United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals

ROBERT E. SHOEMAKER

IBLA 87-340

Decided July 13, 1989

INDEX CODE:

43 CFR 4.27(b)(1) & (2)

43 CFR 3712.1(b)

43 CFR 3809.4

***39** Appeal from a decision of the District Manager, Medford District Office, Bureau of Land Management, rejecting a mining claimant's request to remove stream improvement structures placed by BLM under authority of the Surface Resources Act. OR MC 033947.

Affirmed as modified.

1. Mining Claims: Surface Uses--Surface Resources Act: Management Authority

Fish and fish habitats are ''other surface resources" which the Department of the Interior has authority to manage on the surface of mining claims under subsec. 4(b) of the Surface Resources Act, 30 U.S.C. § 612(b) (1982).

2. Mining Claims: Surface Uses--Surface Resources Act: Management Authority

The Surface Resources Act granted Federal agencies authority to manage and dispose of the resources found on the surface of mining claims. When Federal management of surface resources conflicts with the legitimate use of the surface or surface resources by a mineral locator so as to endanger or materially interfere with prospecting, mining, or processing operations, or uses reasonably incident thereto, Federal management must yield to mining as the dominant and primary use.

3. Mining Claims: Surface Uses--Surface Resources Act: Management Authority--Words and Phrases

"Endanger" and "materially interfere." The terms "endanger" and "materially interfere" used in subsec. 4(b) of the Surface Resources Act, 30 U.S.C. § 612(b) (1982), set forth the standard to be applied to determine whether a specific surface management action must yield to a conflicting legitimate use by a mining claimant. Where there is no evidence that such action endangers the claimant's operations, the question is whether the surface management activity will substantially hinder, impede, or clash with mining operations or a reasonably related use.

***40** APPEARANCES: Robert E. Shoemaker, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Robert E. Shoemaker (Shoemaker) has appealed the January 22, 1987, decision of the District Manager, Medford District Office, Bureau of Land Management (BLM), rejecting a request to remove stream improvement structures placed by BLM on the Treetopper I placer mining claim, OR MC 033947, or be compensated for the loss of his mining rights. [FN1] The claim was located by Robert E. Shoemaker and Jerry

McLean on May 23, 1980, and occupies the SE 1/4 SW 1/4 , sec. 27, T. 35 S., R. 7 W., Willamette Meridian, in Josephine County, Oregon. Maps in the case file show Pickett Creek to ***41** cross the claim diagonally, flowing from the southwest corner of the claim to the northern border near the northeast corner.

During the summer of 1986, BLM constructed 10 fish weirs in Pickett Creek within the Treetopper I's boundaries. A BLM report of a December 1, 1986, inspection it conducted after Shoemaker complained about the structures, describes them as follows:

Each structure is composed of 2 foot diameter logs placed diagonally and perpendicular to the flow of the creek and tied into the banks with cables. Gravel was placed on the upstream side of most logs for spawning beds. Spacing of the structure is as shown on the attached map. The area affected by the structure is a three foot deep pool 10-15 feet long below the logs and up to 18 inches of gravel above the structure for 20 to 40 feet, depending on site conditions. There is an average of 60 feet of natural, undisturbed stream bed between each structure.

Included in the report are engineering diagrams of "typical" installations. Eight of them are "reverse log V installations" which consist of two 2-foot diameter logs placed to form a "V" pointing upstream. The logs are secured to each other, and to anchor trees or stumps on the stream banks or in the stream bed, with three-eights-inch galvanized cable. The diagram of this kind of installation shows, instead of gravel, two rows of 18-24-inch diameter rock, individually placed, along the upstream side of each side of the "V," and a minimum of four cubic yards of rock fill, including boulders, on the downstream end of each of the logs that form the "V." A triangular pool approximately 15 feet from apex to base is formed or excavated immediately downstream of the apex of the "V." The design calls for an additional "cull" log to be placed and secured behind and parallel to one side of the ***42** "V" and another "deadman" log to be buried in the streambed upstream of the point of the "V." The other two installations, one a "log sill," the other a "digger log," are also depicted as constructed of anchored logs and rock fill, except they are placed perpendicular to the flow of the creek.

