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United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Utah State Office
P.O. Box 45155
Salt Lake City, UT 84145-0155

RECEIVED
MAY 28 2002
DIVISION OF
OIL, GAS AND MINING

IN REPLY REFER TO
3809
UTU-67101, UTU-71335, UTU-72768
(UT-923)

MAY 17 2002

Mr. Michael R. Dettamanti
P.O. Box 291
Kanab Utah 84741

Dear Mr. Dettamanti:

On March 27, 2002, I received your request for a State Director review of the Grand Staircase-Escalante National Monument decision dated February 20, 2002. Your appeal identified three items specifically that you wanted me to address. I will address them in the order presented in your appeal.

In item number one, you requested that I write the Secretary of the Interior and ask her to overturn BLM's decision declaring your mining claims forfeited by operation of law. I will not be able to accommodate this request. The reason I cannot is that the maintenance fee or the waiver certificate is a Congressional requirement. Failure to file the maintenance fee or waiver certificate constitutes a forfeiture, by statue, of the unpatented mining claim. Even though I am sympathetic that you missed the filling date in 1998, the Secretary and I do not have the authority to excuse the lack of compliance with the maintenance fee or waiver certificate requirement of the Act, to extend the time for compliance, or to afford any relief from the statutory consequences.

In item number two, you requested that if I agree with certain things, you be allowed to post $3,000 and complete reclamation work by October 1, 2002. As stated above you failed to comply with the Congressional mandate that I have no discretionary authority to act upon. The posting of a bond in order to complete reclamation work at the three sites is not required since the mining activity occurred under the old 3809 regulations. I understand you have a verbal commitment with the Monument office to perform the required reclamation. However, if you would like to post a $3,000 bond, we will accept it. Also, I understand that based on a meeting with David Hunsaker and Doug Powell it was mutually agreed that the reclamation deadline would be changed to November 30, 2002. This extension of time does not alleviate your responsibility to complete the reclamation work required in the Grand Staircase-Escalante National Monument decision dated February 20, 2002.

In item number 3, you requested that you alone be held responsible for all punitive actions. Based on your appeal letter we will consider you the operator for all three operations, UTU-67101 Gyp One, UTU-71355 Low Down #1 and UTU-72768 Long Gulch II. However, if you fail to complete the required reclamation work, the mining claimants of record (Don Wood, Richard Dettamanti and yourself) are ultimately responsible for the reclamation of the disturbances that they created under their respective notices on their former mining claims. We hope this will not become an issue.

My decision on these items may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4, and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (request) pursuant to regulation 43 CFR 4.21, 58 FR 4939, January 19, 1993 for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision, to the Interior Board of Land Appeals, and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied.
2. The likelihood of the appellant's success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted; and
4. Whether the public interest favors granting the stay.

If you have any questions regarding this decision, please call Terry Snyder of my staff. Her telephone number is (801) 539-4026.

Sincerely,

Sally Wisely
State Director

Enclosure:
Form 1842-1 (1pp)

cc: Wayne Hedberg, Utah Division of Oil, Gas and Mining
John Steiger, Regional Solicitor
Don Wood, 421 North 250 East, Kanab UT 84741
Richard Dettamanti, 60 W. Shetland Circle, Enoch, UT 84720

Form 1842-1
(April 2002)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

*IF YOU APPEAL, THE FOLLOWING PROCEDURES **MUST** BE FOLLOWED*

1. NOTICE OF APPEAL ..... Within 30 days, file a *Notice of Appeal* in the office which issued this decision (see 43 CFR Secs. 4.411 and 4.413). You may state your reasons for appealing, if you desire.

2. WHERE TO FILE NOTICE OF APPEAL ..... BUREAU OF LAND MANAGEMENT
UTAH STATE OFFICE
324 S. STATE STREET
P.O. BOX 45155
SALT LAKE CITY, UT 84145-0155

SOLICITOR ALSO COPY TO ..... FIELD SOLICITOR'S OFFICE
DEPARTMENT OF THE INTERIOR
FEDERAL BUILDING, SUITE 6201
125 S. STATE STREET
SALT LAKE CITY, UT 84138

3. STATEMENT OF REASONS ..... Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 801 N. Quincy St., Suite 300, Arlington, Virginia 22203 (see 43 CFR Sec. 4.412 and 4.413). If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary.

SOLICITOR ALSO COPY TO ..... FIELD SOLICITOR'S OFFICE
DEPARTMENT OF THE INTERIOR
FEDERAL BUILDING, SUITE 6201
125 S. STATE STREET
SALT LAKE CITY, UT 84138

4. ADVERSE PARTIES ..... Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose **must** be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (see 43 CFR Sec. 4.413). Service will be made upon the Associate Solicitor, Division of Energy and Resources, Washington D.C. 20240, instead of the Field or Regional Solicitor when appeals are taken from the decisions of the Director (WO-100)

5. PROOF OF SERVICE ..... Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 801 N. Quincy St., Suite 300, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (see 43 CFR Sec. 4.401(c)(2)).

Unless these procedures are followed, your appeal will be subject to dismissal (see 43 CFR Sec. 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: *A document is not filed until it is actually received in the proper office (see 43 CFR Sec. 4.401(a))*