



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

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In Reply Refer To:

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Instruction Memorandum No. CA-2006-026

Expires: 09/30/2007

To: All Field Managers, and District Manager, CDD

From: State Director

Subject: Implementation of the Settlement Agreement
re: Stapp v. U.S. Dept. of the Interior, et al., No. ED CV 02-1107 SGL (C.D. CA)

Program Area: Surface management of mineral operations conducted under the general mining laws.

Background: On October 16, 2002, Delores Stapp, a holder of a mining claim located on public land managed by the Bureau of Land Management (BLM), filed a *pro se* challenge to the surface management regulations at 43 CFR 3809 (Stapp v. U.S. Dept. Of the Interior, et al (No. ED CV 02-1107 SGL (C.D. CA))). These regulations were published on November 21, 2000 (65 FR 69998) and effective January 21, 2001, and later amended on October 30, 2001 (66 FR 54834).

Effective February 27, 2006, the United States settled the lawsuit filed by Ms. Stapp (Agreement attached). The terms of the agreement clarify certain issues regarding "casual use", "use and occupation", and other actions related to mining law operations on public lands managed by BLM. The Settlement Agreement also directs certain attention to Ms. Stapp's activity, specifically, and other mining law operators in general.

Purpose: The direction in this memorandum is to inform all California field offices of the terms of the subject Settlement Agreement. All field offices are to comply with the applicable terms of the agreement when reviewing operations proposed on public lands under the regulations at 43 CFR 3809.

Policy/Action: The agreement provides for clarification of terms in the regulations at 43 CFR 3809. The following recites Part II. “Terms” of the agreement:

General Application

- Under 43 CFR 3809, the regulatory maximum for **casual use** is “negligible” disturbance, not “no” disturbance

Generally, **casual use**:

- Includes the collection of mineral specimens; use of hand and battery operated tools and devices; hand panning, non-motorized sluicing and battery-operated dry washers.
 - May include use of small portable suction dredges, motorized dry washers not greater than 10 HP, and motorized recirculating units not greater than 10 HP, provided the activity results in no greater than negligible disturbance;
 - May include occupancies limited to 14 days or less in a 90-day period;
 - Excludes the use of mechanized earth-moving/drilling equipment, chemicals, explosives, and motorized vehicles in areas when designated as closed to “off-road vehicles”. BLM will notify applicable mining claimants of any new road closure proceeding in the California Desert District and will consider mineral resources in road closure decisions.
- Under 43 CFR § 3809.333, persons conducting notice-level operations, including operations involving occupancies of greater than 14 days in a 90-day period, may extend their notice for two years under the same terms and conditions of the original notice by notifying BLM in writing on or before the expiration of the notice. Upon review, BLM may require an operator to modify its notice, adjust the financial guarantee or submit a plan of operations as set forth in 43 CFR 3809.11.

Application Specific to Plaintiff (Delores Stapp)

- For a mining related operation with no greater than negligible surface disturbance and is a notice level or higher solely because an occupancy is greater than 14 days in a 90-day period by the Plaintiff, the financial assurance will be the minimum estimated cost necessary to perform the reclamation as specified. If the reclamation cost estimate is minimal, BLM will require only a nominal financial assurance from the Plaintiff. In addition to surety bonds, acceptable financial assurance instruments include cash, certificates of deposit, savings accounts, irrevocable letters of credit, insurance and various forms of negotiable securities. When an operator requests that BLM release its financial assurance following completion of reclamation and closure activities, BLM will promptly process the request as expeditiously as practicable

- BLM will complete in as timely a manner as possible their review and other actions necessary to process a mining notice that may be submitted by Plaintiff reflecting an operation involving an occupancy that would result in no greater than negligible disturbance.

Timeframe: This policy becomes effective immediately.

Budget Impact: None

Manual/Handbook Section Affected: None.

Coordination: None

Contact: For questions related to surface management policy, please contact Marc Springer in this office at (916) 978-4369. For questions related to the Settlement Agreement contact Rob Waiwood in the California Desert District Office at (951) 697-5306.

Signed by:
James Wesley Abbott
Associate State Director

Authenticated by:
Richard A. Erickson
Records Management

Attachment – Settlement Agreement re: Stapp v. U.S. Dept. Of the Interior, et al,
No. ED CV 02-1107 SGL (C.D. CA) (9 pp)