

May 23, 2012

Mr. Leon Thomas
Field Manager
Sierra Front Field Office
5665 Morgan Mill Road
Carson City, NV 89701

Re: NVN 091117 9232 (NVC0200)
Response to Notice to Cease and Desist Received May 21, 2012

Dear Mr. Thomas:

On May 21, 2012, Comstock Mining, Inc. (“Comstock”), which is the sole owner of The Plum Mining Co, LLC (“Plum Mining”), and the affiliate of Northern Comstock, LLC (“Northern Comstock”) received from the Bureau of Land Management, Sierra Front Field Office (“BLM”) a Notice to Cease and Desist (the “Notice”) regarding “Mount Diablo Meridian T. 16 N., R. 21 E., sec. 5, W1/2NW1/4, W1/2SW1/4, SE1/4SW1/4; sec. 6, E1/2NE1/4, NE1/4SE1/4, S1/2SE1/4; sec.8, E1/4NW1/4.” While these coordinates make it difficult to determine the specific property with which BLM takes issue, I assume that the Notice refers to Lot 51, Block 8, Range D, as shown on the official plat of Gold Hill, Nevada, filed in the Office of the County Recorder of Storey County, State of Nevada (“Lot 51”) and recorded by Storey County as APN 002-131-01 and a mining haul road that is the subject of existing right-of-way grant N-56178 (the “ROW”).

The Notice does not include any specific allegations regarding Comstock’s conduct that your office believes violates any statute or regulation. As you are aware, to assert trespass and obstruction the BLM must show that Comstock has no claim or color of title to the lands, made or acquired in good faith, and has not asserted a right by or under claim made in good faith with a view of entry. See *Lillis v. U.S.*, 190 F. 530 (9th Cir. 1911) cert. denied 32 S.Ct. 525, 223 U.S. 726. However, the BLM cannot meet this burden because Comstock has a good faith claim to the lands at issue. Comstock has been transparent, collaborative and proactively engaged with the BLM throughout this process and the BLM is fully aware of its claims and interests in the lands at issue.

It is also disconcerting that the Comstock Residents Association’s (the “CRA”) Facebook page posted information regarding the Notice specifically addressing Lot 51 at about the same time that the Notice was delivered to CMI. Given the timing of the CRA’s posting, and because the Notice itself does not readily identify Lot 51, it presents a strong appearance that the CRA is collaborating with, or otherwise influencing, someone in your office.

Comstock has and continues to comply with all federal, state, and local regulatory requirements. While the basis for the Notice is unclear, if the basis is Lot 51 and the ROW, then the Notice seems ill-advised for the reasons summarized below.



The ROW

The ROW was originally granted to Scott Shaddock in 1993 to use an existing mining haul road to access his private property.¹ In 1997, an assignment of the ROW from Mr. Shaddock to Hughes Brockbank was approved by BLM.² In 1999, Mr. Brockbank applied for an amendment to the ROW to expand the existing road, which BLM acknowledged was used as a mining haul road.³ At the same time, BLM approved the Notice N30-98-020N.

While BLM's file on this ROW appears incomplete, as the amendment grant is missing, Mr. Brockbank was allowed to proceed with the improvements requested and used the road as a mining haul road as authorized in N30-98-020N.⁴

After Mr. Brockbank's death, the ROW passed to the Hughes Brockbank Trust through probate. *See* 43 C.F.R. § 2803.12. Mr. Brockbank was a principal of Plum Mining prior to his death, and all parties, including the BLM, have consistently treated the ROW as being held by Plum Mining.⁵ Accordingly, BLM's decision to send a Notice to Cease and Desist regarding the ROW's use is troubling.

However, while Plum Mining properly holds and is entitled to continue using the existing haul road pursuant to the ROW, in order to improve the completeness of BLM's records as a "housekeeping" matter, Plum Mining is enclosing the following documents in support of a formal assignment of the ROW from the Hughes Brockbank Trust pursuant to 43 C.F.R. § 2807.21:

1. Standard Form 299, with sections 1-6, 12, 19, and 20 completed;
2. Attachment to Supplemental § I. a. of SF-299 – Articles of Organization for The Plum Mining Co, LLC;
3. Attachment to Supplemental § I. b. of SF-299 – Limited Liability Operating Agreement for The Plum Mining Co, LLC;
4. Attachment to Supplemental § I. c. of SF-299 – A Certificate of Existence with Status in Good Standing and a current Nevada State Business License;

1 *Exhibit A*, Jan. 1993 ROW grant to Mr. Shaddock..

2 *Exhibit B*, Feb. 1997 Approval of ROW Assignment to Mr. Brockbank..

3 *Exhibit C*, Feb. 2000 Conversation Record between BLM and Plum Mining.

4 *Exhibit D*, Jan. 1999 (erroneously dated Jan. 1998) Letter from Plum Mining regarding Amendment to NOI # N30-98-020N; *Exhibit E*, Feb. 1999 letter from BLM acknowledging the NOI amendment.

