

# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Nevada State Office  
P.O. Box 12000 (1340 Financial Blvd)  
Reno, Nevada 89520-0006  
<http://www.nv.blm.gov>

August 10, 2006

In Reply Refer To:

3809/ 3802/ 3715/ 3000(NV-920) P

EMS TRANSMISSION 08-10-06

Instruction Memorandum No. NV-2006-068

Expires: 9/30/2007

To: Field Managers, Assistant Field Managers, Non-Renewables, and Chief, Branch of Minerals Adjudication, Nevada

From: Deputy State Director, Minerals Management (NV-920)

Subject: Appeal Statements for Decisions Issued Pursuant to BLM Surface Management Regulations at 43 CFR 3809/3715

ISSUE: Standardization of Appeals Language in Decisions Issued Pursuant to 43 CFR Subpart 3809 and Related Decisions at 43 CFR 3000.11, 3715, and 3802

This instruction memorandum provides guidance on preparing appeal statements for administrative decisions issued by the State Office and Field Offices in Nevada involving the Bureau of Land Management (BLM) Surface Management Regulations at 43 CFR §3809.800 – 809, and related decisions concerning case-by-case processing fees, suspected mining claim occupancy, and exploration and mining under the Wilderness Review Program at 43 CFR 3000.11, 3715 and 3802, respectively. Except for the language concerning State Director Review at 43 CFR 3809.800, the Bureau approved appeal paragraph given in Handbook 3870-1, Chapter VII and also contained on BLM Form 1842-1 will be used. No deviations from the approved language will be permitted.

**POLICY:** Use the standard appeal language in “A” below, which is common to all BLM decisions. Insert this language as indicated [IN BRACKETS] for the individual decision statements outlined in B through H below. The individual statements will be appended to each action (reviews and appeals) that originate from 43 CFR §3809.800 – 809. The standard appeal and request for stay language in “A” will be followed at all times. No deviation from this language will be permitted without the prior approval of the Washington Office.

### **A. Standard Language - Appeal Statement and Request for Stay**

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. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within

30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. 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 (see 43 CFR 4.413 or Form 1842-1) 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 regulation, 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.

Should you have any questions on this subject matter, please contact [NAME OF AUTHOR] at (XXX) XXX-XXXX.

**B. Field Office (3000.11) Cost Recovery Fee Decisions (includes any decision issued pursuant to 43 CFR §3000.11 for Plans of Operations Requiring an EIS and filed in accordance with the requirements of 43 CFR Subpart 3809 (see 43 CFR §3000.11(b)(7)))**

You may appeal BLM's estimated processing costs, and you may also appeal any determination BLM makes under 43 CFR §3000.11(a) that a document designated for a fixed fee will be processed as a case-by-case basis fee. We will not process the document further until the appeal is resolved, in accordance with 43 CFR §3000.11(b)(5)(i), unless you pay the fee under protest while the appeal is pending. If the appeal results in a decision changing the proposed fee, we will adjust the fee in accordance with 43 CFR §3000.11(b)(5)(ii).

[INSERT STANDARD APPEAL LANGUAGE]

**C. Field Office 3715 Decisions (includes any decision issued pursuant to 43 CFR Subpart 3715, Use and Occupancy Under the Mining Laws (see 43 CFR 3715.9)**

[INSERT STANDARD APPEAL LANGUAGE]

**D. Field Office 3802 Decisions (includes any decision issued pursuant to 43 CFR Subpart 3802, Exploration and Mining, Wilderness Review Program (see 43 CFR 3802.5)**

[INSERT STANDARD APPEAL LANGUAGE]

**E. Field Office 3809 Decisions (including Reclamation Cost Estimates, Noncompliance Orders, Suspension Orders, etc.)**

In accordance with 43 CFR §3809.804, if you are adversely affected by this decision, you may request that the BLM State Director in Nevada review this decision. If you request State Director review, the request must be received in the BLM Nevada State Office, 1340 Financial Blvd., 89502, P.O. Box 12000, Reno, Nevada 89520-0006, no later than 30 calendar days after you receive this decision. A copy of the request must also be sent to this office. The request must be in accordance with the requirements of 43 CFR §3809.805. If you request State Director review, this decision will remain in full force and effect while the State Director review is pending, unless a stay is granted by the State Director under 43 CFR §3809.808(a).

If the Nevada State Director does not respond to your request for State Director review of this decision within 21 calendar days after the request was timely made, you should consider the request denied. If your request for State Director Review is declined or you wish to forego a State Director review, [INSERT STANDARD APPEAL LANGUAGE]

**F. NSO (3809) Notice of Denial of Request for State Director Review**

The State Director has declined to review the [DECISION DATE, FO NAME] Field Office decision concerning [INSERT CASE SERIAL NUMBER]. There is no right of appeal from this State Director action; however, you may still appeal the [DECISION DATE, FO NAME] Field Office decision. [INSERT STANDARD APPEAL STATEMENT]

**G. NSO (3809) Acceptance of Request for State Director Review.**

The State Director has accepted your request for review of the [INSERT DECISION DATE] decision of the [INSERT FIELD OFFICE NAME]. [Your request for a stay is denied. The decision under review will remain in full force and effect pending the outcome of our review] OR [Your request for a stay is hereby granted. You must fully comply with all terms and conditions of the regulations during our review of this decision].

You may appeal the [INSERT DECISION DATE] decision of the [INSERT FIELD OFFICE NAME] to the Interior Board of Land Appeals at any time during the State Director Review process, but before a State Director makes a decision, as provided at 43 CFR §3809.801(a)(3) and Part 4.

The State Director will terminate a review if you or another affected party files an appeal of the [DECISION DATE, FO NAME] Field Office decision before the State Director issues a decision under this subpart, unless the Office of Hearings and Appeals agrees to defer consideration of the

appeal pending a State Director decision (43 CFR §3809.806). Once the State Director issues a decision under this subpart, it replaces the Field Office decision.

**H. State Director Decisions (including State Director (3809) Review decisions and any Bond Decisions written by the NSO Branch of Minerals Adjudication (NV-923))**

[For SDRs, add: “Once the State Director issues a decision under 43 CFR Subpart 3809, it replaces the original BLM Field Office decision, which is no longer in effect, and you may appeal only the State Director’s decision.”]

[INSERT STANDARD APPEAL LANGUAGE]

BUDGET IMPLICATIONS: None

COORDINATION: Washington Office (320), Regional Solicitor

EFFECTIVE DATE: These instructions are effective immediately upon receipt.

CONTACT: Reg Reid, Surface Management Lead (NV-921), at (775) 861-6567 or rreid@nv.blm.gov.

Signed by:  
Atanda Clark  
Deputy State Director  
Minerals Management

Authenticated by:  
Pam Collins  
Staff Assistant