

BEFORE THE RECLAMATION COMMISSION

ROBERT W. BOYD,	:	Case No. RC-14-008
	:	
Appellant,	:	Review of Results of Informal Bond
	:	Release Conference; Permit D-907
-vs-	:	(R.T.G., Inc.)
	:	
DIVISION OF MINERAL RESOURCES	:	<u>ORDER DENYING REQUEST</u>
MANAGEMENT,	:	<u>TO MODIFY OR RECONSIDER</u>
	:	<u>FINAL DECISION OF THE</u>
Appellee.	:	<u>COMMISSION</u>

Appearances: Robert W. Boyd, Appellant *pro se*; Brian Ball, Brian Becker, Assistant Attorneys General, Counsel for Appellee Division of Mineral Resources Management.

This matter came before the Reclamation Commission upon appeal by Robert W. Boyd from a decision of the Division Chief. The Chief's decision approved a request for final release of all financial security posted in support of mining and reclamation operations conducted under permit D-907. Permit D-907 was issued to R.T.G., Inc. ["R.T.G."]. Mr. Boyd owns land upstream from the permit D-907 area. Mr. Boyd contends that R.T.G.'s mining and reclamation altered the natural drainage of this area in a manner that increased the duration and severity of flooding events on Mr. Boyd's upstream property, thus limiting his use of the property.

On March 4, 2015, a site view was conducted by the Commission. The merits of this appeal were heard by the Reclamation Commission on March 4 & 5, 2015.

On May 7, 2015, the Commission **issued** its final decision in this matter. The Commission's decision contained twenty Findings of Fact, seven Conclusions of Law, a Discussion Section and an Order. The Commission **affirmed** the Division's November 5, 2014 approval of performance security releases associated with permit D-907. The Commission specifically found that Mr. Boyd did not carry his burden to prove that reclamation on the D-907 area was improperly, or inadequately, performed.

The decision issued by the Commission included the following language:

INSTRUCTIONS FOR APPEAL

This decision may be appealed to the Court of Appeals, within thirty days of its issuance, in accordance with Ohio Revised Code §1513.14 and Ohio Administrative Code §1513-3-22. If requested, copies of these sections of the law will be provided to you from the Reclamation Commission at no cost.

On June 8, 2015, Mr. Boyd filed with the Commission a letter, with several attachments. The letter began:

After having reviewed the subject report [*i.e.*, the Commission's decision] it is noted that two of the findings of fact upon which the Decision and Order of the Commission are based are not supported by the evidence presented nor are they true.

Mr. Boyd proceeded to provide additional facts, arguments and analysis relative to Findings of Fact made by the Commission.

Mr. Boyd's June 8, 2015 letter concluded with the following request:

In view of the misinterpretation of the information provided at the recent hearing and unsupported assumptions made with respect to my farming activity I would appreciate your revisiting the hearing record, findings, conclusions and order issued for correcting the misconceptions and mistakes that were made.

The law provides certain mechanisms for the review of a final decision of the Reclamation Commission. Commission Rule O.A.C. §1513-3-11(B) states:

Motions for reconsideration of any decision of the commission shall be made in writing within five business days * * * after the issuance of the commission's decision. A motion for reconsideration shall state with particularity the grounds on which it is based. The filing of a motion for reconsideration does not extend the time for filing a notice of appeal in the appellate court.

O.R.C. §1513.14 allows for appellate review of Commission decisions by Ohio courts:

(A) Any party aggrieved or adversely affected by a decision of the reclamation commission may appeal to the court of appeals for the county in which the activity addressed by the decision of the commission occurred, is occurring, or will occur, which court has exclusive jurisdiction over the appeal. The appeal shall be filed within thirty days of issuance of the decision of the commission.

(See also: O.A.C. §1513-3-22.)

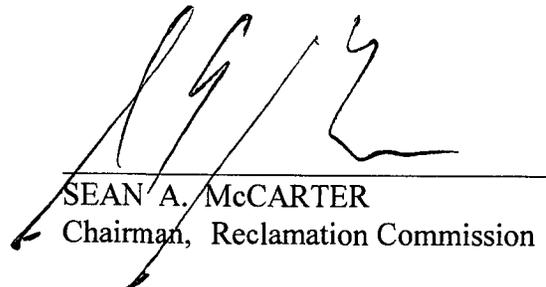
The Commission's May 7, 2015 decision was a final appealable order, reviewable only under the limited options provided by law. Mr. Boyd's June 8, 2015 letter was filed outside the deadlines for both of the above-described opportunities for post-decision review and reconsideration. The Commission is now without jurisdiction to revisit, review, reconsider or revise its May 7, 2015 final decision.

Mr. Boyd's June 8, 2015 letter will, however, be maintained with the Commission's case file for appeal # RC-14-008.

ORDER

Based upon the foregoing, and in light of the fact that the Commission lacks jurisdiction to reconsider, review or revise its final appealable order of May 7, 2015, Mr. Boyd's letter of June 8, 2015 is without effect and the Commission's final decision of May 7, 2015 will stand.

6/17/15
DATE ISSUED


SEAN A. McCARTER
Chairman, Reclamation Commission

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DISTRIBUTION:

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