HAROLD M. VORIS

IBLA 80-361 Decided June 16, 1980

Appeal from a decision of the California State Office, Bureau of Lan Management, declaring null and void certain placer mining claims. CA MC 17377 through CA MC 17381; CA MC 17383 through CA MC 17385.

Affirmed.

1. Act of August 11, 1955 -- Mining Claims Rights Restoration Act -- Mining Claims: Withdrawn Land -- Powersite Lands -- Withdrawals and Reservations: Powersites

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

APPEARANCES: Harold M. Voris, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Harold M. Voris appeals the decision, dated January 14, 1980, whereb the California State Office, Bureau of Land Management (BLM), declared nu and void the Lucky May Number One, Lucky May Number Two, Lucky Mae Number Three, Lucky Mae Number Four, Lucky May Number Five, Lucky Mae Number Seven, 1/ Lucky Mae Number Eight, and Lucky Mae Number Nine placer mining claims lying within the boundaries of Project

1/ A portion of the Lucky Mae Number Seven lies outside the boundaries of Project 2088. BLM's decision of January 14, 1980, invalidated only that part lying within the boundaries.

No. 2088 of the Oroville Wyandotte Irrigation District (OWID). The minir claims at issue have been recorded as CA MC 17377 through 17381 and CA MC 17383 through 17385.

Appellant contends that OWID has no immediate plans for construction in the area covered by his mining claims and that the District has no objection to the river being claimed or mined if such activity is under t provisions of P.L. 359, 30 U.S.C. §§ 621-625 (1976).

Section 2 of the Act of August 11, 1955, 30 U.S.C. § 621(a) (1976), provides pertinently:

> (a) All public lands belonging to the United States heretofore, now or hereafter withdrawn or reserved for power development or power sites shall be open to entry for location and patent of mining claims and for mining, development, beneficiation, removal, and utilization of the mineral resources of such lands under applicable Federal statutes: Provided, That all power rights to such lands shall be retained by the United States: * * * And provided further, That nothing contained herein shall be construed to open for the purposes described in this section any lands (1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other Act of Congress, or (2) which are under examination and survey by a prospective licensee of the Federal Power Commission, if such prospective licensee holds an uncanceled preliminary permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to such lands and such permit has not been renewed in the case of such prospective licensee more than once.

The Federal Energy Regulatory Commission has reported that the lands affected by the Lucky Mae placer mining claims were withdrawn for power purposes pursuant to applications of OWID, Project 2088, of July 9, 1951, and March 29, 1960, and that the claims lie within the project boundary a licensed. Such lands have not been opened to mining location.

Lands which are covered by license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) a not open to mineral location. Raymond C. Gardner, 34 IBLA 179 (1978). A mining claim located on powersite lands is void ab initio unless that lar has been restored to such entry in accordance with section 24 of the Federal Power Act, 16 U.S.C. § 818 (1976). Henry Stagnaro, 31 IBLA 357 (1977).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appeal from is affirmed.

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Douglas E. Henriques
Administrative Judge

We concur:

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Edward W. Stuebing
Administrative Judge

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Joan B. Thompson
Administrative Judge