

UNITED STATES
v.
RICHARD AND BEVERLY WEIGEL

IBLA 76-516

Decided August 10, 1976

Appeal from decision of Administrative Law Judge Robert W. Mesch holding that certain withdrawn lands should not be opened to placer mining operations, I ML 868-871.

Affirmed.

1. Mining Claims: Lands Subject to -- Mining Claims: Power Site Lands
-- Mining Claims Rights Restoration Act

Placer mining on claims located pursuant to the Mining Claims Rights Restoration will be prohibited where unrestricted mining activity would substantially interfere with

2. Appeals -- Rules of Practice: Appeals: Statement of Reasons

Statements of reasons for appeal will not be accorded favorable consideration where they do not state with some particularity the exact reason for appeal and the allegations are not supported by evidence.

3. Administrative Procedure: Hearings -- Rules of Practice: Hearings

A second hearing will not be afforded where a claimant was given notice and an opportunity to appear at a hearing, and where he actually was represented at the hearing and where nothing has been submitted which suggests that another hearing would produce a different result.

APPEARANCES: Richard Weigel, pro se; Erol R. Benson, Esq., Office of the General Counsel, Department of Agriculture, Ogden, Utah, for the Forest Service.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Richard and Beverly Weigel appeal from the January 26, 1976, decision of Administrative Law Judge Robert W. Mesch prohibiting mining pursuant to the provisions of the Mining Claims Rights Restoration Act of 1955, as amended, 30 U.S.C. §§ 621-625 (1970). Section 2 of that Act, 30 U.S.C. § 621 (1970), provides that mining claims may be located on certain lands withdrawn for power site purposes. Within 60 days of the location of a placer mining claim, the locator must notify the Secretary of the Interior. The Secretary then has 60 days to decide either to permit the mining or to hold a public hearing in order to determine whether he should. All mining operations remain suspended pending the holding of a hearing and the issuance of an order by the Secretary. The Secretary may issue one of three alternative holdings as the result of a hearing. First, he may prohibit placer mining altogether. Second, he may allow such mining without restrictions. Third, he may allow placer mining on the condition that the operator restore the land to its former condition.

The placer claims under consideration 1/ were located by Richard and Beverly Weigel in 1973 and 1974. They are situated on the South Fork of the Salmon River (Tr. 21, Exs. 1-4), in sections 27, 28 and 33, T. 21 N., R. 7 E., Boise Meridian, Valley County, Idaho. With the exception of some private land owned by the Idaho Fish and Game Department in the Heaven's Gate claim, all of the claims are within Payette National Forest on lands withdrawn for Power Site Classification No. 280. Upon receipt of the Weigels' notices of location, the Department referred them to the Forest Service. The Forest Service recommended that a public hearing be held. Accordingly, a public hearing was held on October 21, 1975, before Administrative Law Judge Robert W. Mesch. Beverly Weigel appeared on behalf of herself and her husband (Tr. 3, 4).

At the hearing the Forest Service called a number of expert witnesses. Robert C. Bryan, a resource assistant trained in forestry and range management, testified that the area was valuable for three purposes. The river is an important breeding ground for summer chinook salmon and steelhead trout (Tr. 26). The area is a critical winter habitat for big game animals (Tr. 27). The area also has great aesthetic value (Tr. 26-27). Bryan also testified that, as a practical matter, the area could not be reclaimed due to the steepness of the slopes and instability of the soils (Tr. 27-28).

1/ The claims are named Black Cloud Mine, Short Legs Mine, New Life Mine and Heaven's Gate.

Thomas L. Welsh, a fishery biologist for the Idaho Fish and Game Department, testified that:

The South Fork of the Salmon River is a [the?] single largest distributor of summer chinook in the entire Columbia River watershed. It's also a very important producer of summer steelhead [trout].

(Tr. 49). He also testified that the one factor most responsible for diminution of the number of fish is sedimentation in the stream (Tr. 49). While he did not think it possible to carry on commercial placer mining in a way which would not harm the stream (Tr. 50), he did concede that mining only by panning might not be harmful to the stream (Tr. 51).

Richard A. Thompson, an expert soil scientist for the Forest Service, testified that the slopes which are adjacent to the river are very steep. He also testified that there is a fairly high hazard of erosion and that the steep slopes are subject to "massive failure or landsliding" (Tr. 57). He stated that at least one of the reasons why the area is preserved as a roadless area is that the construction of roads would "produce a lot of sediments" (Tr. 66).

