

EDWARD J. CONNOLLY, JR.

IBLA 77-160

Decided March 27, 1978

Appeal from a decision of the Idaho State Office, Bureau of Land Management, rejecting appellant's petition (I 12068) for restoration of certain lands within a reclamation withdrawal to location and entry under the mining laws.

Affirmed.

1. Mining Claims: Lands Subject to--Mining Claims: Special Acts--Mining Claims: Withdrawn Land--Reclamation Lands: Generally--Withdrawals and Reservations: Reclamation Withdrawals--Withdrawals and Reservations: Revocation and Restoration

An application under the Act of April 23, 1932, 43 U.S.C. § 154 (1970), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Bureau of Reclamation has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

APPEARANCES: Edward J. Connolly, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

This appeal is brought from a decision of the Idaho State Office, Bureau of Land Management (BLM), rejecting appellant's petition for restoration of lands within a reclamation withdrawal to location and entry under the mining laws. Appellant's petition was filed pursuant to the Act of April 23, 1932, 43 U.S.C. § 154 (1970). The decision below was based on a report received from the Bureau of Reclamation stating that the land should not be opened to location and entry under the mining laws.

The report of the Bureau of Reclamation stated that the subject lands constitute part of the right-of-way for Lake Walcott, an irrigation water storage reservoir within the Minidoka Project; the land is partially flooded and is "required for the protection, operation and maintenance of Lake Walcott." It was further noted in the report that the lands are located about 1 mile upstream from the Lake Walcott National Wildlife Refuge and that an inspection of the land disclosed considerable wildlife use of the land and the adjacent area. BLM has not yet completed the Management Framework Plan for the area, but the District Manager states it appears general public opinion favors restriction of development along the Snake River and establishment of greenbelts or greenway systems. The Manager recommended denial of the petition.

Appellant asserts in his statement of reasons for appeal that the fact that the lands are partially flooded should be no bar to his application because he has no intention of mining lands below the high water line of Lake Walcott. Further, appellant disputes the assertion of the Bureau of Reclamation that the land is needed for the protection, operation, and maintenance of Lake Walcott. Appellant points out that the Lake is readily accessible from a major highway to the south of the Lake while the subject land to the north of the Lake can be reached only by four wheel drive vehicles. However, appellant fails to explain why the fact that other access exists negates the need of the land for protection, operation, and maintenance of the Lake. Appellant further contends that the subject land does not contain migratory waterfowl habitat. Finally, appellant argues that the decision below is inconsistent with the intent of Congress expressed in the Mining and Minerals Policy Act of 1970. <sup>1/</sup>

Appellant submitted with his application for restoration of the land a copy of a paper on the subject of the heap leaching process of gold recovery, employing a cyanide solution, utilized by the Carlin Gold Mining Co. at Carlin, Nevada. A copy of an article prepared in 1916 by J. M. Hill on the subject of gold recovery along the Snake River channel in Idaho has also been submitted by appellant. The application

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<sup>1/</sup> Mining and Minerals Policy Act of 1970, 30 U.S.C. § 21a (1970). The statute provides in part as follows:

"The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs \* \* \*."

was further accompanied by a report of assays of two mineral samples. No elaboration is made with respect to the significance of the results of the assays, both of which showed only a "trace" of gold.

The issue presented on appeal is whether the BLM decision shall be set aside on appeal in the absence of compelling reasons.

[1] As the Board noted in Surprise Venture Associates, 7 IBLA 44 (1972), the authority conferred upon the Secretary by the Act of April 23, 1932, 43 U.S.C. § 154 (1970), is discretionary, and it is to be exercised only when the rights of the United States will not be prejudiced thereby. The Act reads, in pertinent part:

Where public lands of the United States have been withdrawn for possible use for construction purposes under the Federal reclamation laws, and are known or believed to be valuable for minerals and would, if not so withdrawn, be subject to location and patent under the general mining laws, the Secretary of the Interior, when in his opinion the rights of the United States will not be prejudiced thereby, may, in his discretion, open the land to location, entry, and patent under the general mining laws \* \* \*. [Emphasis supplied.]

43 U.S.C. § 154 (1970).

An application under the Act of April 23, 1932, 43 U.S.C. § 154 (1970), for restoration to mineral entry and location of reclamation lands will ordinarily be rejected when the Bureau of Reclamation has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent. George S. Miles, Sr., 7 IBLA 372, 373 (1972); see Walker Engineering Corporation, A-29833 (November 26, 1963). A decision rejecting such an application has been affirmed by this Board where the Bureau of Reclamation has indicated that the land "lies within the area designated for the operation, protection and security of Hoover Dam" and that mineral development in the area sought to be opened to entry is not in the public interest because of the necessity of maintaining a buffer zone adjacent to the dam over which the United States retains complete jurisdiction. George S. Miles, Sr., supra. Similarly, rejection of an application for opening reclamation withdrawal lands to mineral entry and location was affirmed where the Bureau of Reclamation indicated the lands were in the Shasta Reservoir watershed and were needed for erosion control and reforestation improvements to prevent silting of the reservoir. Walker Engineering Corporation, supra.

We find these precedents to be controlling. The Bureau of Reclamation has advised that the lands are partially flooded and that they

are required for the protection, operation, and maintenance of the reservoir project in the public interest. In addition, the reservoir lands are utilized by wildlife in conjunction with the nearby wildlife refuge. A Management Framework Plan is to be prepared for the area. These factors serve to distinguish this appeal from the recently decided G. W. Daily, 34 IBLA 176 (1978). Neither has appellant suggested sufficient alternative or mitigating measures which could assure protection of the resources here, as proposed in Surprise Ventures, *supra*, and in G. W. Daily, *supra*. Although we are not unmindful of the policy established in the Mining and Minerals Policy Act of 1970, 30 U.S.C. § 21a (1970), we are not able to find on appeal in the circumstances of this case that this aspect of the public interest outweighs the public interest in protection and maintenance of the reservoir project. See Rosita Trujillo, 21 IBLA 289, 291 (1975).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Joseph W. Goss  
Administrative Judge

We concur:

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Frederick Fishman  
Administrative Judge

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Joan B. Thompson  
Administrative Judge

