentality of Federal, State or local government." Where a citizen alleges that acid mine drainage is occurring at sites where the State has forfeited a permittee's bond, OSM's regulations provide no basis for excluding the allegation from the process established in 30 C.F.R. § 842.11(b). However, OSM cannot treat the State as a permittee.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

An operator's assertions of OSM's lack of jurisdiction over a portion of its mine site based on permit revisions approved by the state regulatory authority will be rejected where the record establishes the existence of violations of regulations governing topsoil, revegetation, and the 1 to 3 static safety factor on the mine site, which resulted from use of the mine site as a dump area for spoil from a road reconstruction project.

Lonesome Pine Energy Co., Inc. v. OSM (On Reconsideration), 156 IBLA 182 (Jan. 25, 2002)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

Under 30 C.F.R. § 700.11(d)(2), the Office of Surface Mining Reclamation and Enforcement properly reasserts jurisdiction to issue a Notice of Violation to a permittee after the state regulatory authority terminated jurisdiction over the mine site, pursuant to a written determination under 30 C.F.R. § 700.11(d)(1), when the record shows that the state regulatory authority's written determination was based on a misrepresentation of a material fact because all requirements imposed under Subchapter B, Chapter VII, Title 30, of the Code of Federal Regulations had not been successfully completed.

Cheyenne Sales Co., Inc. v. Office of Surface Mining Reclamation and Enforcement, West Virginia Highlands Conservancy, Inc., Intervenor, 163 IBLA 30 (Sept. 2, 2004)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

Upon review of action taken by the State regulatory authority in response to a Ten-Day Notice, OSM is obligated to conduct an inspection unless the State takes appropriate action to cause the violation to be corrected or shows good cause for failure to do so. OSM's standard on review of the State's findings is whether the State regulatory authority's action or response to the notice is arbitrary, capricious, or an abuse of discretion under the State program.

Danny Crump, 163 IBLA 351 (Nov. 8, 2004)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

When the possible violation cited by OSM in a Ten-Day Notice is the failure to comply with the terms and conditions of the permit requiring mining in contiguous pits through a particular tract of land, the State regulatory authority's response in issuing a notice of violation will be considered to be arbitrary, capricious, or an abuse of discretion, when the notice describes the violation as a failure to mine in accordance with the approved mining plan, and the record indicates that allowing mining to continue west of the tract does not conform to the approved plan, but the abatement action in the notice is only to prohibit mining by auxiliary methods to the north and east of the tract.

Danny Crump, 163 IBLA 351 (Nov. 8, 2004)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

When, in response to a citizen's complaint, OSM has reasserted jurisdiction over a mine site following final bond release by the state regulatory authority and issued a notice of violation and a failure to abate cessation order for water being discharged from the disturbed areas of the site in excess of effluent limitations, it properly responds to a further complaint that it has not taken required alternative enforcement action under 30 C.F.R. § 845.15(b)(2) to ensure abatement by forwarding the matter to the Solicitor's Office for an injunctive relief referral to the U.S. Department of Justice, in accordance with established policy.

West Virginia Highlands Conservancy, 164 IBLA 260 (Jan. 11, 2005)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

OSM may not decline to take additional enforcement action to address alleged violations for failing to obtain a National Pollution Discharge Elimination System permit and to engage in periodic monitoring and reporting concerning water discharges from a mine site, based on the fact that those alleged violations are subsumed in previous enforcement actions citing the operator for discharging water in excess of effluent limitations.

West Virginia Highlands Conservancy, 164 IBLA 260 (Jan. 11, 2005)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

Under 30 U.S.C. § 1271(a)(1) (2000), when a citizen's complaint gives OSM a reason to believe that any person is in violation of any requirement of the Surface Mining Control and Reclamation Act or any permit condition required by that Act, OSM must notify the State regulatory authority. If the State regulatory authority fails within 10 days after notification to take appropriate action to cause the violation to be corrected or to show good cause for such failure and transmit notification of its action, OSM must immediately order a Federal inspection of the surface coal mining operation at which the alleged violation is occurring.

West Virginia Highlands Conservancy, 165 IBLA 395 (May 13, 2005)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

Under 30 C.F.R. § 842.11(b)(1)(ii)(B)(*4*)(*iii*), the State regulatory authority's lack of jurisdiction over an alleged violation or operation under the State program constitutes good cause for not taking enforcement action. When a State responds to a 10-day notice by stating that its release of a bond for an initial program permit prior to the adoption of 30 C.F.R. § 700.11(d) in 1988 terminated its jurisdiction over the operation and OSM desires to challenge that termination, OSM must establish, consistent with 30 C.F.R. § 700.11(d)(2), that the written determination leading to the termination of jurisdiction was based on fraud, collusion, or misrepresentation of a material fact.

West Virginia Highlands Conservancy, 165 IBLA 395 (May 13, 2005)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

In a jurisdiction where the State is the primary regulatory authority, OSM is required in its oversight capacity to con-duct an inspection under 30 C.F.R. § 842.11(b)(1)(ii)(B)(*1*) whenever it has reason to believe as a result of a citizen's complaint that a permittee is in violation of a State program and the State regulatory authority has failed to take appropriate action in response to a ten-day notice to cause the violation to be corrected or to show good cause for such failure.

West Virginia Highlands Conservancy, Inc., 166 IBLA 39 (June 9, 2005)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

When a citizen's complaint does not allege a site-specific violation of the surface mining reclamation program, but rather asserts that a State is not conducting the inspections required to enforce its approved program, that complaint is cognizable under the Federal takeover regulations at 30 C.F.R. § 733.12 and must be presented to the OSM Director under that rule. It may not be presented as a "supplement" to a prior citizen's complaint to which OSM has previously responded.

West Virginia Highlands Conservancy, Inc., 166 IBLA 39 (June 9, 2005)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

Where OSM declines to take enforcement action in response to a citizen's complaint because it finds that the State's response to the Ten-Day Notice (TDN) was appropriate, any party appealing OSM's decision must establish, by a preponderance of the evidence, that the State's regulatory action or response to the TDN was arbitrary, capricious, or an abuse of discretion.

John L. Stenger, 170 IBLA 206 (Sept. 25, 2006)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

OSM has authority under section 521(a) of SMCRA to enforce, on a mine-by-mine basis, any part of a State program not being enforced by that State. Where OSM has issued a 10-day notice (TDN) and the State regulatory agency has failed to take appropriate action, 30 C.F.R. § 842.11(b)(1)(ii)(B)(*1*) expressly requires OSM to immediately conduct a Federal inspection when its authorized representative has reason to believe that there exists a violation of SMCRA, 30 C.F.R. Chapter VII, the

applicable program, or any condition of a permit or an exploration approval. An operator's only vehicle to complain about issuance of a TDN is to obtain administrative review of any resulting notice of violation (NOV) or cessation order; it is free to establish in the context of such proceeding that OSM lacked authority to issue the NOV or CO by showing that the State regulatory authority took appropriate action in response to the TDN or offered good cause for its failure to do so. An applicant for review of an NOV has the burden under 43 C.F.R. § 4.1171(a) of establishing its defense and bears both the burden of going forward and the burden of persuasion on the issue of whether OSM overstepped its oversight authority; OSM is not required to affirmatively prove that it had authority to inspect under the TDN procedures.

Al Hamilton Contracting Co. v. Office of Surface Mining Reclamation and Enforcement, 172 IBLA 83 (Aug. 2, 2007)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

Where OSM had reason to believe that there was a violation of applicable effluent standards, based on site investigations undertaken immediately prior to the formal inspections leading to the issuance of notices of violation; where OSM had both issued a 10-day Notice (TDN) and advised the State enforcement agency that it had revoked its determination that the State's response to an earlier TDN was appropriate; and where the State had notified OSM that it would not provide any further response to the TDN and had otherwise not responded to OSM, OSM was authorized to conduct an inspection and initiate enforcement action, unless there was some basis to find that the State had taken appropriate action either to cause the violation to be corrected or to show cause for such failure under 30 C.F.R. § 842.11(b)(1)(ii)(B).

Al Hamilton Contracting Co. v. Office of Surface Mining Reclamation and Enforcement, 172 IBLA 83 (Aug. 2, 2007)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

Where OSM issues a 10-Day Notice citing discharges from a location not addressed in a previous enforcement action by the State, 30 C.F.R. § 842.11(b)(1)(ii)(B)(*4*)(*iv*) does not apply with respect to the State's failure to inspect discharges from that location, as there was no administrative or judicial order affecting those discharges. Where an effluent discharge has been previously investigated by the State agency and a State notice of violation has been issued; where that violation has been disallowed by a State review board on account of the State agency's failure to provide sufficient evidence in proper form that the discharge was coming from the cited permit area; where neither the State review board nor reviewing court has barred the State agency from returning to the site to address ongoing acid mine drainage violations; and where OSM cites a current discharge that is ongoing and has recently re-emerged after the operator terminated abatement measures following the decision of the State review board, OSM is not barred by 30 C.F.R. § 842.11(b)(1)(ii)(*B*)(*4*)(*iv*) from initiating Federal inspection and enforcement proceedings against that apparent violation, as the State agency was not precluded by a State administrative or judicial order from acting on the possible violation, and as the State review board's decision was not "based on the" current violation "not existing" within the meaning of the regulation, but instead on the fact that the previous violation had not been proven by sufficient evidence in sufficient form.

Al Hamilton Contracting Co. v. Office of Surface Mining Reclamation and Enforcement, 172 IBLA 83 (Aug. 2, 2007)

Surface Mining Control and Reclamation Act of 1977
Enforcement Procedures

OSM has the burden of going forward to establish a prima facie case as to the facts of the violation. A prima facie case is made when sufficient evidence is presented to establish the essential facts which, if not contradicted, will justify a finding in favor of the party presenting the case. Where there is adequate, uncontradicted evidence in the record to support an administrative law judge's findings and conclusions that OSM met its burden of proof that acid mine drainage in excess of applicable effluent limitations resulted from an operator's coal mining operation as alleged in the notices of violation and that the testimony of OSM hydrologists that the discharges resulted from operations occurring on the operator's surface mining permit area was more credible than that offered to the contrary by the operator's expert, the decision affirming the NOVs will be affirmed.

Al Hamilton Contracting Co. v. Office of Surface Mining Reclamation and Enforcement, 172 IBLA 83 (Aug. 2, 2007)

Surface Mining Control and Reclamation Act of 1977
Environmental Harm

A decision in response to a request for informal review of a decision on a citizen's complaint, conducted pursuant to 30 C.F.R. § 842.15 and 43 C.F.R. § 4.1280, will be affirmed on appeal where the Appellant fails to offer evidence to demonstrate error in the decision which was based on an investigation which resulted in preparation of a technical report containing opinions of Departmental experts finding that the alleged damage did not result from surface impacts of underground mining.

William Phillips, 152 IBLA 47 (Mar. 7, 2000)

Surface Mining Control and Reclamation Act of 1977
Evidence

OSM fails to make a prima facie case when it presents insufficient evidence to establish whether the mining operation in question was responsible for a disturbed area claimed incidental to the petitioner's mining operation or whether the disturbed area was the result of a preceding mining operation, and thus fails to establish essential facts from which it may be determined that a violation of pertinent requirements has occurred.

Paul Funk v. Office of Surface Mining Reclamation and Enforcement, 151 IBLA 245 (Dec. 17, 1999)

Surface Mining Control and Reclamation Act of 1977
Evidence

In a proceeding concerning an application for review of a notice of violation, the burden of going forward to establish a prima facie case rests with OSM. Although the ultimate burden of persuasion rests with the applicant for review, the notice of violation will be affirmed only where OSM meets its burden of establishing a prima facie case. OSM makes a prima facie case when it presents sufficient evidence to establish essential facts from which it may be determined that a violation has occurred. However, where the operator fails to meets its burden, the notice of violation will be sustained.

Lonesome Pine Energy Co., Inc. v. OSM (On Reconsideration), 156 IBLA 182 (Jan. 25, 2002)

Surface Mining Control and Reclamation Act of 1977
Evidence

An operator's assertions of OSM's lack of jurisdiction over a portion of its mine site based on permit revisions approved by the state regulatory authority will be rejected where the record establishes the existence of violations of regulations governing topsoil, revegetation, and the 1 to 3 static safety factor on the mine site, which resulted from use of the mine site as a dump area for spoil from a road reconstruction project.

Lonesome Pine Energy Co., Inc. v. OSM (On Reconsideration), 156 IBLA 182 (Jan. 25, 2002)

Surface Mining Control and Reclamation Act of 1977
Evidence

Under 30 C.F.R. § 700.11(d)(2), the Office of Surface Mining Reclamation and Enforcement properly reasserts jurisdiction to issue a Notice of Violation to a permittee after the state regulatory authority terminated jurisdiction over the mine site, pursuant to a written determination under 30 C.F.R. § 700.11(d)(1), when the record shows that the state regulatory authority's written determination was based on a misrepresentation of a material fact because all requirements imposed under Subchapter B, Chapter VII, Title 30, of the *Code of Federal Regulations* had not been successfully completed.

Cheyenne Sales Co., Inc. v. Office of Surface Mining Reclamation and Enforcement, West Virginia Highlands Conservancy, Inc., Intervenor, 163 IBLA 30 (Sept. 2, 2004)

Surface Mining Control and Reclamation Act of 1977
Exemptions
2-Acre

Under 30 C.F.R. § 700.11(b), a surface coal mining operation was not exempt from regulation under SMCRA under the "2-acre exemption" where that operation, together with any "related" operations, had an affected area of 2 acres or more. Under 30 C.F.R. § 700.11(b)(2), operations were deemed "related" if (1) they occur within 12 months of each other; (2) they are "physically related"; and (3) they are under "common control." The "physically related site" criteria, which were promulgated in 30 C.F.R. § 700.11(b)(2) on July 2, 1982 (47 Fed. Reg. 33431), could be applied retroactively to determine whether operations in 1981 were eligible for the 2-acre exemption.

Paul Funk v. Office of Surface Mining Reclamation and Enforcement, 151 IBLA 245 (Dec. 17, 1999)

Surface Mining Control and Reclamation Act of 1977
Exemptions
2-Acre

A State permittee with a 2-acre permit obtained in good faith and after the submission of accurate and complete information, and upon which he relied in carrying out mining operations, was protected from OSM citation for violations occurring prior to the date of the OSM reversal of the 2-acre permit pursuant to 30 C.F.R. § 700.11(c).

Paul Funk v. Office of Surface Mining Reclamation and Enforcement, 151 IBLA 245 (Dec. 17, 1999)

Surface Mining Control and Reclamation Act of 1977
Federal Program

An administrative law judge's decision vacating as premature a violation contained in an NOV citing an operator with failure to maintain a section of the haul road that runs through the face-up area of the mine, is properly reversed where the performance standard, 30 C.F.R. § 817.150, applies to the haul road identified on the approved permit map and performance standards were required to be met on a continuous basis pursuant to 30 C.F.R. § 817.150(b).

Southern Appalachian Mining Co. v. Office of Surface Mining Reclamation and Enforcement, 153 IBLA 312 (Sept. 29, 2000)

Surface Mining Control and Reclamation Act of 1977
Federal Program

An administrative law judge's decision vacating as premature a violation citing the operator for failure to eliminate spoil piles, for failure to return spoil to the mined-out surface area, failure to eliminate depressions, highwalls, and the disturbed area above highwall as required by 30 C.F.R. § 817.102(a)(2) and (b) and 30 C.F.R. § 817.107 (c), will be affirmed on appeal where the OSM enforcement of the regulatory backfilling and grading requirements was unreasonable and premature under circumstances of the case. Where the applicable regulation provided a 5-year period for vegetative success, where the approximate original contour had been achieved, and where the operator had not sought backfilling and grading Phase 1 bond release and the permit was undergoing active reclamation, issuance of NOV between 3 and 6 months after the initial backfilling and grading, before commencement of the next growing season after backfilling and grading, was unreasonable and premature.

Southern Appalachian Mining Co. v. Office of Surface Mining Reclamation and Enforcement, 153 IBLA 312 (Sept. 29, 2000)

Surface Mining Control and Reclamation Act of 1977
Federal Program

An administrative law judge's decision vacating as premature a violation citing the operator for failing to redistribute all topsoil as required by 30 C.F.R. § 817.22(d), will be reversed on appeal where the record demonstrates that the topsoil pile existed on the permit on the date of inspection, where the operator's approved permit required topsoil to be redistributed to approximately 12 inches in thickness, and where there was no showing that redistributed topsoil approximated 12 inches in thickness as required by approved permit.

Southern Appalachian Mining Co. v. Office of Surface Mining Reclamation and Enforcement, 153 IBLA 312 (Sept. 29, 2000)

Surface Mining Control and Reclamation Act of 1977
Federal Program

An administrative law judge's decision vacating as premature a violation citing the operator for failure to stabilize surface areas and allow rills and gullies to form in

violation of 30 C.F.R. § 817.95 (a), (b) will be affirmed where issuance of the violation occurred prior to Phase I bond release, and where OSM failed to establish a prima facie case of violation of 30 C.F.R. § 817.95(a), (b) because it failed to show that rills and/or gullies are unstable or that they interfere with post-mining land use or the reestablishment of the vegetative cover or cause or contribute to a violation of water quality standards for receiving streams.

Southern Appalachian Mining Co. v. Office of Surface Mining Reclamation and Enforcement, 153 IBLA 312 (Sept. 29, 2000)

Surface Mining Control and Reclamation Act of 1977
Federal Program

An administrative law judge's decision vacating as premature a violation citing the operator with failure to mark a topsoil pile with appropriate signage, will be reversed where 30 C.F.R. § 817.11(a)(1), (b), and (f) require "topsoil or other vegetation-supporting material" to be marked and maintained with appropriate signage "during all activities to which they pertain."

Southern Appalachian Mining Co. v. Office of Surface Mining Reclamation and Enforcement, 153 IBLA 312 (Sept. 29, 2000)

Surface Mining Control and Reclamation Act of 1977
Hearings
Procedure

Any person having an interest which is or may be adversely affected by a notice or order or by any modification, vacation, or termination of such notice or order, may petition for review of the order within thirty days of receipt or within thirty days of its modification, vacation, or termination. When the petitioner 1) had a statutory right to initiate the proceeding in which he or she wishes to intervene, or 2) has an interest which is or may be adversely affected by the outcome of the proceeding, the person has the right to intervene.

Citizens Coal Council, 155 IBLA 331 (Sept. 6, 2001)

Surface Mining Control and Reclamation Act of 1977
Hearings
Procedure

An organization with a member whose interests could be adversely affected by the outcome of a proceeding to review a notice of violation issued under the Surface Mining Act is entitled to intervene in the proceeding.

Citizens Coal Council, 155 IBLA 331 (Sept. 6, 2001)

Surface Mining Control and Reclamation Act of 1977
Hydrologic System Protection

When, in response to a citizen's complaint, OSM has reasserted jurisdiction over a mine site following final bond release by the state regulatory authority and issued a notice of violation and a failure to abate cessation order for water being discharged from the disturbed areas of the site in excess of effluent limitations, it properly responds to a further complaint that it has not taken required alternative enforcement action under 30 C.F.R. § 845.15(b)(2) to ensure abatement by forwarding the matter to the Solicitor's Office for an injunctive relief referral to the U.S. Department of Justice, in accordance with established policy.

West Virginia Highlands Conservancy, 164 IBLA 260 (Jan. 11, 2005)

Surface Mining Control and Reclamation Act of 1977
Hydrologic System Protection

OSM may not decline to take additional enforcement action to address alleged violations for failing to obtain a National Pollution Discharge Elimination System permit and to engage in periodic monitoring and reporting concerning water discharges from a mine site, based on the fact that those alleged violations are subsumed in previous enforcement actions citing the operator for discharging water in excess of effluent limitations.

West Virginia Highlands Conservancy, 164 IBLA 260 (Jan. 11, 2005)

Surface Mining Control and Reclamation Act of 1977
Hydrological System Protection

West Virginia State regulation W. Va. Code St. R § 38-2-5.4.b.7 requires that sediment control structures be cleaned out when the sediment accumulation reaches 60 percent of design capacity, which is the capacity determined during the permitting process to be necessary for its function as a sediment control structure. Where a pre-existing structure is used as a sediment control structure, the sediment-cleaning requirement is triggered only when the capacity remaining in the structure is 40 percent or less than the capacity determined in the permitting process to be necessary for its function as a sediment control structure.

John L. Stenger, 170 IBLA 206 (Sept. 25, 2006)

Surface Mining Control and Reclamation Act of 1977
Indian Lands

OSM properly terminates its jurisdiction, under the Surface Mining Control and Reclamation Act of 1977, *as amended*, 30 U.S.C. §§ 1201-1328 (2000), over a surface coal mining and reclamation operation or any increment thereof on Indian lands, pursuant to 30 C.F.R. § 700.11(d)(1), once the operator has, following the cessation of mining operations, completed reclamation and otherwise fully complied with the applicable requirements of the initial program regulations, 30 C.F.R. Chapter VII, Subchapter B. Termination may occur regardless of whether the affected lands remain thereafter subject to a mining lease, that was issued by the Indian tribe to the surface coal mining operator, pursuant to the Indian Mineral Leasing Act of 1938, *as amended*, 25 U.S.C. §§ 396a-396g (2000).

Navajo Nation, 163 IBLA 245 (Oct. 26, 2004)

Surface Mining Control and Reclamation Act of 1977
Initial Regulatory Program

OSM properly terminates its jurisdiction, under the Surface Mining Control and Reclamation Act of 1977, *as amended*, 30 U.S.C. §§ 1201-1328 (2000), over a surface coal mining and reclamation operation or any increment thereof on Indian lands, pursuant to 30 C.F.R. § 700.11(d)(1), once the operator has, following the cessation of mining operations, completed reclamation and otherwise fully complied with the applicable requirements of the initial program regulations, 30 C.F.R. Chapter VII, Subchapter B. Termination may occur regardless of whether the affected lands remain thereafter subject to a mining lease, that was issued by the Indian tribe to the surface coal mining operator, pursuant to the Indian Mineral Leasing Act of 1938, *as amended*, 25 U.S.C. §§ 396a-396g (2000).

Navajo Nation, 163 IBLA 245 (Oct. 26, 2004)

Surface Mining Control and Reclamation Act of 1977
Initial Regulatory Program

When, in response to a citizen's complaint, OSM has reasserted jurisdiction over a mine site following final bond release by the state regulatory authority and issued a notice of violation and a failure to abate cessation order for water being discharged from the disturbed areas of the site in excess of effluent limitations, it properly responds to a further complaint that it has not taken required alternative enforcement action under 30 C.F.R. § 845.15(b)(2) to ensure abatement by forwarding the matter to the Solicitor's Office for an injunctive relief referral to the U.S. Department of Justice, in accordance with established policy.

West Virginia Highlands Conservancy, 164 IBLA 260 (Jan. 11, 2005)

Surface Mining Control and Reclamation Act of 1977
Initial Regulatory Program

OSM may not decline to take additional enforcement action to address alleged violations for failing to obtain a National Pollution Discharge Elimination System permit and to engage in periodic monitoring and reporting concerning water discharges from a mine site, based on the fact that those alleged violations are subsumed in previous enforcement actions citing the operator for discharging water in excess of effluent limitations.

West Virginia Highlands Conservancy, 164 IBLA 260 (Jan. 11, 2005)

Surface Mining Control and Reclamation Act of 1977
Initial Regulatory Program

Under 30 C.F.R. § 700.11(d)(2), the Office of Surface Mining Reclamation and Enforcement properly reasserts jurisdiction to issue a Notice of Violation to a permittee after the state regulatory authority terminated jurisdiction over the mine site, pursuant to a written determination under 30 C.F.R. § 700.11(d)(1), when the record shows that the state regulatory authority's written determination was based on a misrepresentation of a material fact because all requirements imposed under Subchapter B, Chapter VII, Title 30, of the Code of Federal Regulations had not been successfully completed.

