

INTERIOR BOARD OF LAND APPEALS

Cambrillic Natural Stone and Unique Minerals, Inc.

161 IBLA 288 (May 13, 2004)

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CAMBRILLIC NATURAL STONE
UNIQUE MINERALS, INC.

IBLA 2000-249, 2000-251
2001-168, 2001-361

Decided May 13, 2004

Appeals from decisions of the Fillmore (Utah) Field Office, and the Utah State Director, Bureau of Land Management, approving a materials sale for building stone from mining claims located on lands designated as a community pit, and requiring claimant to deposit money in escrow equal to the appraised value of stone in the area pending a validity examination for mining claims located for uncommon variety building stone prior to designation of the community pit. UTU-063420, UTU-078273, UTU-078275, UTU-070560, UTU-070560-01, UTU-070560-02.

Decisions appealed in IBLA 2000-249 and 2000-251 vacated and cases remanded; decisions appealed in IBLA 2001-168 and 2001-361 affirmed.

1. Materials Act--Mining Claims: Generally--Mining Claims:
Common Varieties of Minerals: Generally

Departmental regulation 43 CFR 3604.1(b) (2000) formerly provided that “the designation of a community pit constitutes a superior right to remove material as against any subsequent claim or entry of the lands.” A community pit designation does not exclude or preclude the subsequent location of mining claims for uncommon variety building stone within the pit area. When there is a genuine controversy concerning whether the stone is a common or uncommon variety, BLM may not permit removal the stone pursuant to the Common Varieties Act, 30 U.S.C. § 611 (2000), before conducting a validity examination to determine whether in fact the stone is common or uncommon.

2. Materials Act--Mining Claims: Generally--Mining Claims:
Common Varieties of Minerals: Generally

The agency-wide procedure of requiring reasonable amounts of sales proceeds to be deposited in escrow pending the outcome of a validity examination to determine whether a building stone is a common or uncommon variety will be upheld as a means of protecting both the right of the Government to receive the proceeds of sales of mineral material and the claimants' due process right to have the legal status of minerals on their claims fully and fairly adjudicated.

APPEARANCES: William J. Pappas and Jerome Gatto, Salt Lake City, Utah, for Cambrillic Natural Stone; Richard L. Stone, Salt Lake City, Utah, for Unique Minerals, Inc.; Philip N. Levin, Ash Fork, Arizona, for Levin Stone Company, Inc.; and David K. Grayson, Esq., Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Cambrillic Natural Stone (Cambrillic) and Unique Minerals, Inc. (Unique) have appealed separate identical decisions dated April 13, 2000,^{1/} issued to each of them by the Fillmore (Utah) Field Office (FFO), Bureau of Land Management (BLM), which approved Environmental Assessment (EA) No. J-010-000-038TR dated April 4, 2000 (Sale EA), and authorized a materials sale of building stone to Levin Stone Co., Inc. (Levin). BLM had designated secs. 11, 14, 23, and portions of secs. 12 and 22, T. 17 S., R. 13 W., Salt Lake Meridian (SLM), a community pit (UTU-063420) in 1997. The material sale, entitled the "Antelope Mountain Building Stone Sale," authorizes the removal of mineral material from the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 23, T. 17 S., R. 13 W., SLM, Millard County, Utah, which partially overlaps the Unique Minerals #16 (UMC 365063) located by Unique in 1998 and the Cambrillic mining claim (UMC 366336) located by Cambrillic in 1999. (Sale EA at 1; Project Proposal Worksheet attached to the EA.) The affected mining claims were located by appellants to mine the same stone that BLM has authorized Levin to remove pursuant to the material sales contract. Both Unique and Cambrillic maintain that the mineral material is an uncommon variety useful for building stone and industrial uses and therefore appealed the decision allowing Levin to remove stone as common variety

^{1/} Cambrillic's appeal of the Levin materials sale was docketed as IBLA 2000-249; Unique's appeal of the sale was docketed as IBLA 2000-251.

minerals. By order dated August 29, 2000, this Board granted Levin's motion to intervene, and stayed BLM's April 13, 2000, decisions pending review of these appeals on their merits.

Additionally, Cambrillic has appealed two letter decisions issued by the Utah State Director (SD), BLM, respectively dated February 14, 2001, and April 18, 2001,^{2/} which affirmed the FFO's conditional approval of mining plans submitted by Cambrillic. More specifically, the February 14, 2001, SD decision pertained to a July 7, 2000, FFO decision which conditionally approved a mining notice submitted by Cambrillic for mining in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 14, T. 17 N., R. 13 W., pending satisfaction of three conditions: (1) BLM's receipt of a \$5,000 interim reclamation bond from Cambrillic for mining on less than five acres, with possible increases in the amount of the bond should Cambrillic disturb more than five acres; (2) Cambrillic's deposit in escrow of \$1,000 for each 100 tons of material removed, pending release of a final mineral report by BLM determining whether the stone is common or uncommon; and (3) Cambrillic's withdrawal of a previous related appeal of an FFO decision dated June 10, 1999, which BLM believed had been rendered moot by the July 7, 2000, decision. Cambrillic persisted in its request for SD review of BLM's June 1999 decision, however, as that decision held that one of its principals, William Pappas, had demonstrated a "record of noncompliance" with departmental regulations governing reclamation of mined public lands. The June 1999 decision was reviewed by the Utah SD in an April 18, 2001, decision in which BLM's imposition of a reclamation bond was affirmed, but the finding that Pappas had demonstrated a record of noncompliance was set aside on the ground that the regulations authorizing such findings had been judicially declared invalid in May 1998.

By order dated August 31, 2000, we granted BLM's motion to consolidate the appeals in IBLA 2000-249 and 2000-251 over Cambrillic's objection.^{3/} Because they

^{2/} Cambrillic's appeal of the SD's Feb. 14, 2001, decision was docketed by the Board as IBLA 2001-168; its appeal of the SD's Apr. 18, 2001, decision was docketed as IBLA 2001-361.

^{3/} Cambrillic and Unique may have erroneously believed that consolidating the two appeals negated or ignored the fact that they are adverse parties, filing joint pleadings as "consolidated appellants." See, e.g., Feb. 19, 2002, letter to the Board requesting clarification; Sept. 13, 2000, joint Motion for Extension of Time. However, the appeals were consolidated solely as a matter of administrative

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involve common parties and/or related legal issues, however, we have determined to consolidate all four appeals for decision.

