

One aspect of this legal problem has already reached the courts. Over 30 years ago the Department canceled a number of oil shale mining claims upon the ground that the claimants had failed to perform their annual assessment work. In a very large majority of cases the claimants accepted the Department's determination and did not appeal. One case, however, was carried to the Supreme Court by an aggrieved claimant. That Court held that failure to perform assessment work was not ground for cancellation. In the last few years application for patents to the old canceled claims have been made. The Department rejected these applications upon the ground that the claims had been canceled in the earlier proceedings and, since the claimants had not appealed, the decisions were final and their validity could not be reexamined.

A short while after this decision, action was brought in the U.S. District Court for Colorado and that court has recently rendered a judgment which will be entered this week, reversing the Department and ordering the reinstatement of the applications for patent. Since a large number of old claims will be affected by this judgment, we anticipate that further appellate review will be sought.

It is also the feeling of our legal staff that a large percentage of the old claims will not meet the tests of the mining law on other counts, such as discovery, proper monumentation of claims, and other essential requirements. These, too, will be brought to a prompt test, first through administrative adjudication, then through review in the courts if claims are canceled and the claimants seek judicial review.

A second form of encumbrance has developed since your last hearings which I want to emphasize particularly this morning. As your record shows, the oil shale has been withdrawn since 1930. There was no desire at that time to forestall other mineral development consistent with protection of the oil shale. Accordingly, oil and gas and sodium leasing has been permitted. There are many oil and gas leases on the oil shale lands and their development and operation have not disturbed the oil shale deposits. The important Wyoming trona mining industry, for example, has also developed in the oil shale area. A dozen sodium prospecting permits were issued by BLM a few years ago. Explorations were made and dawsonite, a sodium aluminum carbonate, and nahcolite, a sodium carbonate, were found. It appears, however, that they are a part of and intermingled with the oil shale and that they cannot be developed without disturbing and possible damaging the oil shale.

It is thought by many that the oil shale lands, although withdrawn, are open for location of deposits of metalliferous minerals under the mining law of 1872. A very large number of claims estimated to exceed 7,000, have been filed for dawsonite during calendar year 1966—on the theory the aluminum in dawsonite is locatable. For the most part dawsonite and nahcolite exist as an integral part of the oil shale deposits; they cannot be removed without removing the shale. The claims based on presence of dawsonite must be resolved before the oil shale resources can be made available for extensive development.

We have taken steps to resolve these title questions on a broad front. In the first place, application has been filed and published and is in