Cheyenne Sales Co., Inc. v. Office of Surface Mining Reclamation and Enforcement, West Virginia Highlands Conservancy, Inc., Intervenor, 163 IBLA 30 (Sept. 2, 2004)

Surface Mining Control and Reclamation Act of 1977
Inspections
10-Day Notice to State

Upon review of action taken by the state regulatory authority in response to a 10-day notice, OSM is obligated to conduct an inspection unless the state takes appropriate action to cause the violation to be corrected or shows good cause for failure to do so. "Good cause for failure to act" includes a finding that the alleged violation does not exist and OSM's standard on review of such a finding is whether the state regulatory authority's action or response to the 10-day notice is arbitrary, capricious, or an abuse of discretion under the state program.

Jim & Ann Tatum, 151 IBLA 286 (Jan. 5, 2000)

Surface Mining Control and Reclamation Act of 1977
Inspections
10-Day Notice to State

Assuming actions by a surface coal mining operation result in the diminution of a person's water supply, the operator is responsible for replacement of that water supply, in accordance with section 720(a)(2) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1309a(a)(2) (1994), only if that water supply constitutes a "drinking, domestic, or residential water supply."

Jim & Ann Tatum, 151 IBLA 286 (Jan. 5, 2000)

Surface Mining Control and Reclamation Act of 1977
Inspections
10-Day Notice to State

Under 30 C.F.R. § 842.11(b)(1)(i), OSM has "reason to believe" that a violation exists if the facts alleged by an informant in a citizen's complaint would, if true, constitute a violation of SMCRA, Departmental regulations at 30 C.F.R. Ch. VII, the applicable State program, or "any condition of a permit or exploration approval." Once a citizen's complaint gives OSM reason to believe that a violation has occurred, OSM's obligation is to respond to the citizen's complaint by issuing a 10-day notice to the State. Neither OSM's perception of the "complexity" of the issues or the desire to conduct "policy review and outreach" justifies a refusal to address the site-specific allegations of violations in a citizen's complaint.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Inspections

10-Day Notice to State

The mere fact that individuals have self-reported data showing noncompliance with effluent limitations is not "reason to believe" a violation exists, because under the self-reporting regulations at 30 C.F.R. §§ 816.41(e)(2) and 817.41(e)(2), the company bears an obligation to correct the effluent discharge to meet its hydrologic plan. It is not until this obligation to correct is ignored that OSM has "reason to believe" that a violation exists. But where a citizen provides evidence of consistent and repeated monthly reports from the same discharge point, OSM has "reason to believe" that a violation exists and is required to issue a 10-day notice to the State agency.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Inspections
10-Day Notice to State

Failure to obtain an NPDES permit from the State or Federal authority responsible for implementation of the Clean Water Act is an enforceable violation of Federal and State SMCRA program rules, and a citizen's complaint alleging that a permittee is operating a point source discharge without an NPDES permit would constitute "reason to believe" a violation of those rules exists.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Inspections
10-Day Notice to State

The forfeiture of a bond does not provide a sufficient basis for OSM to decline to issue a 10-day notice to the State when a citizen has provided reason to believe that violations continue at a minesite.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Inspections
10-Day Notice to State

Because a bond can be released only when all reclamation requirements are fully met, an allegation that a company with a released bond failed to retain an NPDES permit would not, standing alone, constitute "reason to believe" a violation exists.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Inspections
10-Day Notice to State

When a citizen files a complaint that a State regulatory authority as a general matter is failing to carry out the "complete inspection" requirements of its program by failing to inspect every outfall for illegal discharges, that particular grievance is cognizable under the Federal takeover regulations at 30 C.F.R. § 733.12 and would thus be beyond this Board's jurisdiction.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Inspections
10-Day Notice to State

When a citizen provides OSM with data from a State NPDES authority that a permittee is violating the Clean Water Act, OSM may not decline to issue a 10-day notice because of unspecified "doubts" about the data. Under 30 C.F.R. § 842.11(b), OSM has "reason to believe" a violation is occurring where the data, if true, would constitute a violation, and a 10-day notice must be issued to the State with respect to permittees alleged to be in violation. However, when a citizen files a complaint that a State regulatory authority as a general matter is failing to obtain permit blocks against operators who are in violation of the Clean Water Act, that particular grievance is cognizable under the Federal takeover regulations at 30 C.F.R. § 733.12.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Inspections
10-Day Notice to State

Section 521(a) of SMCRA, 30 U.S.C. § 1271(a) (1994), states that if "the Secretary has reason to believe that any person is in violation of any requirement of this chapter," then enforcement will be taken according to its further provisions, and 30 C.F.R. § 700.5 defines "person" as including "any agency, unit or instrumentality of Federal, State or local government." Where a citizen alleges that acid mine drainage is occurring at sites where the State has forfeited a permittee's bond, OSM's regulations provide no basis for excluding the allegation from the process established in 30 C.F.R. § 842.11(b). However, OSM cannot treat the State as a permittee.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Inspections
10-Day Notice to State

Upon review of action taken by the State regulatory authority in response to a Ten-Day Notice, OSM is obligated to conduct an inspection unless the State takes appropriate action to cause the violation to be corrected or shows good cause for failure to do so. OSM's standard on review of the State's findings is whether the State regulatory authority's action or response to the notice is arbitrary, capricious, or an abuse of discretion under the State program.

Danny Crump, 163 IBLA 351 (Nov. 8, 2004)

Surface Mining Control and Reclamation Act of 1977
Inspections
10-Day Notice to State

When the possible violation cited by OSM in a 10-Day Notice is the failure to comply with the terms and conditions of the permit requiring mining in contiguous pits through a particular tract of land, the State regulatory authority's response in issuing a notice of violation will be considered to be arbitrary, capricious, or an abuse of discretion, when the notice describes the violation as a failure to mine in accordance with the approved mining plan, and the record indicates that allowing mining to continue west of the tract does not conform to the approved plan, but the abatement action in the notice is only to prohibit mining by auxiliary methods to the north and east of the tract.

Danny Crump, 163 IBLA 351 (Nov. 8, 2004)

Surface Mining Control and Reclamation Act of 1977
Inspections
10-Day Notice to State

Under 30 U.S.C. § 1271(a)(1) (2000), when a citizen's complaint gives OSM a reason to believe that any person is in violation of any requirement of the Surface Mining Control and Reclamation Act or any permit condition required by that Act, OSM must notify the State regulatory authority. If the State regulatory authority fails within 10 days after notification to take appropriate action to cause the violation to be corrected or to show good cause for such failure and transmit notification of its action, OSM must immediately order a Federal inspection of the surface coal mining operation at which the alleged violation is occurring.

West Virginia Highlands Conservancy, 165 IBLA 395 (May 13, 2005)

Surface Mining Control and Reclamation Act of 1977
Inspections
10-Day Notice to State

Under 30 C.F.R. § 842.11(b)(1)(ii)(B)(*4*)(*iii*), the State regulatory authority's lack of jurisdiction over an alleged violation or operation under the State program constitutes good cause for not taking enforcement action. When a State responds to a 10-day notice by stating that its release of a bond for an initial program permit prior to the adoption of 30 C.F.R. § 700.11(d) in 1988 terminated its jurisdiction over the operation and OSM desires to challenge that termination, OSM must establish, consistent with 30 C.F.R. § 700.11(d)(2), that the written determination leading to the termination of jurisdiction was based on fraud, collusion, or misrepresentation of a material fact.

West Virginia Highlands Conservancy, 165 IBLA 395 (May 13, 2005)

Surface Mining Control and Reclamation Act of 1977
Inspections
10-Day Notice to State

In a jurisdiction where the State is the primary regulatory authority, OSM is required in its oversight capacity to con-duct an inspection under 30 C.F.R. § 842.11(b)(1)(ii)(B)(*1*) whenever it has reason to believe as a result of a citizen's complaint that a permittee is in violation of a State program and the State regulatory authority has failed to take appropriate action in response to a 10-day notice to cause the violation to be corrected or to show good cause for such failure.

West Virginia Highlands Conservancy, Inc., 166 IBLA 39 (June 9, 2005)

Surface Mining Control and Reclamation Act of 1977
Inspections
10-Day Notice to State

When a citizen's complaint does not allege a site-specific violation of the surface mining reclamation program, but rather asserts that a State is not conducting the inspections required to enforce its approved program, that complaint is cognizable under the Federal takeover regulations at 30 C.F.R. § 733.12 and must be presented to the OSM Director under that rule. It may not be presented as a "supplement" to a prior citizen's complaint to which OSM has previously responded.

West Virginia Highlands Conservancy, Inc., 166 IBLA 39 (June 9, 2005)

Surface Mining Control and Reclamation Act of 1977
Inspections
10-Day Notice to State

Where OSM declines to take enforcement action in response to a citizen's complaint because it finds that the State's response to the Ten-Day Notice (TDN) was appropriate, any party appealing OSM's decision must establish, by a preponderance of the evidence, that the State's regulatory action or response to the TDN was arbitrary, capricious, or an abuse of discretion.

John L. Stenger, 170 IBLA 206, 212 (Sept. 25, 2006)

Surface Mining Control and Reclamation Act of 1977
Inspections
10-Day Notice to State

OSM has authority under section 521(a) of SMCRA to enforce, on a mine-by-mine basis, any part of a State program not being enforced by that State. Where OSM has issued a 10-day notice (TDN) and the State regulatory agency has failed to take appropriate action, 30 C.F.R. § 842.11(b)(1)(ii)(B)(*1*) expressly requires OSM to immediately conduct a Federal inspection when its authorized representative has reason to believe that there exists a violation of SMCRA, 30 C.F.R. Chapter VII, the

applicable program, or any condition of a permit or an exploration approval. An operator's only vehicle to complain about issuance of a TDN is to obtain administrative review of any resulting notice of violation (NOV) or cessation order; it is free to establish in the context of such proceeding that OSM lacked authority to issue the NOV or CO by showing that the State regulatory authority took appropriate action in response to the TDN or offered good cause for its failure to do so. An applicant for review of an NOV has the burden under 43 C.F.R. § 4.1171(a) of establishing its defense and bears both the burden of going forward and the burden of persuasion on the issue of whether OSM overstepped its oversight authority; OSM is not required to affirmatively prove that it had authority to inspect under the TDN procedures.

Al Hamilton Contracting Co. v. Office of Surface Mining Reclamation and Enforcement, 172 IBLA 83 (Aug. 2, 2007)

Surface Mining Control and Reclamation Act of 1977
Inspections
10-Day Notice to State

Where OSM had reason to believe that there was a violation of applicable effluent standards, based on site investigations undertaken immediately prior to the formal inspections leading to the issuance of notices of violation; where OSM had both issued a 10-day Notice (TDN) and advised the State enforcement agency that it had revoked its determination that the State's response to an earlier TDN was appropriate; and where the State had notified OSM that it would not provide any further response to the TDN and had otherwise not responded to OSM, OSM was authorized to conduct an inspection and initiate enforcement action, unless there was some basis to find that the State had taken appropriate action either to cause the violation to be corrected or to show cause for such failure under 30 C.F.R. § 842.11(b)(1)(ii)(B).

Al Hamilton Contracting Co. v. Office of Surface Mining Reclamation and Enforcement, 172 IBLA 83 (Aug. 2, 2007)

Surface Mining Control and Reclamation Act of 1977
Inspections
10-Day Notice to State

Where the State agency declined to take any enforcement action following OSM's issuance of a 10-Day Notice (TDN) or its revocation of its "appropriate" determination under a previous TDN, the State's "action or response" was "arbitrary, capricious, or an abuse of discretion under the State program." As a result, the State did not take "'appropriate action' to cause a violation to be corrected" or establish "'good cause' for failure to do so" under 30 C.F.R. § 842.11(b)(1)(ii)(B)(*2*) and did not take "enforcement or other action authorized under the State program to cause the violation to be corrected under 30 C.F.R. § 842.11(b)(1)(ii)(B)(*3*). Where a violation of State effluent standards existed at the time of issuance by OSM of a TDN or revocation by OSM of its determination that the State's response to an earlier TDN was appropriate, the terms of 30 C.F.R. § 842.11(b)(1)(ii)(B)(*4*)(*i*) and (*iii*) do not apply, and OSM is not barred from conducting an inspection and taking enforcement action.

Al Hamilton Contracting Co. v. Office of Surface Mining Reclamation and Enforcement, 172 IBLA 83 (Aug. 2, 2007)

Surface Mining Control and Reclamation Act of 1977
Inspections
10-Day Notice to State

Where OSM issues a 10-Day Notice citing discharges from a location not addressed in a previous enforcement action by the State, 30 C.F.R. § 842.11(b)(1)(ii)(B)(*4*)(*iv*) does not apply with respect to the State's failure to inspect discharges from that location, as there was no administrative or judicial order affecting those discharges. Where an effluent discharge has been previously investigated by the State agency and a State notice of violation has been issued; where that violation has been disallowed by a State review board on account of the State agency's failure to provide sufficient evidence in proper form that the discharge was coming from the cited permit area; where neither the State review board nor reviewing court has barred the State agency from returning to the site to address ongoing acid mine drainage violations; and where OSM cites a current discharge that is ongoing and has recently re-emerged after the operator terminated abatement measures following the decision of the State review board, OSM is not barred by 30 C.F.R. § 842.11(b)(1)(ii)(*B*)(*4*)(*iv*) from initiating Federal inspection and enforcement proceedings against that apparent violation, as the State agency was not precluded by a State administrative or judicial order from acting on the possible violation, and as the State review board's decision was not "based on the" current violation "not existing" within the meaning of the regulation, but instead on the fact that the previous violation had not been proven by sufficient evidence in sufficient form.

Al Hamilton Contracting Co. v. Office of Surface Mining Reclamation and Enforcement, 172 IBLA 83 (Aug. 2, 2007)

Surface Mining Control and Reclamation Act of 1977
Notices of Violation
Generally

An administrative law judge's decision vacating as premature a violation contained in an NOV citing an operator with failure to maintain a section of the haul road that runs through the face-up area of the mine, is properly reversed where the performance standard, 30 C.F.R. § 817.150, applies to the haul road identified on the approved permit map and performance standards were required to be met on a continuous basis pursuant to 30 C.F.R. § 817.150(b).

Southern Appalachian Mining Co. v. Office of Surface Mining Reclamation and Enforcement, 153 IBLA 312 (Sept. 29, 2000)

Surface Mining Control and Reclamation Act of 1977
Notices of Violation
Generally

An administrative law judge's decision vacating as premature a violation citing the operator for failure to eliminate spoil piles, for failure to return spoil to the mined-out surface area, failure to eliminate depressions, highwalls, and the disturbed area above highwall as required by 30 C.F.R. § 817.102(a)(2) and (b) and 30 C.F.R. § 817.107 (c), will be affirmed on appeal where the OSM enforcement of the regulatory backfilling and grading requirements was unreasonable and premature under circumstances of the case. Where the applicable regulation provided a 5-year period for vegetative success, where the approximate original contour had been achieved, and where the operator had not sought backfilling and grading Phase 1 bond release and the permit was undergoing active reclamation, issuance of NOV between 3 and 6 months after the initial backfilling and grading, before commencement of the next growing season after backfilling and grading, was unreasonable and premature.

Southern Appalachian Mining Co. v. Office of Surface Mining Reclamation and Enforcement, 153 IBLA 312 (Sept. 29, 2000)

Surface Mining Control and Reclamation Act of 1977
Notices of Violation
Generally

An administrative law judge's decision vacating as premature a violation citing the operator for failing to redistribute all topsoil as required by 30 C.F.R. § 817.22(d), will be reversed on appeal where the record demonstrates that the topsoil pile existed on the permit on the date of inspection, where the operator's approved permit required topsoil to be redistributed to approximately 12 inches in thickness, and where there was no showing that redistributed topsoil approximated 12 inches in thickness as required by approved permit.

Southern Appalachian Mining Co. v. Office of Surface Mining Reclamation and Enforcement, 153 IBLA 312 (Sept. 29, 2000)

Surface Mining Control and Reclamation Act of 1977
Notices of Violation
Generally

An administrative law judge's decision vacating as premature a violation citing the operator for failure to stabilize surface areas and allow rills and gullies to form in violation of 30 C.F.R. § 817.95 (a), (b) will be affirmed where issuance of the violation occurred prior to Phase I bond release, and where OSM failed to establish a prima facie case of violation of 30 C.F.R. § 817.95(a), (b) because it failed to show that rills and/or gullies are unstable or that they interfere with post-mining land use or the reestablishment of the vegetative cover or cause or contribute to a violation of water quality standards for receiving streams.

Southern Appalachian Mining Co. v. Office of Surface Mining Reclamation and Enforcement, 153 IBLA 312 (Sept. 29, 2000)

Surface Mining Control and Reclamation Act of 1977
Notices of Violation
Generally

An administrative law judge's decision vacating as premature a violation citing the operator with failure to mark a topsoil pile with appropriate signage, will be reversed where 30 C.F.R. § 817.11(a)(1), (b), and (f) require "topsoil or other vegetation-supporting material" to be marked and maintained with appropriate signage "during all activities to which they pertain."

Southern Appalachian Mining Co. v. Office of Surface Mining Reclamation and Enforcement, 153 IBLA 312 (Sept. 29, 2000)

Surface Mining Control and Reclamation Act of 1977
Notices of Violation
Generally

In a proceeding concerning an application for review of a notice of violation, the burden of going forward to establish a prima facie case rests with OSM. Although the ultimate burden of persuasion rests with the applicant for review, the notice of violation will be affirmed only where OSM meets its burden of establishing a prima facie case. OSM makes a prima facie case when it presents sufficient evidence to establish essential facts from which it may be determined that a violation has occurred. However, where the operator fails to meets its burden, the notice of violation will be sustained.

Lonesome Pine Energy Co., Inc. v. OSM (On Reconsideration), 156 IBLA 182 (Jan. 25, 2002)

Surface Mining Control and Reclamation Act of 1977
Notices of Violation
Generally

The Office of Surface Mining Reclamation and Enforcement properly issues a Notice of Violation when discharges from disturbed areas are more acidic than the 6.0-9.0 pH range provided in 40 C.F.R. § 434.52(a), incorporated by 30 C.F.R. § 816.42 of the permanent program regulations, and in 30 C.F.R. § 715.17(a) of the initial program regulations, and violate the hydrologic balance provisions of 30 C.F.R. § 715.17 and 816.41.

Cheyenne Sales Co., Inc. v. Office of Surface Mining Reclamation and Enforcement, West Virginia Highlands Conservancy, Inc., Intervenor, 163 IBLA 30 (Sept. 2, 2004)

Surface Mining Control and Reclamation Act of 1977
Notices of Violation
Permittees

Where disposal on a mine site of clean fill from off-site sources is not authorized by the permit then in effect, such disposal constitutes a violation. However, where the permit is ambiguous as to whether on-site disposal of coal processing waste stockpiled at a coal processing plant was authorized, the ambiguity will be resolved in favor of the permittee.

Pacific Coast Coal Company v. Office of Surface Mining Reclamation and Enforcement, 158 IBLA 115 (Jan. 6, 2003)

Surface Mining Control and Reclamation Act of 1977
Performance Bond or Deposit
Forfeiture

The forfeiture of a bond does not provide a sufficient basis for OSM to decline to issue a 10-day notice to the State when a citizen has provided reason to believe that violations continue at a minesite.

West Virginia Highlands Conservancy et al., 152 IBLA 158 (Apr. 25, 2000)

Surface Mining Control and Reclamation Act of 1977
Permits
Generally

A permittee is required to strictly adhere to the specific terms of the authorization set out in its approved permit. The Office of Surface Mining may properly approve permit modifications to ensure that fill material directly or incidentally utilized in mine reclamation meets applicable statutory and regulatory environmental standards and does not endanger the public health and safety, such as by restricting the sources of fill material that may be disposed on a site. Where a permittee places fill material from sites that are not approved in its permit on its mine site, a violation has occurred.

Pacific Coast Coal Company v. Office of Surface Mining Reclamation and Enforcement, 158 IBLA 115 (Jan. 6, 2003)

Surface Mining Control and Reclamation Act of 1977
Permits
Generally

SMCRA does not authorize State regulatory authorities to retroactively waive the requirement that operators obtain a permit before placing excess spoil outside of the permit area.

John L. Stenger, 170 IBLA 206 (Sept. 25, 2006)

Surface Mining Control and Reclamation Act of 1977
Permits
Generally

Federal regulations define "excess spoil" simply as "spoil material disposed of in a location other than the mined-out area," but provide one exception, *viz.*, that "spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with [30 C.F.R. §§ 816.102(d) and 817.102(d)] in non-steep slope areas shall not be considered excess spoil." 30 C.F.R. § 701.5. Where OSM files a petition for reconsideration showing that two violations of the permit boundary fall under the exception, the Board will clarify that a permit is not required as to those two violations.

John L. Stenger (On Reconsideration), 171 IBLA 1, 4 (Dec. 14, 2006)

Surface Mining Control and Reclamation Act of 1977
Permits
Revisions

A permittee is required to strictly adhere to the specific terms of the authorization set out in its approved permit. The Office of Surface Mining may properly approve permit modifications to ensure that fill material directly or incidentally utilized in mine reclamation meets applicable statutory and regulatory environmental standards and does not endanger the public health and safety, such as by restricting the sources of fill material that may be disposed on a site. Where a permittee places fill material from sites that are not approved in its permit on its mine site, a violation has occurred.

Pacific Coast Coal Company v. Office of Surface Mining Reclamation and Enforcement, 158 IBLA 115 (Jan. 6, 2003)

Surface Mining Control and Reclamation Act of 1977
Permits
Revisions

OSM is authorized to order the "reasonable revision" of a permit where it is reasonably designed to "ensure compliance with the Act and the regulatory program."

Pacific Coast Coal Company v. Office of Surface Mining Reclamation and Enforcement, 158 IBLA 115 (Jan. 6, 2003)

Surface Mining Control and Reclamation Act of 1977
Permits
Revisions

When the Office of Surface Mining orders the revision of a permit and its decision is challenged by the permittee, the Office of Surface Mining bears the burden of presenting a prima facie case that the revision is reasonable and designed to ensure compliance with the Surface Mining Control and Reclamation Act of 1977 or regulatory program, whereupon the burden devolves to the permittee who has challenged the revision to overcome that case by a preponderance of the evidence. 43 C.F.R. § 4.1366 (b). Where the record contains ample evidence demonstrating the need for additional permit provisions governing disposal of materials on site and specifying how to ascertain the content of such materials, and where the permittee fails to show otherwise, OSM's permit revision order is properly affirmed.

Pacific Coast Coal Company v. Office of Surface Mining Reclamation and Enforcement, 158 IBLA 115 (Jan. 6, 2003)

Surface Mining Control and Reclamation Act of 1977
Public Health and Safety

A permittee is required to strictly adhere to the specific terms of the authorization set out in its approved permit. The Office of Surface Mining may properly approve permit modifications to ensure that fill material directly or incidentally utilized in mine reclamation meets applicable statutory and regulatory environmental standards and does not endanger the public health and safety, such as by restricting the sources of fill material that may be disposed on a site. Where a permittee places fill material from sites that are not approved in its permit on its mine site, a violation has occurred.

Pacific Coast Coal Company v. Office of Surface Mining Reclamation and Enforcement, 158 IBLA 115 (Jan. 6, 2003)

Surface Mining Control and Reclamation Act of 1977
Revegetation

An administrative law judge's decision vacating as premature a violation citing the operator for failure to stabilize surface areas and allow rills and gullies to form in violation of 30 C.F.R. § 817.95 (a), (b) will be affirmed where issuance of the violation occurred prior to Phase I bond release, and where OSM failed to establish a prima facie case of violation of 30 C.F.R. § 817.95(a), (b) because it failed to show that rills and/or gullies are unstable or that they interfere with post-mining land use or the reestablishment of the vegetative cover or cause or contribute to a violation of water quality standards for receiving streams.

Southern Appalachian Mining Co. v. Office of Surface Mining Reclamation and Enforcement, 153 IBLA 312 (Sept. 29, 2000)

Surface Mining Control and Reclamation Act of 1977
Roads

An administrative law judge's decision vacating as premature a violation contained in an NOV citing an operator with failure to maintain a section of the haul road that runs through the face-up area of the mine, is properly reversed where the performance standard, 30 C.F.R. § 817.150, applies to the haul road identified on the approved permit map and performance standards were required to be met on a continuous basis pursuant to 30 C.F.R. § 817.150(b).

