

NOTE: This disposition is nonprecedential.



United States Department of the Interior
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Interior Board of Land Appeals
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IBLA 2015-123-1)	AMC377441
)	
ULYSSES CORPORATION)	Mining Claim Recordation
(ON RECONSIDERATION))	
)	Petition for Reconsideration Denied

ORDER

Lou Birbas, President of the Ulysses Corporation (Appellant), petitions for reconsideration of the Board’s opinion in *Ulysses Corporation*, 186 IBLA 101 (2015). In that opinion, we affirmed a December 16, 2014, decision of the Arizona State Office, Bureau of Land Management (BLM), declaring the Apex Silicon Hill association placer mining claim (the Claim) (AMC377441) forfeited for failure to file an amended claim notice to comply with the 20-acre per claimant requirement of 43 C.F.R. § 3833.33. For the following reasons, we deny the petition for reconsideration.

BACKGROUND

The facts in *Ulysses Corporation* are straightforward. Eight co-locators located the Claim, with each co-locator claiming an interest of 20 acres in the Claim. See 30 U.S.C. §§ 35, 36 (2012); 43 C.F.R. § 3832.22(b). Appellant became sole owner of the Claim in April and May of 2007. In a series of three notices, BLM requested Appellant to demonstrate compliance with 43 C.F.R. § 3833.33 by providing either documentation of a discovery of a valuable mineral deposit prior to transfer of the Claim to Appellant, or an amendment to the Claim location reducing the size of the Claim so that it would meet the 20-acre per locator limit. This notice was provided pursuant to 43 C.F.R. § 3833.33, which states that upon transfer of an association placer claim to an individual or an association that is smaller in number than the association that located the claim, the transferor must either “have discovered a valuable mineral deposit before the transfer” or, “[u]pon notice from BLM . . . reduce the acreage of the claim” to meet the 20-acre per claimant limit. *Ulysses Corporation*, 186 IBLA at 102. Appellant responded to the first two notices from BLM with documentation intended to demonstrate a discovery of a valuable mineral deposit, but BLM determined that the information submitted did not show that a valuable

mineral deposit was discovered prior to transfer of the Claim to Appellant. In its third notice, BLM required Appellant to amend the Claim to comply with the 20 acre per claimant requirement, and informed Appellant that if the amendment was not filed within 30 days of receipt of the notice, the Claim would be declared forfeited and void. Appellant did not amend the Claim, and BLM issued its decision declaring the claim forfeited.

Appellant's sole argument on appeal from BLM's decision was that BLM prevented it from discovering a valuable mineral deposit on the Claim. Appellant admitted that there was no discovery of a valuable mineral deposit prior to the transfer of the Claim. We stated: "There is no question that Appellant did not show that it had made a valuable mineral discovery prior to the transfer of the claim, as required under 43 C.F.R. § 3833.33(a)." *Ulysses Corporation*, 186 IBLA at 106 (citing *American Colloid Company*, 162 IBLA 158, 172 (2004); *Dennis J. Kitts*, 84 IBLA 338, 342 (1985) (citing *Brittain Contractors, Inc.*, 37 IBLA 233, 239 (1978))). The Board further held that there was no evidence that "BLM . . . prevent[ed] Appellant or others from proving a discovery of a valuable mineral deposit before the transfer of the claim." *Id.* at 107.

DISCUSSION

A petition for reconsideration may be granted only in extraordinary circumstances where good reason is shown therefor. 43 C.F.R. § 4.21(d); *see, e.g., Art Anderson (On Reconsideration)*, 182 IBLA 27, 30 (2012); *Dona Jeanette Ong (On Reconsideration)*, 166 IBLA 65, 66 (2005); *Ulf T. Teigen (On Reconsideration)*, 159 IBLA 142, 144 (2003); *Dugan Production Corp. (On Reconsideration)*, 117 IBLA 153, 154 (1990). "Extraordinary circumstances" include, but are not limited to: (1) error in the Board's interpretation of material facts; (2) recent judicial developments; (3) change in Departmental policy; or (4) evidence that was not before the Board at the time the Board's decision was issued that demonstrates error in the decision. 43 C.F.R. § 4.403(d).