Factual Background

In 1956, BLM mining valuation engineer Harold Babcock investigated two applications (U-019799 and U-018463) filed by Clyde L. Cheney, Jr., and his associates to purchase “flagstone” and “black calcareous limestone” from unsurveyed and surveyed portions of T. 17 S., R. 13 W., SLM, Millard County, Utah. ^{4/} See Babcock Report dated Oct. 22, 1956, at 5 (BLM Binder 1). ^{5/} Babcock recommended approval of the two materials sales applications. Id. at 3.

Babcock determined the stone to be a “common variety stone, of little value except possibly in the building trade,” and recommended that Cheney be “permitted to purchase the flagstone applied for * * * if and when the placer claim for mining flagstone is declared invalid or otherwise disposed of.” (Babcock Report dated Oct. 22, 1956, at 5.) In due course, BLM rendered a decision declaring the placer claim void on grounds that the shale and limestone on the claim were common varieties of stone. That decision was appealed and ultimately vacated, ^{3/} and Eugene W. Pearson, a BLM mining valuation engineer, was assigned to conduct a further investigation. He prepared a report to supplement Babcock’s report in which he found that “the shale and fissile limestone that * * * Cheney wishes to obtain have properties of cleavage, dendritic patterns, and irregular concentric banding giving it a

^{3/} (...continued)

convenience and efficiency, and in no way altered Cambrillic’s and Unique’s status as rival claimants.

^{4/} Cheney et al. filed a total of 14 applications, but requested a decision only on U-019799, filed Sept. 20, 1956, and U-018463, filed Apr. 4, 1956.

^{5/} The history of the mining and mining claims in the area is well-documented by BLM in three binders appended to BLM file UTU-070560. Binder 1 contains copies of archival documents generated from 1958 through 1989. Binder 2 spans the period from April 1990 through December 1991. Binder 3 contains documentation produced between January 1992 through February 1999, when Cheney died. Those binders contain far more detail, in generally chronological order, than what is necessary to resolve these appeals, and accordingly, our recitation of the facts will do no more than outline the background to the present controversy.

^{6/} We did not find a copy of that decision in the record before us.

special value as a decorative veneer in the building trade * * * , [and therefore] should be considered as locatable under the mining laws.” (Pearson Report dated Nov. 24, 1958, at 3-4 (BLM Binder 1.)

Mining claims adverse to Cheney’s materials sale applications were eventually abandoned, giving him the opportunity to locate claims on the same land. Cheney ultimately located eight placer mining claims (the Spectrum and Spectrums 1 through 7) in secs. 14, 22, and 23, for uncommon variety building stone. ^{7/} Cheney held all eight claims until 1993, ^{8/} when he permitted all but three claims (Spectrum, Spectrum 1, and Spectrum 2), which generally embraced what is known as the Spectrum Quarry, to lapse. Cheney held those claims until his death in February 1999, after which others, including appellants, located claims, as generally described below. (BLM Binder 3.)

Over the course of the more than 20 years that Cheney held the claims, various efforts were made to develop them. Thus, Cheney and investors formed the Sapphire Corporation, which later became the Sapphire Company. Cheney met Pappas and Gatto, who at different times undertook to develop the claims. These efforts began in 1977, when Sapphire Corporation entered into a contract to sell the claims to Intermountain Slate, Inc., of which Pappas was president. Intermountain

^{7/} By quadrant, the locations of these claims were as follows:

Spectrum	S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 23	located Dec. 8, 1958
Spectrum 1	N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 23	located Aug. 15, 1971
Spectrum 2	N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 23	located Aug. 15, 1971
Spectrum 3	E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 23	located Aug. 15, 1971
Spectrum 4	S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 14	located Aug. 13, 1976
Spectrum 5	E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ sec. 22	located Aug. 13, 1976
Spectrum 6	W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 23	located Aug. 13, 1976
Spectrum 7	E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 23	located Aug. 13, 1976

Cheney located all the claims, except for the Spectrum claim, which had been located by his father, Clyde Cheney, Sr., from whom Cheney acquired it. (BLM Binder 1.) The record also shows that amended notices of location were filed for the claims in 1976.

^{8/} The record shows that Cheney conveyed all or partial interests in all or some of the claims at different points before 1993, but again, it is not necessary to delve into those details to get to the heart of the matter before us.

defaulted on the sales contract, and Sapphire turned to Gatto, who, under various corporate arrangements (Gatto was associated with Merd Corporation (Merd), Lifetime West Corporation, and Sunburst Industries) undertook to mine the claims. Merd submitted a plan of operations to BLM in 1978, but Gatto and Merd parted ways, and operations languished before a reclamation bond could be secured. See, e.g., Letter of Utah Department of Natural Resources, Division of Oil, Gas, and Mining (DOGM) to Cheney dated Feb. 1, 1980. (BLM Binder 1.) Gatto performed labor on the claims through 1981, but severed his relationship with Cheney soon thereafter. (Letter from Gatto doing business as Sunburst Industries dated Dec. 7, 1981.) Cheney ensured that minimal assessment work was performed on the claims during the 1980's.

In 1989, Cheney entered into a second agreement with Pappas to mine and reclaim the area. (Letter from Diane Martin to BLM dated July 17, 1989.) Pappas attempted, under various corporate arrangements, to mine and market the stone. During the most expansive of those endeavors, which was undertaken by the Baron Trading Company (BTC), Pappas and/or BTC located seven additional contiguous claims, designated as the Barons 1 through 7.^{2/} In September 1991 BTC filed a plan of operations proposing to disturb 18 acres primarily in sec. 23, but BLM failed to secure a reclamation bond from BTC before Pappas and Russell Ponce, BTC's president, fell into discord. Their conflict resulted in legal action in state court, and in 1993 BTC filed for relief in bankruptcy court, leaving BLM with a reclamation bill of \$13,950.51 (\$14,000 less a credit of \$49.51). See Attachment A to BLM letter to Pappas dated Apr. 3, 2001 (BLM File UTU-070560); Memorandum from D. Wayne Hedburg, DOGM Permit Supervisor, dated Feb. 2, 1992 (BLM Binder 3); see also BLM Decision dated August 25, 1997 (BLM Binder 3).

Once Cheney permitted the Spectrums 3 through 7 to lapse in 1993, Gatto and Pappas located claims over the ground formerly embraced by the Spectrum claims. The new claims were named the Billy Boy Helen #1 (UMC 353656) and Billy Boy II Helen (UMC 353657), the Billy Boy Helen #3 (UMC 353658), and the Jerry G #1 (UMC 353712), Jerry G #2 (UMC 353713), and Jerry G #3 (UMC 353714).