The case file contains a copy of a Mining Feasibility Study of the claim done by Shoemaker, presumably in support of his original November 1986 complaint about the installation of the weirs. [FN2] Shoemaker estimates that Pickett Creek is approximately 1,490 feet long as it crosses his claim. Of this, he estimates he had mined approximately 235 feet and that 322 feet of the remaining 1,255 feet of streambed have been covered by BLM's gravel. He says the water levels have been raised behind the weirs. As a result, in his view, a different type of mining equipment will have to be bought and ground sluicing will be eliminated, thus making these parts of the claim, i.e., those behind the weirs, "less economical to mine--more work for the same amount of gold" (Study at 5). He estimates the gravel at "upwards to +4' feet thick near the weirs and down to 4"-6" inches deep at there ends [sic]." "During heavy rains and flood[s] there is no doubt that this gravel will move down stream covering and inter-mixing with gold bearing gravel making it increasing[ly] less economical to mine" (Study at 6). Shoemaker also comments that because of the weirs "gravel movement [through the] claim will come to a standstill, the bottom half will have little to no gravel bearing gold [sic] movement and the top end of claim will have stagnate ***43** [sic] movement" (Study at 8). Finally, Shoemaker explains that they began by working the claim at the upstream (southern) end but then shifted to the downstream end, where they found better deposits, and worked upstream. "But also sniping th[r]oughout the whole claim has been done, finding pockets with dredge, sl[u]ice box, and by panning" (Study at 9).

BLM conducted the December 1, 1986, inspection mentioned above "to determine if, in fact, those fishery improvements were materially interfering with the claimants[']activities." BLM describes Pickett Creek as follows:

There is almost no gravel over bedrock which makes it easy for operating a suction dredge "sniping" for gold along bedrock. The natural water depth during summer is less than two feet. * * * [T]here are very little deposits outside the stream banks. Bedrock strikes at various angles but nearly perpendicular to the stream flow,

forming natural riffles. The rock is highly fractured graphite shale-siltstone. The author of the report comments that small suction dredges cannot work very much ground, and estimates that Treetopper I's claimants "couldn't possibly dredge more than 50 to 75 feet of their claim in a single operating season." "There are approximately 1,119 feet of exposed unaltered streambed not affected by fish structures on the claim, representing 73 percent of the stream length. This situation suggests that there is an adequate area in which to operate," the author observes. As to Shoemaker's concerns about raised water levels and increased costs, the report responds:

1. * * * [T]he water level is only raised a foot near the structure which may be to his benefit during his operating period. ***44** The higher water level will extend the area to operate his suction dredge.

2. There is, at most, 18 inches of gravel over the natural gravels where the log weirs have been placed. The BLM is not restricting the claimant from mining through those gravels, and we recognize there is some minimal amount of additional effort to remove those gravels. This might be interpreted as materially interfering, but remember the bureau requires other operators to comply with state environmental regulations which attaches additional costs to miners for reclamation work or operating methods. * * * [W]e feel that our structures do not violate his rights and do not prevent him from mining his placer claim. [FN3]

BLM's January 22, 1987, decision rejected Shoemaker's concern that the weirs would prevent new gold from migrating onto his claim. "[I]n fact, any gold that might migrate downstream will be trapped by the structures on your claim. The BLM does not object to you mining the gravels collected behind the log weirs," the decision stated. The decision also rejected his concerns about raised water levels and increased costs:

Our mineral examiner has found that the water level will not be significantly raised and that although we have placed gravel above the logs, there is ample area remaining on your claim that the structures have not affected. Furthermore, the amount of increased effort required on your part at or adjacent to the structures is not that significant. Because of the nature of the placer deposit on your claim, you are limited to use of portable suction dredge and hand tools for mining on your claim. We believe for this form of mining there is ample undisturbed stream bed available to you.

***45** The decision concluded with an expression of regret that Shoemaker was not notified of BLM's intention to install the weirs before they were installed. "In the spirit of cooperation, we are willing to work with you to remove a few of the structures to expand some of your working area to expose more bedrock," the decision stated, and suggested meeting to discuss what measures could be taken "to reach an amicable agreement."

The case file also contains a document, prepared by a Medford District fishery biologist, entitled "Pickett Creek Position Paper" and dated February 11, 1987. [FN4] This paper explains that BLM places logs and boulders in selected stream segments in order "to create deep pools for young fish to live in and provide better spawning habitat for adult fish." "Occasionally, ***46** as in the case of Pickett Creek, we also place gravel so that spawning areas are available immediately. * * * In some cases, Pickett Creek for instance, we've dug and blasted pools in bedrock to try to improve on a natural condition." "Anadromous fish belong to everyone and in part are dependent on public land," the paper continues:

We have identified specific potential project sites throughout the district. It would be irresponsible for us to avoid an area just because it contains a mining claim, especially since * * * Public Law 167 (Multiple Use Act) gives us the authority to manage surface resources, interpreted by us to include water and fisheries, on mining claims to the extent that our activities do not materially interfere with prospecting, mining or processing operations.

