CAMBRILLIC NATURAL STONE
UNIQUE MINERALS, INC.
(ON RECONSIDERATION)

IBLA 2000-249R, 2000-251R
2001-168R, 2001-361R Decided March 28, 2005

Cross-petitions for reconsideration of Cambrillic Natural Stone, 161 IBLA 288 (2004), which vacated identical BLM decisions approving a material sale for building stone from mining claims located for uncommon variety building stone on lands designated as a community pit, and requiring mining claimant to deposit money in escrow pending a validity examination for mining claims located for uncommon building stone prior to the community pit designation.

BLM's Petition for Reconsideration granted in part; Cambrillic's Petition for Reconsideration denied.

1. Administrative Procedure: Standing--Materials Act--Mining Claims: Generally--Mining Claims: Common Varieties of Minerals: Generally--Rules of Practice: Standing to Appeal

   Where petitioner's mining claim was located for the same building stone which is to be disposed of as a common variety mineral material pursuant to a sales contract issued under the Materials Act, as amended, 30 U.S.C. §§ 601-604 (2000), and the sale tract is within petitioner's mining claim, petitioner is a party to the case and adversely affected by BLM's decision, and therefore has standing to appeal the material sale.

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

   The Materials Act excludes deposits of common variety materials from appropriation under the Mining Law of

1872, as amended, 30 U.S.C. §§ 21-47 (2000). Section 3 of the Common Varieties Act of 1955, as amended, 30 U.S.C. § 611 (2000), expressly prohibits disposal under the Materials Act of deposits of materials which are valuable because the deposit has some property giving it distinct and special value. Those materials continue to be subject to location and patent under the 1872 Mining Law.

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

A community pit designation does not authorize BLM to dispose of uncommon varieties of minerals by sale. Where the mineral sale area is within the boundaries of their mining claims and the claimants come forward with evidence to show that the mineral to be sold is an uncommon variety of stone subject to the mining laws, the Board properly remands the case to BLM to adjudicate the question.

4. Administrative Procedure: Adjudication

Where the essence of a party's petition for reconsideration is a renewed request that the Board adjudicate in the first instance the question of whether the building stone to be sold under the Materials Act is a common or uncommon variety of stone, reconsideration is properly denied because the Board lacks the authority to grant the relief sought.

APPEARANCES: Jerome Gatto, Salt Lake City, Utah, pro se as principal for Cambrillic Natural Stone; Karen Hawbecker, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management; Phillip Wm. Lear, Esq., and J. Matthew Stone, Esq., Salt Lake City, Utah, for Unique Minerals, Inc.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Cambrillic Natural Stone, L.L.C. (Cambrillic), through Jerome Gatto, and the Bureau of Land Management (BLM), have filed cross-petitions for reconsideration of the Board's decision in Cambrillic Natural Stone (Cambrillic), 161 IBLA 288 (2004),

in which we vacated identical BLM decisions dated April 13, 2000, issued to Cambrillic and Unique Minerals, Inc. (Unique), respectively, approving a materials sale contract in the NE¼SE¼NW¼ of sec. 23, T. 17 S., R. 13 W., Salt Lake Meridian (SLM), Millard County, Utah, to Levin Stone Co., Inc. (Levin), for the sale of building stone. The sale tract is within mining claims located by both Unique and Cambrillic for uncommon variety stone on lands contained within community pit designation UTU-063420 over and around what is known as the Spectrum Quarry. [1/] The Spectrum Quarry embraces the SE¼NW¼ and the N½NE¼SW¼ of sec. 23, T. 17 S., R. 13 W., SLM. In 1997, BLM designated a large area surrounding the Spectrum Quarry as a community pit. The pit designation includes secs. 11, 14, 23, and portions of secs. 12 and 22, T. 17 S., R. 13 W., SLM. Cambrillic Natural Stone, 161 IBLA at 289. Although Cambrillic holds some mining claims within the community pit which pre-date the community pit designation, the area from which the stone is to be sold to Levin is within the mining claims located by Unique in 1998 and Cambrillic in 1999 subsequent to the community pit designation. [2/] The appeals in IBLA 2000-249 and 2000-251 were filed by Cambrillic and Unique, respectively, and concerned BLM's identical decisions authorizing the material sale to Levin. The appeals in IBLA 2001-168 and 2001-361 were filed by Cambrillic, and related to BLM decisions dated February 14, 2001, and April 18, 2001, concerning the conditional approval of its mining plan of operations for its mining claim in the SW¼SE¼SW¼ of sec. 14, T. 17 N., R. 13 W, which, among other things, required Cambrillic to place in escrow funds equal to the fair market value of the stone pending a validity examination to determine whether the stone Cambrillic proposed to mine is common variety. [3/] Id. at 290.