5 *Exhibit F*, Mar. 2004 Categorical Exclusion Environmental Review and Approval for Right-of-Way N-78108; *Exhibit G*, Mar. 2004 Memorandum regarding N-78108; See also, *Exhibit C* and *Exhibit E*.



5. Attachment to Supplemental § I. d. of SF-299 – A statement that § 6.5 of the Operating Agreement for The Plum Mining Co, LLC authorizes the Manager to make the application;
6. Attachment to Supplemental § I. e. of SF-299 – A list of the members, affiliates, and participants of The Plum Mining Co, LLC;
7. Assignor Consent and Assignee Agreement from the Hughes Brockbank Trust in favor of The Plum Mining Co, LLC; and
8. Assignor Consent and Assignee Agreement from Comstock Mining, Inc. in favor of The Plum Mining Co, LLC.⁶

I would also note that a categorical exclusion from NEPA review applies to the application pursuant to BLM *Handbook* H-1790-1 Appx. 4 § E. 9.

Lot 51

Lot 51 has been privately titled since at least 1869, and Northern Comstock and its predecessors-in-title have paid taxes on the property since that time. The fact that Lot 51 is privately owned and taxed by Storey County as private land is confirmed by a letter dated November 2, 2011 from the Storey County Manager to the BLM.⁷ In addition, conversations held on Comstock's behalf with officials in the Nevada State Office of the BLM over the past month have confirmed that those officials also believe Lot 51 to be privately owned.

A comprehensive list of the title history for Lot 51 going back to 1869, along with the actual title documents of record with Storey County, shows that Lot 51 is private land for which Northern Comstock paid fair market value. These documents are attached,⁸ and include the grant of an easement to Sierra Pacific Power Company in 1940 to construct a power line on Lot 51.⁹ It is curious that, despite the fact that Lot 51 has been privately owned, conveyed over twenty times, and significantly improved over the course of one-hundred-and-forty years, BLM never challenged ownership of the property until apparently pressured by the CRA. Also attached is a copy of an 1872 record from the General Land Office, stored in the National Archives in Washington, D.C., listing the Gold Hill Townsite lots which were not patented, and Lot 51 is not included on the list.¹⁰ All other town lots were patented prior to the issuance of this record.

⁶ The BLM's file may reflect a prior Assignor Consent from The Hughes Brockbank Trust to Comstock Mining, Inc. To the extent that the prior consent vested any rights to the ROW in Comstock Mining, Inc., those rights are assigned to The Plum Mining Co, LLC through the Assignor Consent and Assignee Agreement enclosed herewith.

⁷ *Exhibit H*, Nov. 2011 from Storey County Manager to BLM.

⁸ *Exhibit I*, List of Lot 51 Conveyances and supporting documentation.

⁹ See *Exhibit I*.

¹⁰ *Exhibit J*, 1872 Record from the General Land Office.



Finally, as noted in the ROW section above, the Feb 2, 1999 amendment to N30-98-020N clearly states that “all new road construction will be upon private lands”, specifically Lot 51.¹¹ Further, “this haul road will tie into the existing old Houston Oil and Minerals road into American Flat which is under right of way N-56178.” In this approval document, the BLM clearly accepts that Lot 51 is private and that the ROW is acceptable for use by haul trucks.

Conclusion

Hopefully, you appreciate that we are enabling responsible mining of historic significance to our State. We have already set new, higher standards of environmental responsibility in the State and on the Comstock. We have already partnered with the local, state and federal agencies in unprecedented ways and very much enjoyed hosting your tour of our activities last week.

I believe this response demonstrates that we represent a thorough, reputable, quality organization proud to represent the Comstock and Nevada. I hope you find this information helpful, and trust that this response and all of the detailed support provided herein resolves the issues raised by the Notice. The BLM initiated correspondence and other supporting evidence shows that neither Comstock nor its affiliates have committed any trespass to public lands. Accordingly, Comstock prefers to continue with its productive, lawful pursuits, providing valuable jobs, historic preservation and restoration, environmental enhancements and real economic growth for the State of Nevada, and requests that the BLM withdraw the Notice based on the additional information provided. Of course, we are willing to discuss these matters further with the aim toward expedient, efficient resolution. We look forward to our future collaborations and your response.

Sincere regards,

Corrado De Gasperis
President and CEO
Comstock Mining, Inc.

Encl.

¹¹ See *Exhibit E*.



cc: The Honorable Harry Reid, Senator (c/o Mary Connelly)
The Honorable Dean Heller, Senator
The Honorable Mark Amodei, Representative
The Honorable Shelley Berkley, Representative
The Honorable Brian Sandoval, Governor
Amy Luter, State Director BLM
The Board of Storey County Commissioners
Carolyn McIntosh, Esq., Patton Boggs LLP
Aaron Boschee, Esq., Patton Boggs LLP
Leif Reid, Esq., Lewis and Roca LLP
Brian Hutchins, Esq., BH Consulting LLC