The paper enumerates several reasons why its author does not believe BLM's management significantly affects Shoemaker's claim. In addition to those mentioned in the inspection report summarized above, the paper suggests the series of log

structures "may actually act as a riffle board, trapping any gold that may work its way downstream onto the claim during high winter streamflow."

Appellant's notice of appeal states that previously Pickett Creek "was a very economical mining creek because there was so much bedrock outcropping throughout the claim. It acted as a big sluicebox catching gold and washing out (off) waste rock down stream * * *." Now, appellant says:

The fish weirs placed over our claim clog the movement of gravel through the claim. The road gravel behind the weirs completely bury the gold burying [sic] gravel. With the weirs in, the water take behind them is raised. It wouldn't be as bad with weirs catching native gravel behind them but with weirs with road gravel dumped behind them, * * * [t]he heavier matter [e.g., placer gold] ***47** will be caught in the round gravel and trapped working its way down to the bottom, but with +200 yards of gravel to move before reaching the gold bearing gravel will make it highly impractically [sic] and economically unfeasible to mine.

Appellant states that the "bottom two weirs are over considerable gravel beds."

Appellant contends that placement of the structures in Pickett Creek was "an infringement on my basic mining rights, granted in 1872 and revised under the Public Law 167 of 1955," i.e., granted by the Mining Act of 1872 and "revised" by section 4(b) of the Surface Resources Act of 1955, P.L. 84- 167, 69 Stat. 367, 368-69, codified at 30 U.S.C. § 612(b) (1982). He also says Or.Rev.Stat. § 517.520 "was not followed." [FN5] Shoemaker says the weirs of his choice should be removed or he should be awarded compensation for the loss of his rights.

Section 4(b) of the Surface Resources Act, 30 U.S.C. § 612(b) (1982), provides:

***48** Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: Provided, however, That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto * * *. [Emphasis added.]

[1] The phrase "other surface resources," underlined above, is ambiguous. United States v. Curtis-Nevada Mines, Inc., 611 F.2d 1277, 1280 (9th Cir.1980); United States v. Richardson, 599 F.2d 290, 294 (9th Cir.1979), cert. denied, 444 U.S. 1014 (1980); United States v. Curtis-Nevada Mines, Inc., 415 F.Supp. 1373, 1375, 1377 (E.D.Cal.1976). From the legislative history of the Act, however, we have no difficulty concluding that the phrase includes fish and fish habitats.

The legislation was intended to provide statutory authority "which would operate to encourage mining activity on our vast expanse of public lands compatible with utilization, management, and conservation of surface resources such as water, soil, grass, timber, parks, monuments, recreation areas, fish, wildlife, and waterfowl." (Emphasis added.) H.R.Rep. No. 730, 84th Cong., 1st Sess. 3, reprinted in 1955 U.S. Code Cong. & Admin.News 2474, 2475. One of the problems the legislation was intended to address was that mining claims frequently blocked access ***49** to agents of the Federal Government desiring to reach adjacent lands for purposes of managing wild-game habitat or improving fishing streams so as to thwart the public harvest and proper management of fish and game resources on the public lands generally, both on the located lands and on adjacent lands. [Emphasis added.]
Id. at 6, 1955 U.S. Code Cong. & Admin.News at 2478-79.

Like the House report, the Senate report states, in discussing conflicts between surface and subsurface uses: "Surface uses include stock grazing, forestry, soil-erosion control, watershed purposes, fish and wild-life preservation, and

recreational areas." (Emphasis added.) S.Rep. No. 554, 84th Cong., 1st Sess. 3. The Senate report also notes the problem of mining claims having prevented access for the "proper management of fish and game resources on the public lands generally, both on the located lands and on adjacent lands." Id. at 5 (emphasis added).

