

JOE ASHBURN

IBLA 81-698

Decided August 25, 1982

Appeal from decision of Nevada State Office, Bureau of Land Management, rejecting application to open land to mineral entry. N-5629.

Reversed and remanded.

1. Act of April 23, 1932--Mining Claims: Lands Subject to --Mining Claims: Withdrawn Lands--Reclamation Lands: Generally--Withdrawals and Reservations: Reclamation Withdrawals--Withdrawals and Reservations: Revocation and Restoration

A decision rejecting an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration of lands within a reclamation withdrawal to mineral entry and location will be reversed on appeal where the record fails to disclose any objection to granting the application or any way in which it is contrary to the public interest.

APPEARANCES: Joe Ashburn, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Joe Ashburn has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated April 27, 1981, rejecting his application (N-5629) to open 1,280 acres of land, situated in secs. 22 and 26, T. 23 N., R. 28 E., Mount Diablo meridian, Nevada, to mineral entry. The land was withdrawn from mineral entry in a first form reclamation withdrawal, dated April 6, 1956, for the Humboldt Drainage Project, pursuant to section 3 of the Act of June 17, 1902, 32 Stat. 388 (amended 1976).

On June 11, 1971, appellant filed his application, stating that: "I drilled a small test well thirty feet deep and found the water to be carrying about 1 cent each in silver and gold. These metals can be very profitably recovered. This I will prove to any responsible person, preferably a chemist or mining engineer, of your choice." In response to a BLM request for its

recommendations, pursuant to 43 CFR 3816.3, the Bureau of Reclamation stated, in a letter dated September 14, 1971, that:

We have no objections to mineral entry on the lands requested by Mr. Ashburn. Therefore, we are restoring the two sections of land to mineral entry providing the following reservation is included in the document issued in order to protect the Bureau of Reclamation and the Pershing County Water Conservation District:

"There is reserved to the United States the right to seep, overflow and flood lands."

Since the proposed mining location is near but outside the Stillwater Wildlife Management area, the Bureau Sports Fisheries and Wildlife should be contacted for their views on impact of mining operations on the environment.

The Bureau of Sport Fisheries and Wildlife was contacted and, by letter dated October 19, 1971, expressed no reservations about the impact on the Stillwater Management Area from mining operations on the subject land.

Subsequently, BLM requested input from the Nevada Department of Fish and Game which replied by letter of May 6, 1972, as follows:

This is in reference to your letter of April 24, 1972, concerning the petition of Mr. Joe Ashburn to restore to BLM 1,280 acres in the Humboldt Sink which would be subject to general mining laws.

We are not familiar with the mining procedures that would be involved should a permit be issued, therefore, we would like to see a stipulation that no toxic or waste chemicals be allowed to flow off the location boundary. This is based on the fact that water from the Humboldt and Carson systems have, on occasion, co-mingled in years of heavy runoff via the Humboldt Slough.

In the event that no toxic materials are involved in the proposed mining operation, we would not have any objection to mineral entry on the subject lands.

The next item appearing in the file is a letter from appellant dated September 19, 1972, in which he stated to BLM that contamination would not be a problem as "no toxic or poisonous chemicals will be used in the recovery process."

After the passage of several years during which the application apparently received no attention, BLM again inquired of Bureau of Reclamation officials as to their position. In a letter dated January 1, 1979, Bureau of Reclamation officials again stated: "We have no objections to mineral entry on the lands requested by Mr. Ashburn provided the flooding reservation is included."

Thereafter, a report was requested from Geological Survey which responded that: "No locatable or salable minerals are reported from Sections 22 and 26, and their disposal would not interfere unreasonably with operations under the mining or material sales act."

In its April 1981 decision, BLM rejected appellant's application because it did not satisfy the requirements of 43 CFR 3816.2, "calling for detailed facts regarding the nature of the formation, land and character of the mineral deposit." BLM cited, in support, the case of Joe Ashburn, 27 IBLA 227 (1976), wherein we affirmed BLM's rejection of a similar application by appellant, on the basis that he had failed to comply with 43 CFR 3816.2 by not providing "facts" as to the nature of the formation, the kind and character of the alleged mineral deposits of gold and silver, or the valuable nature of such deposits. Id. at 229.

On September 3, 1981, appellant filed a statement with the Board in which he requests a 6-month extension of time to prove "commercial values in silver and gold in the clay and water in the Carson Sink in Churchill County, Nevada." He asserts that the land is "part of a large deposit of clay that has a considerable amount of silver and gold" which is not extractable by conventional methods. Furthermore, he states that while he and his associates are prepared to "prove the values in the clay and water," nevertheless, they prefer to rely on a particular graduate engineer, who has "had unexpected delays in coming out here." No further information has been received.

The authority conferred upon the Secretary of the Interior by the Act of April 23, 1932, 43 U.S.C. § 154 (1976), is discretionary and is to be exercised only when the rights of the United States will not be prejudiced thereby. Florence Adkisson, 47 IBLA 121 (1980); Edward J. Connolly, Jr., 34 IBLA 233 (1978). 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).

The Board has held that an application under the Act of April 23, 1932, 43 U.S.C. § 154 (1976), 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. Edward J. Connolly, Jr., supra.

The regulations concerning applications under the Act of April 23, 1932, are set forth in 43 CFR Subpart 3816. The applicable regulation, 43 CFR 3816.2, provides, in relevant part: "The application * * * must set out the facts upon which is based the knowledge or belief that the lands contain valuable mineral deposits, giving such detail as the applicant may be able to furnish as to the nature of the formation, kind and character of the mineral deposits."

[1] We agree with BLM that appellant has submitted little information with his application as called for by 43 CFR 3816.2 concerning the nature of the formation and the kind and character of the alleged mineral deposits of gold and silver. However, the apparent purpose of requiring this information is to guide BLM in determining what is in the public interest in the event that Bureau of Reclamation, BLM, or some other party poses some objection to restoration of the land to mineral entry. Despite all the inquiries made over the many years this application has been pending, no objection has been stated to granting the application. Reservation of the flowage easement requested by Bureau of Reclamation can be accomplished pursuant to 43 CFR 3816.4. The concern of the Nevada Department of Fish and Game for prevention of pollution by toxic chemicals can be accommodated in a similar manner. Although the decision regarding restoration to mineral entry is discretionary under this statute, an exercise of discretion must have a reasonable basis in the record. Such a basis for rejection has not been shown in this case. We believe this case is distinguishable from the Board decision in Joe Ashburn, supra, involving another application under the same statute. The application in that case embraced approximately 42,800 acres as opposed to the 1,280 acres described in the application under appeal. A more detailed factual basis might reasonably be required before undertaking such a massive change in land status. Further, it appears that appellant has already drilled a well in one of the two sections involved in the present application before becoming aware that the land was not open to entry.

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 reversed and the case is remanded for further proceedings consistent with this decision.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