Southern Appalachian Mining Co. v. Office of Surface Mining Reclamation and Enforcement, 153 IBLA 312 (Sept. 29, 2000)

Surface Mining Control and Reclamation Act of 1977
Signs and Markers

An administrative law judge's decision vacating as premature a violation citing the operator with failure to mark a topsoil pile with appropriate signage, will be reversed where 30 C.F.R. § 817.11(a)(1), (b), and (f) require "topsoil or other vegetation-supporting material" to be marked and maintained with appropriate signage "during all activities to which they pertain."

Southern Appalachian Mining Co. v. Office of Surface Mining Reclamation and Enforcement, 153 IBLA 312 (Sept. 29, 2000)

Surface Mining Control and Reclamation Act of 1977
Spoil and Mine Wastes
Generally

Where disposal on a mine site of clean fill from off-site sources is not authorized by the permit then in effect, such disposal constitutes a violation. However, where the permit is ambiguous as to whether on-site disposal of coal processing waste stockpiled at a coal processing plant was authorized, the ambiguity will be resolved in favor of the permittee.

Pacific Coast Coal Company v. Office of Surface Mining Reclamation and Enforcement, 158 IBLA 115 (Jan. 6, 2003)

Surface Mining Control and Reclamation Act of 1977
Spoil and Mine Wastes
Generally

SMCRA does not authorize State regulatory authorities to retroactively waive the requirement that operators obtain a permit before placing excess spoil outside of the permit area.

John L. Stenger, 170 IBLA 206 (Sept. 25, 2006)

Surface Mining Control and Reclamation Act of 1977
Spoil and Mine Wastes
Generally

Federal regulations define "excess spoil" simply as "spoil material disposed of in a location other than the mined-out area," but provide one exception, *viz.*, that "spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with [30 C.F.R. § 816.102(d) and 817.102(d)] in non-steep slope areas shall not be considered excess spoil." 30 C.F.R. § 701.5. Where OSM files a petition for reconsideration showing that two violations of the permit boundary fall under the exception, the Board will clarify that a permit is not required as to those two violations.

John L. Stenger (On Reconsideration), 171 IBLA 1 (Dec. 14, 2006)

Surface Mining Control and Reclamation Act of 1977
State Program
10-Day Notice to State

When the record on appeal establishes that the state regulatory authority's response to a 10-day notice of a state regulatory program subsidence violation by an underground coal mining operation was arbitrary, capricious, and an abuse of discretion, the OSM decision upholding the state regulatory authority's action will be vacated and the case remanded for appropriate action.

Jim & Ann Tatum, 151 IBLA 286 (Jan. 5, 2000)

Surface Mining Control and Reclamation Act of 1977
State Program
10-Day Notice to State

Because the regulation at 30 C.F.R. § 842.11(b)(1) (ii)(B) establishes the 10-day notice process as a formal communication between OSM and a State's designated regulatory authority, an applicant/operator's vehicle to pursue a complaint against OSM's issuance of a 10-day notice is to seek administrative review of the resulting notice of violation and cessation order pursuant to 30 C.F.R. § 843.16 and 43 C.F.R. § 4.1161.

Lonesome Pine Energy Co., Inc. v. OSM (On Reconsideration), 156 IBLA 182 (Jan. 25, 2002)

Surface Mining Control and Reclamation Act of 1977
State Program
10-Day Notice to State

Where OSM has not complied with the SMCRA requirement to inform the State regulatory authority of specific aspects of a citizen complaint and has failed to make an independent investigation into each allegation, the matter may be remanded to OSM with instructions to issue a 10-Day Notice (TDN) to the State on the unconsidered allegations to allow the State an opportunity to respond to the allegations in the first instance. However, the failure to notify the State in the initial TDN may be regarded as harmless where a subsequent Federal inspection revealed that the condition complained of did not exist and where issuing the TDN would not have altered subsequent regulatory analysis and conclusions.

John L. Stenger, 170 IBLA 206 (Sept. 25, 2006)

Surface Mining Control and Reclamation Act of 1977
Subsidence

When the record on appeal establishes that the state regulatory authority's response to a 10-day notice of a state regulatory program subsidence violation by an underground coal mining operation was arbitrary, capricious, and an abuse of discretion, the OSM decision upholding the state regulatory authority's action will be vacated and the case remanded for appropriate action.

Jim & Ann Tatum, 151 IBLA 286 (Jan. 5, 2000)

Surface Mining Control and Reclamation Act of 1977
Subsidence

A decision in response to a request for informal review of a decision on a citizen's complaint, conducted pursuant to 30 C.F.R. § 842.15 and 43 C.F.R. § 4.1280, will be affirmed on appeal where the Appellant fails to offer evidence to demonstrate error in the decision which was based on an investigation which resulted in preparation of a technical report containing opinions of Departmental experts finding that the alleged damage did not result from surface impacts of underground mining.

William Phillips, 152 IBLA 47 (Mar. 7, 2000)

Surface Mining Control and Reclamation Act of 1977
Tipples and Processing Plants
At or Near a Minesite

Where disposal on a mine site of clean fill from off-site sources is not authorized by the permit then in effect, such disposal constitutes a violation. However, where the permit is ambiguous as to whether on-site disposal of coal processing waste stockpiled at a coal processing plant was authorized, the ambiguity will be resolved in favor of the permittee.

Pacific Coast Coal Company v. Office of Surface Mining Reclamation and Enforcement, 158 IBLA 115 (Jan. 6, 2003)

Surface Mining Control and Reclamation Act of 1977
Topsoil
Redistribution

An administrative law judge's decision vacating as premature a violation citing the operator for failing to redistribute all topsoil as required by 30 C.F.R. § 817.22(d), will be reversed on appeal where the record demonstrates that the topsoil pile existed on the permit on the date of inspection, where the operator's approved permit required topsoil to be redistributed to approximately 12 inches in thickness, and where there was no showing that redistributed topsoil approximated 12 inches in thickness as required by approved permit.

Southern Appalachian Mining Co. v. Office of Surface Mining Reclamation and Enforcement, 153 IBLA 312 (Sept. 29, 2000)

Surface Mining Control and Reclamation Act of 1977
Water Quality Standards and Effluent Limitations
Acid and Toxic Materials

The Office of Surface Mining Reclamation and Enforcement properly issues a Notice of Violation when discharges from disturbed areas are more acidic than the 6.0-9.0 pH range provided in 40 C.F.R. § 434.52(a), incorporated by 30 C.F.R. § 816.42 of the permanent program regulations, and in 30 C.F.R. § 715.17(a) of the initial program regulations, and violate the hydrologic balance provisions of 30 C.F.R. §§ 715.17 and 816.41.

Cheyenne Sales Co., Inc. v. Office of Surface Mining Reclamation and Enforcement, West Virginia Highlands Conservancy, Inc., Intervenor, 163 IBLA 30 (Sept. 2, 2004)

Surface Mining Control and Reclamation Act of 1977
Water Quality Standards and Effluent Limitations
Discharges from Disturbed Areas

The Office of Surface Mining Reclamation and Enforcement properly issues a Notice of Violation when discharges from disturbed areas are more acidic than the 6.0-9.0 pH range provided in 40 C.F.R. § 434.52(a), incorporated by 30 C.F.R. § 816.42 of the permanent program regulations, and in 30 C.F.R. § 715.17(a) of the initial program regulations, and violate the hydrologic balance provisions of 30 C.F.R. §§ 715.17 and 816.41.

Cheyenne Sales Co., Inc. v. Office of Surface Mining Reclamation and Enforcement, West Virginia Highlands Conservancy, Inc., Intervenor, 163 IBLA 30 (Sept. 2, 2004)

Surface Mining Control and Reclamation Act of 1977
Water Quality Standards and Effluent Limitations
Discharges from Disturbed Areas

OSM may not decline to take additional enforcement action to address alleged violations for failing to obtain a National Pollution Discharge Elimination System permit and to engage in periodic monitoring and reporting concerning water discharges from a mine site, based on the fact that those alleged violations are subsumed in previous enforcement actions citing the operator for discharging water in excess of effluent limitations.

West Virginia Highlands Conservancy, 164 IBLA 260 (Jan. 11, 2005)

Surface Mining Control and Reclamation Act of 1977
Water Quality Standards and Effluent Limitations:

Discharges from Disturbed Areas

When, in response to a citizen's complaint, OSM has reasserted jurisdiction over a mine site following final bond release by the state regulatory authority and issued a notice of violation and a failure to abate cessation order for water being discharged from the disturbed areas of the site in excess of effluent limitations, it properly responds to a further complaint that it has not taken required alternative enforcement action under 30 C.F.R. § 845.15(b)(2) to ensure abatement by forwarding the matter to the Solicitor's Office for an injunctive relief referral to the U.S. Department of Justice, in accordance with established policy.

West Virginia Highlands Conservancy, 164 IBLA 260 (Jan. 11, 2005)

Surface Resources Act
Occupancy

Section 4(a) of the Surface Resources Act, 30 U.S.C. § 612(a) (1994), bars use of an unpatented mining claim for any purpose other than prospecting, mining, or processing operations and uses "reasonably incident thereto." Residential occupancy may be reasonably incident to mining during the conduct of operations where the claims are located in an area so remote as to require the claimant to remain on site in order to work a full shift. Residential occupancy may also be allowed to provide security for equipment and material at times when operations are ongoing. These needs are obviated, however, and residential occupancy may not be reasonably incident where the claimant's family owns fee lands adjacent to the claims in question, on which the claimant is mining, where he could reside and store equipment to protect it from theft.

David E. Pierce, 153 IBLA 348 (Sept. 29, 2000)

Surface Resources Act
Occupancy

Storage on unpatented mining claims of an excessive amount of equipment for a mining operation which is in an exploratory or prospecting stage of development is not reasonably incidental to mining.

David E. Pierce, 153 IBLA 348 (Sept. 29, 2000)

Surface Resources Act
Occupancy

While 43 C.F.R. § 3715.6(g) prohibits placing gates on mining claims to exclude the general public, a notice of noncompliance cannot be sustained to the extent that it is premised on a locked cable blocking access to mining claims where it is unclear whether the cable is located on public land.

David E. Pierce, 153 IBLA 348 (Sept. 29, 2000)

Surface Resources Act
Occupancy

Section 4(a) of the Surface Resources Act, 30 U.S.C. § 612(a) (1994), bars use of an unpatented mining claim for any purpose other than prospecting, mining, or processing operations and uses "reasonably incident thereto." Under the authority of 43 C.F.R. § 3715.7-1(c), BLM properly requires the removal of a locked gate blocking access to mining claims, a mobile home, a wooden shack, and personal items from the site where the record supports BLM's determination that the level of the use and occupancy by the claimant are not reasonably incident to mining operations.

Wilbur L. Hulse, 153 IBLA 362 (Sept. 29, 2000)

Surface Resources Act
Occupancy

The essence of the statutory grant allowing the appropriation of the public lands for millsites is actual use and occupancy for mining and milling purposes. The Surface Resources Act of July 23, 1955, 30 U.S.C. § 612(a) (1994), further clarifies that use and occupancy shall be for the purposes of prospecting, mining, or processing and uses reasonably incident thereto. The mining claimant must stand ready to prove the validity of the millsite at any time before patent issues, by demonstrating that he uses and occupies the land for such purposes.

United States v. James L. Pence, d.b.a. Shooter Mining Co., and Milton Embry, 157 IBLA 124 (July 31, 2002)

Surface Resources Act
Occupancy

Where a contestee chose not to retain counsel, despite ample opportunity and urging to do so, and chose not to put on a case on his own behalf, the Government's prima facie case is unrebutted. In such circumstances, the Board properly affirms the Administrative Law Judge's decision declaring the millsites null and void.

United States v. James L. Pence, d.b.a. Shooter Mining Co., and Milton Embry, 157 IBLA 124 (July 31, 2002)

Surface Resources Act
Occupancy

Public lands may be occupied pursuant to valid millsite claims in accordance with the general mining laws, only for the purpose of prospecting, mining, or processing, and uses reasonably incident thereto. Under 43 C.F.R. § 3715.0-5, "occupancy" means full or part-time residence on the public lands, and "residence" includes placing barriers to access, trailers, buildings, or storage of equipment or supplies on the claims. Where the record shows that all of those were found on a millsite, there was "occupancy" and BLM may properly consider whether that occupancy was authorized under the regulations.

John B. Nelson, Robert Kahre, 158 IBLA 370 (Apr. 15, 2003)

Surface Resources Act
Occupancy

In order to "occupy" a mill site under the mining laws, a party must comply with the requirements of 43 C.F.R. § 3715.2. Where the millsite has not been used for many years, there is no compliance with those requirements as the claimant's occupancy of the millsite is not reasonably incident to legitimate millsite activities, in that it is unrelated to actual processing operations on the claim, such as development or beneficiation of mineral resources. That is, it cannot be said that there was any processing operations on the claim to which appellants' occupancy related or that the claimant's use of the site constituted substantially regular work or involved observable on-the-ground activity that BLM may verify. It is no defense that appellant hopes or expects to receive mineral material for processing at the site in the future.

John B. Nelson, Robert Kahre, 158 IBLA 370 (Apr. 15, 2003)

Surface Resources Act
Occupancy

In the event of noncompliance with the occupancy regulations, BLM may either order a millsite claimant to cease (temporarily or permanently) all or any part of a his use or occupancy or issue a notice of noncompliance requiring corrective action. The extent of permissible occupancy is directly related to the extent of processing activity conducted on a millsite claim. The structures and equipment maintained on site must be related to and commensurate with the operations. Where there was no activity on the site, BLM was justified in directing claimants to remove all of their equipment from the site.

John B. Nelson, Robert Kahre, 158 IBLA 370 (Apr. 15, 2003)

Surface Resources Act
Occupancy

Section 4(a) of the Surface Resources Act, 30 U.S.C. § 612(a) (2000), bars 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." Under the authority of 43 C.F.R. § 3715.7-1(c), BLM properly issues a notice of noncompliance requiring the removal of all personal property from a millsite claim where no minerals are being beneficiated on the site and no observable work is taking place.

Jay H. Friel, 159 IBLA 150 (May 29, 2003)

Surface Resources Act
Occupancy

The use and occupancy regulations at 43 C.F.R. § Subpart 3715 authorize the issuance of a temporary or permanent cessation order when there is a failure to comply timely with a notice of noncompliance issued under 43 C.F.R. § 3715.7-1(c). BLM properly issues a cessation order pursuant to 43 C.F.R. § 3715.7-1(b)(ii) where the claimant has failed to comply with a previous notice of noncompliance requiring him to remove property from a millsite and reclaim the land because his use and occupancy are not reasonably incident to mining or processing operations.

Jay H. Friel, 159 IBLA 150 (May 29, 2003)

Surface Resources Act
Occupancy

A mining claimant has no right to use or occupy the surface of a mining claim site unless the activity constituting the reason for the use or occupancy is reasonably incident to mining-related operations.

Patrick Breslin, 159 IBLA 162 (May 29, 2003)

Surface Resources Act
Occupancy

BLM may properly issue a Notice of Noncompliance and Cessation Order pursuant to 43 C.F.R. § 3715.7-1 where an appellant's mill site claims are no longer valid and his continued occupancy is not reasonably incident to mining.

James R. McColl, 159 IBLA 167 (May 29, 2003)

Surface Resources Act
Occupancy

The Board will not enforce an interpretation of 43 C.F.R. §§ 3715.5-1 and 5-2 that holds a current occupant liable for removal of structures and other materials from the public lands where the current occupant clearly establishes that the structures, etc., existed on site at the time his or her occupancy commenced, as a reasonably prudent prospective or current occupant could reasonably interpret the regulatory language to indicate that he or she is responsible for removing only structures and materials he or she placed there.

James R. McColl, 159 IBLA 167 (May 29, 2003)

Surface Resources Act
Occupancy

Except where otherwise allowed by applicable laws or regulations, for activities that are defined as casual use or notice activities under 43 C.F.R. Part 3800 or Subpart 3809, a mining claimant is prohibited from commencing residential occupancy before consulting with BLM. 43 C.F.R. § 3715.6(c). Consultation with BLM is initiated by the submission of a detailed map that identifies the site and the placement of temporary and permanent structures, and a written description showing how the proposed occupancy is reasonably incident to prospecting, mining, or processing operations and conforms to the requirements of 43 C.F.R. §§ 3715.2 and 3715.2-1. In addition to the placement of structures, the mining claimant must describe how long they are expected to be used, and the schedule for removing them and reclaiming the

affected land at the end of operations. 43 C.F.R. § 3715.3-2. A claimant must not begin occupancy until he has complied with 43 C.F.R. Subpart 3715 and BLM has completed its review and made the required determination of concurrence or non-concurrence in the occupancy.

Skip Myers, 160 IBLA 101 (Oct. 8, 2003)

Surface Resources Act
Occupancy

Even though appellant had long occupied his mining claim, the placement on the claim of a ramada and two camp trailers constituted new occupancies, regardless of whether they were actually or continually used for residential purposes, which required consultation with BLM so that BLM could adjudicate each specific proposed occupancy and issue a "decision" either concurring or not concurring with it pursuant to 43 C.F.R. Subpart 3715.

Skip Myers, 160 IBLA 101 (Oct. 8, 2003)

Surface Resources Act
Occupancy

Absent a determination that residential occupancy of a mining claim was not reasonably incident to prospecting, mining, or processing operations or not in compliance with 43 C.F.R. §§ 3715.2, 3715.2-1, 3715.3-1(b), 3715.5, or 3715.5-1, and that immediate suspension was necessary to protect health, safety, or the environment, BLM could not properly order the immediate, temporary suspension of occupancy pursuant to 43 C.F.R. § 3715.7-1(a).

Skip Myers, 160 IBLA 101 (Oct. 8, 2003)

Surface Resources Act
Occupancy

To issue a cessation order, it is not necessary for BLM to determine and conclude that an occupancy that is not reasonably incident threatens public health, safety, or the environment (43 C.F.R. § 3715.7-1(b)(1)(i)). It is necessary to show or determine lack of timely compliance with a notice of noncompliance (43 C.F.R. § 3715.7-1(b)(1)(ii)), an order issued pursuant to paragraph (d) (43 C.F.R. § 3715.7-1(b)(1)(iii)), or corrective action ordered during a suspension (43 C.F.R. § 3715.7-1(b)(1)(iv)). The record contains no such prior order, and accordingly, the order involved in this appeal cannot be deemed to be a cessation order.

Skip Myers, 160 IBLA 101 (Oct. 8, 2003)

Surface Resources Act
Occupancy

When on appeal it is determined that an immediate suspension order is defective and could be sustainable only if deemed a notice of noncompliance, the notice will be set aside and the case remanded so that BLM can decide how it wishes to proceed and issue a new decision that conforms to the requirements of 43 C.F.R. § 3715.7-1. If BLM concludes that a notice of noncompliance is appropriate, BLM must establish a date for starting corrective action, 43 C.F.R. § 3715.7-1(c)(ii), and a date by which it shall be completed, 43 C.F.R. § 3715.7-1(c)(iii). However, the regulation does not require completion of corrective action within 30 or fewer days. Therefore, nothing prevents BLM from establishing a completion date that coincides with issuance of a concurrence determination. Issuance of a concurrence determination ensures that mining claimants will not needlessly expend time and money in removing occupancies in which BLM ultimately concurs, or risk exposure to more serious enforcement action while waiting for a concurrence determination.

Skip Myers, 160 IBLA 101 (Oct. 8, 2003).

Surface Resources Act
Occupancy

The Surface Resources Act, 30 U.S.C. § 612(a) (2000), bars 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 site unless the activity constituting the reason for the use or occupancy is reasonably incident to mining-related operations.

Karen V. Clausen, 161 IBLA 168 (Apr. 13, 2004)

Surface Resources Act
Occupancy

Under the authority of 43 C.F.R. § 3715.7-1(c), BLM properly issues a notice of noncompliance requiring the removal of all personal property from a mining claim site where no observable work or use reasonably incident to mining is taking place.

Karen V. Clausen, 161 IBLA 168 (Apr. 13, 2004)

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. The fact that a mining claimant's use of a mining claim constitutes "casual use," however, does not by itself exclude all types of "occupancy" under the terms of 43 C.F.R. Subpart 3715.

Dan Solecki, Marylou Teel, Alfred Cook, 162 IBLA 178 (July 21, 2004)

Surface Resources Act
Occupancy

In order to justify an occupancy on a mining claim, the miner's activities must comply with all of the requirements of 43 C.F.R. § 3715.2 and meet at least one standard set forth in 43 C.F.R. § 3715.2-1. To issue a cessation order, BLM must determine whether a miner's actual activities on a mining claim meet the standards set forth in those two rules. Where the record demonstrates that an appellant's activities do not meet the standards of 43 C.F.R. § 3715.2, BLM's conclusion that an occupancy is not permitted will be affirmed on that ground.

Dan Solecki, Marylou Teel, Alfred Cook, 162 IBLA 178 (July 21, 2004)

Surface Resources Act
Occupancy

The regulations governing use and occupancy of unpatented mining claims, 43 C.F.R. Subpart 3715, apply to a use or occupancy that was in existence when the regulations were published. All existing uses and occupancies had to meet the applicable requirements of that subpart by August 18, 1997.

Terry Hankins, 162 IBLA 198 (July 22, 2004)

Surface Resources Act
Occupancy

Departmental regulation 43 C.F.R. § 3715.0-5 defines "occupancy" of public lands covered by mining claims as "full or part-time residence on the public lands," including "the construction, presence, or maintenance of temporary or permanent structures." However, under that definition, "residence or structures" include uses not commonly associated with residential occupancy, *viz.*, "barriers to access, fences, * * * buildings, and storage of equipment or supplies." As a result, structures used for purposes other than residential use are governed by 43 C.F.R. Subpart 3715, specifically including buildings and storage of equipment or supplies.

Terry Hankins, 162 IBLA 198 (July 22, 2004)

Surface Resources Act
Occupancy

Under 43 C.F.R. § 3715.2, in order to occupy the public lands under the mining laws for more than 14 calendar days in any 90-day period, a claimant must be involved in certain activities that (a) are reasonably incident; (b) constitute substantially regular work; (c) are reasonably calculated to lead to the extraction and beneficiation of minerals; (d) involve observable on-the-ground activity that BLM may verify under 43 C.F.R. § 3715.7; *and* (e) use appropriate equipment that is presently operable, subject to the need for reasonable assembly, maintenance, repair or fabrication of replacement parts. All five of those requirements must be met for occupancy to be permissible, in addition to other relevant requirements.

Terry Hankins, 162 IBLA 198 (July 22, 2004)

Surface Resources Act
Occupancy

The regulation at 43 C.F.R. § 3715.2-1 establishes a requirement separate from and additional to those at 43 C.F.R. § 3715.2. Under 43 C.F.R. § 3715.2-1, occupancy of a mining claim is permissible if it involves one or more of the following: (a) Protecting exposed, concentrated or otherwise accessible valuable minerals from theft or loss; (b) protecting from theft or loss appropriate, operable equipment which is regularly used, is not readily portable, and cannot be protected by means other than occupancy; (c) protecting the public from appropriate, operable equipment which is regularly used, is not readily portable, and if left unattended, creates a hazard to public safety; (d) protecting the public from surface uses, workings, or improvements which, if left unattended, create a hazard to public safety; or (e) being located in an area so isolated or lacking in physical access as to require the mining claimant, operator, or workers to remain on site in order to work a full shift of a usual and customary length, a full shift being ordinarily 8 hours and not including travel time to the site from a community or area in which housing may by obtained. Occupancy of a mining claim by using it as a residence is not authorized where the claim is located near two towns, minerals and equipment on the claim can be protected by removing them from the claim or by storing them in buildings on the claim, and the claim does not contain equipment or works that are hazardous to the public or that cannot be stored in buildings on the claim. At the same time, the need to use a mining claim for protective storage of equipment and samples, satisfies one or more of those requirements, justifying maintenance of non-residential structures on the claim, if other relevant requirements are met.