After passage of the Surface Resources Act, the Department of the Interior promulgated regulations under its authority. 21 FR 7619 (Oct. 4, 1956). One portion of the regulations was apparently based in part on this legislative history. In relevant part it states:

> Except as such interference may result from uses permitted under the act, the locator of an unpatented mining claim subject to the act may not interfere with the right of the United States to manage the vegetative and other surface resources of the land, * * * or prevent agents of the Federal Government from crossing the locator's claim in order to reach adjacent land for purposes of managing wild-game habitat or improving fishing streams so as to thwart the public harvest and proper management of fish and game ***50** resources on the public lands generally, both on located and on adjacent lands.

43 CFR 3712.1(b).

From these statements it is clear that fish and fish habitats are within the intended scope of the "other surface resources" that BLM has authority to manage on the surface of mining claims under 30 U.S.C. § 612(b) (1982). From the information in the record before us, it is apparent that installing weirs in streams is a recognized technique of enhancing fish habitats, and is thus an acceptable management practice.

However, employing this practice is subject to the statutory limitation, underlined above, that "any use of the surface of any * * * mining claim by the United States * * * shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto * * *." We must therefore consider whether the weirs placed on the Treetopper I claim endanger or materially interfere with the operations conducted by the claim owners.

Like "other surface resources," the terms "endanger" and "materially interfere" are general. Although the terms are not precise, the legislative history is clear as to their intended effect. In reference to the portion of the statute containing the terms, the House and Senate reports both state:

> This language, carefully developed, emphasizes the committee's insistence that this legislation not have the effect of modifying ***51** longstanding essential rights springing from location of a mining claim. Dominant and primary use of the locations hereafter made, as in the past, would be vested first in the locator; the United States would be authorized to manage and dispose of surface resources, or to use the surface for access to adjacent lands, so long as and to the extent that these activities do not endanger or materially interfere with mining, or related operations or activities on the mining claim. [Emphasis added.]

H.R.Rep. No. 730, 84th Cong., 1st Sess. 10, reprinted in 1955 U.S.Code Cong. & Admin.News 2474, 2483; S.Rep. No. 554, 84th Cong., 1st Sess. 8-9.

Similar language appears in the legislative history concerning subsection 4(c) of the Act, which in part provides:

> Except to the extent required for the mining claimant's prospecting, mining or processing operations and uses reasonably incident thereto, * * * no claimant of any mining claim hereafter located under the mining laws of the United States shall, prior to issuance of patent therefor, sever, remove or use any vegetative or other surface resources thereof which are subject to management or disposition by the United States under subsection (b) of this section.

30 U.S.C. § 612(c) (1982). The House and Senate reports contain identical statements concerning this provision: "This language, read together with the entire section, emphasizes recognition of the dominant right to use in the locator, but strikes a balance, in the view of the committee, between competing surfaces uses, and surface versus subsurface competing uses." (Emphasis added.) H.R.Rep. No.

730, 84th Cong., 1st Sess. 10, reprinted in 1955 U.S.Code Cong. & Admin.News 2474, 2483; S.Rep. No. 554, 84th Cong. 1st Sess. 9.

***52** Senator Anderson of New Mexico, who introduced the Senate version of the bill, made similar comments on the Senate floor. First, in responding to criticism of the legislation he stated: "On a claim located after enactment, the locator would have full right to all surface resources of the claim which may be needed for carrying on mining activities." 101 Cong.Rec. 9334 (June 28, 1955). He went on to describe subsection 4(c) as recognizing "that a mining claimant has the first right, the first call on any and all surface resources of his claim which he needs for carrying on activities related to mining." Id.

When these statements are considered in relation to the mining laws as they stood at the time, it is clear that the legislation did not diminish the rights of locators to use the surface of mining claims. The Mining Law of 1872 provides that locators of mining claims "shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations." 30 U.S.C. § 26 (1982). Although once understood by some to mean that a locator had an unrestricted right to make use of the surface in whatever manner and for whatever purpose chosen, the judicial decisions addressing the matter made clear that the right to use the surface and surface resources was limited to uses "reasonably necessary in the legitimate operation of mining," Teller v. United States, 113 F. 273, 280 (8th Cir.1901), or "incident to mining operations." United States v. Rizzinelli, 182 F. 675, 684 (D.Idaho 1910). Thus, in declaring that mining claims subsequently located "shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto" (30 U.S.C. § 612(a) ***53** (1982)), the Surface Resources Act was "simply declaratory of the law as it existed prior to 1955." Bruce W. Crawford, 86 IBLA 350, 364, 92 I.D. 208, 216 (1985) [FNc] (emphasis in original, footnote omitted); see United States v. Curtis-Nevada Mines, Inc., 611 F.2d at 1280-81.

