



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Royal Gorge Field Office
3028 East Main Street
Cañon City, Colorado 81212

9230 (COF02000, SSC)
COC-079526

FEB 12 2020

CERTIFIED MAIL – 7008 1140 0003 5860 0056
RETURN RECEIPT REQUESTED

TRESPASS DECISION

| | | |
|----------------------------------|---|---------------------------|
| Eastern Colorado Aggregates LLLP | : | |
| Attn: Ronda Neumeister | : | |
| PO Box 580 | : | Mineral Material Trespass |
| Rye, CO 81069 | : | |

Dear Ms. Ronda Neumeister,

BLM has conducted an extensive investigation of the federal mineral material trespass located in and around the Potts Pit #2 Quarry. We are in receipt of your response to the initial Trespass Notice, which BLM issued on October 11, 2019. We have accepted this information as complete and have analyzed it in conjunction with other data Eastern Colorado Aggregates LLLP has provided BLM pertaining to this trespass.

BLM has determined that Eastern Colorado Aggregates LLLP is in violation and/or has violated law(s) specified below and the regulation(s) approved by the Secretary of the Interior pursuant to the authority vested in him by said law. Therefore, it is our opinion that you:

Have committed the following act(s):

- Removal and sale of mineral materials (aggregate) from public lands without a valid contract.

Are in violation of the following law(s):

- R.S. 2478; 43 U.S.C. 1201 sections 302 and 310 of federal land policy and management act of 1976, as amended; 43 U.S.C. 1732, 1740.

And are in violation of the following regulations:

- 43 CFR 9239.0-7 which states, "the extraction, severance, injury, or removal of timber or other vegetative resources or mineral materials from public lands under the jurisdiction of the department of the interior, except when authorized by law and the regulations of the department, is an act of trespass. Trespassers will be liable in damages to the United States and will be subject to prosecution for such unlawful acts."
- 43 CFR 3601.71(a) which states, "Except as provided in paragraph (b) of this section, you must not extract, sever, or remove mineral materials from public lands under the jurisdiction of the Department of the Interior, unless BLM or another Federal agency with jurisdiction authorizes the removal by sale or permit. Violation of this prohibition constitutes unauthorized use."

The above stated violation occurred at the following location (Enclosure 1):

POTTS PIT #2

6th Principal Meridian, Township 27 South, Range 66 West, Section 4

It is our opinion that you have committed an act of innocent trespass by removing mineral materials from the above site, however, any further infractions will be considered willful. By the admission of Baxter Kirkland and Ronda Neumeister, company owners and permitting contacts for Eastern Colorado Aggregates LLLP, 50,816 tons of material were removed from the site between 2013 and 2019 without a contract. This information was obtained from past company records, according to Mr. Kirkland and Ms. Neumeister.

In an innocent trespass, the liability includes current and past years of trespass based on the fair market value of the materials at the time of removal, as inferred in guidance per H-9235-1 C.8 (B.2.) Mineral Materials Trespass Prevention and Abatement Handbook. BLM calculated a total federal mineral cost liability, based on the above stated volume, BLM volume calculations and averages of the Fair Market Value Royalty from 2013 to 2019, of \$33,761.80.

| Federal Mineral Cost | | | |
|--|------------------------|--|--------------------------------------|
| SOURCE | Tons Removed 2013-2019 | Average Fair Market Value Royalty rates per ton ¹ | Value of Mineral Materials Liability |
| Eastern Colorado Aggregates LLLP | 50,816 | \$0.58 | \$29,473.28 |
| BLM | 67,452 | \$0.58 | \$39,122.16 |
| Modified Removal Amount² | 58,210 | \$0.58 | \$33,761.80 |

¹ 2013-2014: \$0.54

2015-2017: \$0.58

2018-2019: \$0.63

²The modified volume was calculated by BLM utilizing information from Eastern Colorado Aggregates LLLP, which prompted revisions to the bank and loose factors that were used in the volume calculations.

A trespass is considered cost recoverable for administrative and labor costs incurred by the United States, per authority of 43 CFR 9239. Therefore, BLM has charged a quantified cost associated to processing your mineral materials trespass. BLM calculated a total administrative and labor cost liability, including employee time spent processing the trespass and the price of cadastral surveyor input, of \$2,098.68.

| BLM Administrative and Labor Cost | | | |
|-----------------------------------|----------------------------|--------------|-------------------|
| Item | Time | Unit Price | Amount |
| BLM Intern Time | 38 hours | \$16.00/hour | \$608.00 |
| BLM Employee Time | 12 hours | \$41.15/hour | \$493.68 |
| BLM Employee Time | 12.5 hours | \$66.56/hour | \$832.00 |
| BLM Cadastral Survey | Lump sum for investigation | | \$165.00 |
| Total | | | \$2,098.68 |

BLM has determined a total settlement liability of \$35,860.48, which includes both the costs of federal mineral materials and BLM administrative and labor liabilities.

| Total Settlement Liability | |
|-----------------------------------|--------------------|
| Item | Amount |
| Mineral Materials Liability | \$33,761.80 |
| BLM Administrative and Labor Cost | \$2,098.68 |
| Total | \$35,860.48 |

To resolve this trespass, either a total settlement liability payment of \$35,860.48 or a promissory note including an installment agreement must be received within 60 days of receipt of this letter per H-9235-1 C.8 (B.8.a.) Mineral Materials Trespass Prevention and Abatement Handbook. If this payment or promissory note is not received within 60-days we will refer this trespass to Colorado State Office for referral to the Solicitor's Office or the Department of Justice for prosecution as a criminal trespass.

Appeal of the Decision Determining the Required Financial Guarantee Amount – This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. (Enclosure 2).

If you have any questions, please contact Stephanie Carter at 719-269-8551.

Sincerely,

A handwritten signature in black ink, appearing to read 'KE Berger', is written over the typed name.

Keith E. Berger
Field Manager
Royal Gorge Field Office

Enclosure(s)

- 1 – Quarry Map displaying trespass on federal subsurface mineral rights
- 2 – Appeals Form 1842-1

Cc:

Patrick Lennberg, CDRMS









Land Surveyor Report Information related to general location map above
04/10/2019

Pott's Pitt #2

6th PM. T. 27 S., R. 66 W., Sec. 4

Legend

-  Pott's Pitt #2 Disturbance Area
-  Federal Minerals
-  No Federal Minerals
-  Other
-  Bureau of Land Management
-  Private

Determination made by the DOI Land Surveyor Surveyor: The land survey has potential problems as noted below; however, the risk appears minor and the pursuance of unauthorized use by BLM personnel should not be affected.

Recommendations/Comments/Concerns/Corrections:

- Prior Rectangular Surveys: 1869 original survey.
- Patent No. 105043 was issued in 1931 with all minerals reserved to the United States.
- Colorado Land Survey Monument Record was filed with DORA on October 13, 1972 by Robert Walsh, RLS 4738, indicating a found original corner of sections 3, 4, 32, and 33 (northeast section corner of section 4).
- The spatial reliability of the Public Land Survey System (PLSS) in the BLM Corporate GIS for the exterior boundary of section 4 is under 200 ft. Therefore, there is a high probability that there is a gravel trespass in this area.

The Land Surveyor Report correctly represents the records and documents evaluated by Rebecca Bruno (Land Surveyor) and under Randy Bloom's (Cadastral Chief for Colorado) direct supervision in conformance with the requirements of the Department of the Interior Standards for Federal Lands Boundary Evidence, of the parcel(s) of land identified.

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.