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[1/] Cambrillic and Unique are rival mining claimants. See Cambrillic Natural Stone, 161 IBLA at 295-96 n. 1, and see nn. 3 and 4 *post*. A full recitation of the facts of this controversy appears at 161 IBLA at 291-300.

[2/] Unique located the Unique #11, 14, 15, and 16 association placer claims, and together these embraced all of sec. 23 and therefore the Spectrum Quarry. One of the four claims contains the Levin sale tract.

Cambrillic located the Cambrillic, Cambrillic #1, and Cambrillic #2 over what had been the Spectrum, Spectrum #1, and Spectrum #2 claims, which together constituted the Spectrum Quarry. One of the claims is in the N½SE¼NW¼ of sec. 23 and embraces the Levin sale tract.

[3/] The mining claim in sec. 14 that is subject to the plan of operations pre-dates the pit designation and does not adjoin the Levin sale area, but it originally was one of mining claims in the Spectrum group of claims held by Cambrillic's predecessor, Clyde Cheney, Jr.

The Cambrillic decision upheld BLM's authority pursuant to 43 CFR 3604.1(b) (2000) to authorize removal of mineral material from mining claims located subsequent to a community pit designation. Cambrillic Natural Stone, 161 IBLA at 306-07. We expressly affirmed the principle that a community pit designation does not "exclude or preclude the subsequent location of mining claims for uncommon variety building stone within the pit area." Id. at 288, 306. We vacated BLM's decision authorizing the material sale to Levin, however, because there was "a genuine controversy concerning whether the stone is a common or uncommon variety." Id. at 288. We held that in that circumstance, BLM could not authorize sale of the stone pursuant to the Common Varieties Act, 30 U.S.C. § 611 (2000), before conducting an examination to determine whether in fact the stone is common or uncommon. Id. We accordingly remanded the cases for 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." Id. at 310.

With respect to Cambrillic's appeals in IBLA 2001-168 and 2001-361, we affirmed that BLM could require "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 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. Id. at 309.

Procedural Background

On May 24, 2004, Cambrillic filed a "Notice of Appeal" advising that it intended to appeal the Board's Cambrillic decision in Federal court. Because that pleading also presented arguments pertaining to the validity of the Board's decision in a September 1, 2004, order in a related appeal, [4/] we indicated that Cambrillic's "Notice of Appeal" would be deemed a petition for reconsideration (Petition), which arguably related to all four consolidated appeals. (Nov. 2, 2004, order at 1 n.1.) BLM's Petition and "Brief in Support of Petition for Reconsideration" (Brief) explicitly pertains only to IBLA 2000-249 and 2000-251.

Earlier, in granting Cambrillic an extension of time within which to file its brief in this matter, we stated that Cambrillic's July 12, 2004, pleading styled "Objection to Order to Allow FFO [Farmington Field Office, BLM] to Prepare and

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[4/] In the Sept. 1, 2004, order we denied Cambrillic's petition for reconsideration of a dispositive order issued in Cambrillic Natural Stone, IBLA 2004-158 (May 13, 2004).