[2] The change made by the Surface Resources Act was to create in the United States explicit authority "to manage and dispose of the vegetative surface resources * * * and to manage other surface resources." 30 U.S.C. § 612(b) (1982). Previously, Governmental agencies had been unable to do so once a mining claim had been located, even though the locator had only a limited right to use the same resources. See Bruce W. Crawford, supra at 365-66, 92 I.D. at 216-17. Congress recognized that there would be instances in which Federal management of the surface resources found on a mining claim would conflict with legitimate use of the surface and surface resources by the claimant. The balance it struck in order to resolve such conflicts was to specify that the authority the statute granted would apply only so long as and to the extent that Federal use of the surface did not "endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto." 30 U.S.C. § 612(b) (1982); see United States v. Curtis-Nevada Mines, Inc., 611 F.2d at 1283, 1285. When it does, Federal surface management activities must yield to mining as the "dominant and primary use," the mineral locator having a first and full right to use the surface and surface resources. [FN6]

***54** [3] Understood in this context, the terms "endanger" and "materially interfere" set forth the standard to be applied to determine whether a specific surface management action must yield to a conflicting legitimate use by a claim owner and may be given their ordinary meanings. To "endanger" is "to bring into danger or peril." Webster's New Collegiate Dictionary (1977) at 375. In this case there is no evidence that the weirs cause danger or peril to appellant's operations, so we turn to whether the weirs "materially interfere" with them. To "interfere" is "to interpose in a way that hinders or impedes"; and "material" means "being of real importance or great consequences." Webster's New Collegiate Dictionary (1977) at 602, 709. Webster's Third New International Dictionary (1971) defines "material" as "being of real importance or great consequence: substantial" (at 1392), and "interfere" as "to come in collision: to be in opposition: to run at cross-purposes: clash <interfering claims>--used with with" (at 1178 (emphasis in original)). Thus, the question is whether BLM's fish weirs substantially hinder,

impede, or clash with appellant's mining operations.

Although there are some disparities between BLM's reports of the effects of its installing the weirs and appellant's, e.g., concerning the maximum depth of the gravel, even BLM's version of facts in this case leads us to conclude that BLM materially interfered with appellant's mining operations. The logs are 2 feet thick and fixed in place. The gravel BLM deposited covers at least 20 percent of the streambed (Position Paper at 1). Although the gravel BLM deposited may be "less than 15 inches in most locations" (Position Paper at 2) and "at most, 18 inches" over the ***55** natural gravel (Inspection Report at 2), before it was deposited there was almost no gravel over the bedrock, making it easy to operate a suction dredge. Id. at 1.

The statement in BLM's decision that "there is ample area remaining on [the] claim that the structures have not affected" does not negate the fact that it has obstructed 20 percent of the total streambed (and more of the unworked streambed). Nor do we believe BLM's judgment that "the amount of increased effort required on [appellant's] part at or adjacent to the structures is not that significant" is reasonable. Removing up to 18 inches of gravel from 20 percent of the streambed in order to be able to operate a suction dredge on the native gravels and fractured bedrock would in our view substantially impede appellant's mining operations.

The record indicates that after its January 22, 1987, decision, BLM attempted to negotiate with Shoemaker. A February 5, 1987, Conversation Record of a conference of five members of BLM staff states: "Bob Bessey [Medford District Fishery Biologist] explained that the lower 2 weir[s] were the most important structures and that we should remove the upper structures and all present agreed. Gerard Capps was to arrange meeting with Mr. Shoemaker (Senior) to inform him of our decision and explain reasons." A February 6, 1987, Conversation Record indicates appellant's father told BLM if it was not willing to remove the lower two weirs there was nothing to meet about. We interpret these documents as evidencing an intent by BLM, at one point, to accommodate appellant by removing all but ***56** the lower two weirs. [FN7] In view of our conclusion that the 10 weirs, taken together, materially interfere with appellant's mining operations, we find the appropriate resolution of this case is to direct BLM to undertake what it offered to do, i.e., remove all but the lower two weirs. Leaving the lower two weirs would not materially interfere with appellant's operations, especially in light of the fact no gravel was placed by one of them. See Study at 1.

Therefore, in accordance with the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified to the extent that the upper eight weirs should be removed.

