

ROBERT LIMBERT  
OTIS SCHOOLCRAFT

IBLA 84-857

Decided February 19, 1985

Appeal from a decision of the Idaho State Office, Bureau of Land Management, rejecting an application to open lands to mineral entry under the Act of April 23, 1932, 43 U.S.C. § 154 (1982). I-20938.

Set aside and remanded.

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 Act of April 23, 1932 -- Mining Claims: Lands Subject to -- Mining Claims: Special Acts -- Mining Claims: Withdrawn Land -- Reclamation Lands: Generally -- Withdrawals and Reservations: Reclamation Withdrawals -- Withdrawals and Reservations: Revocation and Restoration

Ordinarily an application to restore lands within a reclamation withdrawal to mineral entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1982), will be rejected by the Bureau of Land Management where the Bureau of Reclamation recommends against restoration. However, on appeal a case may be remanded for further consideration by the appropriate agencies, including preparation of a mineral report, where it appears warranted by the appellant's showings and willingness to accept terms and conditions to protect the Government's interest.

APPEARANCES: Robert Limbert, pro se, and on behalf of Otis Schoolcraft, partner.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Robert Limbert and Otis Schoolcraft have appealed from a decision dated August 23, 1984, of the Idaho State Office, Bureau of Land Management (BLM). BLM's decision rejected appellants' application to open lot 8, sec. 4, T. 4 N., R. 7 E., Boise Meridian to mineral entry. These lands are a part of Payette-Boise Reclamation project and are subject to a first-form withdrawal dated October 7, 1904.

BLM's decision is based on an August 7, 1984, memorandum from the Regional Director of the Bureau of Reclamation. That memorandum states:

Your letter of July 2, 1984, 3816 (923 SH), requested our report and recommendations regarding an application to open lot 8, Sec. 4, T. 4 N., R. 7 E., withdrawn for the Boise Reclamation Project to mineral entry. We recently received a copy of a July 11, 1984 memorandum (copy enclosed) regarding a Solicitor's opinion of June 29, 1984 in which it was stated that under the provisions of the Act of April 23, 1932 (43 U.S.C. 154) the Federal Government could not prohibit patenting of a mineral entry allowed under the 1932 Act. The Act provides for mineral entry on lands withdrawn by the Bureau of Reclamation and allows Reclamation to set forth the conditions or protective stipulations under which the withdrawn lands may be opened.

This recent opinion is opposite from the policy we had been operating under previously. We had thought withdrawn lands could be entered upon for the purposes of exploiting only the mineral resources and the title of the land would remain in the name of the United States.

Since opening the said tract could result in the lands going to patent, we reviewed the need for the said tract and determined it should be kept under United States ownership and Reclamation withdrawal. We recommend these lands not be opened for mineral entry under the 1932 Act.

As BLM's decision notes, 43 CFR 3816.3 requires BLM to reject an application where the Bureau of Reclamation makes an adverse report.

[1] The Board has consistently held that the authority conferred upon the Secretary by the Act of April 23, 1932, 43 U.S.C. § 154 (1982), is discretionary, and is to be exercised only when the rights of the United States will not be prejudiced thereby. Joe Ashburn, 66 IBLA 328, 330 (1982). 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, reserving such ways, rights, and easements over or to such lands as may be prescribed by him \* \* \* and/or the \* \* \* Secretary may require the execution of a contract by the intending \* \* \* entryman as a condition precedent to the vesting of any rights in him, when \* \* \* necessary for the protection of the irrigation interests.

We have affirmed the rejection of an application under the Act where 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., 34 IBLA 233, 235 (1978); George S. Miles, Sr., 7 IBLA 372, 373 (1972). However, where a person alleges the lands contain valuable minerals and offers to conduct his operations in a way that will not harm the interests of the United States, we have set aside a rejection and remanded for a mineral examination by BLM and further consideration by the Bureau of Reclamation. G. W. Daily, 34 IBLA 176 (1978); Surprise Venture Associates, 7 IBLA 44 (1972). In Daily, supra, we said at page 178:

Appellant alleges that there is a valuable deposit of uranium. His application showed certain facts tending to corroborate this assertion. He appears willing to suggest proposals for a contract or reservations whereby his activities will not be harmful to the environment or prejudice the interests of the United States. He has done so in a general way. We believe this case should be remanded, as in Surprise Ventures, for an appropriate mineral examination and evaluation. Also, appellant may make more specific proposals and suggestions to the Bureau of Reclamation for conditions and terms to be imposed if the land of Reclamation for conditions and terms to be imposed if the land were to be opened for mineral entry. The report of the mineral examination should be forwarded to the Bureau of Reclamation for its consideration and further recommendations on appellant's application. Upon such further report from that Bureau, BLM may take further appropriate action.

Appellants in this case propose to conduct placer mining operations for gold and silver on the Middle Fork of the Boise River. They plan to work one-half acre at a time, provide lined holding ponds and recycle water to prevent drainage into the river, and reclaim and revegetate as they proceed. Based on assays of nearby samples they estimate the gold is about 85 percent pure; they estimate they could recover \$10 to \$17 worth of gold and silver per cubic yard. They state they "will comply with any and all requirements recommended by the Bureau of Reclamation."

The Bureau of Reclamation bases its negative recommendation on a concern that the land might go to patent. It has not, however, indicated why its interests could not be protected by the reservation of such rights or imposition of such contract conditions (e.g., rights-of-way or easements) as BLM might prescribe under the statute. Any mineral patent which may issue would be subject to such reservation or condition. See 43 U.S.C. § 154 (1982).

In Daily, supra, the Bureau of Reclamation also based its negative recommendation in part on "the possibility that the land might have to be reacquired." 34 IBLA at 177. We believe it is appropriate in this case, as it was there, to set aside BLM's decision and remand the matter for a mineral examination by BLM, if it is needed to determine whether the lands are valuable for minerals, and for further consideration by the Bureau of Reclamation of whether and how the rights of the United States may be protected by reservation of rights by the Secretary in the document opening the

land to entry or execution of a contract by the appellants. See Red Mountain Mining Co., 85 IBLA 23 (1985); Order dated Feb. 14, 1956 (21 FR 1205 (Feb. 22, 1956)).

Accordingly, 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 set aside and remanded.

Will A. Irwin  
Administrative Judge

We concur:

C. Randall Grant, Jr.  
Administrative Judge

R. W. Mullen  
Administrative Judge