Conduct a Validity Examination on the Sapphire and Other Claims of Appellant" would be accepted as a brief in support of its Petition. (Oct. 29, 2004, order at 1-2.) We noted that, although we had inadvertently overlooked a previous request for extension of time it had filed on September 19, 2004, Cambrillic had had virtually all the time it sought in the September request to answer BLM's Brief, and therefore we granted Cambrillic an additional 10 days from date of receipt of that order within which to file a pleading. Cambrillic received a courtesy copy of the order by telecopier on October 29. The Board received Cambrillic's "Response and Objection" (Response) to BLM's Brief on November 19, 2004. Although untimely, we nonetheless have considered the Response in ruling on the parties' petitions.

Additionally, on October 29, 2004, via telecopier, the Board received a courtesy copy of an entry of appearance by counsel on behalf of Unique Minerals, Inc., in which Unique requested leave to respond to the cross-petitions. [5/] We granted Unique 15 days from receipt within which to file its response, with instructions to confine it to "the relatively narrow question of whether the grounds enumerated in either petition demonstrate extraordinary circumstance and sufficient reason to reconsider our decision." (Nov. 2, 2002, order.) The Board timely received Unique's "Response to Petition for Reconsideration" on November 19, 2004.

Regulation 43 CFR 4.403 provides, in pertinent part, that "[t]he Board may reconsider a decision in extraordinary circumstances for sufficient reason." We have reviewed the parties' submissions and, in BLM's case, determined that reconsideration should be granted to refine and clarify the scope of the Board's decision. In Cambrillic's case, because petitioner seeks reconsideration on the basis of a request for relief this Board has no authority to grant, we determined that reconsideration is properly denied.

BLM's Petition

In its Brief, BLM argues that (1) its decision "approving a mineral materials sale from within the community pit, regardless of subsequently located mining claims, complies with Departmental regulations" and should therefore be upheld (Brief at 3); (2) Cambrillic and Unique lack standing to challenge a BLM decision "based on a community pit designation," because the time for appealing the designation "has long since expired," and because the pit designation is superior, they could not allege an adverse effect, id. at 8-9; and (3) "the decision has the potential to encourage the spurious filing of mining claims, severely disrupt materials disposals

[5/] The entry of appearance and request were properly filed with the Board on Nov. 4, 2004.

throughout the country, and substantially increase the government's cost of business," id. at 9.

BLM argues that the Department has broad authority to dispose of common variety mineral materials pursuant to the Materials Act of 1947, which authorizes the Secretary to sell mineral materials under "such rules and regulations as he may prescribe." (Brief at 4, quoting from 30 U.S.C. § 601 (2000).) Citing BLM Manual Handbook H-3600-1, *Mineral Materials Disposal Handbook*, Chapter II B, [6/] BLM maintains that it "makes community pit designations only after going through a series of time-consuming and costly administrative steps," including surveys, NEPA analyses and inventories, "sampling and testing of the quality and quantity of material," developing mining and reclamation plans, estimating expected production, physically preparing the site, and preparing an appraisal of the fair market value of the minerals. Id. at 5. BLM accordingly argues that "[t]o protect these efforts from going to naught," the Department's regulations at 43 CFR 3603.11 and 3602.12(a) provide that designation of a community pit site, "when noted on the appropriate BLM records or posted on the ground," establish "a right to remove the material superior to any subsequent claim, entry, or other conflicting use of the land, including subsequent mining claim locations." Id. (BLM's emphasis.) [7/]

As duly promulgated regulations have the force and effect of law, BLM argues, the Board is required to enforce 43 CFR 3603.11 by permitting the material sale contract with Levin to go forward, as that regulation unequivocally establishes that BLM's right is superior. (Brief at 6.) BLM maintains that the purpose of 43 CFR 3603.11 is "to avoid the need for BLM to engage in time-consuming and costly

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[6/] The *Mineral Materials Disposal Handbook*, BLM Manual Handbook H-3600-1, was revised effective Feb. 2, 2002; however, the administrative procedures for designating community pits in effect in 1997 when Community Pit UTU-063420 was designated were essentially the same. Compare *Mineral Materials Disposal Handbook*, BLM Manual Handbook H-3600-1, Rel. 3-315 (2/22/02) at II-15 through II-18 with *Mineral Materials Disposal Handbook*, BLM Manual H-3600-1, Rel. 3-106 (3/1/85), as amended by Rel. 3-214 (5/25/88), at I-5 through I-7.