Terry Hankins, 162 IBLA 198 (July 22, 2004)

Surface Resources Act
Occupancy

BLM may not, in the context of issuing a notice of noncompliance under 43 C.F.R. § 3715.7-1(c) citing a claimant for unauthorized occupancy of a mining claimant, order immediate cessation of occupancy and the complete reclamation of the mining claim. In such a NON, BLM is required to (1) describe how the claimant's use is not in compliance with the regulations, (2) describe the actions that must be taken in order to correct the noncompliance, (3) set a date not to exceed 30 days from the issuance of the NON by which corrective action is to commence, and (4) establish the time frame by which corrective action is to be completed. BLM may issue a Cessation Order under 43 C.F.R. § 3715.7-1(b)(ii) only when corrective action by the mining claimant is not completed within the time specified in the NON. Where a NON effectively required immediate cessation of occupancy and reclamation of the mine site, it will be amended on appeal, as it was premature for BLM to take such action.

Terry Hankins, 162 IBLA 198 (July 22, 2004)

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's acquisition of milling equipment and placement of it on public lands does not validate the use and occupancy of a site as a mill site when the claimant did not use the equipment for significant milling operations in the ensuing 14 years.

Precious Metals Recovery, Inc., 163 IBLA 332 (Nov. 4, 2004)

Surface Resources Act
Occupancy

An enforcement order issued under 43 C.F.R. § 3715.7-1 survives the forfeiture of a mining claim or mill site or the abandonment of such a claim or site that attends the conclusion of the permitted exploration, mining, or milling operation.

Marietta Corporation, Comstock Ore Buyers, 164 IBLA 360 (Feb. 10, 2005)

Surface Resources Act
Occupancy

When a person or entity legally acquires property on a mining claim or mill site through a chain of title, by virtue of contract, agreement, or the exercise or operation of law, and exercises dominion and control over it, the pronouns in the regulations at 43 C.F.R. §§ 3715.5-1 and 3715.5-2 are properly construed to include a subsequent successor-in-interest to the property left on the mining or mill site claim.

Marietta Corporation, Comstock Ore Buyers, 164 IBLA 360 (Feb. 10, 2005)

Surface Resources Act
Occupancy

A mill site claimant who actually disturbs public lands and uses and occupies the site in connection with a putative milling operation is responsible for reclaiming the mill site. The obligation to reclaim the land entails the obligation to remove all structures, equipment, material, and other personal property under 43 C.F.R. Subpart 3715, as well as any other measures required by 43 C.F.R. Subpart 3809 to rehabilitate and stabilize the land and the habitat it contains. When the claimant dies, that unsatisfied obligation becomes an obligation of his estate.

Betty Dungey, Mary Humphries, Peggy Ruesch, 165 IBLA 1 (Feb. 17, 2005)

Surface Resources Act
Occupancy

Nevada State law prescribes a time and formal procedure for disclaiming a testamentary devise or bequest, absent which the devise or bequest is deemed accepted. When the heirs of a deceased mill site claimant do not aver or proffer evidence that they have complied with such State law or otherwise show that the statute does not apply to them, the Board properly may assume that they accepted their inheritance of the mill site and the personal property on it and are legally responsible for removing it.

Betty Dungey, Mary Humphries, Peggy Ruesch, 165 IBLA 1 (Feb. 17, 2005)

Surface Resources Act
Occupancy

As used in 43 C.F.R. § 3715.7-1, the pronouns "you" and "your" include persons who acquire property on a mining claim or mill site by transfer, contract, agreement, or by exercise or operation of law, and who exercise or assert dominion and control over that property.

Betty Dungey, Mary Humphries, Peggy Ruesch, 165 IBLA 1 (Feb. 17, 2005)

Surface Resources Act
Occupancy

When appellants paid the annual maintenance fee for a mill site, they exercised and asserted dominion and control over the mill site to retain possession as against the United States and avoid the consequence of conclusive forfeiture that attends the failure to timely pay the fee or obtain a small miner waiver certification. Where appellants also failed to produce evidence showing that they timely disclaimed the interests in personal property on the mill site that they acquired by operation of law, a notice of noncompliance for failing to remove their property will be upheld.

Betty Dungey, Mary Humphries, Peggy Ruesch, 165 IBLA 1 (Feb. 17, 2005)

Surface Resources Act
Occupancy

Departmental regulation 43 C.F.R. § 3715.0-5 defines "occupancy" of public lands covered by mining claims as "full or part-time residence on the public lands," including "the construction, presence, or maintenance of temporary or permanent structures," expressly including "trailers." Leaving a 14-foot travel trailer on a mining claim for indefinite periods of time (with claimants residing in that trailer overnight while spending time on the claim and storing equipment during their absences from the claim) constitutes "occupancy" of the claim within the meaning of 43 C.F.R. § 3715.0-5. Such use is "occupancy" even if claimants do not stay overnight in the trailer, as the "presence" of a "trailer" on the claim constitutes "occupancy" under that regulation. Accordingly, maintaining a trailer on the claim is "occupancy," and doing so for more than a prescribed period is allowed only under certain circumstances as provided in 43 C.F.R. Subpart 3715.

Donna Friedman, John Csupick, 165 IBLA 313 (May 2, 2005)

Surface Resources Act
Occupancy

Under 43 C.F.R. § 3715.2, in order to justify occupancy of the public lands (that is, either maintaining a residence, trailer, or other structures) for *more than* 14 days in a 90-day period, the activities that are the reason for the occupancy must (a) be reasonably incident; (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 under 43 C.F.R. § 3715.7; *and* (e) use appropriate equipment that is presently operable, subject to the need for reasonable assembly, maintenance, repair or fabrication of replacement parts. In order to comply with 43 C.F.R. § 3715.2, all five of those requirements must be met for occupancy to be permissible. Where mining activities associated with claimants' proposed occupancy are small-scale, occasional operations using very small, portable mining equipment, and where claimants' proposal involves only bi-weekly visits to the mining claim and excavating and mining only a few cubic feet of placer material per visit, those activities are not "substantially regular work" within the meaning of the regulation. Where claimants have presented a plan that only very generally describes where material would be removed and does not set out any organized exploration activity, the small level of activity is therefore not "associated with the search for and development of mineral deposits or the processing of ores"; it does not include "active and continuous exploration, mining, and beneficiation or processing of ores; and it does not "include assembly or maintenance of equipment [and] work on physical improvements" incident to mining activities, within the definition of "substantially regular work" at 43 C.F.R. § 3715.0-5.

Donna Friedman, John Csupick, 165 IBLA 313 (May 2, 2005)

Surface Resources Act
Occupancy

The regulation at 43 C.F.R. § 3715.2-1 establishes a requirement separate from and additional to those at 43 C.F.R. § 3715.2, under which occupancy of the public lands is permissible if it involves one or more of the following: (a) Protecting exposed, concentrated or otherwise accessible valuable minerals from theft or loss; (b) protecting from theft or loss appropriate, operable equipment which is regularly used, is not readily portable, and cannot be protected by means other than occupancy; (c) protecting the public from appropriate, operable equipment which is regularly used, is not readily portable, and if left unattended, creates a hazard to public safety; (d) protecting the public from surface uses, workings, or improvements which, if left unattended, create a hazard to public safety; *or* (e) being located in an area so isolated or lacking in physical access as to require the mining claimant, operator, or workers to remain on site in order to work a full shift of a usual and customary length, a full shift being ordinarily 8 hours and not including travel time to the site from a community or area in which housing may by obtained. If any one of the criteria of 43 C.F.R. § 3715.2-1 is met, the claim may be occupied for more than 14 days in any 90-day period (if the occupancy is otherwise in compliance with all of the five criteria of 43 C.F.R. § 3715.2). Where claimants have neither exposed any valuable mineral deposit nor created hazardous workings on the claim; where claimants' equipment is readily portable and can be protected from theft easily by removing it from their claim, thereby also protecting the public from any injury; and where claimants' claim is not so distant from a nearby community in which housing is available as to prevent them from being able to put in a full work shift on the claim, they have complied with none of the applicable criteria.

Donna Friedman, John Csupick, 165 IBLA 313 (May 2, 2005)

Surface Resources Act
Occupancy

A BLM cessation order requiring the immediate removal of a building, equipment, and all other personal property from an abandoned mill site is properly affirmed when BLM previously found the occupancy to be in noncompliance with the regulations regarding use and occupancy under the mining laws, issued a notice of noncompliance providing a deadline for removal, and no progress in removing the personal property from the site had been made despite extensions of the deadline for more than a year.

Peter Blair, 166 IBLA 120 (June 30, 2005)

Surface Resources Act
Occupancy

Occupancy of the public lands under the mining laws within the meaning of the regulations at 43 C.F.R. Subpart 3715 includes the construction, presence, or maintenance of temporary or permanent structures, including buildings and the storage of equipment or supplies, regardless of whether they are actually used as a residence.

Leadville Corp., 166 IBLA 249 (Aug. 5, 2005)

Surface Resources Act
Occupancy

The activities justifying a claimant's occupancy of a mining claim or mill site in the form of the placement of structures and property, must (a) be reasonably incident to mining and milling operations; (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 equipment that is presently operable. A notice of noncompliance issued under the authority of 43 C.F.R. § 3715.7-1(c), is properly affirmed when there have been no mining operations or mineral processing for more than 15 years and the buildings on site are extremely dilapidated.

Leadville Corp., 166 IBLA 249 (Aug. 5, 2005)

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.

Rivers Edge Trust, Jimmy C. Chisum, Trustee, 166 IBLA 297 (Aug. 23, 2005)

Surface Resources Act
Occupancy

Occupancy of the public lands under the mining laws within the meaning of the regulations at 43 C.F.R. Subpart 3715 includes the construction, presence, or maintenance of temporary or permanent structures, including buildings and the storage of equipment or supplies, regardless of whether they are actually used as a residence.

Las Vegas Mining Facility, Inc., 166 IBLA 306 (Aug. 25, 2005)

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." Under 43 C.F.R. § 3715.2, in order to justify occupancy of the public lands for more than 14 days in a 90-day period, the activities that are the reason for the occupancy must include all five elements: (a) be reasonably incident to mining or mineral processing operations; (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 by inspection; and (e) use appropriate equipment that is presently operable. Where the record demonstrates that an appellant's activities do not meet the standards of 43 C.F.R. § 3715.2, BLM's conclusion that an occupancy is not permitted will be affirmed on that ground.

Las Vegas Mining Facility, Inc., 166 IBLA 306 (Aug. 25, 2005)

Surface Resources Act
Occupancy

Occupancy of the public lands under the mining laws within the meaning of the regulations at 43 C.F.R. Subpart 3715 includes the construction, presence, or maintenance of temporary or permanent structures, including buildings and the storage of equipment or supplies, regardless of whether they are actually used as a residence.

L. Joei Netolicky, 167 IBLA 193 (Nov. 9, 2005)

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." Under 43 C.F.R. § 3715.2, in order to justify occupancy of the public lands, the activities that are the reason for the occupancy must include five elements: (a) be reasonably incident to mining or mineral processing operations; (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 by inspection; and (e) use appropriate equipment that is presently operable. In order to be reasonably incident, occupancy must be commensurate with the scope and nature of current mining activities.

L. Joei Netolicky, 167 IBLA 193 (Nov. 9, 2005)

Surface Resources Act
Occupancy

When BLM is unable to concur after inspection under the regulations at 43 C.F.R. Subpart 3715 that a mining claimant's occupancy is reasonably incident to mining and processing activities, it may issue a cessation order describing the ways in which the occupancy is not reasonably incident. The cessation order must be supported by a reasoned analysis of the facts in the record and, when the record lacks copies of recent inspection reports as well as any analysis of the asserted scope of claimant's operations, the decision is properly set aside and the case remanded for adjudication.

L. Joei Netolicky, 167 IBLA 193 (Nov. 9, 2005)

Surface Resources Act
Occupancy

A mining claimant is not entitled to use and occupy a mining claim or mill site unless such use and occupancy justifiably can be considered reasonably incident to prospecting, mining, or processing operations. The possibility that mining or milling might commence sometime in the future does not justify current occupancy of a mining claim or mill site.

Jason S. Day, 167 IBLA 395 (Feb. 14, 2006)

Surface Resources Act
Occupancy

Under the Surface Resources Act of July 23, 1955, 30 U.S.C. § 612(a) (2000), mining and mill site 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. Where appellants had no viable mining operation on their claim and it contained no valuable mineral deposit, the disposition of common sand and gravel from the claim for use as Type II road base and as aggregate in other commodities was properly held a mineral trespass.

Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., Ian Matheson, 168 IBLA 183 (Mar. 16, 2006)

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." To justify occupancy of the public lands, the regulations at 43 C.F.R. Subpart 3715 require that the activities be reasonably incident to mining, milling, or processing operations; constitute substantially regular work; be reasonably calculated to lead to the extraction and beneficiation of minerals; involve observable on-the-ground activity that BLM may verify by inspection; and use appropriate equipment that is presently operable. 43 C.F.R. § 3715.2. The regulations also mandate that occupancy must involve either protecting exposed, concentrated or otherwise accessible minerals from loss or theft; protecting appropriate, regularly used, and not readily portable operable equipment from theft or loss; protecting the public from such equipment which, if unattended, creates a hazard to public safety; protecting the public from surface uses, workings, or improvements which, if left unattended, create a hazard to public safety; or being located in an area so isolated or lacking in physical access as to require the claimant, operator, or workers to remain on the site in order to work a customary full 8-hour shift. 43 C.F.R. § 3715.2-1.

Pilot Plant, Inc., 168 IBLA 201 (Mar. 16, 2006)

Surface Resources Act
Occupancy

A BLM notice of noncompliance finding that occupancy of a mill site does not meet the requirements of 43 C.F.R. Subpart 3715 will be affirmed where the operator has not shown that the current level of occupancy is commensurate with the magnitude of mining and milling operations occurring on the site or that the schedule for the removal of various items is unreasonable or otherwise erroneous.

Pilot Plant, Inc., 168 IBLA 201 (Mar. 16, 2006)

Surface Resources Act
Occupancy

In addition to meeting the criteria for an occupancy prescribed in 43 C.F.R. §§ 3715.2 and 3715.2-1, a claimant who asserts the need for a caretaker or watchman must show that the need is reasonably incident and continual and that occupancy by a caretaker or watchman is needed whenever the operation is not active or whenever the claimant or the claimant's workers are not present on site. 43 C.F.R. § 3715.2-2. In the absence of a need to protect exposed valuable minerals from theft or loss; to protect

operable equipment that is not readily portable from theft or loss; to avoid creating a hazard to the public from unattended equipment, surface uses, workings, or improvements; or a location in an isolated or physically inaccessible area, a caretaker or watchman cannot be justified under the regulations.

Pilot Plant, Inc., 168 IBLA 201 (Mar. 16, 2006)

Surface Resources Act
Occupancy

All existing uses and occupancies under the mining laws were required to comply with Departmental regulations at 43 C.F.R. Subpart 3715 implementing the Surface Resources Act, 30 U.S.C. § 612(a) (2000), by Aug. 18, 1997, after which they became subject to enforcement action.

Combined Metals Reduction Co., 170 IBLA 56 (Sept. 7, 2006)

Surface Resources Act
Occupancy

A party will be deemed not to have received constructive notice under 43 C.F.R. § 1810.2(b) of a notice of noncompliance (NON) issued by BLM under 43 C.F.R. § 3715.7-1(c) where the NON was mailed to the party but not received by him, the record does not establish that it was mailed to his last address of record, and the circumstances of the non-delivery are not clear from the record. In the absence of service of the NON, the purpose of providing notice to the claimant of how it is failing or has failed to comply with 43 C.F.R. Subpart 3715 was thwarted, and the matter must proceed as though no NON was issued.

Combined Metals Reduction Co., 170 IBLA 56 (Sept. 7, 2006)

Surface Resources Act
Occupancy

Reasonably incident. Under 43 C.F.R. § 3715.2, occupancy of a mining claim for more than 14 days in any 90-day period is not an authorized use or occupancy if the mining operations used to justify the use or occupancy are not "reasonably incident" to mining or mining-related activity. "Reasonably incident" is defined at 43 C.F.R. § 3715.0-5 as those actions involving the "statutory standard" of "prospecting, mining, or processing operations and uses reasonably incident thereto" and "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."

Combined Metals Reduction Co., 170 IBLA 56 (Sept. 7, 2006)

Surface Resources Act
Occupancy

The burden of proving that activities on a mining claim are reasonably incident to mining or mining-related activity is on the claimant. The extent of permissible occupancy is directly related to the extent of mining-related activity conducted on the claim; the structures and equipment maintained on site must be related to and commensurate with the operations. The relevant period of time for determining the level of activity on mining claims is the time immediately prior to BLM's issuance of a cessation order. Where the record shows that, for a period of some 3 years immediately prior to the issuance of the CO, an occupant was merely "mothballing" its equipment, while actually dismantling much of its mining infrastructure, and that the actions taken were defensive and preservational and not related to the development of the mineral resources of the claims, the occupancy is not "reasonably incident" under the regulations.

Combined Metals Reduction Co., 170 IBLA 56 (Sept. 7, 2006)

Surface Resources Act
Occupancy

Where an occupancy does not meet the conditions of 43 C.F.R. §§ 3715.2(a) and 3715.5(a) (both requiring that such occupancy be "reasonably incident") maintaining structures and equipment for such occupancy is prohibited under 43 C.F.R. § 3715.6(a) and (j), and a cessation order directing the immediate removal of structures and equipment from the claims is properly issued under 43 C.F.R. § 3715.7-1(b)(I).

Combined Metals Reduction Co., 170 IBLA 56 (Sept. 7, 2006)

Surface Resources Act
Occupancy

The promulgation of 43 C.F.R. Subpart 3715 superseded any previous authorizations for occupancy. In the absence of a new authorization under 43 C.F.R. Subpart 3715, any prior authorization of occupancy is irrelevant.

Combined Metals Reduction Co., 170 IBLA 56 (Sept. 7, 2006)

Surface Resources Act
Occupancy

As long as mining claims remain valid, the claimant retains the right to re-enter its claims for mining, exploration, and/or milling operations, subject to the limitations imposed by 43 C.F.R. Subparts 3809 and 3715. To the extent that a validly-issued cessation order purports to permanently bar an operator from re-entering a valid mining claim to conduct mining and/or milling operations, it will be modified to clarify that occupancy is barred only until BLM approves a new occupancy.

Combined Metals Reduction Co., 170 IBLA 56 (Sept. 7, 2006)

Surface Resources Act
Occupancy

A cessation order issued by BLM pursuant to 43 C.F.R. Subpart 3715 is properly vacated as unsupported where the record does not show, and BLM has not ruled in the first

instance, that reclamation is in order under relevant provisions of 43 C.F.R. Subpart 3809.

Combined Metals Reduction Co., 170 IBLA 56 (Sept. 7, 2006)

Surface Resources Act
Occupancy

As a BLM decision concerning permissibility of occupancy of a mining claim is not a decision determining whether the claim is invalid due to lack of a discovery under the Mining Law of 1872, the mining claimant is not entitled to a pre-decisional fact-finding hearing before an administrative law judge. The claimant's due process rights are fully protected by its right to appeal such decision to the Interior Board of Land Appeals.

Combined Metals Reduction Co., 170 IBLA 56 (Sept. 7, 2006)

Surface Resources Act
Occupancy

Under 43 C.F.R. § 3715.7(b)(1), to the extent that a use or occupancy is not reasonably incident to prospecting, mining, or processing operations, BLM may order a temporary or permanent cessation of all or any part thereof if all or part of the use or occupancy is not reasonably incident but does not endanger health, safety, or the environment. A cessation order citing use or occupancy that is not reasonably incident, but does not endanger health, safety, or the environment, is properly issued even though it was not preceded by a cognizable notice of noncompliance.

Combined Metals Reduction Co., 170 IBLA 56 (Sept. 7, 2006)

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. The fact that a mining claimant's use of a mining claim constitutes "casual use," however, does not by itself exclude all types of "occupancy" under the terms of 43 C.F.R. Subpart 3715.

Cynthia Balser, et al., 170 IBLA 269 (Oct. 24, 2006)

Surface Resources Act
Occupancy

"*Substantially regular work*." As used in 43 C.F.R. § 3715.0-5, the phrase "substantially regular work" means work on, or that substantially and directly benefits, a mineral property including nearby properties under control of the mining claimant. The term also embraces mining activity that is intermittent and/or seasonal in nature.

Cynthia Balser, et al., 170 IBLA 269 (Oct. 24, 2006)

Surface Resources Act
Occupancy

Occupancy of the public lands under the mining laws within the meaning of the regulations at 43 C.F.R. Subpart 3715 includes the construction, presence, or maintenance of temporary or permanent structures, including buildings and the storage of equipment or supplies. BLM properly makes a determination of nonconcurrence with a request for occupancy of a mining claim when the claimant has failed to demonstrate by a preponderance of the evidence that the activity on the claim is reasonably incident to prospecting, mining, or processing operations, and is commensurate with the level of occupancy requested.

Karl F. Reith, 172 IBLA 351 (Sept. 28, 2007)

Surface Resources Act
Occupancy

When BLM issues a decision enforcing the use and occupancy requirements of 43 C.F.R. Subpart 3715, it must ensure, as an initial matter, that the decision is supported by a reasoned analysis of the facts in the record. Thereafter, a party challenging a BLM decision that is based on a finding that a claimant's use or occupancy of a mining claim is not reasonably incident to prospecting, mining, or processing operations bears the burden of proving, by a preponderance of the evidence, that the challenged decision is in error and that the use or occupancy is, in fact, in compliance with section 4(a) of the Multiple Use Mining Act of 1955 and 43 C.F.R. §§ 3715.2 and 3715.2-1. When a decision does not include a reasoned analysis of a determination regarding a claimant's request to occupy the mining claim by storing equipment and other property the decision will be set aside and remanded to BLM.

Karl F. Reith, 172 IBLA 351 (Sept. 28, 2007)

Surveys of Public Lands
Generally

The Secretary of the Interior is authorized and obligated to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands have been or remain to be disposed of by the United States. An island in a navigable river that has been omitted from a public land survey remains public land and may be surveyed and disposed of by the United States.

State of South Dakota, 166 IBLA 210 (July 27, 2005)

Surveys of Public Lands

Generally

Although there is no right to a hearing before an administrative law judge on a protest against a survey, a BLM decision dismissing a protest against a survey of an island will be set aside and referred for a hearing where the record discloses significant unresolved factual issues as to whether the island was actually in existence at the time of the admission to the Union of the state within which the island is situated.

State of South Dakota, 166 IBLA 210 (July 27, 2005)

Surveys of Public Lands
Generally

Notations to an official survey plat that are based on the surveyor's conclusion that an island was created by avulsion will be ordered removed when the evidence relied on to reach that conclusion is not positive evidence, as required by section 7-73 of the *Manual of Instructions for the Survey of the Public Lands of the United States 1973*.

Quinton Douglas, 166 IBLA 257 (Aug. 11, 2005)

Surveys of Public Lands
Generally

Section 7-73 of the *Manual of Instructions for the Survey of the Public Lands of the United States 1973* requires that an avulsive change in a channel of a body of water be proved by positive evidence. Such positive evidence must be direct, affirmative, and definite, and does not include circumstantial evidence, conjecture, or indirect evidence subject to different interpretations.

Quinton Douglas, 166 IBLA 257 (Aug. 11, 2005)

Surveys of Public Lands
Generally

When the Government conveys title to a parcel of land fronting navigable water, the intention, in all ordinary cases, is that the parcel's edge extends to the water's edge. When a homestead patent contains nothing to indicate that the United States intended to retain title to the Federal land between the meander line and the mean high water line, BLM properly concluded that there is no Federal interest it could convey under a color-of-title application.

