



## United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
Royal Gorge Field Office  
3028 East Main Street  
Cañon City, Colorado 81212



3809 (COF02000, SSC)  
COC-073930

MAR 02 2017

CERTIFIED MAIL – 7016 0750 0000 8433 1463  
RETURN RECEIPT REQUESTED

### DECISION

Destiny Mining, LLC	:	
Attn: Boyd Astemborski	:	Surface Management
P.O. Box 1413	:	
Fairplay, CO 80440	:	

### NONCOMPLIANCE ORDER

BLM is issuing this noncompliance order in response to operations and associated site disturbance conducted outside of the authorized boundary for the Destiny Mine in Park County, Colorado.

On February 17, 2017, Mr. Gregg Morrill informed BLM that he was at the Destiny Mine site to conduct sampling efforts and had begun using a backhoe to excavate a hole approximately 8-feet deep within the mine's authorized boundary. Mr. Morrill then stated that he had permission from the operator, Boyd Astemborski, to conduct these activities.

Based on the information received, BLM decided to conduct an inspection at the mine on February 22, 2017. While on site, BLM observed a recently disturbed area measuring approximately 1,500 ft<sup>2</sup> in size, located outside of the operation's authorized boundary, approximately 145-feet to the southwest (enclosure 1). At this time, the excavation had already been backfilled, with the topsoil re-distributed across the surface of the disturbed area (enclosure 2).

BLM records indicate that the following criteria apply to activities conducted under the approved Plan of Operations for Destiny Mine:

1. The operations will be conducted within the authorized boundary in the eastern and northeastern portion of the claim.

2. There will be a seasonal shutdown from the end of November to the end of April each year.
3. The operator will be enrolled in the South Platte Water Related Activities Program (SPWRAP) and comply with partnership requirements.

BLM has determined that this activity violated 43 CFR 3809.605(c), which prohibits conducting any operations outside the scope of the operator's notice or approved Plan of Operations.

Per the findings of our inspection and a phone conversation with the operator on February 24, 2017, BLM is ordering Destiny Mining, LLC to complete the following work in accordance with 43 CFR 3809.601(a):

1. Seed the disturbed area using the approved seed mixture as soon as it is reasonably practicable to do so.
2. Contact BLM when seeding efforts are complete.

As this area is located outside of the authorized boundary, BLM will need to revisit the area to determine whether any cultural resources were impacted. If significant cultural resources are found to have been disturbed as a result of this activity, further action may be required.

Appeal of the Decision

Appeal of this Noncompliance Order can be pursued utilizing Form 1842-1 (enclosure 3).

If you have any questions, please contact Stephanie Carter at 719.269.8551.

Sincerely,



Keith E. Berger  
Field Manager  
Royal Gorge Field Office

Enclosures:

- 1 – Map of Authorized Boundary
- 2 – Site Picture of Disturbed Area
- 3 – Form 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals

cc: Michael Cunningham, CDRMS



Sources: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

# Legend

- Approved Site Access
- Authorized Boundary
- Gregg Morrill Test Pit

## Destiny Mine

6th P.M., T. 9 S., R. 77 W., Sec. 33



**NOTE TO MAP USERS**  
 No warrantee is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of the data layers shown on this map. The official land records of the data providers should be checked or current status on any specific tract of land.





Site Picture of Disturbed Area  
(Enclosure 2)



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,  
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF  
APPEAL.....

A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).

2. WHERE TO FILE

NOTICE OF APPEAL.....

WITH COPY TO  
SOLICITOR...

3. STATEMENT OF REASONS

Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).

WITH COPY TO  
SOLICITOR.....

4. ADVERSE PARTIES.....

Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).

5. PROOF OF SERVICE.....

Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).

6. REQUEST FOR STAY.....

Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the *Notice of Appeal* and Petition for a Stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

**Standards for Obtaining a Stay.** Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that all communications are identified by serial number of the case being appealed.

**NOTE:** A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

#### 43 CFR SUBPART 1821--GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

##### STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ----- Alaska  
Arizona State Office ----- Arizona  
California State Office ----- California  
Colorado State Office ----- Colorado  
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri  
and, all States east of the Mississippi River  
Idaho State Office ----- Idaho  
Montana State Office ----- Montana, North Dakota and South Dakota  
Nevada State Office ----- Nevada  
New Mexico State Office ----- New Mexico, Kansas, Oklahoma and Texas  
Oregon State Office ----- Oregon and Washington  
Utah State Office ----- Utah  
Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

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(Form 1842-1, September 2006)