[7/] The regulation pertaining to how "the mineral materials sales process affect[s] other users of the same public lands," 43 CFR 3602.12(a), tracks the language in 43 CFR 3603.11, and states: "When BLM designates tracts for competitive or noncompetitive sale of mineral materials, and notes the designation in the public land records, it creates a right to remove the materials superior to any subsequent claim, entry, or other conflicting use of the land, including subsequent mining claim locations."

determinations of the validity of subsequently located mining claims by unequivocally establishing the superior rights of the community pit." Id. BLM further argues: "To designate an area as a community pit, BLM must of necessity make at least a prima facie determination that the material to be disposed of therein is a common variety." Id. at 7. BLM argues that a "presumption of procedural regularity and substantive rationality attaches to final agency action," and "aggrieved parties bear the burden of demonstrating * * * that challenged agency action merits reversal." Id., n. 2. BLM asserts that "[i]t is uncontested in this case that BLM followed the proper procedures for designating the area at issue in this case as a community pit." Id. at 6. In sum, BLM argues that designating the pit not only constitutes a prima facie showing that the minerals within the pit in fact are common variety, but once the pit designation is noted on the public land records, it is conclusive and there is no circumstance in which it would be appropriate to require a further showing as to the common or uncommon character of the minerals within the community pit boundaries.

[1] As an initial matter, we reject BLM's argument that Cambrillic and Unique had no standing to challenge the material sale to Levin because they did not timely appeal the community pit designation. (Brief at 8-9.) Regulation 43 CFR 4.410(a)(2000), in effect when the appeals herein were filed, provided that "[a]ny party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management * * * shall have a right of appeal to the Board * * *." [8/] As mining claimants holding active claims from which BLM authorized the sale to Levin, they are parties to the case. Cambrillic and Unique were adversely affected by BLM's decision to authorize the sale, because the stone to be sold as common variety stone was the same stone for which their mining claims had been located as an uncommon variety, and if an uncommon variety, as they allege, Cambrillic and Unique are entitled to possession of it as against Levin. Both were therefore adversely affected by the decision to authorize the sale of the stone contained in their claims. They therefore were entitled to notice and an opportunity to appeal that decision pursuant to 43 CFR 4.410. [9/]

[8/] That regulation was amended June 5, 2003, 68 FR 33803, and now includes definitions for "party to a case," and "adversely affected." A "party to a case," is defined, inter alia, as one who is the object of a decision of BLM, or has "otherwise participated in the process leading to the decision under appeal, *e.g.*, by filing a mining claim * * *." 43 CFR 4.410(b) (2003). A party is "adversely affected" when "that party has a legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest." 43 CFR 4.410(d).

[9/] BLM refers to notices it issued on Apr. 14, 1999, to Unique and Nov. 16, 1999, to (continued...)