Irving and Jeanette Stevens, 172 IBLA 157 (Aug. 20, 2007)

Surveys of Public Lands
Dependent Resurveys

The purpose of a dependent resurvey is to retrace and reestablish the lines of the original survey in their true and original positions according to the best available evidence of the positions of the original corners. A corner can be determined to be "existing" if such a conclusion is supported by substantial evidence. Where a party challenging the filing of a plat for a dependent resurvey fails to meet his burden of establishing by a preponderance of the evidence that a corner proffered by appellant is an original section corner, the decision dismissing his protest of the dependent resurvey will be affirmed.

Robert W. Delzell, Betty Simpson, 158 IBLA 238 (Jan. 29, 2003)

Surveys of Public Lands
Dependent Resurveys

Where a BLM conclusion that a particular stone is not the original monument for an "existing" corner and that the original section corner was lost is supported by substantial evidence, appellant must show more than a difference of opinion or speculation in order to preponderate. A corner will be regarded as lost where the appellant fails to establish by a preponderance of the evidence that monuments or accessories are those set in the original survey.

Robert W. Delzell, Betty Simpson, 158 IBLA 238 (Jan. 29, 2003)

Surveys of Public Lands
Dependent Resurveys

An obliterated corner is one at which there are no remaining traces of the monument or its accessories, but whose location has been perpetuated or may be recovered beyond reasonable doubt based on the acts or testimony of the interested landowners, competent surveyors, or other qualified local authorities, or witnesses, or by some acceptable record evidence. Where evidence does not support that a particular location is an obliterated corner, the Board will not reverse BLM's determination that the corner is lost.

Robert W. Delzell, Betty Simpson, 158 IBLA 238 (Jan. 29, 2003)

Surveys of Public Lands
Dependent Resurveys

A survey that has already been accepted will not be overturned, especially after a long lapse of time, except upon proof by a preponderance of the evidence of fraud or gross error amounting to fraud.

Robert W. Delzell, Betty Simpson, 158 IBLA 238 (Jan. 29, 2003)

Surveys of Public Lands
Dependent Resurveys

An allegation that a dependent resurvey is void because it impairs bona fide rights is without merit where the record shows that the dependent resurvey is an accurate

retracement and reestablishment of the lines of the original survey. The dependent resurvey does not affect the location of any boundary lines as it is, by definition, a restoration of the original conditions of the official survey.

Robert W. Delzell, Betty Simpson, 158 IBLA 238 (Jan. 29, 2003)

Surveys of Public Lands
Dependent Resurveys

The Board will affirm a BLM decision dismissing a protest of a dependent resurvey when the protestant fails on appeal to establish by a preponderance of the evidence that BLM erred as a matter of fact in determining that original section corners and quarter-section corners are "existent."

Howard Vagneur, 159 IBLA 272 (June 27, 2003)

Surveys of Public Lands
Dependent Resurveys

The proper standard for BLM to apply in the course of a dependent resurvey is to consider a corner "existent" (or "found") if such a conclusion is supported by substantial evidence. "Substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Where a BLM conclusion that a corner is existent is based on evidence of an original bearing tree, record bearings and distances to other nearby corners, and its location on the east end of an ancient blaze line, that conclusion is supported by substantial evidence.

Howard Vagneur, 159 IBLA 272 (June 27, 2003)

Surveys of Public Lands
Dependent Resurveys

The Board will dismiss an appeal from a BLM decision dismissing a protest of a dependent resurvey where the appellant fails to demonstrate that he has been adversely affected by such dismissal since he has no legally cognizable interest which will be affected by the resurvey. The appeal is also properly dismissed where a quarter corner to the survey is surrounded by private land.

John D. Wayne d/b/a Basin Surveying, Inc., 161 IBLA 140 (Apr. 13, 2004)

Surveys of Public Lands
Dependent Resurveys

In a dependent resurvey, a corner is categorized as existent, obliterated, or lost. A lost corner is restored by proportionate measurement from one or more interdependent corners. When the field notes for a dependent resurvey do not identify the monuments or points of control used to restore a lost corner and the record does not include field notes from the original survey which established the corner or any related corner or monument, the survey cannot be held to have complied with the *Manual of Instructions for the Survey of the Public Lands of the United States*.

Russell and Ann Fisher-Ives, et al., 172 IBLA 54 (Aug. 2, 2007)

Surveys of Public Lands
Dependent Resurveys

When the placement of a "closing corner" by dependent resurvey is not supported by facts documented in the record on appeal, the dependent resurvey will be set aside and remanded.

Russell and Ann Fisher-Ives, et al., 172 IBLA 54 (Aug. 2, 2007)

Surveys of Public Lands
Omitted Lands

Under the Minnesota Public Lands Improvement Act of 1990, Pub. L. No. 101-442, Congress intended to divest the United States of ownership of a multitude of unmanageable small islands and upland areas generally omitted from the original surveys of Minnesota, and authorize conveyance either to the State or to persons claiming ownership of those lands. The Act requires only that a claimant make a good faith assertion of ownership that is meritorious. The Bureau of Land Management's rejection of a claim under the Act, based upon the application of a limited number of particular factors as the exclusive evidence of a good faith assertion of ownership, is properly reversed where a claimant produces other credible evidence of a good faith assertion of ownership.

Steven L. Abel, Trustee of the Erma Tomalino Trust, 164 IBLA 212 (Dec. 28, 2004)

Surveys of Public Lands
Omitted Lands

The Secretary of the Interior is authorized and obligated to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands have been or remain to be disposed of by the United States. An island in a navigable river that has been omitted from a public land survey remains public land and may be surveyed and disposed of by the United States.

State of South Dakota, 166 IBLA 210 (July 27, 2005)

Surveys of Public Lands
Omitted Lands

When the Government conveys title to a parcel of land fronting navigable water, the intention, in all ordinary cases, is that the parcel's edge extends to the water's edge. When a homestead patent contains nothing to indicate that the United States intended to retain title to the Federal land between the meander line and the mean high water line, BLM properly concluded that there is no Federal interest it could convey under a color-of-title application.

Irving and Jeanette Stevens, 172 IBLA 157 (Aug. 20, 2007)

Timber Sales and Disposals
Generally

BLM may approve a timber sale without preparing an EIS, if, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2)(C) (1994), it has taken a hard look at the environmental consequences of the timber sale and reasonable alternatives, considering all relevant matters of environmental concern, including the expected individual and cumulative impacts, and made a convincing case that no significant impact will result, or that the impacts will be reduced to insignificance by the adoption of appropriate mitigation measures. BLM's decision not to prepare an EIS will be affirmed if an appellant does not demonstrate, with objective proof, that BLM failed to consider a substantial environmental problem of material significance, or otherwise failed to abide by the statute.

Klamath Siskiyou Wildlands Center et al., 157 IBLA 332 (Oct. 30, 2002)

Timber Sales and Disposals
Generally

It is proper for BLM to approve a timber sale, absent preparation of an EIS, when, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2)(C) (1994), it has taken a hard look at the environmental consequences of doing so and reasonable alternatives thereto, considering all relevant matters of environmental concern, including the expected individual and cumulative impacts to soils, water quality and quantity, and threatened or endangered species, and made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. BLM's decision not to prepare an EIS will be affirmed if the appellant does not demonstrate, with objective proof, that BLM failed to consider a substantial environmental problem of material significance to the proposed action, or otherwise failed to abide by the statute.

Umpqua Watersheds, Inc., et al., 158 IBLA 62 (Dec. 18, 2002)

Timber Sales and Disposals
Generally

When, on appeal of a timber sale, key issues regarding implementation of the Northwest Forest Plan and compliance with the Aquatic Conservation Strategy and the Endangered Species Act of 1973 have been decided in Federal court by an agreement settling litigation, or by the preparation of further environmental documentation, and those issues that remain must await the development of a new site-specific consultation process and the issuance of new biological opinions, BLM's decision denying appellant's protest and authorizing commercial thinning will be vacated and the case remanded to BLM for further action after reconsultation and issuance of new biological opinions.

Umpqua Watersheds, Inc., In re Johnson Creek Commercial Thinning Project, 163 IBLA 94 (Sept. 9, 2004)

Timber Sales and Disposals
Generally

Review of a challenge to a timber sale on the ground of consistency with the aquatic conservation strategy is guided by principles generally relevant to review of environmental compliance. The record must provide a rational rational basis for a finding of consistency. One challenging such a finding must demonstrate either an error of law or fact or that the analysis failed to consider a significant impact of the timber sale. This showing must be satisfied by objective evidence and a mere difference of opinion with BLM specialists will not suffice.

Klamath Siskiyou Wildlands Center et al., 157 IBLA 322 (Oct. 29, 2002)

Timber Sales and Disposals
Generally

Upon review of the cumulative impacts analysis in an EA for a timber sale which is tiered to a broader programmatic EIS for timber management in the area, the finding of no significant impact based on the EA may be upheld when there is no showing that BLM failed to consider significant impacts different in nature than those analyzed in the EIS.

Klamath Siskiyou Wildlands Center et al., 157 IBLA 322 (Oct. 29, 2002)

Timber Sales and Disposals
Generally

A decision that it is not necessary to prepare an EIS before proceeding with a prescribed burn and juniper cut will be affirmed on appeal if the record demonstrates that BLM has, considering all relevant matters of environmental concern, taken a "hard look" at potential environmental impacts, and made a convincing case that no significant impact will result or that the impacts will be reduced to insignificance by the adoption of appropriate mitigation measures. An appellant seeking to set aside or overturn a decision to proceed without preparing an EIS must demonstrate, with objective proof, that BLM failed to consider a substantial environmental question of material significance to the proposed action, or that it otherwise failed to abide by section 102(2)(C) of NEPA.

Committee for Idaho's High Desert, Western Watersheds Project & Idaho Bird Hunters, 158 IBLA 322 (Mar. 27, 2003)

Timber Sales and Disposals
Generally

The procedures governing wildfire management decisions affecting forests are set forth at 43 C.F.R. § 5003.1(b). Appeals of such decisions are to the Board of Land Appeals, which is required under 43 C.F.R. § 4.416 to decide such appeals within 60 days after all pleadings have been filed, and within 180 days after the appeal is filed. Other BLM decisions governing or relating to forest management proceed through the protest and appeal process of 43 C.F.R. § 5003.1(a), 43 C.F.R. § 5003.2, and 43 C.F.R. § 5003.3.

Oregon Natural Resources Council, Hells Canyon Preservation Council, 161 IBLA 323 (May 25, 2004)

Timber Sales and Disposals
Generally

When BLM provides in a decision record approving a fuels treatment project, and subsequent notice thereof, for a right of appeal to the Board of Land Appeals, pursuant to 43 C.F.R. Part 4, but explains on appeal that the project will be implemented through a timber sale contract and a stewardship contract and that the timber sale contract will be subject to the protest and appeal procedures of 43 C.F.R. Subpart 5300, the Board will grant BLM's motion to dismiss, as premature, an appeal of the decision record, as it relates to activities to be conducted pursuant to a timber sale contract.

Oregon Natural Resources Council, Hells Canyon Preservation Council, 161 IBLA 323 (May 25, 2004)

Timber Sales and Disposals
Generally

Under 43 C.F.R. § 5003.1(b), BLM may make a wildfire management decision effective immediately or on a date certain when it determines that "vegetation, soil, or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire." In the absence of such a determination, a wildfire management decision is automatically stayed in accordance with 43 C.F.R. § 4.21(a). Regardless, 43 C.F.R. § 4.21(b) clearly is applicable to wildfire management decisions whether or not such a decision is made effective immediately.

Oregon Natural Resources Council, Hells Canyon Preservation Council, 161 IBLA 323 (May 25, 2004)

Timber Sales and Disposals
Generally

BLM properly decides to approve an integrated resource management project, including timber harvesting and road building, without preparing an EIS, where, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2)(C) (2000), it has taken a hard look at the environmental consequences of doing so and reasonable alternatives thereto, considering all relevant matters of environmental concern, including the anticipated individual and cumulative impacts to soils, water quality, and threatened and endangered species, and determined that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. BLM's decision not to prepare an EIS will be affirmed where the appellant does not demonstrate, with objective proof, that BLM failed to consider a significant impact resulting from the proposed action, or otherwise failed to abide by the statute.

Friends of the Clearwater, et al., 163 IBLA 1 (Aug. 31, 2004)

Timber Sales and Disposals
Generally

The impact of more than one timber sale may be addressed in a single environmental analysis. The Board will not set aside a timber sale based on an appellant's objections that pertain to another timber sale which had been addressed in the same environmental analysis unless those objections are tied to the cumulative effect of the action.

In re Big Deal Timber Sale, 165 IBLA 18 (Feb. 17, 2005)

Timber Sales and Disposals
Generally

When a resource management plan (RMP) provides that connectivity blocks will be managed on a 150-year control rotation and that regeneration harvests will occur at the rate of approximately 1/15 of the available acres per decade, the 1/15 limitation does not embrace harvests that occurred prior to the designation of the connectivity block.

In re Big Deal Timber Sale, 165 IBLA 18 (Feb. 17, 2005)

Timber Sales and Disposals
Generally

When a fish species is listed as threatened or endangered, its critical habitat is afforded protection under section 7 of the ESA. Under section 7(a)(2) of the ESA, 16 U.S.C. § 1536(a)(2) (2000), BLM may not take action likely to jeopardize the continued existence of an endangered or threatened (listed) species or result in the destruction or adverse modification of its critical habitat. To that end, section 7(a)(2) of the ESA imposes an obligation on BLM to consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (depending on whether the species is under the jurisdiction of the Secretary of the Interior or the Secretary of Commerce) to insure that "any action authorized, funded, or carried out" by BLM is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of its critical habitat. If, after either informal consultation or preparation of a biological assessment, BLM, with the concurrence of the Director of the wildlife agency, makes a determination that the action is not likely to adversely affect listed species or critical habitat, then formal consultation is not required.

In re Big Deal Timber Sale, 165 IBLA 18 (Feb. 17, 2005)

Timber Sales and Disposals
Generally

When a timber sale includes a unit that is infected with Port Orford Cedar root rot, BLM must specifically address how the spread of the infection is to be mitigated.

In re Big Deal Timber Sale, 165 IBLA 18 (Feb. 17, 2005)

Timber Sales and Disposals
Generally

The Board will ordinarily uphold a BLM determination that a proposed project, with appropriate mitigation measures, will not have a significant impact on the quality of the human environment if the record establishes that a careful review of environmental problems has been made, relevant environmental concerns have been identified, and the final determination is reasonable. A party challenging BLM's decision to approve a timber sale based on a finding of no significant impact has the burden of

demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal. If the appealed decision is the denial of a protest, the appellant must affirmatively point out error in the protest decision.

Bark (In re Rusty Saw Timber Sale), 167 IBLA 48 (Sept. 29, 2005)

Timber Sales and Disposals
Generally

A party challenging BLM's decision to approve a timber sale based on a finding of no significant impact has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demon-strable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal. If the appealed decision is the denial of a protest, the appellant must affirmatively point out error in the protest decision.

In re North Trail Timber Sale, 169 IBLA 258 (July 13, 2006)

Timber Sales and Disposals
Generally

A party appealing the denial of a protest of a timber sale may raise an issue pertaining to the prospectus for the timber sale, dated subsequent to the environmental assessment (EA), the finding of no significant impact, and the decision record, when there is no basis for concluding that the party should have been alerted to the issue by the scoping notice or EA.

In re North Trail Timber Sale, 169 IBLA 258 (July 13, 2006)

Timber Sales and Disposals
Northwest Forest Plan
Generally

When a resource management plan (RMP) provides that connectivity blocks will be managed on a 150-year control rotation and that regeneration harvests will occur at the rate of approximately 1/15 of the available acres per decade, the 1/15 limitation does not embrace harvests that occurred prior to the designation of the connectivity block.

In re Big Deal Timber Sale, 165 IBLA 186 (Feb. 17, 2005)

Timber Sales and Disposals
Northwest Forest Plan
Aquatic Conservation Strategy

The Aquatic Conservation Strategy (ACS) of the Northwest Forest Plan (NFP) requires BLM to maintain and restore a number of environmental values in lands subject to the NFP. ACS components include riparian reserves, key watersheds, watershed analysis, and watershed restoration. Riparian reserves are lands along streams and unstable and potentially unstable areas where special standards and guidelines direct land use. Key watersheds are a system of large refugia comprising watersheds that are crucial to at-risk fish species and stocks and provide high quality water.

In re Big Deal Timber Sale, 165 IBLA 18 (Feb. 17, 2005)

Timber Sales and Disposals
Northwest Forest Plan
Aquatic Conservation Strategy

Timber sales and forest management projects must be consistent with Aquatic Conservation Strategy (ACS) objectives, *i.e.*, BLM must maintain the existing condition or move the watershed towards the range of natural variability. A determination regarding whether a particular timber sale or the overall forest management project is consistent with the ACS must be made at the sale or project level (not at the watershed level), and in the short-term (less than 10 years) as well as the long-term, especially when considering the cumulative site-specific impacts of all sales or projects in the affected watershed.

In re Big Deal Timber Sale, 165 IBLA 18 (Feb. 17, 2005)

Timber Sales and Disposals
Northwest Forest Plan
Aquatic Conservation Strategy

When a fish species is listed as threatened or endangered, its critical habitat is afforded protection under section 7 of the ESA. Under section 7(a)(2) of the ESA, 16 U.S.C. § 1536(a)(2) (2000), BLM may not take action likely to jeopardize the continued existence of an endangered or threatened (listed) species or result in the destruction or adverse modification of its critical habitat. To that end, section 7(a)(2) of the ESA imposes an obligation on BLM to consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (depending on whether the species is under the jurisdiction of the Secretary of the Interior or the Secretary of Commerce) to insure that "any action authorized, funded, or carried out" by BLM is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of its critical habitat. If, after either informal consultation or preparation of a biological assessment, BLM, with the concurrence of the Director of the wildlife agency, makes a determination that the action is not likely to adversely affect listed species or critical habitat, then formal consultation is not required.

In re Big Deal Timber Sale, 165 IBLA 18 (Feb. 17, 2005)

Timber Sales and Disposals
Northwest Forest Plan
Aquatic Conservation Strategy

Review of a challenge to a timber sale's consistency with the Aquatic Conservation Strategy of the Northwest Forest Plan is guided by principles generally relevant to review of environmental compliance. The record must provide a rational basis for a finding of consistency. A party challenging such a finding must demonstrate either an

error of law or fact or a failure to consider a significant impact of the timber sale. The challenging party bears the ultimate burden of proof which must be satisfied by objective evidence rather than differences of opinion.

Bark (In re Rusty Saw Timber Sale), 167 IBLA 48 (Sept. 29, 2005)

Title

Bona fide purchaser protection is generally limited to a purchaser of title to the land in good faith, for value, and without notice of an earlier unrecorded equitable interest or claim. A party holding a special use permit authorizing use of Federal lands for a specific purpose, subject to valid claims, has no claim of title to the land and, hence, is not entitled to protection as a bona fide purchaser against adjudication of outstanding claims of title.

Erling Skaflestad, Bonnie Skaflestad, 155 IBLA 141 (June 27, 2001)

Trespass
Generally

When the record supports a finding that the purchaser under a mineral materials sale contract committed a willful trespass by removing sand and gravel in excess of the volume limitation in the contract, a BLM levy of trespass damages determined in accordance with applicable state law will be affirmed.

M. L. Petersen, 151 IBLA 379 (Feb. 8, 2000)

Trespass
Generally

Removal of boulders beyond the amounts authorized by contract and after expiration thereof is intentional trespass when there is evidence of a reckless disregard for the expiration date and quantity limits of the contract.

El Rancho Pistachio, 152 IBLA 87 (Mar. 29, 2000)

Trespass
Generally

An appraisal will not be set aside unless an appellant shows error in the method of appraisal or shows by convincing evidence that the value is excessive. Where BLM attempts to implement the comparable use method of valuation by using a master appraisal, the Board will uphold the BLM decision where the record contains sufficient detail to show that the specific material at issue matches the representative material.

El Rancho Pistachio, 152 IBLA 87 (Mar. 29, 2000)

Trespass
Generally

Under 43 C.F.R. § 2920.1-2(a), any use, occupancy, or development of the public lands without authorization, shall be considered a trespass. Where the record shows that a mobile homes business uses public land for storage of mobile homes, mobile home parts, and other vehicles without authorization, and continues to use such land despite being told by BLM on several occasions that authorization for use is required, the business is properly found to be in willful trespass.

Factory Homes Outlet, 153 IBLA 83 (July 28, 2000)

Trespass
Generally

BLM must support a charge of nonwillful trespass for removing mineral material from public lands with evidence that the charged party actually committed a trespass by removing mineral materials from public lands, or by directing or acquiescing in such removal without authority. A lessor is not liable for the trespass of his lessee when the trespass is committed on lands other than those leased and where there is no evidence that the lessor extracted and/or removed or directed the extraction and/or removal of materials in trespass.

Kenneth Snow, Richard Halliburton, 153 IBLA 371 (Oct. 5, 2000)

Trespass
Generally

Under 43 C.F.R. § 9239.0-7, the unauthorized extraction and/or removal of mineral materials from public lands is an act of trespass. When a party extracts and removes mineral materials from public lands without prior authorization from BLM, a finding of trespass is properly affirmed. However, when the record shows that one or more parties, in addition to the party charged, operated on the site and may have contributed to the trespass, the case will be remanded for BLM to determine whether trespass damages should be properly apportioned among several parties.

Kenneth Snow, Richard Halliburton, 153 IBLA 371 (Oct. 5, 2000).

Trespass
Generally

A BLM trespass notice issued under 43 C.F.R. § 2920.1-2 is properly affirmed when an appellant, despite being advised numerous times of the need to apply for a land use permit, continues to use public lands for agricultural purposes without a permit issued pursuant to 43 U.S.C. § 1732(b) (1994).

Sydney Dowton, 154 IBLA 222 (Mar. 30, 2001)

Trespass
Generally

The continued presence of construction equipment, materials, and waste on public lands without authorization under 43 C.F.R. § 2920.1-1 constitutes a trespass, subjecting the responsible parties to liability under 43 U.S.C. § 1733(g) (1994) and 43 C.F.R. § 2920.1-2.

Parkway Retail Centre, LLC, 154 IBLA 246 (Apr. 4, 2001)

Trespass
Generally

It is incumbent upon BLM to ensure that its decision is supported by a rational basis and that such basis is stated in the written decision, as well as being demonstrated in the administrative record accompanying the decision. A BLM decision claiming trespass damages for the unauthorized use of 3 acres of public lands will be set aside and the case remanded where neither the decision nor the case record provide any support for a finding that the trespass encompassed 3 acres.

Parkway Retail Centre, LLC, 154 IBLA 246 (Apr. 4, 2001)

Trespass
Generally

Under 43 C.F.R. § 9239.0-7 and 43 C.F.R. § 9239.1-3(a), burning of public lands is an act of trespass for which fire suppression and related administrative costs may properly be assessed as damages against the trespasser.

Daryl Serr, 155 IBLA 21 (Apr. 30, 2001)

Trespass
Generally

When wind carries a fire set by an individual beyond the original site of the fire and onto public lands, the setting of the fire remains the "cause" of the fire, and the fact that wind is an "Act of God," or an act not of human origin, does not excuse the originator of the fire from liability for trespass.

Daryl Serr, 155 IBLA 21 (Apr. 30, 2001)

Trespass
Generally

A claim that wind carries a fire deliberately set by an individual beyond the original site of the fire and onto public lands, and that the fire was thereby caused by an "Act of God" does not justify a hearing under 43 C.F.R. § 4.415, when the trespasser admits that he set the fire.

Daryl Serr, 155 IBLA 21 (Apr. 30, 2001)

Trespass
Generally

Under 43 C.F.R. § 9239.0-7 and 43 C.F.R. § 9239.1-3(a), burning of resources on public lands is an act of trespass for which fire suppression and related administrative costs may properly be assessed as damages against the trespasser.

Gene Goold, 155 IBLA 299 (Aug. 24, 2001)

Trespass
Generally

To the extent a fire trespass case presents complex factual issues, it will justify a hearing before an administrative law judge, pursuant to 43 C.F.R. § 4.415. The Board will exercise its discretionary authority to order a hearing if an appellant presents sufficient material issues of fact requiring resolution through the introduction of testimony and other evidence not readily obtainable through ordinary appeals procedures.