While we have granted petitions for reconsideration where the party requesting reconsideration provides information that invalidates the premise upon which the Board's original decision was based, that is not the case here. *See, e.g., Ulf T. Teigen (On Reconsideration)*, 159 IBLA at 144; *Gary L. Carter (On Reconsideration)*, 132 IBLA 46, 48 (1995); *Dugan Production Corp. (On Reconsideration)*, 117 IBLA at 154-55. Appellant argues that the Board issued its decision without fully considering the factual record. Appellant asserts that the entire record was not before the Board, and describes facts that he asserts proves that BLM prevented it from entering the Claim to prove a valid discovery. In rendering our decision, we reviewed the entire record, and have done so again in addressing Appellant's petition for reconsideration. The reiteration of facts previously presented

in Appellant's statement of reasons for appeal provides no basis for us to reconsider our decision. 43 C.F.R. § 4.403(f)(1); *Dona Jeanette Ong (On Reconsideration)*, 166 IBLA at 66. Further, the additional facts to which it refers do not demonstrate error in our decision, or invalidate the premise upon which our decision was based. See 43 C.F.R. § 4.403(d)(4); *Ulf T. Teigen (On Reconsideration)*, 159 IBLA at 144; *Gary L. Carter (On Reconsideration)*, 132 IBLA at 48; *Dugan Production Corp. (On Reconsideration)*, 117 IBLA at 154-55.

The facts as repeated by Appellant confirm that BLM correctly declared the Claim forfeited and void and that the Board correctly affirmed BLM's decision. Moreover, Appellant argues that the Board was not aware of all the facts when it issued its decision. Those additional facts, as now presented by the Appellant, would not have resulted in a different outcome had they been before the Board when it issued its decision. While Appellant asserts that it met with BLM staff regarding access to the claim "much earlier than suggested in the decision," this statement does not show a discovery on the Claim. Petition for Reconsideration (Petition) at unpaginated 1. Appellant indicates that it "relied upon the opinion of the ASFO [Arizona Strip Field Office, BLM] as to the legal and cultural aspects of mining this particular claim without restriction." *Id.* Appellant states that it "moved forward identifying a potential market or customer (Indian River Power Plant)" and that at a meeting at the Claim site BLM's geologist "informed [Appellant that] his manager would reject the desired drill locations because of visual aspects." *Id.* Appellant avers that it drilled at a site on adjoining claims owned by another company, but that the "solid material . . . [was] under the 95 % purity." *Id.* Appellant states that its contract was lost and that it then "shifted [its] consideration to a contract sale of the Limestone for construction material with the BLM." *Id.* Appellant suggests that BLM's "change of opinion" . . . influenced any drilling to prove the reserves" on the Claim. *Id.* at unp. 1-2. None of these facts show a discovery of a valuable mineral deposit on the Claim prior to the transfer, but amounts to a description of the inconclusive steps Appellant took to "prove the reserves" on the Claim.

The facts as repeated by Appellant do not demonstrate error in the Board's decision. See 43 C.F.R. §§ 4.403(d)(1); 4.403(f)(1). Moreover, the facts that Appellant argues were not before the Board when it issued its decision do not invalidate the premise upon which the Board's decision was based. See 43 C.F.R. § 4.403(d)(4). He has not shown that we erred in our conclusion that a discovery of a valuable mineral deposit had not been made on the Claim prior to transfer of the Claim, or that BLM prevented it from accessing the Claim in order to prove a discovery. *Ulysses Corporation*, 186 IBLA at 107.

In conclusion, Appellant has not demonstrated that the Board erred in its consideration of the facts of record in issuing its opinion in *Ulysses Corporation*.

Appellant has failed to meet any of the criteria that would justify reconsidering our decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, we deny the petition for reconsideration.

_____/s/_____
James F. Roberts
Deputy Chief Administrative Judge

I concur:

_____/s/_____
Eileen G. Jones
Chief Administrative Judge