

BARRY C. BINNING

IBLA 78-237

Decided February 28, 1979

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring the Red Gamet lode mining claim null and void ab initio, in part. I 13946.

Affirmed.

1. Mining Claims: Generally--Mining Claims: Location--Mining Claims: Withdrawn Land--Wild and Scenic Rivers Act

Designation of a river for potential addition to the national wild and scenic rivers system, pursuant to the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. § 1271 et seq. (1976), withdraws Federal lands constituting the bed or bank or within one-quarter mile of the bank of such river from all forms of appropriation under the mining laws, and on appeal the mining claimant bears the burden of showing by survey or other evidence that his claim is outside the withdrawn area.

2. Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

Portions of mining claims located on lands within a withdrawal and not open to mineral entry are properly declared null and void ab initio.

APPEARANCES: James L. Schoenhut, Esq., Schoenhut & Gordon, McCall, Idaho, and David Bonderman, Esq., Arnold & Porter, Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Barry C. Binning has appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated January 18, 1978, declaring the Red Garnet lode mining claim null and void ab initio, in part.

The claim is situated on portions of lot 4, sec. 13 and lot 1, sec. 14, T. 24 N., R. 3 E., Boise meridian, Idaho, within the Nezperce National Forest. In his notice of location appellant stated his discovery point as 1,100 feet northerly from the Salmon River. A BLM map shows that virtually three-quarters of the claim is within one-quarter mile of the Salmon River. The segment of the Salmon River from the town of North Fork to its confluence with the Snake River, including the portion of the river near appellant's claim, was designated for potential addition to the national wild and scenic rivers system by section 5(a) of the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. § 1271 et seq. (1976).

Appellant, in his statement of reasons for appeal, contends that it is impossible to determine which portion is "claimed as void" because "no adequate determination has yet been made as to the location of the bank of the Salmon River." Appellant also contends that pursuant to the Act the Secretary of Agriculture was required to file with the Secretary of the Interior "a statement of the lands to be withdrawn, together with maps and illustrations and reasons for withdrawal." No such statement having been filed, appellant argues, the withdrawal cannot be deemed to be effective.

[1] Pursuant to the Wild and Scenic Rivers Act of 1968, supra, Federal lands constituting the bed or bank or within one-quarter mile of the bank of any river designated for potential addition to the national wild and scenic rivers system are "withdrawn from all forms of appropriation under the mining laws." Walter B. Freeman, 25 IBLA 150 (1976). 16 U.S.C. § 1280(b) (1976). The withdrawal was to be for a period of 10 years from the date of the Act, October 2, 1968, 16 U.S.C. § 1278(b)(1) (1976).

Appellant's claim was located on February 25, 1973, within the 10-year withdrawal period. To the extent that the claim was situated on withdrawn land it was declared null and void ab initio.

Appellant offers no survey or other evidence as to the exact position of the bank of the Salmon River near his claim, nor does he make the affirmative statement that portions of his claim are not within one-quarter mile of the bank of the river. On appeal, a mining claimant bears the burden of showing by survey or other evidence that his claim is outside the area of the withdrawal.

Furthermore, appellant is mistaken as to the requirements for the withdrawal of land along a river designated for potential addition to

the national wild and scenic rivers system. Appellant has not cited any section of the Act as supporting his position. The only reference in the Act to the submission of a statement of the land to be withdrawn, along with maps, illustrations and reasons for withdrawal is in 16 U.S.C. § 1275(a) (1976). This section refers to the submission to the President and the Congress by the Secretary of the Interior or the Secretary of Agriculture, where national forest lands are involved, of proposals for the addition to the national wild and scenic rivers system of rivers already designated for potential addition to the system. In such a case, the proposal must be accompanied by a "report," including the documents appellant refers to. This section does not set out the requirements for a withdrawal. The withdrawal protection afforded by the Act was accomplished merely by designation of the river by Congress as a potential addition to the national wild and scenic rivers system. See 16 U.S.C. § 1280(b) (1976).

[2] To the extent that appellant's claim was located on land withdrawn from mineral entry, it was properly declared null and void ab initio. Robert Connett, 36 IBLA 84 (1978).

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.

Joseph W. Goss
Administrative Judge

We concur.

Frederick Fishman
Administrative Judge

Edward W. Stuebing
Administrative Judge