Gene Goold, 155 IBLA 299 (Aug. 24, 2001)

Trespass
Generally

Under 43 C.F.R. § 9239.0-7 and 43 C.F.R. § 9239.1-3(a), the unauthorized burning of public lands is an act of trespass for which fire suppression and related administrative costs may properly be assessed as damages against the trespasser. However, in the absence of a showing of either intent or negligence, the mere fact that human actions may have contributed in some way to the initiation of fire on or spread of fire to public lands is an insufficient basis on which to predicate liability for fire suppression and restoration costs.

Pamela Neville, 155 IBLA 303 (Aug. 29, 2001)

Trespass
Generally

Under 43 C.F.R. § 9239.0-7 and 43 C.F.R. § 9239.1-3, the unauthorized burning of public lands is an act of trespass for which fire suppression and related administrative costs may properly be assessed as damages against the trespasser. However, in each case of human-caused fire, BLM must establish either intent or negligence as a

prerequisite to the assessment and collection of damages. Where the party assessed for trespass damages raises material issues of fact concerning the cause of the fire and its culpability for negligence, BLM's decision will be set aside and the case will be referred for a hearing to resolve those disputed issues.

Idaho Power Company, 156 IBLA 25 (2001)

Trespass
Generally

BLM properly finds that a water diversion structure has been erected in trespass on Federally-owned public lands where, even though the structure is intended to serve State water rights which predate the Oct. 21, 1976, passage of FLPMA, no right-of- way or other authorization for the construction and maintenance of the structure has since been obtained. In these circumstances, BLM also properly holds the builder of the structure and the party on whose behalf the structure was built jointly and severally liable for the administrative costs incurred by BLM in resolving the trespass and requires that arrangements be made to remove the structure and rehabilitate the affected lands.

Dalton Wilson, Don Bowman, 156 IBLA 89 (Dec. 14, 2001)

Trespass
Generally

"*Trespass*." Departmental regulations define "trespass" generally as "any use, occupancy or development of the public lands or their resources without authorization to do so from the United States where authorization is required, or which exceeds such authorization." 43 C.F.R. § 2800.0-5(u). The regulations specifically governing enclosures prohibit "[c]onstructing or maintaining any kind of * * * fences or enclosures on the Federal range * * * without authority of law or a permit." 43 C.F.R. § 9239.2-1(c). A BLM decision finding that a fence was being maintained in trespass and ordering the removal of that fence will be affirmed where (1) the fence enclosed approximately 15 acres of Federal lands, effectively adding them to adjacent private lands; (2) the trespasser repeatedly admitted that the fence was being used both to define the boundary of his property and to contain his cattle; and (3) the fence was gated, controlling access to the trespasser's private property. Although the user did not personally construct the fence, he "used" it for a period of 7 or 8 years after acquiring his private lands and "maintained" it by not removing it. There being a trespass, BLM was authorized to require the trespasser to remove (at his own expense) improvements maintained on lands in trespass, even if originally placed there unintentionally or inadvertently.

John T. Alexander, 157 IBLA 1 (July 17, 2002)

Trespass
Generally

Under 43 C.F.R. § 9239.0-7, the unauthorized severance or removal of timber and forest products from public lands under the jurisdiction of the Department of the Interior is an act of trespass.

Caughman Lumber, Inc., 157 IBLA 192 (Sept. 19, 2002)

Trespass
Generally

The Board will not affirm an indirect cost assessment associated with prosecution of a trespass action by BLM where BLM has not itemized and justified the basis for the assessment in the administrative record.

Caughman Lumber, Inc., 157 IBLA 192 (Sept. 19, 2002)

Trespass
Generally

A willful trespass results from "a knowing act or omission that constitutes the voluntary or conscious performance of a prohibited act or indifference to or reckless disregard for the law." 43 C.F.R. § 5400.0-5. Where a logging company was informed numerous times that it was responsible for marking boundaries between private lands it was authorized to log and public lands it was not, it must clearly delineate the boundaries prior to cutting. In failing to do so, the company acted with indifference to and in reckless disregard for the law, and BLM's assessment of damages for willful trespass was proper.

Caughman Lumber, Inc., 157 IBLA 192 (Sept. 19, 2002)

Trespass
Generally

Where BLM holds a purchaser of materials under a materials sale contract in trespass for removing materials in excess of his authorization and failing to pay for them, the purchaser does not sufficiently rebut the trespass by refusing to provide its sale and haul records demanded by BLM or by demanding that BLM investigate other material sales contracts. Where a purchaser refuses to rebut evidence that it removed materials in excess of its authorization to do so and refuses to pay or settle payment demands for the excess material served on it by certified mail, BLM may properly suspend further sales and require the purchaser to remove its equipment from the site.

MSVR Equipment Rentals Ltd., 160 IBLA 95 (Oct. 3, 2003)

Trespass
Generally

Under 43 C.F.R. § 2920.1-2(a), one who commits a trespass on public land is liable for (1) the administrative costs incurred by the United States as a consequence of such trespass; (2) the fair market value rental of the lands for the period of trespass; and (3) rehabilitation and stabilization of the lands that were the subject of such trespass. That regulation further provides that if the trespasser does not rehabilitate and stabilize the lands subject to the trespass within the period set by the authorized officer, the trespasser shall be liable for the costs incurred by the United States in rehabilitating and stabilizing such lands. A decision imposing administrative costs, rental, and a bond requirement to assure compliance with requirements for rehabilitation will be affirmed when an appellant has provided no evidence to support his allegation that BLM was arbitrary and capricious in its determination.

Norman Reid, 163 IBLA 324 (Nov. 3, 2004)

Trespass
Generally

Under 43 C.F.R. § 9239.0-7 and 9239.1-3(a), burning of public lands is an act of trespass for which fire suppression and related administrative costs may properly be assessed as damages against the trespasser.

Brad Bower, 163 IBLA 342 (Nov. 4, 2004)

Trespass
Generally

In each case of human-caused fire constituting trespass on public lands, the record must establish either intent or negligence as a prerequisite to the assessment and collection of damages. A hearing to resolve the trespasser's culpability for causing the fire or his liability for costs is unnecessary where the issues can be resolved through the record.

Brad Bower, 163 IBLA 342 (Nov. 4, 2004)

Trespass
Generally

Any use, occupancy, or development of the public lands without authorization is a trespass. Where a party plants fruit trees on public lands and maintains them for a period of at least 13 years, and where there is nothing indicating that he was authorized to do so, he has committed trespass.

Stanley Dimeglio et al., 163 IBLA 365 (Nov. 8, 2004)

Trespass
Generally

BLM could properly direct trespassers to rehabilitate and stabilize the lands that were the subject of a trespass, including bringing the lands back to their pre-trespass condition by removing fruit trees planted and maintained in trespass.

Stanley Dimeglio et al., 163 IBLA 365 (Nov. 8, 2004)

Trespass
Generally

Sand and gravel are covered by the reservation of "oil, gas, and all other mineral deposits" in patents granted under the Small Tract Act, 43 U.S.C. § 682a (1970). Removal of sand and gravel from land patented under that Act for commercial purposes constitutes a trespass.

New West Materials, 164 IBLA 126 (Dec. 2, 2004)

Trespass
Generally

The purchaser under a mineral materials sales contract commits occupancy trespass when it allows stockpiles of raw mineral material to remain on the lands and conducts substantial processing operations there beyond the expiration date of the contract. However, where neither the contract nor the regulations provided for any measure of damages for such occupancy trespass, any damages should be assessed under 43 C.F.R. § 9239.0-8 and would be limited to the value of use of the surface of the lands covered by the stockpiles and processing equipment; the damages are accordingly not related to the value of any mineral material stockpiled on the claim during the term of the contract and subsequently removed.

Quality Earth Materials, LLC, 164 IBLA 160 (Sept. 23, 2004)

Trespass
Generally

Where the purchaser under a mineral materials sales contract pays in advance for 10,000 tons of mineral material and extracts only 7,000 tons of mineral material from the ground (placing it in stockpiles) prior to the expiration date of the sales contract, it has not committed mineral trespass. Nor is it mineral trespass where the purchaser continues to process the previously-mined and stockpiled materials into sand products after expiration of the sales contract, as, by so doing, the purchaser is not taking more mineral materials than it is entitled to under the contract, but is instead merely moving the stockpiles, which were its personal property, as required by the terms of the contract.

Quality Earth Materials, LLC, 164 IBLA 160 (Sept. 23, 2004)

Trespass
Generally

Under 43 C.F.R. § 9239.0-7 and 43 C.F.R. § 9239.1-3, the unauthorized burning of public lands is an act of trespass for which fire suppression and related administrative costs may properly be assessed as damages against the trespasser. However, in each case of human-caused fire, BLM must establish either intent or negligence as a prerequisite to the assessment and collection of damages. Where the party assessed for trespass damages raises material issues of fact concerning the cause of the fire and its culpability for negligence, BLM's decision will be set aside and the case will be referred for a hearing to resolve those disputed issues.

T.J.'s Land Clearing, Golden Valley Electric Association, Inc., 164 IBLA 222 (Dec. 28, 2004)

Trespass

Generally

Any use, occupancy, or development of the public lands without authorization is a trespass. BLM may properly require the removal of structures unintentionally constructed in trespass on public land. A party constructing a cabin in trespass on the public lands is liable for the administrative expenses incurred in dealing with the trespass, as well as the fair market value rental of the land for the period of trespass.

Darrell Ceciliani, 166 IBLA 316 (Aug. 31, 2005)

Trespass
Generally

Even assuming *arguendo* that appellant was informed by a BLM employee that a fence served as a public/private land boundary, such action would not estop BLM from charging him with trespass in the construction of a cabin on public land, when there is no affirmative misconduct in the nature of an erroneous statement of fact in an official written decision.

Darrell Ceciliani, 166 IBLA 316 (Aug. 31, 2005)

Trespass
Generally

While situations may arise where the Government may be estopped because a private party, acting in reliance upon a Governmental representation, was prevented from obtaining a right which might have been obtained, the Government cannot be estopped where the effect of the estoppel is to grant someone a right which was not available in the first instance.

Darrell Ceciliani, 166 IBLA 316 (Aug. 31, 2005)

Trespass
Generally

Under the Surface Resources Act of July 23, 1955, 30 U.S.C. § 612(a) (2000), mining and mill site 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. Where appellants had no viable mining operation on their claim and it contained no valuable mineral deposit, the disposition of common sand and gravel from the claim for use as Type II road base and as aggregate in other commodities was properly held a mineral trespass.

Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 183 (Mar. 16, 2006)

Trespass
Generally

Causing a fire on public lands, other than one permitted in writing by BLM or specifically exempted by the regulations, is one of the prohibited acts enumerated in 43 C.F.R. § 9212.1. When such a fire injures vegetative materials on public lands, it constitutes an act of trespass under 43 C.F.R. § 9239.0-7.

Leo R. Haag, Jr. v. Bureau of Land Management, 170 IBLA 320 (Nov. 21, 2006)

Trespass
Generally

Pursuant to 43 C.F.R. § 9239.1-3(a), damages for trespass include administrative costs and costs "associated with the rehabilitation and stabilization of any resources damaged as a result of the trespass." Thus, to the extent a fire produces an injury to public lands, BLM may properly assess fire suppression and related administrative costs against the trespasser, upon a showing of either intent or negligence by a preponderance of the evidence. However, BLM may only assess the costs that result from the trespasser's negligence, and not those additional costs resulting from the Government's decision to allow the fire to continue to burn, or those additional costs resulting from the fire suppression measures required when, after the Government decides to allow the fire to continue to burn, it burns out of control.

Leo R. Haag, Jr. v. Bureau of Land Management, 170 IBLA 320 (Nov. 21, 2006)

Trespass
Generally

An appellant bears the burden of showing error in a BLM decision requiring cessation of operations that would remove mineral materials owned by the United States from the public lands.

Alfred Jay Schritter, 171 IBLA 123 (Feb. 21, 2007)

Trespass
Generally

Where the record fails to support a finding that BLM erred in determining (1) that the owner of a mineral estate on lands acquired by the United States was removing sand, gravel, and common earthen material, and (2) that such material was not reserved under the general mineral clause of the relevant deed, Arizona law dictates a finding that the material removed was not included in appellant's mineral estate, but rather was included in the surface estate held by the United States.

Alfred Jay Schritter, 171 IBLA 123 (Feb. 21, 2007)

Trespass
Generally

The Board properly rejects an appellant's assertion in defense of a trespass notice that he owns the affected public land pursuant to the State law doctrine of boundary by acquiescence. It is well established that prescriptive rights cannot be obtained against the Federal government; mere occupancy and improvements of public lands without color of title create no prescriptive or vested rights as against the United States; and adverse possession of Government property cannot affect the title of the United States, except as provided by Federal statute. Moreover, the authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by the acquiescence of its officers or their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Leo Hardy, 172 IBLA 296 (Sept. 20, 2007)

Trespass
Measure of Damages

Evidence of knowledge that a violation is occurring or of a reckless disregard for whether a violation is occurring is essential to a finding of willful trespass. Standing alone, knowledge that specific behavior is regulated will not support a finding that the violation was willfully committed or a finding that it was committed with reckless disregard. The test is the trespasser's actual intent at the time of the violation.

M. L. Petersen, 151 IBLA 379 (Feb. 8, 2000)

Trespass
Measure of Damages

The rule of damages applied for mineral materials trespass is the measure of damages prescribed by the laws of the state in which the trespass occurs. Both statutes and state court decisions prescribing mineral trespass damages are applicable.

M. L. Petersen, 151 IBLA 379 (Feb. 8, 2000)

Trespass
Measure of Damages

Anyone properly determined by BLM to be in trespass shall be liable to the United States for the reimbursement of all costs incurred by the United States in the investigation and termination of a trespass and the rental value of the lands for the time of the trespass. Where a trespasser does not take issue with the details of BLM's assessment of liability, the assessment is properly affirmed.

Factory Homes Outlet, 153 IBLA 83 (July 28, 2000).

Trespass
Measure of Damages

A BLM determination of the fair market value of the use of public land, both authorized and unauthorized, will be set aside where the value is based on a rental estimate which explicitly states that an appraisal is necessary if the case is controversial and the record establishes that the matter has been controversial from the outset.

Sydney Dowton, 154 IBLA 222 (Mar. 30, 2001)

Trespass
Measure of Damages

BLM is obligated to ensure that the compensation paid for use of the public lands, both in rent and trespass damages, represents not less than fair market rental value under the circumstances. Where BLM does not provide rationale supporting its determination to assess liability for a period of 6 months, its decision, when challenged, must be set aside and the matter remanded for further review.

Parkway Retail Centre, LLC, 154 IBLA 246 (Apr. 4, 2001)

Trespass
Measure of Damages

The regulation, 43 C.F.R. § 2920.1-2(b), allows BLM to assess more than fair market rental value for unauthorized uses of the public land in very limited circumstances, *i.e.*, only when the trespass is not timely resolved following notice to the trespasser. In such a circumstance, it may collect double the fair market rental value for a nonwillful trespass and triple the fair market rental value for a knowing and willful trespass.

Parkway Retail Centre, LLC, 154 IBLA 246 (Apr. 4, 2001)

Trespass
Measure of Damages

BLM properly finds that a water diversion structure has been erected in trespass on Federally-owned public lands where, even though the structure is intended to serve State water rights which predate the Oct. 21, 1976, passage of FLPMA, no right-of- way or other authorization for the construction and maintenance of the structure has since been obtained. In these circumstances, BLM also properly holds the builder of the structure and the party on whose behalf the structure was built jointly and severally liable for the administrative costs incurred by BLM in resolving the trespass and requires that arrangements be made to remove the structure and rehabilitate the affected lands.

Dalton Wilson, Don Bowman, 156 IBLA 89 (Dec. 14, 2001)

Trespass
Measure of Damages

Under 43 C.F.R. § 9239.0-7, the unauthorized severance or removal of timber and forest products from public lands under the jurisdiction of the Department of the Interior

is an act of trespass.

Caughman Lumber, Inc., 157 IBLA 192 (Sept. 19, 2002)

Trespass
Measure of Damages

A willful trespass results from "a knowing act or omission that constitutes the voluntary or conscious performance of a prohibited act or indifference to or reckless disregard for the law." 43 C.F.R. § 5400.0-5. Where a logging company was informed numerous times that it was responsible for marking boundaries between private lands it was authorized to log and public lands it was not, it must clearly delineate the boundaries prior to cutting. In failing to do so, the company acted with indifference to and in reckless disregard for the law, and BLM's assessment of damages for willful trespass was proper.

Caughman Lumber, Inc., 157 IBLA 192 (Sept. 19, 2002).

Trespass
Measure of Damages

The Board will not affirm an indirect cost assessment associated with prosecution of a trespass action by BLM where BLM has not itemized and justified the basis for the assessment in the administrative record.

Caughman Lumber, Inc., 157 IBLA 192 (Sept. 19, 2002)

Trespass
Measure of Damages

The purchaser under a mineral materials sales contract commits occupancy trespass when it allows stockpiles of raw mineral material to remain on the lands and conducts substantial processing operations there beyond the expiration date of the contract. However, where neither the contract nor the regulations provided for any measure of damages for such occupancy trespass, any damages should be assessed under 43 C.F.R. § 9239.0-8 and would be limited to the value of use of the surface of the lands covered by the stockpiles and processing equipment; the damages are accordingly not related to the value of any mineral material stockpiled on the claim during the term of the contract and subsequently removed.

Quality Earth Materials, LLC, 163 IBLA 160 (Sept. 23, 2004)

Trespass
Measure of Damages

Anyone properly determined by BLM to be in trespass on Federally-owned lands shall be liable to the United States for damages, including the administrative costs incurred by the United States as a consequence of such trespass and the fair market value rental of the lands for the current year and past years of trespass. Where trespass is "knowing and willful," the trespasser shall be liable to the United States for three times the fair market rental value which has accrued since the inception of the trespass, not to exceed a total of 6 years. In determining the "fair market rental value," it was proper for BLM to consider the value of the improvements (most particularly the fruit trees) placed on the Federally-owned lands in trespass.

Stanley Dimeglio et al., 163 IBLA 365 (Nov. 8, 2004)

Trespass
Measure of Damages

Anyone properly determined by BLM to be in trespass on Federally-owned lands shall be liable to the United States for damages, including the administrative costs incurred by the United States as a consequence of such trespass and the fair market value rental of the lands for the current year and past years of trespass. Where trespass is "knowing and willful," the trespasser shall be liable to the United States for three times the fair market rental value which has accrued since the inception of the trespass, not to exceed a total of 6 years. In determining the "fair market rental value," it was proper for BLM to consider the value of the improvements (most particularly the fruit trees) placed on the Federally-owned lands in trespass.

Stanley Dimeglio et al., 163 IBLA 365 (Nov. 8, 2004).

Trespass
Measure of Damages

The sanctions for unauthorized commercial recreation use of the public lands are set forth in the regulations governing special recreation permits at 43 C.F.R. § 8372.0-7 (b) (2000). A decision applying the trespass regulation at 43 C.F.R. § 2920.1-2, which pertains to uses not authorized under any other law or regulation, to assess administrative costs, fair market value rental, and a willful trespass penalty for unauthorized commercial recreation use will be vacated.

Frank Robbins, d.b.a. High Island Ranch, 167 IBLA 239 (Nov. 30, 2005).

Trespass
Nonwillful

A letter granting a party "official authorization to conduct maintenance activities on existing public land reservoirs, pits, and spreader dikes within" a grazing allotment, and requiring that party, "[p]rior to beginning construction work on any projects . . . to notify [BLM] of the location of the projects that you will be maintaining," is properly interpreted as requiring that BLM be notified and approve the construction work, where the record shows that both the party and BLM believed that the party would inform BLM in advance before commencing work. Where the party notified BLM of his intention to undertake construction on a dam/reservoir within a wilderness study area and BLM expressly notified the party not to proceed until the validity of the construction could be confirmed, the party was not authorized to proceed with the construction.

Terry Jones v. Bureau of Land Management, 170 IBLA 295 (Nov. 7, 2006).

Trespass
Nonwillful

A party is not authorized to undertake construction activities on a dam/reservoir within a wilderness study area by virtue of a cooperative agreement authorizing and obliging its predecessor-in-interest to conduct maintenance on the dam/reservoir where BLM documentation shows that it was abandoned in 1972, where there is no reference to it in BLM's record assignments of cooperative agreements after 1970 (including assignments to the party itself), where it was not listed in a 1980 wilderness inventory, and where the party lacked knowledge of its existence.

Terry Jones v. Bureau of Land Management, 170 IBLA 295 (Nov. 7, 2006).

Trespass
Nonwillful

A charge of unintentional trespass is not negated because the trespasser acted on the basis of a mistaken belief. At best, acting on a mistaken belief establishes that the trespass was inadvertent or nonwillful.

Terry Jones v. Bureau of Land Management, 170 IBLA 295 (Nov. 7, 2006).

Trespass
Willful Trespass

When the record supports a finding that the purchaser under a mineral materials sale contract committed a willful trespass by removing sand and gravel in excess of the volume limitation in the contract, a BLM levy of trespass damages determined in accordance with applicable state law will be affirmed.

M. L. Petersen, 151 IBLA 379 (Feb. 8, 2000).

Trespass
Willful Trespass

Knowing and Willful. A trespass is "knowing and willful" if it constitutes the voluntary or conscious performance of an act which is prohibited or the voluntary or conscious failure to perform an act or duty that is required; the knowing or willful nature of conduct may be established by plain indifference to or reckless disregard of the requirements of law, regulations, orders, or terms of a lease; and a consistent pattern of performance or failure to perform supports a finding that the conduct is knowing or willful in nature, where such consistent pattern is neither the result of honest mistake nor mere inadvertency. Planting fruit trees on lands known to be Federally-owned and subsequently failing to remove them and continuing to harvest fruit from them following notification that the trees were planted in trespass was "knowing and willful" trespass, as those actions constituted both a voluntary and conscious performance of an act which is prohibited (planting the trees) and a voluntary and conscious failure to perform an act or duty that is required (removing the trees). The continued presence on public lands of the fruit trees, as well as a water reservoir, equipment, and supply storage yard without BLM authorization throughout a 13-year period shows a consistent pattern of performance and failure to perform supporting the knowing and willful nature of the trespass. The trespasser's subjective beliefs that he was legally expanding his operation and reclaiming adjacent lands and that it was reasonable to do so do not mitigate the knowing and willful character of his conduct.

Stanley Dimeglio et al., 163 IBLA 365 (Nov. 8, 2004).

Water Pollution Control
Generally

Under section 313(a) of the Clean Water Act of 1977, *as amended*, 33 U.S.C. § 1323(a) (1994), BLM is generally required to comply with state water pollution laws when engaged in any activity which may result in the runoff of pollutants. Under Arizona law, existing water quality is required to be protected and maintained in surface water designated as a "unique water."

National Wildlife Federation, et al., 151 IBLA 66 (Oct. 28, 1999).

Wild and Scenic Rivers Act

An appellant must demonstrate that, when finding that its proposed action will not result in significant adverse impact on the human environment, BLM erred in its analysis or acted contrary to any law to prevail on appeal. A BLM decision to approve amendment of a special recreation permit to authorize a jet boat race on a Federally–designated wild and scenic river will be affirmed when the record adequately supports the decision, demonstrates that BLM took a hard look at the potential environmental impacts of its decision, and makes a convincing case that no significant impact will likely result, in accordance with section 102(2) of the National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. § 4332(2) (1994).

Klamath–Siskiyou Wildlands Center, 153 IBLA 110 (Aug. 7, 2000).

Wild and Scenic Rivers Act

It is proper for BLM to declare null and void ab initio that portion of a placer mining claim encompassing land which was, at the time of location, withdrawn from mineral entry pursuant to section 9(b) of the Wild and Scenic Rivers Act, *as amended*, 16 U.S.C. § 1280(b) (1994).

