

EDITORIAL NOTE.

In connection with the foregoing regulations as printed in pamphlet form there were added, as an appendix, for information and convenient reference, reprints of the instructions of March 6, 1911, 39 L. D., 544, concerning surface rights, withdrawals, etc., under the acts of March 3, 1909, and June 22 and 25, 1910; the circular of October 21, 1912, 41 L. D., 345, under the act of August 24, 1912, concerning the exploration of lands withdrawn under the act of June 25, 1910; the instructions of October 30, 1913, 42 L. D., 474, amending rule 7 of the circular of April 24, 1907, 35 L. D., 681, 682; the instructions of November 21, 1914, 43 L. D., 459, concerning the form of applications and agreements under the act of August 25, 1914, respecting patents for oil lands in withdrawn areas; the regulations of March 20, 1915, 44 L. D., 32, under the act of July 17, 1914, governing agricultural entries of phosphate, oil, and other mineral lands; the regulations of March 31, 1915, 44 L. D., 46, under the act of January 11, 1915, validating placer locations of deposits of phosphate rock; and the instructions of July 15, 1915, 44 L. D., 195, under the act of January 11, 1915, providing for the purchase and disposal of certain lands containing kaolin, kaolinite, Fuller's earth, China clay, and ball clay, in Tripp county, formerly a part of the Rosebud Indian reservation, South Dakota.

EARL DOUGLASS.

Decided August 6, 1915.

MINERAL LAND—REMAINS OF PREHISTORIC ANIMALS.

Fossil remains of dinosaurs and other prehistoric animals are not mineral within the meaning of the United States mining laws, and lands containing such remains are not subject to entry under such laws.

JONES, *First Assistant Secretary:*

This is an appeal by Earl Douglass from the decision of the Commissioner of the General Land Office, dated July 24, 1913, holding for cancellation his mineral entry No. 04764, made April 5, 1913, at Vernal, Utah, for the Carnegie Museum placer claim, survey No. 6206, for 80 acres unsurveyed, which, it is stated, will conform to the NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ and NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 26, T. 4 S., R. 23 E., S. L. M., upon extension of the public land surveys.

The character of the deposit claimed is disclosed in the report of the mineral surveyor as follows:

This claim is adapted for mining for the fossil remains of dinosaurs and other prehistoric animals; . . . the ridge shown upon the accompanying plat as Fossil Reef, contains fossil remains of prehistoric animals throughout its

entire length upon this claim, but at no other point in such abundance as at the point at which the open cut shown upon the plat is being excavated.

The record discloses that the fossil remains of the prehistoric animals have been excavated for uses in scientific investigation. The Commissioner held that they were not subject to entry under the mining laws of the United States.

Lindley on Mines, third edition, section 98, lays down the following rules for determining the question as to whether the character of the land is mineral or not:

The mineral character of the land is established when it is shown to have upon or within it such a substance as—

(a) Is recognized as mineral, according to its chemical composition, by the standard authorities on the subject; or—

(b) Is classified as a mineral product in trade or commerce; or—

(c) Such a substance (other than the mere surface which may be used for agricultural purposes) as possesses economic value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts.

In that connection he cites the similar decision of this Department in *Pacific Coast Marble Co. v. Northern Pacific R. R. Co.* (25 L. D., 233).

The material here claimed is not recognized as a mineral by standard authorities on the subject. It is not classified as a mineral product in trade or commerce, nor does it possess economic value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts; therefore, under the rule as above laid down, it is not a mineral within the meaning of the public land laws.

The case is analogous in principle to that of *South Dakota Mining Co. v. McDonald* (30 L. D., 357), in which it was held that (syllabus):

Land not shown to contain deposits, in paying quantities, of any of the mineral substances usually developed by mining operations, but which appears to be valuable and to be desired by the parties attempting to secure title thereto chiefly because of a cave or cavern the entrance to which is situated thereon, and for the crystalline deposits, and formations of various kinds, such as stalactites, stalagmites, geodes, etc., found therein, which are made the subject of sale by the parties not as minerals but as natural curiosities, is not mineral land within the meaning of the mining laws.

The decision of the Commissioner holding that the character of the deposit here claimed is not a mineral within the meaning of the mining laws is correct and the action in cancelling the mineral entry is hereby affirmed.

EARL DOUGLASS.

Motion for rehearing of departmental decision of August 6, 1915, 44 L. D., 325, denied by First Assistant Secretary Jones November 16, 1915.