[2] The Act of July 31, 1947, as amended (Materials Act), 30 U.S.C. § 601 (2000), provides, in pertinent part, that "[t]he Secretary, under such rules and regulations as he may prescribe, may dispose of mineral materials (including but not limited to common varieties of the following: sand, stone, gravel, pumice, pumicite, cinders and clay) * * * on public lands * * * if the disposal of such mineral * * * materials (1) is not otherwise expressly authorized by law, * * * and (2) is not expressly prohibited by laws of the United States * * *." The Mining Law of 1872, as amended, at 30 U.S.C. § 21 (2000), provides that "[i]n all cases[,] lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law." Section 3 of the Common Varieties Act, as amended, 30 U.S.C. § 611 (2000), expressly prohibits disposal under the Materials Act of deposits of "materials which are valuable because the deposit has some property giving it distinct and special value * * *." Those mineral materials continue to be subject to location and patent under the 1872 Mining Law. See 30 U.S.C. § 161 (2000); United States v. Coleman, 390 U.S. 599 (1968); Cambrillic Natural Stone, 161 IBLA at 304-05.

[3] The primary issue in Cambrillic was whether the mineral materials sale to Levin pursuant to the Materials Act and the 1997 community pit designation authorized the sale of an uncommon variety of stone from an area contained within the boundaries of Unique's and Cambrillic's rival claims, contrary to the provisions of the mining laws and the Common Varieties Act. BLM correctly asserted, as it does on reconsideration, that appellants' mining claims are subordinate to the pit designation under 43 CFR 3604.1(b) (2000). Cambrillic, 161 IBLA at 306. [10/] This does not

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[9/] (...continued)
Cambrillic informing them at the time they located the mining claims that those claims "may lie within a community pit," and informing them that, pursuant to 43 CFR 3600.0-5(g) (1999), BLM has a superior right of removal of materials from a community pit. Those notices, however, did not propose to take specific action adversely affecting the claimants, and therefore were not appealable decisions. See, e.g., Hacienda Del Cerezo, Ltd., 135 IBLA 277, 279 (1996) (quoting Southern Utah Wilderness Alliance, 122 IBLA 17, 20 (1992)).

[10/] The 2000 regulation provided: "The designation of a community pit site constitutes a superior right to remove the material as against any subsequent claim or entry of the lands." On Dec. 24, 2001, 43 CFR 3604.1(b) was superceded by 43 CFR 3603.11, which now provides:
"**§ 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." See Cambrillic Natural
(continued...)

resolve the issue in this case, because by statute BLM has no authority to dispose of uncommon variety minerals by sale, and no regulation can be interpreted or applied to create such authority where none has been conferred by Congress. See, e.g., Bruce A. Blakemore Estate Trust (A. J. Grant concurring), 62 IBLA 336, 352 (1982).

When the holder of an after-located mining claim challenges a sale of the mineral for which he located his claim and contends that the mineral being sold pursuant to the authority of the Common Varieties Act is not a common variety mineral and comes forward with evidence in support of that contention, BLM must adjudicate the issue thus raised. See Mid-Continent Resources, Inc., 148 IBLA 370, 379 (1999). In this case, Cambrillic has submitted evidence to BLM and to this Board, described at 161 IBLA at 305 n. 21, that appears to support the contention that the stone is or may be an uncommon variety locatable under the mining laws. BLM has never adjudicated the fundamental question posed by Cambrillic's submissions, a question that is only compounded by the sharply inconsistent and ambiguous record of BLM's conclusions over the years regarding the nature of the stone found in the Spectrum Quarry. BLM's last opinion in 1992, that of Michael K. Jackson, was both "preliminary" in nature and inconclusive. (1992 Jackson Preliminary Mineral Report at 9.) Before Jackson, the last unequivocal pronouncement of record on the subject, that of Eugene W. Pearson, plainly determined that the stone was an uncommon variety, a conclusion that has never

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[10/] (...continued)
Stone, 161 IBLA at 306-07. The regulation at 43 CFR 3602.12(a) (2003) contains virtually the same statement:

"§ 36012.12 How does the mineral material sales process affect other users of the same public lands?

"(a) When BLM designates tracts for competitive or noncompetitive sale of mineral materials, and notes the designation in the public land records, it creates a right to remove the materials superior to any subsequent claim, entry, or other conflicting use of the land, including subsequent mining claim locations."