^{2/} The Board has not been provided with the mining claim files for any claims other than the Spectrum claims Cheney held. Accordingly, the facts of the Baron claims are not before us; however, that information is not relevant for our purposes, as none of the BTC claims is currently active. It suffices to note that BTC located claims in and around the Spectrum Quarry.

By 1993, interest was also developing in obtaining the right to purchase decorative rock from the general area under materials sales contracts authorized by BLM. From November 1993 to 1996, BLM awarded short term contracts to remove stone from the old Spectrum claims area.^{10/}

On April 23, 1997, Ron Teseneer, Acting Area Manager for BLM's Warm Springs Resource Area, forwarded a memorandum to the Utah State Director requesting that secs. 11, 14, and 23, T. 17 S., R. 13 W., be platted as a community pit, to be designated as "UTU-063420." On September 29, 1997, the Acting Area Manager requested the inclusion of land in the W $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$ sec. 12 in the community pit, due to errors in plotting the legal description of the material sales area. See n. 10, *infra*. Land in the E $\frac{1}{2}$ E $\frac{1}{2}$ sec. 22 was also added as a result of that memorandum. In October 1997, the community pit was duly noted on the master title plat for T. 17 S., R. 13 W.

On August 25, 1997, BLM issued a notice of noncompliance (NON), pursuant to 43 CFR 3809.3-2 (1997), to Pappas, BTC, and Ponce. The NONs required them to name an operator to assume responsibility for BTC's 1991 plan of operations, to post a reclamation bond with DOGM in the amount of \$13,950.49 with the understanding that additional funds could be required if more mining was contemplated, and to either resume mining or begin reclamation by July 1, 1998. (Aug. 25, 1997, BLM Letter to Pappas, Ponce, and BTC, as amended by BLM Letter dated Sept. 18, 1997 (BLM Binder 3.)) In the event the parties did not comply, BLM informed them that, under regulations then in effect, they would be deemed to have established a "Record of Noncompliance." Pappas received the September 18 letter on September 23, 1997, and did not respond or appeal. However, on September 19, 1997, Gatto contacted BLM by telephone and indicated that he "wanted to assume the [plan of operations] submitted by Baron Trading." (Confirmation/Report of Telephone Conversation between Sheri Wysong, BLM, and Gatto dated Sept. 19, 1997.) In a letter to Gatto dated September 25, 1997, BLM indicated the conditions under which Gatto could commence mining on the site. In general, these conditions reiterated the demand for a reclamation bond in the amount of \$13,950.49, established the date by which reclamation must be commenced to avoid bond forfeiture, required a plan of

^{10/} It was later discovered that the land from which the material had been sold was incorrectly described as occurring in the "E $\frac{1}{2}$ NESENE sec. 11." The correct description was the W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 12. (Mineral Materials Compliance Field Report dated July 25, 1997.) Because it is not necessary to the disposition of these appeals, we have made no attempt to relate those sales to the various claims in the area.

operation acceptable to DOGM, and further required Pappas, BTC, and Ponce to resolve the NON, failing in which Cheney would be required to commence reclamation. (BLM Binder 3.)

On November 8, 1997, BLM sent a letter to Cheney informing him that BLM was of the opinion that the stone located on the Spectrum, Spectrum 1, and Spectrum 2 mining claims “is a common variety building stone and as such is not locatable.” The letter stated:

You were informed of this opinion in a copy of a letter to William J. Pappas dated February 21, 1991; in a letter dated December 5, 1991, a copy of which was sent to you on April 10, 1992, and again by a copy of a letter dated October 8, 1996, which was addressed to Mr. James Whelan.

Due to the continued interest in this area, and questions from your lessee, Mr. Jerome Gatto, as to whether we have completed our validity examination of the claims, we have decided to proceed with the validity examination of Spectrum, Spectrum No. 1, and Spectrum No. 2 placer mining claims.

BLM noted that the validity examination was scheduled to begin in late February 1998, and would be conducted by Teseneer, a geologist and certified mineral examiner. (BLM Binder 3.) On December 2, 1997, BLM sent Cheney a letter requiring him to submit a reclamation plan and cost estimate within 60 days. BLM informed him that failure to respond would result in issuance of a NON against him and investors in the Sapphire Company. BLM did not receive a response, and therefore issued a NON to Cheney on April 16, 1998.^{11/}

On September 15, 1998, Unique located the Unique #11 (UMC 365058), the Unique #14 (UMC 365061), the Unique #15 (UMC 365062), and the Unique #16 (UMC 365063) association placer claims for uncommon materials over the entire northwest quadrant of sec. 23, embracing active mining claims that had previously been located by Pappas and/or Gatto.^{12/} (BLM Mining Claim Geographic Report at

^{11/} The NON was issued to Cheney in spite of a Mar. 5, 1998, Memorandum to File which indicated that much of the disturbance was to the east of Cheney’s claims, on a claim belonging to “Don Smith, et al.”

^{12/} It thus appears that Unique became a rival locator. The Department has been
(continued...)

1.) The Utah State Office issued a notice on April 14, 1999, informing Unique that its claims might lie on lands encompassed by Community Pit UTU-063420. BLM informed Unique that 43 CFR 3600.0-5(g) provides that the “establishment of a community pit, when noted on the appropriate Bureau of Land Management records or posted on the ground, constitutes a superior right to remove material as against any subsequent claim or entry of the lands.” The notice directed Unique to contact the appropriate BLM field office prior to commencing operations. Unique filed a plan of operations for the N½ sec. 23 sometime in late 1998. (BLM Letter to Cheney dated Jan. 4, 1999) (BLM Binder 3.) Nothing in the record before us indicates whether BLM approved or rejected Unique’s plan. ^{13/}

At some point, Gatto and Pappas joined forces under the name of Cambrillic Natural Stone. On May 19, 1999, Cambrillic submitted to DOGM a notice of intent to commence small mining operations on its Billy Boy Helen #3 and Billy Boy #4 claims in the SE¼SW¼ sec. 14. ^{14/} The notice was signed by Pappas. (BLM File UTU-070560.) DOGM forwarded the notice to the FFO, which issued a letter decision to Cambrillic on June 10, 1999, rejecting the notice on the ground that Pappas had established a Record of Noncompliance, as provided by 43 CFR 3809.3-2(e)(1997), by virtue of the failure of former corporations Pappas was associated with to complete their reclamation responsibilities under 43 CFR Subpart 3809. ^{15/} The letter advised that a plan of operation was required to mine, and before a plan could be approved, an EA was necessary. The letter suggested that Pappas contract for the EA

^{12/} (...continued)

consistent in its position that it is without authority to determine the question of right of possession as to claims between rival claimants. Sandra Memmott (On Reconsideration), 93 IBLA 113, 115 (1986), and cases cited. Accordingly, BLM accepts location notices, mining claim fees, and other required documentation from all claimants.