Lamar & Christine Burnett, 153 IBLA 215 (Aug. 31, 2000).

Wild and Scenic Rivers Act

It is proper for BLM to declare null and void ab initio a placer mining claim encompassing land which was, at the time of location, withdrawn from mineral entry pursuant to section 9(b) of the Wild and Scenic Rivers Act, *as amended*, 16 U.S.C. § 1280(b) (1994).

Robert B. Hoke, et al., 160 IBLA 220 (Dec. 3, 2003).

Wild and Scenic Rivers Act

Under section 501(a)(6) of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1761(a)(6) (2000), a decision to issue a right-of-way is discretionary. When BLM uses its discretionary authority to reject an application for a land use authorization, it must provide a rational basis for its decision. A BLM decision rejecting a right-of-way application will be affirmed when the record shows that BLM balanced the application against resource values of concern, including preservation of the wild and scenic characteristics of the area, and concluded that the application is inconsistent with applicable land use plans.

Wiley F. & L'Marie Beaux, 171 IBLA 58 (Jan. 31, 2007).

Wild and Scenic Rivers Act

In denying a right-of-way application for the upgrading of an existing road in a wild and scenic river study area, BLM may not, according to section 12(b) of the Wild and Scenic Rivers Act, 16 U.S.C. § 1283(b) (2000), and the implementing regulations at 43 C.F.R. Subpart 8351, abrogate any existing rights of the private party without the consent of said party.

Wiley F. & L'Marie Beaux, 171 IBLA 58 (Jan. 31, 2007).

Wild and Scenic Rivers Act

As a general rule, the Board of Land Appeals has authority to review decisions by BLM relating to the use and disposition of the public lands. *See* 43 C.F.R. § 4.1(b)(3), 4.410(a). However, the Board does not have jurisdiction to review appeals of decisions to approve or amend a resource management plan, which is designed to guide and control future management actions.

Friends of Living Oregon Waters et al., 171 IBLA 271 (May 21, 2007).

Wild and Scenic Rivers Act

Whether the Board of Land Appeals exercises jurisdiction over a BLM action as an implementation decision depends upon the effect of that action. If it is in the nature of a direction to BLM's employees, so that an action would be required to produce an adverse effect, the Board does not have jurisdiction. Thus, a BLM decision adopting a management plan providing for guidance and direction regarding recreation activities along a wild and scenic river is not within the jurisdiction of the Board of Land Appeals because it does not implement those actions.

Friends of Living Oregon Waters et al., 171 IBLA 271 (May 21, 2007).

Wild and Scenic Rivers Act

By authorizing and limiting motor vehicle use near and across a river to the type, level, and nature of use occurring at the time it was designated as a "wild river area" under section 101(a) of the Wild and Scenic River Act, 16 U.S.C. § 1251(a) (2000), BLM acts consistent with its obligation to protect the values which caused that river to be so designated, unless it is demonstrated by objective evidence that its authorization will "substantially interfere" with others' use and enjoyment of that river or area under section 10(a) of the Wild and Scenic River, 16 U.S.C. § 1281(a) (2000).

Oregon Chapter of the Sierra Club, Wilderness Watch; George Stroemple, Central Oregon Land, LLC; Steens Mountain Landowner Group, 172 IBLA 27 (July 25, 2007).

Wild Free-Roaming Horses and Burros Act

A BLM decision canceling a private maintenance and care agreement and repossessing a wild horse is properly affirmed where the evidence establishes that the adopter violated the adoption agreement by transferring the horse to another party for more than 30 days without notifying the authorized officer.

Stefanie Lee, 151 IBLA 1 (Oct. 14, 1999).

Wild Free-Roaming Horses and Burros Act

When BLM cancels a Private Maintenance and Care Agreement, the adopter has the burden of establishing that BLM's action was improper.

Stefanie Lee, 151 IBLA 1 (Oct. 14, 1999).

Wild Free-Roaming Horses and Burros Act

A BLM decision authorizing the removal of wild horses determined to be excess from certain areas of public land based on an appropriate management level which will avert deterioration of the range and preserve a thriving natural ecological balance in accordance with section 3(b) of the Wild Free-Roaming Horses and Burros Act, *as amended*, 16 U.S.C. § 1333(b) (1994), will be upheld where the record demonstrates that the decision is based upon a reasonable analysis of data collected on an ongoing basis.

Animal Protection Institute of America, et al., 151 IBLA 396 (Feb. 15, 2000).

Wild Free-Roaming Horses and Burros Act

BLM improperly cancelled a private maintenance and care agreement for wild horses and took immediate possession of the horses on the basis that the adopter had failed to provide adequate shelter and feed for her adopted horses, where BLM did so (1) during the period of an indefinite extension of time granted to the adopter to provide shelter without providing notice that the period for compliance had ended and that the horses were about to be seized; and (2) on the strength of an unconfirmed report by a third party that the horses were about to be denied feed.

Julie R. Hayslip, 155 IBLA 315 (Sept. 5, 2001).

Wild Free-Roaming Horses and Burros Act

Where an adopter, over a 8-month period following the implementation of a private maintenance and care agreement, failed to provide shelter for adopted horses as required by that agreement, the return of the horses to the adopter is properly conditioned upon a showing that she has, in fact, provided shelter as required.

Julie R. Hayslip, 155 IBLA 315 (Sept. 5, 2001).

Wild Free-Roaming Horses and Burros Act

A BLM decision cancelling a private maintenance and care agreement and repossessing three wild horses will be affirmed where the evidence establishes that the adopter violated the terms of the agreement by selling horses covered by agreement before he obtained title to them and by failing to notify BLM within 7 days of the discovery of the death of one of the horses he sold.

Ted L. Barber, Sr., 156 IBLA 59 (Dec. 5, 2001).

Wild Free-Roaming Horses and Burros Act

In exercising its broad discretion to approve or reject an application to adopt a wild horse under 43 C.F.R. Subpart 4750, BLM properly considers information and circumstances contained in the application, as well as matters outside the application of which it has knowledge.

Nikki Lippert, 160 IBLA 149 (Oct. 17, 2003).

Wild Free-Roaming Horses and Burros Act

BLM acts arbitrarily in imposing a requirement that a rancher make water available to wild horses if BLM fails to consider an important aspect of the problem such as the adverse effect of such a requirement on cattle grazing practices.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Wild Free-Roaming Horses and Burros Act

Departmental regulation 43 C.F.R. § 4710.4 requires that management of wild horses and burros be undertaken with the objective of limiting the animals' distribution to herd areas. Management shall be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans. Absent a factual showing that optimum levels cannot be achieved without additional resources, a policy to manage allotments by requiring ranchers to make additional resources available to wild horses cannot be reconciled with the regulatory requirement that management be kept at the minimal level necessary.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Wild Free-Roaming Horses and Burros Act

The constraints on wild horse management established by 43 C.F.R. § 4710.4 make the effect of a water source on herd distribution a relevant factor that BLM is required to consider before requiring a rancher to provide water for wild horses. Because the constraints were adopted for the stated purpose of controlling herd size, the effect of sharing water with horses on the rate of herd growth is a relevant factor that must be considered before a requirement to share water with horses may be imposed. A decision to require a rancher to provide water for horses must be supported by specific evidence that the requirement would not have undue adverse effects on grazing practices and range conditions.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Wild Free-Roaming Horses and Burros Act

When BLM has rejected range improvement permit applications in order to require the applicants to transfer an undivided one-half interest in the water rights to the United States and to provide water for wild horses under the terms of a cooperative agreement and BLM has not provided a rational basis for imposing such requirements, BLM's decision denying the applications for range improvement permits cannot be affirmed because such denial would be an abuse of discretion.

Joe B. Fallini, Jr., et al. v. Bureau of Land Management, 162 IBLA 10 (June 24, 2004).

Wild Free-Roaming Horses and Burros Act

A decision to remove excess wild horses to the extent necessary to reach the appropriate management level required to preserve a thriving natural ecological balance on the range will be affirmed when the decision is based on a reasoned analysis of rangeland monitoring data.

Thomas M. Berry, 162 IBLA 221 (July 27, 2004).

Wild Free-Roaming Horses and Burros Act

Board of Land Appeals regulations at 43 C.F.R. § 4.410(a) require that the appellant be a party to the case and be adversely affected by a decision. Where the appellant fails to identify specific facts giving rise to a conclusion of adverse effect, the appeal will be dismissed for lack of standing. The appellant fails to show standing to appeal a decision regarding the placement of excess horses removed from and no longer located on the public lands, by alleging impacts to its members' interest in seeing horses remain on the public lands.

The Fund for Animals, Inc., 163 IBLA 172 (Sept. 24, 2004).

Wild Free-Roaming Horses and Burros Act

A Private Maintenance and Care Agreement for adopted wild horses may be summarily cancelled by BLM upon good and sufficient evidence that the terms of the agreement have been violated. BLM may rely upon an observed deteriorating condition of the animals themselves and credible reports of third parties in deciding to repossess the animals and cancel a Private Maintenance and Care Agreement. Where photographs taken on the day of the inspection provide sufficient evidence of the deteriorating condition of the animals, and appellant has submitted no countervailing evidence that would warrant reversal of a decision to cancel the Private Maintenance and Care Agreement and repossess the horses, the decision will be affirmed.

Jerry Dixson, 165 IBLA 125 (Mar. 22, 2005).

Wild Free-Roaming Horses and Burros Act

BLM may properly cancel private maintenance and care agreements for wild horses and repossess the horses when there is sufficient evidence of improper care of the adopted animals to establish that the adopter violated the terms of the agreements.

Elizabeth Box, 166 IBLA 50 (June 14, 2005).

Wild Free-Roaming Horses and Burros Act

Photographic evidence or a report from a veterinarian or a BLM official will ordinarily constitute sufficient evidence of the adopter's treatment of the adopted animal.

Elizabeth Box, 166 IBLA 50 (June 14, 2005).

Wild Free-Roaming Horses and Burros Act

Credible reports by third parties regarding the condition of adopted animals may be used in conjunction with proof of the deteriorating condition of the animals to provide support to a BLM finding of substandard care.

Elizabeth Box, 166 IBLA 50 (June 14, 2005).

Wild Free-Roaming Horses and Burros Act

An employer does not have a right of appeal from the cancellation of a Private Maintenance and Care Agreement that was issued to an employee because the employee may not serve as the employer's agent in filing an application to adopt or in signing a maintenance and care agreement.

Lynda Fowler, 166 IBLA 193 (July 19, 2005).

Wild Free-Roaming Horses and Burros Act

Nothing in the Wild Free-Roaming Horses and Burros Act of 1971 or implementing regulations in 43 C.F.R. Part 4700 prohibits BLM from establishing an Appropriate Management Level for wild horses based on rangeland monitoring data, climate, and wild horse health that anticipates herd augmentation to maintain the herd's genetic diversity.

Wild Horse Organized Assistance, 172 IBLA 128 (Aug. 2, 2007).

Wild Free-Roaming Horses and Burros Act

A BLM decision establishing an Appropriate Management Level for wild horses will be affirmed on appeal when the decision is based upon a reasoned analysis of rangeland monitoring data, climate, and wild horse health conditions and the appellant fails to show that BLM committed an error in ascertaining, collecting, or interpreting such data.

Wild Horse Organized Assistance, 172 IBLA 128 (Aug. 2, 2007).

Wilderness Act

The Wilderness Act, 16 U.S.C. §§ 1133(c) and 1134(a) (1994), preserves existing access rights of private inholders. If a landowner has no prior existing right to access, he must be given the option of adequate access or of a land exchange. In this latter situation, where an inholder is offered an exchange, the statutory requirements are met, and he then has no right of access.

Erik and Tina Barnes, National Wildlife Federation, et al., 151 IBLA 128 (Nov. 30, 1999).

Wilderness Act

A BLM decision to allow maintenance of a segment of an access route to a private inholding within a recently designated wilderness area to facilitate limited and reasonable vehicle access consistent with the prewilderness grazing use is not contrary to the Wilderness Act, 16 U.S.C. § 1133(d)(4)(2) (1994), and will be upheld on appeal absent a showing of compelling reasons for modification or reversal.

Erik and Tina Barnes, National Wildlife Federation, et al., 151 IBLA 128 (Nov. 30, 1999).

Wilderness Act

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1994), requires the Secretary to regulate activities on lands under wilderness review to prevent impairment of their suitability for inclusion in the wilderness system. However, operations that impair wilderness suitability may be allowed if they are conducted in the same manner or degree as on Oct. 21, 1976.

Natural Guardian LP, 152 IBLA 295 (May 31, 2000).

Wilderness Act

An appellant appealing denial of an application for a right-of-way across public land must show that the decision was premised either on a clear error of law or a demonstrable error of fact.

Natural Guardian LP, 152 IBLA 295 (May 31, 2000).

Wilderness Act

BLM's authority to conduct wilderness reviews or establish new wilderness study areas expired on October 21, 1993, and, absent congressional authorization, BLM may not establish, manage or otherwise treat public lands, other than Congressionally designated wilderness under 43 U.S.C. § 1782 (2000), as a wilderness study area or as a wilderness under the land use planning provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1712.

Colorado Environmental Coalition, The Wilderness Society, 161 IBLA 386 (June 4, 2004).

Wilderness Act

BLM has authority under the Federal Land Policy and Management Act to prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values, which may include characteristics that are associated with the concept of wilderness.

Colorado Environmental Coalition, The Wilderness Society, 161 IBLA 386 (June 4, 2004).

Wilderness Act

When considering a proposal to preserve land having wilderness characteristics, BLM will continue to manage public lands according to existing land use plans. During the planning process and concluding with actions after the planning process, BLM will not manage those lands under a congressionally designated non-impairment standard, nor manage them as if they are or may become congressionally designated wilderness areas, but through the planning process BLM may manage them using special protections to protect wilderness characteristics.

Colorado Environmental Coalition, The Wilderness Society, 161 IBLA 386 (June 4, 2004).

Wilderness Act

When BLM prepares an environmental analysis for a proposed action to issue an oil and gas lease in an area open to leasing under a governing resource management plan, it is not required to postpone leasing under its existing resource management plan in order to consider a wilderness proposal from an advocacy group. Proposed designations that would require amendment of the existing resource management plan need not be considered each time BLM decides to grant a right to undertake an activity in conformity with the existing land use plan.

Colorado Environmental Coalition, The Wilderness Society, 161 IBLA 386 (June 4, 2004).

Wilderness Act

BLM's authority to conduct wilderness reviews or establish new wilderness study areas expired on October 21, 1993, and, absent Congressional authorization, BLM may not establish, manage or treat public lands, other than those designated wilderness by Congress under 43 U.S.C. § 1782 (2000), as wilderness study areas or as wilderness under the land use planning provisions of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1712 (2000). Under FLPMA, BLM has the authority to prepare and maintain an inventory of all public lands and their resources and other values, which may include characteristics that are associated with the concept of wilderness.

Colorado Environmental Coalition, The Wilderness Society, Sierra Club, 162 IBLA 293 (Aug. 17, 2004).

Wilderness Act

BLM properly dismisses a protest against an oil and gas lease sale based on assertions of the wilderness character of the lands, because the final administrative determination that the land was not wilderness in character was made in the 1980's. Even where the land has been proposed for wilderness designation in pending legislation, BLM may properly administer those lands for other purposes, where the land has not been included in a wilderness study area. Because the time for taking appeals from inventory decisions has long since passed, the doctrine of administrative finality precludes appellants from challenging those decisions by filing protests against actions taken by BLM to administer the land for other purposes.

Colorado Environmental Coalition, The Wilderness Society, Sierra Club, 162 IBLA 293 (Aug. 17, 2004).

Wilderness Act

When parcels nominated for inclusion in a competitive oil and gas lease sale encompass lands that have not been included in a wilderness study area or found to possess wilderness characteristics in a BLM wilderness inventory, BLM may administer those lands for other purposes, including oil and gas leasing, even though the lands were determined to have wilderness characteristics in a citizens' group wilderness inventory and were included in an area proposed for wilderness designation in legislation introduced in Congress.

Southern Utah Wilderness Alliance, 163 IBLA 14 (Sept. 3, 2004).

Wilderness Act

BLM is not required to re-inventory lands that have not been included in a wilderness study area or found to possess wilderness characteristics in a BLM inventory for wilderness suitability even though the lands were determined to have wilderness characteristics in a citizens' group wilderness inventory and were included in an area proposed for wilderness designation in legislation introduced in Congress. The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1711(a) (2000), controls the Secretary's wilderness inventory authority and grants the Secretary the discretion to determine the manner and time of implementation of the statutory mandate to keep a current inventory of the public lands and their resources.

Southern Utah Wilderness Alliance, 163 IBLA 14 (Sept. 3, 2004).

Wilderness Act

BLM's determination that existing environmental documents adequately analyze the effects of the inclusion in a competitive oil and gas lease sale of parcels located on lands that have not been included in a wilderness study area or found to possess wilderness characteristics in a BLM inventory will be affirmed where the appellant bases its objection to the adequacy of those documents on the fact that the lands were determined to have wilderness characteristics in a citizens' group wilderness inventory and were included in an area proposed for wilderness designation in legislation introduced in Congress.

Southern Utah Wilderness Alliance, 163 IBLA 14 (Sept. 3, 2004).

Wilderness Act

Section 4(c) of the Wilderness Act provides that "subject to existing private rights, there shall be . . . no permanent road within any wilderness area designated by this chapter and, . . . there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats . . . within any such area." 16 U.S.C. § 1133(c) (2000). If there is no evidence of existing private rights, no road or regular and continuous motorized use amounting to use of a road may be recognized to have existed at the time of wilderness designation. Where BLM relied on the existence of a route used by a random vehicle at the time of the designation of wilderness to justify authorizing, later, a "road receiving regular and continuous use" within a wilderness area, this conclusion is in error.

Wilderness Watch, et al., 168 IBLA 16 (Feb. 17, 2006).

Wilderness Act

Under 43 C.F.R. § 6305.10(a), governing access to wilderness inholdings, BLM may approve only "routes and modes of travel to your land" that existed on the date of wilderness designation. Where the record does not show that BLM gave proper attention to the historic access pertinent to the inholdings in question, a decision approving motorized access cannot be sustained and must be vacated.

Wilderness Watch, et al., 168 IBLA 16 (Feb. 17, 2006).

Wilderness Act

When parcels nominated for inclusion in a competitive oil and gas lease sale encompass lands that were not included in a wilderness study area, BLM may administer those lands for other purposes, including oil and gas leasing, even though the lands were asserted to have wilderness characteristics in a citizens' group wilderness proposal and were included in an area proposed for wilderness designation in legislation introduced in Congress. BLM's determination that existing environmental documents adequately analyze the effects of a competitive oil and gas lease sale for such parcels will be affirmed where the appellants base their objection to the adequacy of those documents on purported "significant new circumstances or information" but fail to establish such circumstances or information.

Colorado Environmental Coalition, et al., 171 IBLA 256 (May 9, 2007).

Wilderness Act

In authorizing access to inholdings under regulations that implement section 5(a) of the Wilderness Act, 16 U.S.C. § 1134(a) (2000), BLM will approve only the mode, route, and degree of access that inholders enjoyed at the time of wilderness designation.

Oregon Chapter of the Sierra Club, Wilderness Watch; George Stroemple, Central Oregon Land, LLC; Steens Mountain Landowner Group, 172 IBLA 27 (July 25, 2007).

Wilderness Act

Under regulations implementing the mandate to assure adequate access under the Wilderness Act, BLM is required to identify routes and modes previously used to access inholdings and to select the combination of routes and modes which will cause the least impact on wilderness character. 43 C.F.R. § 6305.10(a). BLM properly exercises its discretion by considering impacts to solitude and from the existence of observable routes within a wilderness area and selecting the alternative it determines will have the least impact on wilderness character.

Oregon Chapter of the Sierra Club, Wilderness Watch; George Stroemple, Central Oregon Land, LLC; Steens Mountain Landowner Group, 172 IBLA 27 (July 25, 2007).

Wilderness Act

Since a motorized route approved for inholder access is specifically provided for under section 5(a) of the Wilderness Act, 16 U.S.C. § 1134(a) (2000), it is excepted from the prohibition against roads and motor vehicle use under section 4(c) of the Wilderness Act, 16 U.S.C. § 1133(c) (2000).

Oregon Chapter of the Sierra Club, Wilderness Watch; George Stroemple, Central Oregon Land, LLC; Steens Mountain Landowner Group, 172 IBLA 27 (July 25, 2007).

Wilderness Act

Where BLM approves motorized access to inholders which is similar in nature, degree, and effect to that which they enjoyed at the time of wilderness designation, it acts consistent with its responsibility to "preserve" wilderness character under section 4(b) of the Wilderness Act, 16 U.S.C. § 1133(b) (2000).

Oregon Chapter of the Sierra Club, Wilderness Watch; George Stroemple, Central Oregon Land, LLC; Steens Mountain Landowner Group, 172 IBLA 27 (July 25, 2007).

Wilderness Act

The Wilderness Act does not prohibit access to a commercial enterprise which is located on an inholding where that enterprise is permitted by BLM under section 4(d)(5) of the Wilderness Act, 16 U.S.C. § 1133(d)(5) (2000). Such access is allowed but may be limited under standards applicable to granting access to the inholding at issue.

Oregon Chapter of the Sierra Club, Wilderness Watch; George Stroemple, Central Oregon Land, LLC; Steens Mountain Landowner Group, 172 IBLA 27 (July 25, 2007).

Wilderness Act

The general requirements and restrictions of the Wilderness Act, including its implementing regulations, apply to all wilderness areas unless Congress enacts specific provisions and standards for the administration of an area when designating it as a wilderness area. Where specific provisions and standards are enacted, they must be given effect by BLM in its decisionmaking affecting that wilderness area.

Oregon Chapter of the Sierra Club, Wilderness Watch; George Stroemple, Central Oregon Land, LLC; Steens Mountain Landowner Group, 172 IBLA 27 (July 25, 2007).

Wildfire Management

A decision that it is not necessary to prepare an EIS before proceeding with a prescribed burn and juniper cut will be affirmed on appeal if the record demonstrates that BLM has, considering all relevant matters of environmental concern, taken a "hard look" at potential environmental impacts, and made a convincing case that no significant impact will result or that the impacts will be reduced to insignificance by the adoption of appropriate mitigation measures. An appellant seeking to set aside or overturn a decision to proceed without preparing an EIS must demonstrate, with objective proof, that BLM failed to consider a substantial environmental question of material significance to the proposed action, or that it otherwise failed to abide by section 102(2)(C) of NEPA.

Committee for Idaho's High Desert, Western Watersheds Project & Idaho Bird Hunters, 158 IBLA 322 (Mar. 27, 2003).

Wildfire Management

The procedures governing wildfire management decisions affecting forests are set forth at 43 C.F.R. § 5003.1(b). Appeals of such decisions are to the Board of Land Appeals, which is required under 43 C.F.R. § 4.416 to decide such appeals within 60 days after all pleadings have been filed, and within 180 days after the appeal is filed. Other BLM decisions governing or relating to forest management proceed through the protest and appeal process of 43 C.F.R. § 5003.1(a), 43 C.F.R. § 5003.2, and 43 C.F.R. § 5003.3.

Oregon Natural Resources Council, Hells Canyon Preservation Council, 161 IBLA 323 (May 25, 2004).

Wildfire Management

When BLM provides in a decision record approving a fuels treatment project, and subsequent notice thereof, for a right of appeal to the Board of Land Appeals, pursuant to 43 C.F.R. Part 4, but explains on appeal that the project will be implemented through a timber sale contract and a stewardship contract and that the timber sale contract will be subject to the protest and appeal procedures of 43 C.F.R. Subpart 5300, the Board will grant BLM's motion to dismiss, as premature, an appeal of the decision record, as it relates to activities to be conducted pursuant to a timber sale contract.

Oregon Natural Resources Council, Hells Canyon Preservation Council, 161 IBLA 323 (May 25, 2004).