Will A. Irwin

Administrative Judge

I concur:
Bruce R. Harris
Administrative Judge

FN1. The decision states that the claimants have the right to appeal the decision "to the State Director, and thereafter to the Board of Land Appeals of the Department of the Interior." Appellant's notice of appeal was addressed to the district manager and was forwarded to the Board with the case file. It appears that BLM may have had in mind appeal procedures established under the surface management regulations. See 43 CFR 3809.4. Those regulations, however, are not applicable here because the decision on appeal concerns actions taken on the surface of a mining claim by BLM rather than the requirements imposed on mineral locators by 43 CFR Subpart 3809.

FN2. Neither the case file submitted to the Board by BLM in response to Shoemaker's appeal nor the file for the mining claim submitted in response to our order of June 14, 1989, contains the original of this document, so the apparent color coding of

the accompanying maps cannot be read.

FN3. The Dec. 1, 1986, inspection report concludes:

"The BLM fishery habitat improvement program is an essential program to revive the fishery population which has been so severely impacted by both logging and placer mining over the past 100 years. We believe that the fishery program and mining activities can co-exist and do co-exist over most of the district. It is, however, unfortunate that a small minority of the mining community will always be present which will not cooperate with federal programs."

FN4. This document was placed in the file after BLM made its decision but before Shoemaker filed his notice of appeal on Feb. 18, 1987.

"The Board of course finds it helpful to have the kind of background and analysis that BLM provided in this case, either directly or via the Office of the Solicitor, and welcomes its submission. * * * If it is placed in the file after BLM makes its decision but before a person files a notice of appeal, there is no regulation requiring that it be sent to affected parties; nevertheless, in fairness BLM should mail a copy of it to such persons at the time it is placed in the file so that they may consider it in deciding whether to appeal the decision and what to say in a statement of reasons."
Amoco Production Co., 101 IBLA 152, 156-57 (1988). [FNa]

Cf. Metropolitan Water District of Southern California, 109 IBLA 327, 329 n. 2 (1989): [FNb]

"BLM is advised that, under 43 CFR 4.27(b)(1), it is required to furnish appellants copies of all communications that concern the merits of the appeal and that are placed into the official record after the notice of appeal is filed. This includes not only answers and other pleadings filed with the Board, but also copies of memoranda that are not addressed directly to the Board, because we will nevertheless have them before us in the file as we consider the appeal. Appellant is normally to be provided the opportunity to respond to such communications by BLM. 43 CFR 4.27(b)(1). In the present case, we choose not to delay our decision by requiring service of this memorandum. However, BLM is further advised that failure to comply in the future may, in appropriate circumstances, result in the imposition of sanctions against it. 43 CFR 4.27(b)(2)."
These statements apply to BLM's Chronology of Events in this case, which was placed in the case file after the filing of the appeal.

FNa) GFX(O&G) 21(1988)

FNb) GFX(MISC) 56(1989)

End of Footnote(s).

FN5. Appellant cites the Oregon statute as "State Law § 108-504" and gives its title. The section of the Oregon statutes which bears the title "Maintenance of fishing conditions; cooperation of placer and fishing interests" is section 517.520 and is part of a statute establishing and granting powers to the Rogue River Coordination Board. See Or.Rev.Stat. § § 517.510- 517.550. The statute gives that Board jurisdiction over placer mining operations on the Rogue River and its tributaries and authorizes it to regulate placer mining operations for the mutual benefit of placer mining interests and fishing interests. Pickett Creek is a tributary of the Rogue River. The report of BLM's Dec. 1, 1986, mining inspection states: "The new state regulations for operating dredges within the stream channel precludes mining on tributaries to the Rogue River between September 15 and June 15, except where the Oregon Department of Fish and Wildlife grant a waiver. Mr. Shoemaker was not granted a waiver." No copy of these regulations is contained in the case file.

FNc) GFS(MIN) 55(1985)

FN6. Cf. United States v. Curtis-Nevada Mines, Inc., 611 F.2d at 1286: "[I]n the event that public use interferes with prospecting or mining activities * * * [t]he mining claimant can protest to the managing federal agency about public use which results in material interference and, if unsatisfied, can bring suit to enjoin the activity."

FN7. We note that the Pickett Creek Position Paper indicates an offer was made to appellant regarding removal of fewer than eight weirs.

GFS(MIN) 82(1989), 110 IBLA 39

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