^{13/} Unique has not appealed any decision of BLM affecting its mining operations, and therefore BLM did not forward records pertaining to Unique’s mining activity.

^{14/} Unique located the Billy Boy #4 claim (UMC 354029) in sec. 14 on Nov. 18, 1993, just north of the Billy Boy Helen #3 claim. See Oct. 6, 2003, BLM Mining Claim Geographic Report at 3.

^{15/} The letter stated: “We will not accept a notice from any corporation for which you are an officer, nor will we accept a notice on any mining claims if the owner of the claims is a corporation for which you are an officer.” (June 10, 1999, letter from the FFO Field Manager to Pappas, submitted in a red binder in IBLA 2000-249 and filed with the Board on June 8, 2000.)

because of the size and timing of BLM's workload. Gatto responded in a letter dated June 18, 1999, and protested that decision on June 21, 1999. Gatto was unable to reach agreement with the FFO and accordingly filed an appeal with the SD on July 29, 1999. Due to circumstances explained infra, that appeal was not addressed by the SD until April 18, 2001.

In late August 1999, Cambrillic located the Cambrillic (UMC 366336), the Cambrillic No. 1 (UMC 366337), and Cambrillic No. 2 (UMC 366338) placer claims over what had been the Spectrum and Spectrum Nos. 1 and 2. Thus, by 1999, Gatto and Pappas held 10 mining claims, seven in the NW $\frac{1}{4}$ sec. 23, two in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 14, and one in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 23. On November 16, 1999, the Utah State Office notified Cambrillic that its Cambrillic and Cambrillic Nos. 1 and 2 claims were located within Community Pit UTU-063420, and informed Cambrillic of BLM's superior right, established by 43 CFR 3600.0-5(g), to authorize removal of materials from the pit.

According to documentation in the BLM file for UTU-063420 pertaining to the community pit, Levin first received a sales contract from BLM for removal of "calcareous shale" from the NW $\frac{1}{4}$ sec. 23 on November 23, 1999. The contract was to expire on January 23, 2000. (Receipt 34774 issued by the FFO to Levin Stone dated Nov. 23, 1999.) A second contract granted Levin the right to remove material through April 4, 2000. The contracts listed the material variously as "calcareous shale" (Contract 43546), "calcarion stone" (Contract 43609), "calficeous shale" (Contract 43622), and "calciferous shale" (Contract UTU-063420). By letter received February 3, 2000, Levin informed BLM that it would be extracting "flagstone," and "cap-rock." (Letter from Philip N. Levin to Wysong dated Jan. 28, 2000.)

On April 3, 2000, BLM issued a decision rejecting an "Amended Notice of Intention to Commence Small Mining Operations" Pappas had filed with DOGM. By that amended notice, Pappas changed the site of its mining operations from the Billy Boy Helen # 3 and Billy Boy # 4 claims to the Cambrillic claim. (BLM File for UTU-063420.) Pappas' amended notice expressed an intent to mine, at least in part, the same area from which Levin was authorized to remove mineral material. In its April 3, 2000, decision, BLM drew a distinction between claims located after the community pit was established, and those that predated the community pit. BLM acknowledged that, in the case of the claims that predated the community pit, the burden was on BLM to conduct a validity examination to determine whether the claims are supported by discovery of a valuable mineral deposit. However, for claims located after the community pit was established, BLM informed Pappas that the burden was on Cambrillic to establish that the stone would be sold for "qualifying

uses.” (April 3, 2000, Decision at 2.) As in its June 10, 1999, decision rejecting Cambrillic’s mining notice for claims in sec. 14, BLM stated that, because Pappas had established a Record of Noncompliance with respect to BTC’s previous failure to reclaim the area, it would require not only a full plan of operations and a 100% reclamation bond, but, consistent with the view that the stone is common variety, an “escrow account for the appraised value of the material removed” would be required. Id. Lastly, BLM informed Pappas that he could opt to buy the material in quantities of 99 tons or less over-the-counter, or submit bids for larger amounts at a competitive sale to be held in the near future. Cambrillic did not appeal this decision. Instead, it appealed the decision issued by BLM 10 days later authorizing the materials sale to Levin in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 23.

On April 4, 2000, BLM issued the Stone Sale EA. That EA was initiated because Levin had applied to “expand the scope of the operation and purchase another 1000 ton[s],” which would redisturb about 4 acres previously disturbed by BTC on or around the Spectrum quarry and on portions of the Unique Minerals #16 (UMC 365063) and the Cambrillic (UMC 366336) mining claims. (Stone Sale EA at 2-3.)

BLM issued to both Cambrillic and Unique letters of decision approving the Levin sale on April 13, 2000. On May 11, 2000, BLM received notices of appeal from each and requests for a stay of any further sales. Contracts approving sales to Levin through June 21, 2000, and July 7, 2000, were accordingly suspended. (BLM letter to Richard Stone, Unique Minerals, dated September 12, 2000.) On August 29, 2000, the Board stayed further sales pending a decision on the merits.

On July 28, 2000, Teseneer sent Levin a questionnaire requesting information about Levin’s production. In answering the questionnaire, Levin stated he was producing “patio stone” from the quarry, in random sizes and shapes $\frac{1}{2}$ to 3 inches in thickness. (Levin Stone Questionnaire attached to Levin’s Response to SORs of Unique and Cambrillic, at 1.) He stated that 99% of the product sold at that time had been untreated, although he strongly recommended “sealing” when the material was to be exposed to the outside elements. Id. at 1, 4. He stated that markets were available in California, Montana, Texas, and New York. Id. at 2. Levin reported that no other product he sold competed directly with the Spectrum quarry stone in terms of color, although locations near the quarry contained “several thousand tons of similar material.” Id. He further stated that he was looking into whether there was a market for waste material from the quarry, such as the “asphalt emulsion” market. Id. at 3. Levin nonetheless concluded that “flagstone is flagstone,” and noted that

wholesale sales were running \$160 to \$200 per ton, retail at \$200 to \$300 per ton, with costs at \$100 per ton. Id. at 1-2.