The subject of these regulations is, by statutory definition, superior and subordinate rights to remove common variety mineral materials, not a right to remove common variety mineral material that is superior to the right of a mining claimant to remove locatable minerals. Thus, the regulation further provides:

"(c) This right does not prevent other uses or segregate the land from the operation of the public land laws, including the mining and mineral leasing laws. However, such subsequent uses must not interfere with the extraction of mineral materials." (Emphasis added.) The decision in Cambrillic Natural Stone is not to the contrary.

been formally repudiated or invalidated. (1958 Pearson Mineral Report at 4.) Those facts cast doubt on the argument that, because it designated the community pit, BLM necessarily determined that the stone is common variety. [11/]

BLM argues that our decision contradicts the regulation establishing a right superior to after-located mining claims, that it could "encourage spurious filings of mining claims, severely disrupt materials disposals throughout the country, and substantially increase the government's cost of business." [12/] (Brief at 9.) We do not agree. An after-located mining claim is subordinate to a pit designation, and it is for BLM to decide whether to approve mining operations prior to the termination of the pit designation. Mid-Continent Resources, Inc., 148 IBLA at 370. The Cambrillic decision addresses the rare case in which the unresolved dispute regarding whether the mineral can be disposed of by sale long pre-dates the pit designation, the record contains no reliable basis for deciding the dispute, and the mining claimant has submitted independent evidence for BLM's consideration and decision. Moreover, more than an unsubstantiated or superficial assertion is necessary to challenge the implicit conclusion that the mineral within a sale tract of a designated community pit is a common variety. In this case, Cambrillic's evidence, viewed against the backdrop of the evidence in the administrative record, clearly crosses the threshold, such that BLM should decide the question before allowing the Levin sale to proceed. Thus, the

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[11/] BLM has described what its *Mineral Materials Disposal Handbook* prescribes to designate a community pit, including sampling and testing where required. Yet the only document in the record specifically pertaining to that administrative process is an Apr. 23, 1997, memorandum to the Utah State Director, which listed the affected sections in T. 17 S., R. 13 W., SLM, with the request "[p]lease plat the following as a community pit." We note that an incomplete Area-Wide Appraisal Report dated Apr. 10, 1996, prepared by Robert M. Nielson of the Utah State Office, is in the file, and it relates to a May 17, 1996, letter to Feller Stone, Inc., advising it of an increase in prices for various commodities. That appraisal makes no specific mention of lands in or in the proximity of the Spectrum Quarry, although at pages 4 and 5 it refers to "landscape rock" and "shale" located in Millard County. The appraisal states: "Large rocks * * * have been mined and shipped to lucrative landscape markets as far as Southern California," and "demand has greatly accelerated for this material in recent years." Nielsen describes the shale as having "[c]oncentric banding and dendritic patterns * * * associated with fractures and cleavages." Id. at 5. The precise location of these deposits is not reported, and whether such patterns imparted or failed to impart "distinct and special value" to the stone is not addressed. BLM did not supplement the record with the documentation to which it alludes.

[12/] Given the record in this case, we would hardly characterize Gatto's claims as spurious.

decision in Cambrillic was not intended to establish that in all cases "BLM is required to conduct a more elaborate common variety determination before making a community pit or mineral materials sale tract designation" and make a "determination equivalent to mineral validity examinations" before doing so. (Brief at 10.) We emphasize that it is the particular facts of this case that compel the outcome: On a record such as that before us, BLM cannot simply argue the subordinating effect of a pit designation and invoke the presumption of administrative regularity to avoid adjudicating the issue that determines compliance with applicable statutes. Accordingly, we adhere to our conclusion that remand to BLM is proper, and to that extent we decline to reconsider the decision in Cambrillic.