Wildfire Management

Under 43 C.F.R. § 5003.1(b), BLM may make a wildfire management decision effective immediately or on a date certain when it determines that "vegetation, soil, or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire." In the absence of such a determination, a wildfire management decision is automatically stayed in accordance with 43 C.F.R. § 4.21(a). Regardless, 43 C.F.R. § 4.21(b) clearly is applicable to wildfire management decisions whether or not such a decision is made effective immediately.

Oregon Natural Resources Council, Hells Canyon Preservation Council, 161 IBLA 323 (May 25, 2004).

Withdrawals and Reservations
Generally

Public lands designated by Congress as a wilderness area in 1994 are withdrawn from mineral entry and mining claims located on the land in 1996 are properly declared null and void ab initio.

G. Robert Carlson, 152 IBLA 35 (Mar. 1, 2000).

Withdrawals and Reservations
Generally

Rights acquired under relocations of lode mining claims declared to be forfeited by operation of law for failure to timely file the claim maintenance fee do not relate back to the date of the locations of the original claims but only to the date of the relocations. When such claims are located totally on land withdrawn from entry under the mining laws, BLM properly declares those claims null and void *ab initio*. When only part of such claims lies on with- drawn land, BLM properly notifies the claimants that they have not acquired any surface rights to the portion of the claims overlapping the withdrawn land; that mining and mining-related activities on those lands would constitute a trespass; and that, depending on the circumstances, they may or may not have any mineral rights in the subsurface of such land.

Devon Britton, et al., 158 IBLA 279 (Feb. 24, 2003).

Withdrawals and Reservations
Generally

The Presidential Proclamation of July 28, 1907, reserved from settlement, entry, or sale certain described public lands in Alaska for the Chugach National Forest, excepting therefrom lands which were on that date embraced in any legal entry or covered by any lawful filing or selection duly of record in the proper United States Land Office, or upon which any valid settlement had been made pursuant to law. One seeking an Alaska Native Veteran Allotment for lands within that forest may not rely on the possession and occupancy of relatives predating the Proclamation, as excepting the lands from that reservation, when such possession and occupancy amounted only to an inchoate preference right.\

Larry M. Evanoff, 162 IBLA 62 (June 29, 2004).

Withdrawals and Reservations
Generally

BLM properly rejects an Alaska Native Veteran Allotment application, pursuant to the Alaska Native Veterans Allotment Act, 43 U.S.C. § 1629g (2000), when at the time the Native initiated use and occupancy of claimed lands those lands were reserved as part of a National Forest, and thus not "vacant, unappropriated, and unreserved," as required by the Act.

Larry M. Evanoff, 162 IBLA 62 (June 29, 2004).

Withdrawals and Reservations
Generally

Section 21 of the Act of March 1, 1893, 27 Stat. 507 (Caminetti Act), authorized the Secretary of the Interior to withdraw lands requested by the California Debris Commission "from sale or entry under the laws of the United States." Withdrawals made under that authority withdrew lands from sale or entry under the mining laws of the United States, including the General Mining Law of 1872. Lands included in a withdrawal remain withdrawn until the withdrawal is revoked, modified, or terminated by appropriate official action, and it is immaterial whether the purpose of the withdrawal is still being served as of the date of location.

Western Aggregates, LLC, 169 IBLA 64 (May 17, 2006).

Withdrawals and Reservations
Generally

Land which, following survey, has accreted to land owned by the United States takes the status of the Federal land to which it has accreted. If the Federal lands were withdrawn from entry under the mining laws of the United States, any lands accreting to those Federal lands were also withdrawn.

Western Aggregates, LLC, 169 IBLA 64 (May 17, 2006).

Withdrawals and Reservations
Generally

By withdrawing upland lots along the banks of a non-navigable river from entry under the laws of the United States, the Department also withdrew all Federally-owned lands within the riverbed to the thread of the river. The withdrawal attached to the lands in the bed of the non-navigable river deemed to be owned by the United States in conjunction with its ownership of each of the upland lots. The fact that the lots were depicted on contemporary plats as extending only to the meander lines of the river is not controlling.

Western Aggregates, LLC, 169 IBLA 64 (May 17, 2006).

Withdrawals and Reservations
Generally

Presidential Proclamation 37 (August 20, 1902) reserved from settlement, entry, or sale certain described public lands in Alaska for the Alexander Archipelago Forest Reserve (later merged into the Tongass National Forest). One seeking an Alaska Native Veteran Allotment for lands within that forest reservation may not rely on the possession and occupancy of relatives predating the Proclamation as excepting the lands from that reservation, as such possession and occupancy amounted only to an inchoate preference right.

Irving P. Sheldon, 169 IBLA 276 (July 27, 2006).

Withdrawals and Reservations
Generally

BLM properly rejects an application pursuant to the Alaska Native Veterans Allotment Act, 43 U.S.C. § 1629g (2000), when, at the time the Alaska Native veteran initiated use and occupancy of the claimed lands, those lands were reserved as part of a National Forest, and thus were not "vacant, unappropriated, and unreserved," as required by the Act of May 17, 1906.

Irving P. Sheldon, 169 IBLA 276 (July 27, 2006).

Withdrawals and Reservations
Effect of

A recreation and public purposes classification, issued pursuant to the Recreation Act of 1926, *as amended*, 43 U.S.C. § 869 (1994), segregates lands from entry and settlement in conformity with its terms until such time as the classification is expressly revoked.

Betty J. (Thompson) Bonin, 151 IBLA 16 (Oct. 20, 1999).

Withdrawals and Reservations

Effect of

Where public land records have been noted to show that a parcel of land is not open to entry under the public land laws, the parcel is not available for entry until such time as the notation is removed and the land restored to entry, even if the original notation was made in error.

William Dunn, 157 IBLA 347 (Oct. 30, 2002).

Withdrawals and Reservations
Effect of

Land orders segregating public lands issued prior to the effective date of FLPMA remain in full force and effect unless the lands are officially reopened to appropriation under the public land laws, or they are subject to a term of renewal and are not renewed.

William Dunn, 157 IBLA 347 (Oct. 30, 2002).

Withdrawals and Reservations
Effect of

The notation on public records of a request for withdrawal has a segregative effect on land contained within the boundaries of a previously located mining claim. While the notation does not preclude the taking of samples of pre-existing discoveries to demonstrate validity of the claims, it does prevent activity that constitutes further exploration to expose a valuable mineral deposit not exposed prior to segregation or withdrawal. A segregation does not grant a mining claimant a perpetual right to explore within the boundaries of its mining claims.

United States v. E. K. Lehmann & Associates of Montana, Inc., et al., 161 IBLA 40 (Mar. 16, 2004).

Withdrawals and Reservations
Effect of

When land on which a mining claim is located is withdrawn from mineral entry, the claimant may enter the claims to verify pre-existing discoveries to demonstrate validity of the claims, but may not engage in activity that constitutes further exploration to expose a valuable mineral deposit not exposed prior to withdrawal.

United States v. Steve Hicks, 162 IBLA 73 (June 29, 2004).

Withdrawals and Reservations
Effect of

BLM may not properly temporarily segregate lands from entry under the mining laws under the authority of section 206(i) of the Federal Land Policy and Management Act of 1976 (FLPMA), *as amended*, 43 U.S.C. § 1716(i) (2000), and 43 C.F.R. § 2201.1-2 in the absence of a proposal to exchange Federal lands. A statement in a resource management plan to the effect that upwards of 149,000 acres of Federal lands are "available for exchange" is not a "proposal" made by BLM to exchange lands within the meaning of 43 C.F.R. Subpart 2201, as it does not identify the lands to be exchanged or the parties seeking the exchange. BLM's improper use of this temporary segregation authority effectively works a withdrawal of the lands without compliance with the procedural requirements of section 204 of FLPMA, 43 U.S.C. § 1714 (2000).

Michael L. Carver, et al., 163 IBLA 77 (Sept. 8, 2004).

Withdrawals and Reservations
Effect of

The notation rule directs that mining claims located at a time when BLM's records indicate that the lands on which they are located are segregated from mineral entry are void regardless of whether the underlying segregation was proper. Where public land records have been noted to show that a parcel of land is not open to entry under the public land laws, the parcel is not available for entry until such time as the notation is removed and the land is restored to entry, even if the original notation was made in error or the segregative effect is void, voidable, or has terminated or expired.

Michael L. Carver, et al., 163 IBLA 77 (Sept. 8, 2004).

Withdrawals and Reservations
Effect of

When land embracing the contested mining claims has been segregated for inclusion in a land exchange, a mining claimant acquires rights which cannot be cancelled by the segregation only if the claim is perfected, including discovery, on the date of segregation. The deposit must be physically exposed as of the date of segregation, and the discovery must be based upon showings of mineral value from the mineral deposit that was exposed as of the segregation date. Once a discovery has been made, it must be maintained. A discovery must exist and present marketability must be shown as of the date of the segregation and as of the date of the hearing, and no further exploration to physically expose valuable minerals of sufficient quality and quantity to constitute discovery can be permitted after the date of segregation.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Withdrawals and Reservations
Effect of

The validity of the segregation of lands embracing contested mining claims for purposes of a land exchange is not justiciable. Even if the segregation was justiciable, under the notation rule, no rights incompatible with the use so noted in BLM's land records can attach until the record is changed to show that the land is no longer segregated.

United States v. Pass Minerals, Inc., Kiminco, Inc., Pilot Plant, Inc., K. Ian Matheson, 168 IBLA 115 (Mar. 16, 2006).

Withdrawals and Reservations
Effect of

The segregative effect of a proposed land exchange automatically terminates 5 years from the date the segregation is noted on the public land records, but the termination does not instantly restore the lands to the operation of public land laws, including the mining laws. To effectuate the opening of lands to the operation of the public land laws requires a change in the status of the lands noted on the public land records. Lands may not be appropriated under the mining laws prior to the date and time of restoration and opening, and any such attempted appropriation vests no rights against the United States. 43 C.F.R. § 2091.1(b). An opening order may be issued at any time, but is required when the opening date is not specified in the document creating the segregation. 43 C.F.R. § 2091.07(b).

Pilot Plant, Inc., et al., 168 IBLA 169 (Mar. 16, 2006).

Withdrawals and Reservations
Effect of

Under the notation rule, mining claims located at a time when BLM's records indicate that the lands on which they are located are segregated from mineral entry are void regardless of whether the underlying segregation was proper. The land is not available for entry until such time as the notation is removed and the land is restored to entry, even if the original notation was made in error or the segregative effect is void, voidable, or has terminated or expired. 43 C.F.R. § 2091.1(b).

Pilot Plant, Inc., et al., 168 IBLA 169 (Mar. 16, 2006).

Withdrawals and Reservations
Effect of

Under the notation rule, a mining claim located at a time when BLM's official public land records indicate that the lands on which the claim is located is segregated from mineral entry is void regardless of whether the underlying segregation was proper. The land is not available for entry until such time as the notation is removed and the land is restored to entry, even if the original notation was made in error, or the segregative effect is void or voidable, or has terminated or expired.

Joe R. Young, 171 IBLA 142 (Feb. 27, 2007).

Withdrawals and Reservations
Effect Of

A post-sale noncompetitive oil and gas lease offer that has not been accepted is properly rejected if the land is withdrawn from oil and gas leasing while the offer is pending.

Richard D. Sawyer, 162 IBLA 339 (Aug. 19, 2004).

Withdrawals and Reservations
Powersites

A mining claim located prior to Aug. 11, 1955, on land subject to a powersite classification is null and void ab initio, and an attempt to amend the location is an action that has no legal effect.

Daddy Del's L.L.C., 151 IBLA 229 (Dec. 15, 1999).

Withdrawals and Reservations
Powersites

BLM improperly declares a placer mining claim located on land subject to a powersite reservation null and void when the claimants, following notice from BLM, failed to submit a location notice properly marked to indicate that it was filed pursuant to the Mining Claims Rights Restoration Act of 1955, *as amended*, 30 U.S.C. §§ 621-625 (1994), as required by 43 C.F.R. § 3734.1(a), since the failure to do so does not affect the validity of the claim but only when mining may occur on the claimed land.

Allen C. Kroeze, 153 IBLA 140 (Aug. 16, 2000).

Withdrawals and Reservations
Powersites

The Mining Claims Rights Restoration Act of 1955, *as amended*, 30 U.S.C. §§ 621-625 (2000), which opened powersite withdrawals for entry under the mining laws, provides that the locator of a placer claim under the Act may not conduct any mining operations for 60 days after filing a notice of location pursuant to 30 U.S.C. § 623 (2000) and that, if the Department decides to hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land, the suspension of operations will continue until the hearing has been held and the Department has issued an appropriate order providing for one of the following alternatives: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator restore the surface of the claim to the condition it was in prior to mining; or (3) a general permission to engage in placer mining.

United States v. Donald E. Eno, 171 IBLA 69 (Feb. 13, 2007).

Withdrawals and Reservations
Powersites

To determine whether mining would substantially interfere with other uses of powersite lands within the meaning of the Mining Claims Rights Restoration Act of 1955, *as amended*, 30 U.S.C. § 621 (2000), the Department is required to engage in a weighing or balancing of the benefits of mining against the injury mining would cause to other uses of the land. Mining may be allowed where the benefits of placer mining outweigh the detriment that placer mining causes to other uses. Central to the balancing test is the concept that the competing uses must be substantial if they are to be used to prohibit placer mining. Thus, even if the Secretary determines that placer mining would substantially interfere with other uses of the land, he may still appropriately grant a general permission to engage in placer mining operations if the competing surface uses have less significance than the proposed placer mining operation. The importance of the competing uses, which must be compared and judged on whatever grounds are relevant in the individual case, need not be economically quantifiable and may include the preservation of cultural, geological, or scenic resources.

United States v. Donald E. Eno, 171 IBLA 69 (Feb. 13, 2007).

Withdrawals and Reservations
Temporary Withdrawals

BLM may not properly temporarily segregate lands from entry under the mining laws under the authority of section 206(i) of the Federal Land Policy and Management Act of 1976 (FLPMA), *as amended*, 43 U.S.C. § 1716(i) (2000), and 43 C.F.R. § 2201.1-2 in the absence of a proposal to exchange Federal lands. A statement in a resource management plan to the effect that upwards of 149,000 acres of Federal lands are "available for exchange" is not a "proposal" made by BLM to exchange lands within the meaning of 43 C.F.R. Subpart 2201, as it does not identify the lands to be exchanged or the parties seeking the exchange. BLM's improper use of this temporary segregation authority effectively works a withdrawal of the lands without compliance with the procedural requirements of section 204 of FLPMA, 43 U.S.C. § 1714 (2000).

Michael L. Carver, et al., 163 IBLA 77 (Sept. 8, 2004).

Withdrawals and Reservations
Temporary Withdrawals

The segregative effect of a proposed land exchange automatically terminates 5 years from the date the segregation is noted on the public land records, but the termination does not instantly restore the lands to the operation of public land laws, including the mining laws. To effectuate the opening of lands to the operation of the public land laws requires a change in the status of the lands noted on the public land records. Lands may not be appropriated under the mining laws prior to the date and time of restoration and opening, and any such attempted appropriation vests no rights against the United States. 43 C.F.R. § 2091.1(b). An opening order may be issued at any time, but is required when the opening date is not specified in the document creating the segregation. 43 C.F.R. § 2091.07(b).

Pilot Plant, Inc., et al., 168 IBLA 169 (Mar. 16, 2006).

Withdrawals and Reservations
Temporary Withdrawals

Under the notation rule, mining claims located at a time when BLM's records indicate that the lands on which they are located are segregated from mineral entry are void regardless of whether the underlying segregation was proper. The land is not available for entry until such time as the notation is removed and the land is restored to entry, even if the original notation was made in error or the segregative effect is void, voidable, or has terminated or expired. 43 C.F.R. § 2091.1(b).

Pilot Plant, Inc., et al., 168 IBLA 169 (Mar. 16, 2006).

Withdrawals and Reservations
Temporary Withdrawals

Under the notation rule, a mining claim located at a time when BLM's official public land records indicate that the lands on which the claim is located is segregated from mineral entry is void regardless of whether the underlying segregation was proper. The land is not available for entry until such time as the notation is removed and the land is restored to entry, even if the original notation was made in error, or the segregative effect is void or voidable, or has terminated or expired.

Joe R. Young, 171 IBLA 142 (Feb. 27, 2007).

Words and Phrases

Where a mining claim is null and void ab initio, an amended notice of location will not be construed as a relocation where the filing does not conform to state and Federal requirements for a new location.

Daddy Del's L.L.C., 151 IBLA 229 (Dec. 15, 1999).

Words and Phrases

"*Occupancy*." As used in 43 C.F.R. Subpart 3715, the word "occupancy" means full or part time residence, and under 43 C.F.R. § 3715.2, occupancy must not only (a) be reasonably incident but must also (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 under 43 C.F.R. § 3715.7; and (e) use appropriate equipment that is presently operable, subject to the need for reasonable assembly, maintenance, repair or fabrication of replacement parts.

Bradshaw Industries, 152 IBLA 57 (Mar. 10, 2000).

Words and Phrases

When a mining claimant has located mining claims embracing mineral deposits of such quantity that only a portion of those deposits is presently marketable at a profit, the remaining mineral deposits have been characterized by the Department as "excess reserves."

United States v. Curt L. Willsie, 152 IBLA 241 (May 8, 2000).

Words and Phrases

"*Trespass*." Departmental regulations define "trespass" generally as "any use, occupancy or development of the public lands or their resources without authorization to do so from the United States where authorization is required, or which exceeds such authorization." 43 C.F.R. § 2800.0-5(u). The regulations specifically governing enclosures prohibit "[c]onstructing or maintaining any kind of * * * fences or enclosures on the Federal range * * * without authority of law or a permit." 43 C.F.R. § 9239.2-1(c). A BLM decision finding that a fence was being maintained in trespass and ordering the removal of that fence will be affirmed where (1) the fence enclosed approximately 15 acres of Federal lands, effectively adding them to adjacent private lands; (2) the trespasser repeatedly admitted that the fence was being used both to define the boundary of his property and to contain his cattle; and (3) the fence was gated, controlling access to the trespasser's private property. Although the user did not personally construct the fence, he "used" it for a period of 7 or 8 years after acquiring his private lands and "maintained" it by not removing it. There being a trespass, BLM was authorized to require the trespasser to remove (at his own expense) improvements maintained on lands in trespass, even if originally placed there unintentionally or inadvertently.

John T. Alexander, 157 IBLA 1 (July 17, 2002).

Words and Phrases

"*Continuous Use*." "*Public Road*." Where a party seeking to continue to use an existing road running across Federally-owned lands as an access road to his privately-owned lands makes no written showing that the road was cognizable under section 8 of R.S. § 2477 and concedes that the road is not a "public road" (a fact inconsistent with the existence of an R.S. § 2477 right-of-way), the Board should not pursue the matter on his behalf and there is no valid reason to remand the matter for consideration of the existence of an R.S. § 2477 right-of-way. "Continuous use," even if established, is insufficient to qualify a road under R.S. § 2477.

John T. Alexander, 157 IBLA 1 (July 17, 2002).

Words and Phrases

A patent is the means by which legal title to public land passes out of Federal ownership. The patent is both evidence of the lands identified to be conveyed and declaratory of the title conveyed.

Beau Hickory & Patricia L. Tinnell, 160 IBLA 166 (Oct. 23, 2003).

Words and Phrases

Under the regulations governing the locating, recording, and maintaining of mining claims, mill sites, or tunnel sites, "filed" is defined at 43 C.F.R. § 3830.5 as meaning a document is received by BLM on or before the due date or is "[p]ostmarked or otherwise clearly identified as sent on or before the due date by a bona fide mail delivery service" and received by the appropriate BLM state office either within 15 calendar days after the due date or on the next business day after that date, if the 15th day is not a business day for BLM.

Hale Mining Company, 161 IBLA 260 (May 5, 2004).

Words and Phrases

Knowing and Willful. A trespass is "knowing and willful" if it constitutes the voluntary or conscious performance of an act which is prohibited or the voluntary or conscious failure to perform an act or duty that is required; the knowing or willful nature of conduct may be established by plain indifference to or reckless disregard of the requirements of law, regulations, orders, or terms of a lease; and a consistent pattern of performance or failure to perform supports a finding that the conduct is knowing or willful in nature, where such consistent pattern is neither the result of honest mistake nor mere inadvertency. Planting fruit trees on lands known to be Federally-owned and subsequently failing to remove them and continuing to harvest fruit from them following notification that the trees were planted in trespass was "knowing and willful" trespass, as those actions constituted both a voluntary and conscious performance of an act which is prohibited (planting the trees) and a voluntary and conscious failure to perform an act or duty that is required (removing the trees). The continued presence on public lands of the fruit trees, as well as a water reservoir, equipment, and supply storage yard without BLM authorization throughout a 13-year period shows a consistent pattern of performance and failure to perform supporting the knowing and willful nature of the trespass. The trespasser's subjective beliefs that he was legally expanding his operation and reclaiming adjacent lands and that it was reasonable to do so do not mitigate the knowing and willful character of his conduct.

Stanley Dimeglio et al., 163 IBLA 365 (Nov. 8, 2004).

Words and Phrases

"*Island*." Through the evolution of American common law, the term "island" for purposes of surveying river boundaries has become defined as an upland area that is surrounded by water when the river is at a stage known as the ordinary high water mark (OHWM). Because the definition of OHWM itself has become involved, an island may be redefined as land that is surrounded by a line marked by the action of the water upon the soil of the island, such that the upland (woody types) vegetation is removed by the constant action and presence of water over longer periods of time, and the character of the soil is altered as well. However, if an OHWM can be discerned around a questioned gravel or sand bar (by means of woody vegetation present or other marks on the soil), the supposed bar must then be an island; a bare rock protruding well above a reasonable ordinary high water mark might thus be an island even without vegetation.

State of Alaska, 167 IBLA 250 (Dec. 2, 2005).

Words and Phrases

Reasonably incident. Under 43 C.F.R. § 3715.2, occupancy of a mining claim for more than 14 days in any 90-day period is not an authorized use or occupancy if the mining operations used to justify the use or occupancy are not "reasonably incident" to mining or mining-related activity. "Reasonably incident" is defined at 43 C.F.R. § 3715.0-5 as those actions involving the "statutory standard" of "prospecting, mining, or processing operations and uses reasonably incident thereto" and "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."

Combined Metals Reduction Co., 170 IBLA 56 (Sept. 7, 2006).

Words and Phrases

"*Substantially regular work*." As used in 43 C.F.R. § 3715.0-5, the phrase "substantially regular work" means work on, or that substantially and directly benefits, a mineral property including nearby properties under control of the mining claimant. The term also embraces mining activity that is intermittent and/or seasonal in nature.

Cynthia Balser, et al., 170 IBLA 269 (Oct. 24, 2006).

Words and Phrases

"*Abandonment*." Abandonment of a property interest results from the failure of the holder of a right to exercise that right over an extended period, and abandonment of an interest granted by BLM may thus generally occur without BLM's knowledge. While the BLM Manual states that grazing "[r]esource improvements and treatments cannot be abandoned or removed without authorization," it provides that BLM "may require a permittee/lessee or cooperator to remove a project and rehabilitate the site," but does not require such action. Since abandonment generally occurs over a long period of time, so that BLM may not be aware that it has occurred, it may not be in a position to issue a decision authorizing the abandonment and requiring rehabilitation in every case. Even where BLM is aware of the abandonment, it may not deem it

necessary to issue a decision authorizing the abandonment and requiring rehabilitation in every case, such as where abandonment in place without rehabilitation is a satisfactory conclusion to the project. BLM's failure to notify the holder of a grazing right or interest that it has been abandoned is without significance.

Terry Jones V. Bureau of Land Management, 170 IBLA 295 (Nov. 7, 2006).

Words and Phrases

"Production in paying quantities," for the purpose of continuing a lease beyond its initial term under section 8 of the Outer Continental Shelf Lands Act, *as amended*, 43 U.S.C. § 1337(b)(2000), means sufficient production to yield a net profit when revenue from the lease is reduced by normal expenses, including royalties and direct lease operating costs.

Kerr-McGee Oil & Gas Corp., 172 IBLA 195 (Aug. 29, 2007).