Not long thereafter, on May 12, 2000, Cambrillic submitted a mining plan of operations for its Billy Boy Helen #3 and Billy Boy #4, located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 14. (BLM File for UTU-070560.) ^{16/} This plan of operations triggered preparation of the “Antelope Valley Mining Programmatic Environmental Assessment # J-010-000-058EA” (MPEA), dated June 2000. The MPEA contains the following explanation of the situation at or near the Spectrum quarry site:

In order to protect the government’s rights to sell the material should the claims be abandoned or declared null and void, on April 23, 1997 a community pit was established over the Spectrum quarry and surrounding areas. There were ten grandfathered claims at the time the community pit was established, the Spectrum and the Spectrum 1 and 2, owned by Clyde Cheney, and located over the actual quarry, the Jerry G. 1, 2 and 3, UMC’s 353712-4, owned by Jerry Gatto, and the Billy Boy and Helen 1, 2 and 3, UMC’s 353656-8 and the Billy Boy 4, UMC 354029, owned by William Pappas. The validity exam was being conducted on the Spectrum and Jerry G. claims, when * * * Clyde Cheney died. No Small Miner’s exemption or Rental Fee was paid on the Spectrum claims as of the August 31, 1999 deadline, and the claims became abandoned and void. The validity exam has not been completed as of the time of preparation of this document.

(MPEA at 6.) The MPEA continued:

BLM policy states that a validity exam must be conducted prior to approval of a Plan of Operations to mine a suspected common-variety mineral. If the operator wishes to proceed before the completion of the validity exam, he must post an escrow account for the appraised value of the material removed during the time the exam is pending. In either case, policy requires a validity exam to be conducted.

(MPEA at 6-7.)

^{16/} This plan of operations apparently was submitted as the result of negotiations between the Office of the Solicitor, acting on behalf of BLM, and Cambrillic. See Letter of John Steiger, Esq., to Gatto dated Mar. 8, 2000.

The FFO Manager issued a Finding of No Significant Environmental Impact and on July 7, 2000, issued a decision approving Cambrillic's plan of operations, provided Cambrillic agreed to provide a \$5000 interim reclamation bond to be supplemented if operations exceeded five acres, and a deposit in escrow of \$1000 for every 100 tons of rock sold pending a Departmental validity examination, and provided further that Cambrillic formally withdraw its appeal of BLM's June 10, 1999, decision. (BLM File for UTU-078275.)

Cambrillic appealed the July 7, 2000, decision to SD Sally Wisely, who issued her decision on February 14, 2001. Pursuant to 43 CFR 3809.3-2(e) and 43 CFR 3809.1-9(b), she affirmed BLM's decision to require an interim reclamation bond with additional funds to be deposited should operations expand. She further affirmed BLM's requirement for deposits in escrow pending completion of the validity examination. Additionally, she stated that she had been under the impression that Cambrillic had withdrawn its appeal of the Field Office's June 10, 1999, decision pursuant to the negotiations with the Solicitor's Office which has resulted in Cambrillic's May 12, 2000, submission of a plan of operations. "It was not until your appeal of a mineral material sale adjacent to your proposed mining activity did I realize that the agreement you made with the Field Solicitor was no longer satisfactory to you," the State Director stated. She indicated she would consider the prior appeal in a later decision. Cambrillic appealed the February 14, 2001, decision to the Board, and it was docketed as IBLA 2001-168.

Cambrillic's July 29, 1999, SD appeal was considered by Wisely's successor, Robert A. Bennett, who rendered a decision on April 18, 2001. In his decision, Bennett reversed the FFO's decision to reject Cambrillic's mining plans on the ground that Pappas had established a Record of Noncompliance pursuant to 43 CFR 3809.3-2(e) (1997), citing Northwest Mining Association v. Babbitt, 5 F. Supp. 2d 9, 16 (D.D.C. 1998), which had invalidated the February 28, 1997, final rule authorizing such a finding in May 1998. However, he affirmed the FFO decision to the extent it placed Cambrillic on notice that a plan of operations and bond would be required for any proposed surface disturbance. (Apr. 18, 2001, SD decision at 2.) He did not further address the requirement for deposits in escrow. Cambrillic appealed this decision as well, docketed as IBLA 2001-361, raising arguments similar to those raised in its other appeals.

Arguments of the Parties

As its statement of reasons for appeal (SOR), ^{17/} Unique argues that BLM's establishment of the community pit was unlawful, as a community pit cannot be established over active mining claims without a determination by BLM that the claims are not valid. (USOR at 3.) Moreover, Unique contends, establishing a community pit does not permit BLM to sell uncommon building stone as common variety stone. (USOR at 4.) Unique and Cambrillic maintain that the market has been tested and that the material has sold for \$650 per ton as decorative stone. (USOR at 3; Part II of Appellants' Joint Exhibit in response to the Board's Order of Aug. 31, 2000.) Unique asserts that, in addition to well-respected geologists outside of the Department who have determined the stone to be uncommon, BLM's own mineral valuation experts have not ruled out a conclusion that the stone is an uncommon variety. *Id.* Unique charges that Levin is interested in the stone as an uncommon variety of building stone, that it has charged as much as \$800 per ton for it, and that Levin should not be permitted under a materials sale contract to reap profits from stone rightfully belonging to them as mining claimants. (USOR at 5.) BLM should therefore not proceed with the sale without a complete validity examination, Unique argues. (USOR at 5.) Unique further contends that it has the superior right to remove the stone from the Spectrum Quarry site, since the Unique #16 was located in September 1998, prior to Cambrillic's August 1999 location, as well as prior to the materials sales to Levin. (USOR at 8.) Additionally, Unique contends that BLM failed to provide advance notice to Unique, and, by the time Unique was notified, "vast amounts of uncommon minerals" had been removed. (USOR at 1.)

Cambrillic argues that Departmental regulations found at 43 CFR 3601.1-1 prohibit BLM from making materials sales where "[t]here are any unpatented mining claims which have not been canceled by appropriate legal proceedings." (CSOR at 13.) Cambrillic asserts that the decorative stone within its claims is an uncommon variety stone. (CSOR at 12.) Cambrillic alleges that BLM never intended to complete a validity examination of the Spectrum Quarry claims, but instead intends to "remove the quarrier from the lands and eliminate the possessory right in the claims that we have been afforded by law," proceeding under the "faulty conclusion" that "while we continue testing the stone, it is designated common." (CSOR at 8-10.) Cambrillic contends that it has been denied its "possessory right" to notice of transactions involving the Spectrum Quarry. (CSOR at 18-19.)

^{17/} For ease of reference, Unique's SOR will be designated by the acronym USOR; Cambrillic's SOR will be designated by the acronym CSOR.

