

FLORENCE ADKISSON

IBLA 79-583

Decided April 28, 1980

Appeal from decision of the California State Office, Bureau of Land Management, rejecting petition for restoration of certain lands withdrawn for reclamation purposes to location and entry under the mining laws. CA 6046.

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 Mining Claims: Lands Subject to -- Mining Claims: Special Acts -- Mining Claims: Withdrawn Land -- Reclamation Lands: Generally -- Withdrawals and Reservations: Reclamation Withdrawals -- Withdrawals and Reservations: Revocation and Restoration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 Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Water and Power Resources Service 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: Florence Adkisson, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

On March 14, 1979, application CA 6046, pursuant to the Act of April 23, 1932, 43 U.S.C. § 154 (1976), was filed with the California State Office, Bureau of Land Management (BLM), to have the SW 1/4 SW 1/4, S 1/2 NW 1/4 SW 1/4, W 1/2 NE 1/4 SW 1/4, sec. 34, T. 14 N., R. 11 E., Mount Diablo meridian, opened to location and entry under the mining laws of the United States. The application was filed by Florence Adkisson on behalf of placer mining claimants Raymond E. Sherwood and David Brewer.

The SW 1/4 SW 1/4 sec. 34 is withdrawn for the Central Valley Reclamation Project, and the remaining lands are included in proposed reclamation withdrawal Sacramento 079877, and Power Site Classification 168. Additionally, all of the lands are within the Tahoe National Forest.

Following a report dated June 5, 1979, from the Regional Director, Bureau of Reclamation (now the Water and Power Resources Service (WPRS)), that as the placer mining area is adjacent to the Middle Fork of the American River immediately above the Auburn Reservoir project, the petition for mining purposes should be denied. Thereafter, BLM issued its decision of July 20, 1979, rejecting the application for restoration for the reasons set out by WPRS.

Within the allotted time, notice of appeal was filed by Florence Adkisson as "agent" for Sherwood and Brewer. No explanation is furnished for the term "agent." The Departmental regulations, 43 CFR 1.3, do not include "agent" as an individual who may practice before the Department. However, as the application to have the land opened to operation of the mining laws was submitted by Adkisson, we will consider her as the appellant and review the issue on its merits.

Appellant states that the land sought is approximately 30 feet above the water level of the Middle Fork of the American River, so that it would not be affected by the proposed Auburn Reservoir unless the dam is increased in height, a situation that would endanger the power plant at the Oxbow Dam in sec. 3, T. 13 N., R. 11 E. Appellant reiterates that, if permitted to locate placer mining claims on the subject land, the claims would be relinquished to BLM without cost if and when the land actually is needed for the reservoir project. Additionally, appellant argues that actual construction of Auburn Dam is problematic because of greatly increased costs now projected over the initial authorization.

The recommendation by WPRS against granting the petition to open the lands to mining was based on this analysis:

Although we are currently awaiting a Secretarial determination on the construction of the dam, we have in the past expended appropriated funds for the acquisition of lands and land rights. These include mineral determination and the acquisition of rights found valid.

The lands in question are situated within the Tahoe National Forest within the upper reaches of the proposed Auburn Reservoir. The canyon sides are steep and any mining operations permitted would no doubt encompass lands lying above the maximum water surface elevation of the reservoir. Use of these lands for mining purposes would certainly not be compatible with watershed protection, nor

with protection of the scenic, recreation or other values that must be protected by the managing agency. Any decision to consider restoration of these lands to location and entry for mining would surely impact and set a precedent for other areas within the project takeline.

As the Board has heretofore noted in Edward J. Connolly, Jr., 34 IBLA 233 (1978), and 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 (1976), 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 (1976).

[1] An application under the Act of April 23, 1932 (43 U.S.C. § 154 (1976)), for restoration of lands withdrawn for reclamation to location and entry under the mining laws will ordinarily be rejected when the Water and Power Resources Service has recommended against it if the recommendation is premised upon the requirements of the public interest and the reasons offered in the recommendation are cogent. Edward J. Connolly, supra; George S. Miles, 7 IBLA 372 (1972). A decision rejecting such an application has been affirmed by this Board where the then Bureau of Reclamation has indicated that the land "lies within the area designated for the operation, protection and security of Hoover Dam" and that the 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, supra. Similarly, rejection of an application for opening lands withdrawn for reclamation purposes to location and entry under the mining laws 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 Corp., A-29833 (November 26, 1963).

We adhere to these precedents. WPRS has advised that the involved lands are required for protection of the scenic, recreational and other values that must be protected by the managing agency. Notwithstanding the policy expressed in the Mining and Minerals Policy

Act of 1970, 30 U.S.C. § 219(a) (1976), we are not able to find in the circumstances of this case that the public interest in protection and maintenance of the reservoir project is outweighed by other factors.

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.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