Richard E. Welch, a wildlife biologist for the Forest Service, testified that human use and occupation of the area would inevitably reduce the value of the area as a wildlife habitat for deer and elk (Tr. 74). While deer to some extent can adapt to the presence of man, elk are much less tolerant (Tr. 74).

Norbert C. Kulesza, a hydrologist for the Forest Service, testified that placer mining operations would result in both erosion and increased sedimentation to the stream (Tr. 79). He also testified that it would be very difficult to restore the slopes to their natural condition (Tr. 80).

Beverly Weigel did not give a great deal of direct testimony (Tr. 85-86). However, she did give information while asking questions on cross examination. One point that she emphasized many times was that appellants have no intention of conducting a large commercial placer mining operation (Tr. 31, 60, 87). Mrs. Weigel was very uncertain about exactly how the mining would be done (Tr. 31, 61, 62). Nevertheless, she was very adamant that the type of operation contemplated would not have any substantial effect on the environment. In addition, Mrs. Weigel stressed the commitment of both her and her husband to the protection and preservation of the environment of the area. That testimony appears to be very sincere (Tr. 31, 32, 92).

[1] The Mining Claims Rights Restoration Act of 1955, 30 U.S.C. §§ 621-625 (1970), allows the Department only three alternative courses of action. As we have already noted, those three alternatives are: (1) To bar any placer mining activity; (2) to allow such mining activity without restriction, or (3) to allow placer mining with the restriction that the land be restored to its former condition after the cessation of mining. In considering the impact of mining operations on the environment, the Department looks at the impact of normal placer operations carried on without restrictions, and not just at the proposed operations of the particular locator. The reason for this policy is clear:

The statute permits the Secretary to act only once. He cannot issue an order now allowing unrestricted mining on the basis of a one or two dredge operation and then, if additional dredges are added or larger ones are submitted or a totally different type of operation is adopted, issue an order prohibiting mining. He can act only once, either to permit or prohibit. Because his course of action is so limited, to avoid defeating the purpose of the act, he should be able to base his decision not only on what the claimant proposes to do but also on what the claimant or his successor may be able to do in the way of placer mining.

United States v. Bennewitz, 72 I.D. 183, 188 (1967); accord, United States v. Western Minerals & Petroleum, Inc., 12 IBLA 328, 331 (1973).

We agree with Judge Mesch's conclusion that unrestricted mining would substantially interfere with other uses of the land. The testimony clearly supports the conclusion that unrestricted placer mining would lower the value of the South Fork of the Salmon River as a breeding ground for steelhead trout and summer chinook salmon. Occupancy by humans would displace elk from their winter range. Finally, the aesthetic value of the area would be lowered. Therefore, placer mining activity will not be permitted in this area.

[2] Appellants have alleged many deficiencies in the hearing. Among other things, appellants allege that the testimony and documents introduced at the hearing were false. Further, appellants allege that witnesses at the hearing conceded that the hearing was unfair. In addition, appellant Richard Weigel asserts that the hearing was unfair because the "prosecution" was "against my wife Beverly Weigel."

We have studied the record before us and the transcript of the hearing below and have been unable to find even a scintilla of evidence to support any of appellants' allegations. To the contrary, the hearing appears to have been conducted very fairly. Judge Mesch very carefully, patiently, and thoroughly explained

the nature of the proceedings and the legal issues involved. Moreover, the Forest Service's legal counsel was not only courteous but, because Mrs. Weigel is not a lawyer, he obviously refrained from making many objections to her conduct of the cross examinations, which probably would have been sustained. As appellants' assertions do not appear to be supported by any evidence, and because appellants have not pointed to any specific facts which would support their assertions, we cannot accord them favorable consideration.

[3] Appellants have also asked for another hearing, alleging that they had insufficient time to prepare for the hearing and alleging that their case was prejudiced because appellant Richard Weigel did not appear at the hearing due to a death in the family. Appellants were advised by notice dated April 16, 1974, that a hearing would be held, and then they received notice of the hearing on September 8, 1975. The hearing was held on October 21, 1975. That is enough time to prepare for a hearing. Even if it were not, appellants were represented at the hearing by Mrs. Weigel. No objection to proceeding was raised at that time. It was not until nearly a month after the hearing that a request for another hearing was made. While due process requires notice and an opportunity for a hearing, it does not require an opportunity for a second hearing in the absence of a compelling reason to the contrary. United States v. MacIver, 20 IBLA 352, 359 (1975). As Judge Mesch noted in denying appellants' request to reopen the hearing, appellants have not submitted anything which would suggest that another hearing would produce a different result.

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 affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Martin Ritvo
Administrative Judge