Cambrillic maintains that BLM acted in bad faith during negotiations with Gatto on April 7, 2000, relative to Cambrillic's amended mining notice for the Cambrillic claim, when it did not inform Gatto that it intended to proceed with a materials sale on lands embraced by the Cambrillic claim. (CSOR at 1, 3, 6.) Cambrillic alleges that BLM and the Cheney heirs entered into secret negotiations in which BLM released the heirs from their reclamation responsibilities at the quarry if they agreed to relinquish the claims "quietly without benefit of notice to Appellant." (CSOR at 5.) Cambrillic contests Unique's authority to assert a claim to the mineral, alleging that Unique's locations are invalid. (CSOR at 15.) Cambrillic requests that it be permitted to depose witnesses, if necessary, to substantiate its assertions. (CSOR at 16.) Cambrillic requests that the Board "irrevocably cancel the rock sale * * * and further bar any other rock sales on the claims," and "issue an order that [Cambrillic] is the valid claim holder of the Spectrum Quarry claims * * *." (CSOR at 23.)

Levin responds that, while Levin is "extremely pleased with the quality and color of this stone," it does not command prices that would support a finding that it is an uncommon variety. (Levin Response at 2.) Levin asserts that Unique and Cambrillic's assertions concerning profits it has made from the stone are "outlandish" and "unsubstantiated." (Levin Response at 1.) Levin states that it charges from \$130 to \$270 per ton for the stone, depending on whether the stone is sold as "patio," "thin patio," "select," or "thin select." (Levin Response at 2.) Nor is it particularly rare, Levin contends, as it has been "quarrying the same product in another, if less desirable, location" since Levin was barred from mining the stone at the Spectrum Quarry site as a result of the stay. *Id.* Levin states that his company has entered into dozens of sales contracts with the Forest Service and BLM over the years, and it is alarmed at the precedent that may be set if a mining claimant can unilaterally shut down a designated sales site by alleging that the material under contract is an uncommon variety. (Levin Response at 1.) Levin requests that we lift the stay or expedite our consideration of these appeals. (Levin Response at 2.) Levin further states that it has not "wasted" or damaged "valuable product" in the quarry, and it would not be in Levin's economic interests to do so. (Levin Response at 3.)

Relying on Mid-Continent Resources, Inc., 148 IBLA 370 (1999) and Robert L. Mendenhall, 127 IBLA 73 (1993), appeal dismissed with prejudice, No. CV-S-93-912 LDG-LRL (D. Nev. Sept. 17, 1993), BLM maintains that "establishment of the Spectrum Quarry under the Materials act as a community pit was appropriate," pursuant to the Materials Act, 30 U.S.C. § 601 (2000), and 43 CFR 3604.1 (2000).

(July 25, 2000, Answer at 2-3.)^{18/} BLM concedes that, under 43 CFR 3601.1-1(a) (2000), BLM generally could not dispose of mineral materials from lands on which mining claims have been located; but asserts that the outcome of this case is controlled by 43 CFR 3604.1(b) (2000), which provided that, where a community pit pre-dates a mining claim location, BLM has the superior right. *Id.* BLM argues that Cheney's Spectrum claims lapsed, and claims located by Unique and Cambrillic over those claims were located subsequent to establishment of the community pit. *Id.* at 3. BLM avers that Teseneer is preparing a mineral examination of the Cambrillic claims that pre-date the community pit, but, BLM asserts, there is no requirement that such a validity examination be conducted for the claims held by Unique and Cambrillic over the old Spectrum Quarry, as those claims were located after the community pit was established. (May 2001 Answer at 7; July 2000 Answer at 3-4.) Moreover, BLM contends, appellants have not presented any credible evidence showing why their claims over the Spectrum quarry contain uncommon, rather than common variety minerals. (July 2000 Answer at 4-5.)

In its pleadings addressing the February 14 and April 18, 2001, SD decisions, Cambrillic maintains that it is not responsible for BTC's failures, and should not be held accountable for them. (CSOR in IBLA 2001-168 at 15.) Cambrillic contends that BLM has no authority to require it to deposit funds in escrow, as Cambrillic is lawfully mining uncommon variety stone, as evidenced by the geologic reports Cambrillic has submitted to BLM on many occasions. *Id.* Cambrillic argues, on the one hand, that a validity examination by BLM is unnecessary, because there is abundant, credible evidence of the value of the stone. In the alternative, Cambrillic asserts that BLM's failure to timely complete the validity examination has prejudiced its interests, as evidenced by BLM's continued demand for deposits in escrow for production. *Id.* Cambrillic points to the June 8, 1977, report by Hilton Cass recommending that a validity examination be conducted. Cambrillic alleges that BLM has been discussing validity examinations for 24 years, but has never performed one, and does not intend to perform one. (CSOR in IBLA 2001-168 at 2-3; Motion to Vacate Bennett decision, received July 9, 2001, at 3.)

In its appeal of the SD's February 14, 2001, decision, Cambrillic requests that the Board "order the Record of Noncompliance of Mr. Pappas be permanently removed;" order that Cambrillic may mine on its claims "without any payments to the BLM for product belonging to Appellant," and to order that the stone is uncommon,

^{18/} BLM filed an Answer in IBLA 2000-249 and 2000-251 on July 25, 2000, and an Answer in IBLA 2001-168 on May 29, 2001.

and therefore “all claims of appellant are locatable.” (CSOR in IBLA 2001-168 at 16.)

In its appeal of the SD’s decision dated April 18, 2001, Cambrillic requests the Board to (1) “order that the stone is uncommon” (2) “order Levin Stone to cease and desist from purchasing any stone * * * from the Claims of the Appellant;”^{19/} (3) “vacate the decision of Mr. Bennett;” (4) “order a judgment of default against BLM;” (5) deny BLM “any time to prepare a validity exam;” and (6) permit it to file a complaint against BLM attorneys with the Utah Bar Association.^{20/} (Motion to Vacate Bennett decision at 3.)

In response to Cambrillic’s appeals of the February 14 and April 18, 2001, SD decisions, BLM asserts that Cambrillic’s request that the Board “order the Record of Noncompliance of Mr. Pappas be permanently removed” is now moot, as the SD granted that relief in the April 18, 2001, decision. (May 2001 Answer at 6-7.) BLM contends that the State Director’s decision to require an escrow account for funds due BLM in the event the stone located on claims pre-dating the community pit is determined in a validity examination to be common variety is reasonable, and the Board has previously approved such an arrangement under similar circumstances in Jesse R. Collins, 145 IBLA 199 (1998). Id. at 7. Lastly, BLM contends that the Board may not determine the question of whether the stone in question is a common or uncommon variety, as “[i]t is beyond the jurisdiction of the Board to determine initially whether minerals are a common or uncommon variety.” Id. at 8.