However, we acknowledge that our opinion was couched in terms of the completion of a "validity examination" or "mineral validity examination" of the "stone found within the community pit" before material sales could be authorized. See Cambrillic, 161 IBLA at 305-08, 310. Doing so may have conveyed or suggested a much broader meaning than was necessary or intended, and to that extent BLM's petition is granted. We therefore clarify that Cambrillic's remand and direction is for BLM to do what is necessary to finally determine the status of the stone in the Levin sale tract, considering all of the information in the record and any additional information that may be needed to make the determination, which was the only subject of the BLM decisions appealed in IBLA 2000-249 and IBLA 2000-251. The decision in Cambrillic is modified accordingly.

Cambrillic's Petition

Cambrillic argues that the Board issued an "illegal order" on May 13, 2004, [13/] that "in part instructs [our] associates, [i.e., the Fillmore Field Office and the Utah State Office], to conduct a validity examination on stone which, [it is claimed,] is in a so called community pit * * * ." (July 12, 2004, Brief at unnumbered 1.) Cambrillic alleges that the community pit designation is based on "manufactured facts" and "was made to hide the theft of Levin Stone of the products of Appellants' claims." Id., at unnumbered 2. [14/] Cambrillic argues that the reports it submitted in support of its mineral location for uncommon building stone are more credible than

[13/] We understand this description to refer to the Cambrillic decision, which was issued on May 13, 2004.

[14/] BLM's point concerning the untimeliness of any argument relating to the decision to designate the area as a community pit is well taken at this juncture. Cambrillic cannot now challenge the pit designation, as the time for appealing that determination has long since passed. See, e.g., Colorado Environmental Coalition, 162 IBLA 293, 301-02 (2004), and cases cited.

the reports generated by BLM suggesting that the stone is common variety. Id. at unnumbered 2-3. Cambrillic contends that, in failing to reach a decision holding that the stone located by Cambrillic is uncommon variety, the Board is biased in favor of BLM and Levin. Id. at unnumbered 3. Cambrillic argues that the Board is required to make a decision in its favor, in light of the 11 reports it has submitted supporting a finding that stone is uncommon variety. Id. Cambrillic alleges that BLM is incapable of conducting an unbiased mineral examination, and requests the Board to "[o]rder any one of the firms, as outlined [herein], to conduct the Validity Exam, and not anyone connected to any BLM office * * * ." Id. at unnumbered 5. Cambrillic has again submitted its evidence in support of its characterization of the stone as an uncommon variety.

[5] The Board's authority is derived from regulation 43 CFR 4.1(b)(3), which provides, in pertinent part, that "[t]he Board decides finally for the Department appeals to the head of the Department from decisions rendered by Departmental officials relating to * * * the use and disposition of public lands and their resources * * * ." Thus, as an appellate review forum, this Board does not have the authority to make the initial decision regarding whether the stone in Cambrillic's mining claim is a common or an uncommon variety, and therefore we lack the power to grant the relief it seeks. The petition therefore does not present sufficient reason to reconsider the decision as it relates to IBLA 2000-249 and IBLA 2000-251, and it is denied.

Because Cambrillic generally challenged the "illegal order" represented by the Cambrillic decision, we initially assumed that it sought reconsideration of the decision as it related to IBLA 2001-168 and 2001-361 as well. However, Cambrillic has not advanced any further specific arguments relating to those appeals. A petitioner must "state with particularity the error claimed and include all arguments and supporting documents." 43 CFR 4.403. Accordingly, the petition to reconsider the decision as it related to IBLA 2001-168 and 2001-361 is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's Petition for Reconsideration in IBLA 2000-249R and IBLA 2000-251R is granted in part and denied in part; Cambrillic's Petition for Reconsideration in IBLA 2000-249R and IBLA 2000-251R is denied; the Board's decision in Cambrillic Natural Stone, 161 IBLA 288 (2004), relative to IBLA 2000-249 and 2000-251 is modified as set forth herein; and

Cambrillic's Petition for Reconsideration in IBLA 2001-168R and IBLA 2001-361R is denied.

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T. Britt Price
Administrative Judge

I concur:

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James F. Roberts
Administrative Judge