Analysis

Lands chiefly valuable for building stone and not otherwise withdrawn or reserved were made subject to location as placer mining claims by the Act of August 4, 1892. 30 U.S.C. § 161 (2000). However, Section 3 of the Multiple Use Mining Act of July 23, 1955, also known as the Surface Resources Act or the Common Varieties Act, 30 U.S.C. § 611 (2000), excluded deposits of common

^{19/} This portion of the motion to vacate is moot, because the Board already has stayed BLM’s decision authorizing materials sales.

^{20/} The request for an order that would permit Cambrillic to file a formal complaint against BLM’s attorneys with the Utah Bar Association is based on Cambrillic’s allegations of bad faith on BLM’s part. The Board has no authority to order any such action, of course, but we do not perceive any credible basis for a charge of bad faith. To the contrary, it seems clear that BLM has attempted to reach an amicable solution to a challenging issue about which experts may reasonably differ.

varieties of stone, sand, and gravel, from location as mining claims, providing that they would no longer be deemed valuable mineral deposits under the mining laws. This statutory provision of the Common Varieties Act has been upheld as applicable to common varieties of building stone. United States v. Coleman, 390 U.S. 599 (1968). Section 3 of the Common Varieties Act defined the term “common varieties” to exclude “deposits of such materials which are valuable because the deposit has some property giving it distinct and special value.”

Thus, notwithstanding the parties’ extensive arguments or ensuing events over the years, resolution of the appeals in IBLA 2000-149 and 2000-151 turns on the single issue of whether the stone in the former Spectrum Quarry, now the community pit, is a common or uncommon variety of building stone. Babcock’s and Pearson’s opposite conclusions marked the beginning of BLM’s ambivalence over the years, and though one may be in the offing, BLM has never conducted a comprehensive, definitive mineral validity examination to finally decide the issue, despite the fact that no less than four BLM geologists or mineral valuation experts have ventured opinions on the topic. See Hilton Cass Memorandum dated June 8, 1977 (expressing doubts whether Pappas could show a significantly higher market price for the Spectrum slate) (BLM Binder 1); Philip Allard Draft Memorandum dated April 3, 1990 (preliminary opinion is that the stone is a common variety) (BLM Binder 2); Michael K. Jackson Preliminary Mineral Report dated Mar. 19, 1992 (acknowledging that he could not conclusively state that the stone is a common variety) (BLM Binder 3); Teseneer electronic mail communication to Wysong dated Aug. 17, 2000 (stone has little value without sealing) (BLM File UTU-063420). Those differing opinions, as well as the evidence submitted by Cambrillic,^{21/} convince us that the question is likely a very close one, although we are also mindful that Pearson’s conclusion that

^{21/} Appellants rely on early mineral reports generated by BLM geologists, as well as later reports prepared by various consulting geologists or engineers. Their compendium includes the 1958 Pearson Report; a 1969 report by John W. Middleton, Consulting Geologist for the Irish American Mining Company; a 1978 report by Dr. James Whelan, Registered Professional Engineer, prepared for the Merd Corporation; a 1982 report by Bert Thomas Clark, a registered geologist and mining property evaluator in private practice in Utah, updated in 1997 and 1998; and a 1999 report by Russell H. Crouse, a professional engineer. These reports confirm that the stone possesses certain remarkable characteristics and generally agree that there is an economic potential in the decorative stone market for stone from the Spectrum Quarry. Whether these characteristics render the stone an uncommon variety within the meaning of the statute, however, remains to be determined by BLM.

the stone is an uncommon variety stone apparently has never been formally repudiated or withdrawn by BLM. Certainly on the record before us, the Board is unable to reach any conclusion on the matter. We therefore leave it to BLM to determine the character of the stone, and accordingly, the decisions appealed in IBLA 2000-249 and 2000-251 are vacated and the case will be remanded to BLM for that purpose.^{22/}

[1] BLM concedes that, pursuant 43 CFR 3601.1-1(a) (2000), it could not make mineral materials sales where there were “any unpatented mining claims which have not been cancelled by appropriate legal proceeding.” It correctly maintains that, pursuant to 43 CFR 3604.1(b) (2000), where the community pit pre-dates a mining claim location, BLM has a superior right. BLM states that, while it could not authorize materials sales from mining claims appellants located prior to October 1997, once the community pit designation became effective, BLM could properly authorize materials sales from the pit, including from areas subject to mining claims located after the pit designation, pursuant to 43 CFR 3604.1(b) (2000), without conducting a mineral validity examination or initiating a mining contest. Those arguments are consistent with the regulations in place at the time of the decisions here appealed.

However, the regulations at 43 CFR Part 3600, pertaining to mineral materials disposal, community pits, and free use were amended by final rule published in the Federal Register on November 23, 2001. See 66 FR 58892 (Nov. 23, 2001).^{23/} Prior to November 23, 2001, the regulations had not been revised since they originally were promulgated on June 10, 1983. See 48 FR 27011 (June 10, 1983). Apart from being recast in “plain English,” the current regulations, which are now found at

^{22/} Cambrillic’s motion to deny BLM the opportunity to prepare or complete the validity examination is not well-taken. A validity examination must be performed so that all parties finally will understand their respective rights and positions under applicable statutes and regulations. Given the passage of time since Babcock and Pearson stated their opinions, and the continuing controversy among the parties, we urge BLM to conclude the validity examination at the earliest opportunity.

^{23/} The revised regulations were precipitated by an opinion, M-36998, issued by the Department’s Solicitor dated June 9, 1999, styled *Disposal of Mineral Materials from Unpatented Mining Claims*, in which the Solicitor concluded that the Mineral Materials Act of 1947, 30 U.S.C. § 601 (2000), and the first section of the Surface Resources Act, 30 U.S.C. § 612(a) (2000), authorize the Secretary to dispose of mineral materials from unpatented mining claims. See Appendix 3 to BLM Manual, Handbook H-3600-1.

43 CFR 3601.14 and 3603.11, reflect a significant departure from the regulations in place at the time of the events in these appeals. The regulations now specifically provide as follows:

§ 3601.14 When can BLM dispose of mineral materials from unpatented mining claims?

(a) BLM may dispose of mineral materials from unpatented mining claims if disposal does not endanger or materially interfere with prospecting, mining or processing operations, or uses reasonably incident thereto.

(b) BLM will ask a mining claimant for a waiver before disposing of mineral materials from a claim. If the mining claimant refuses to sign a waiver, BLM will make sure that disposal of the mineral materials will not be detrimental to the public interest. We also will consult with the Solicitor's Office, if necessary, before proceeding with the disposal.

§ 3603.11 What rights pertain to users of community pits?

BLM's designation of a community pit site, when noted on the appropriate BLM records or posted on the ground, establishes a right to remove the material superior to any subsequent claim or entry on the land.

Thus, under the revised regulations (to which a future decision in this case will be subject), BLM may indeed authorize sales of mineral materials from unpatented mining claims, subject to the limitations stated in 43 CFR 3601.14. Nonetheless, BLM still must first come to a definitive conclusion regarding the character of the stone found within the community pit, without which there is no reliable factual predicate for an assertion of rights under the Materials Act or under the mining law. Thus, in Mid-Continent Resources, Inc., 148 IBLA 370, 379 (1999), we recognized that the designation of a community pit constitutes a superior right to remove material as against any subsequent claim or entry of the lands, and following Robert L. Mendenhall, 127 IBLA 73 (1993), appeal dismissed with prejudice, No. CV-S-93-912 LDG-LRL (D. Nev. Sept. 17, 1993), acknowledged that a BLM decision could disapprove mining operations within the boundary of a community pit until the pit designation was terminated. Conversely, we acknowledged that BLM could allow mining operations, and if it did so, BLM could require the claimant to establish that

the mineral mined was a locatable mineral and that the mineral was sold to qualifying markets.

In Jesse R. Collins, 148 IBLA at 204-05, the Board described the procedures for making a common-variety determination where mining claims have been located for uncommon building stone, as follows:

As we held in Matthew J. Brainard, 138 IBLA 232, 235-37, BLM may not make a common-variety determination without providing notice and an opportunity for a hearing. See Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963); Cameron v. United States, 252 U.S. 450, 459-60 (1920); Rawls v. Secretary of the Interior, 460 F.2d 1200-1201 (9th Cir. 1972), cert. denied, 409 U.S. 881 (1972); United States v. Diven, 32 IBLA 361, 366 (1977); United States v. Bergdal, 74 I.D. 245, 249-50 (1967). When the governing agency (in this case BLM) has determined that the mineral claimed to have been discovered under a mining claim on Federal lands is a common variety not subject to location under the General Mining Laws, but rather subject to disposal only under the Materials Sales Act of 1947 (thus requiring payment of the purchase price for the mineral), the proper recourse is to initiate a Government contest. See Matthew J. Brainard, 138 IBLA at 237, citing United States v. Cook, 71 IBLA 268, 273 (1983); United States v. Diven, 32 IBLA at 365; and United States v. Bergdal, 74 I.D. at 251.

BLM has conceded that it must conduct a validity examination on all mining claims held by Cambrillic for uncommon building stone which predate the 1997 community pit designation. (BLM July 2000 Answer, at 3, note 1). No doubt that examination will be guided by the principles for determining whether the stone is a common or uncommon variety set forth in McClarty v. Secretary of the Interior, 408 F.2d 907, 908 (9th Cir. 1969). See also United States v. LeFavre, 138 IBLA 60, 66 (1997); David O. Tognoni, 138 IBLA 308, 316 (1997). We now turn to Cambrillic's appeal of the SD decisions.

The February 14, 2000, and April 18, 2001, SD determinations upheld decisions by the FFO requiring Cambrillic to deposit \$1,000 in escrow for each 100 tons of material removed, pending release of a final mineral report by BLM determining whether the stone is common or uncommon. Cambrillic charges that BLM has no basis upon which to require Cambrillic to deposit amounts in escrow pending a validity determination.

[2] The agency-wide procedure of requiring reasonable amounts of sales proceeds to be deposited in escrow pending the outcome of a validity examination has been upheld by this Board as reasonable and consistent with the law. Lone Mountain Production Co., 139 IBLA 244, 249 (1997); Atlantic Richfield Co., 121 IBLA 373, 380, 98 I.D. 429, 433 (1991). As we stated in Jesse R. Collins, “[t]his procedure amply protects the rights of both the Government to receive proceeds of sales of mineral material and the due-process rights of claimants to have the legal status of minerals on their claims fully and fairly adjudicated.” 145 IBLA at 204. The July 7, 2000, decision indicated that the required deposits in escrow were calculated based upon the “appraised value of stone in the area,” which amounted to \$10 per ton. (July 7, 2000, Decision, BLM File UTU-078275.) Appellant has not provided any evidence suggesting or establishing that the amount of money required to be deposited is unreasonable in light of the appraised value of stone in the area. Accordingly, we affirm BLM’s decision requiring Cambrillic to deposit \$1000 per 100 tons of material removed, pending conclusion of the validity determination.

Lastly, the April 18, 2001, SD Decision reversed the finding of the FFO that Pappas had established a record of noncompliance. The matters raised by Cambrillic on appeal pertaining to that issue are therefore moot.

In addition, the portion of the SDR decision related to the requirement of a plan of operation must be sustained. The regulations in effect at the time of the decision required that all operations, whether conducted pursuant to a notice or a plan of operations, shall be reclaimed, 43 CFR 3809.1-1 (2000), and that failure to reclaim a disturbed area constitutes a violation of the regulations, 43 CFR 3809.3-2(b) (2000). As the decision noted, the regulations further provided: “Failure of an operator to take necessary actions on a notice of noncompliance, may constitute justification for requiring the submission of a plan of operations under § 3809.1-5 of this title, and mandatory bonding for subsequent operations which would otherwise be conducted pursuant to a notice under § 3809.1-3 of this title.” 43 CFR 3809.3-2(e) (2000). The record shows that Pappas had identified himself as Project Manager on BTC’s mining notice, and represented to the Utah Division of Corporations that he was vice-president and director of the Spectrum Quarry Corporation, BTC’s corporate name in Utah. It is undisputed that the area disturbed by BTC was never properly reclaimed. (Answer in IBLA 2001-168 at 2-3.) Accordingly, there is ample basis in the record to support this aspect of the SDR decision. The motion to vacate the SDR decision is therefore denied.

All other arguments or motions raised by the parties not explicitly addressed herein have been considered and rejected or are denied as moot or as inappropriate in an appellate proceeding.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions in IBLA 2000-249 and 2000-251 are vacated and the case files remanded to BLM to timely determine whether the stone in the community pit is a common or uncommon variety, and to take such further action as may be warranted by that determination. Since the underlying decisions in IBLA 2000-249 and 2000-251 have been vacated, Levin's motion to lift the stay is denied as moot. Cambrillic's motion to vacate the April 18, 2001, SDR decision is denied, and the decisions in IBLA 2001-168 and 2001-361 are affirmed.

T. Britt Price
Administrative Judge

I concur:

James F. Roberts
Administrative Judge