

CONRAD F. SOVIK

IBLA 78-404

Decided January 8, 1980

Appeal from a decision of the California State Office, Bureau of Land Management, declaring portions of the S & D Evergreen Placer Mining Claim null and void ab initio. CA MC 8694.

Affirmed.

1. Mining Claims: Withdrawn Land -- Withdrawals and Reservations:
Effect of

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

APPEARANCES: Conrad F. Sovik, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Conrad F. Sovik appeals from a decision of the California State Office, Bureau of Land Management (BLM), declaring portions of appellant's S & D Evergreen placer mining claim null and void ab initio. The portions with which this appeal concerns were located on December 29, 1977, in the W 1/2 NE 1/4 NE 1/4, W 1/2 NE 1/4, NE 1/4 SW 1/4, SW 1/4 SW 1/4, and NW 1/4 SE 1/4 SW 1/4 sec. 26 T. 7 N., R., 13 E., Mount Diablo meridian.

The lands claimed by appellant were withdrawn from appropriation under the mining laws by BLM Order S567, 32 FR 13873, 13874 (Oct. 5, 1967). See H. E. Baldwin, 3 IBLA 71 (1971), aff'd, Baldwin v. Morton, Civil No. 72-438 PHX CAM (D. Ariz. May 29, 1974).

In his statement of reasons, appellant does not dispute BLM's finding that the subject lands were withdrawn from appropriation under the mining laws prior to his attempted location. Rather, appellant contends that Withdrawal Order S567 should not be given effect to invalidate his mining claim because to do so would violate the Act of August 11, 1955, 30 U.S.C. § 621 (1976), an Act permitting the mining

and development of public lands withdrawn for power development. Appellant explains that prior to the date of the Act the subject lands were withdrawn from appropriation under the mining laws for power development purposes. ^{1/} The Act of August 11, 1955, permitted mineral exploration of the land. To place further restrictions on the land prohibiting mineral exploration would violate the spirit and provisions of the Act. Appellant states his point of discovery is within the areas denied to him under the BLM decision, and that the withdrawal would block his needed access to the river.

[1] The Act of August 11, 1955, with which appellant alleges the BLM order is inconsistent, specifically provides that "nothing in this Act shall affect the validity of withdrawals or reservations for purposes other than power development." Thus, BLM's order, authorized by 43 U.S.C. §§ 1411-18 (1976) withdrawing the land for multiple use management is not inconsistent with the provisions or intent of the Act of August 11, 1955.

The mining claim was properly declared null and void ab initio as to those areas within the withdrawal. United States v. Consolidated Mining and Smelting Co., 35 IBLA 349 (1978). The Board has no authority to alter the withdrawal boundary to permit exclusion of the appellant's point of discovery or an area of access to the river.

Accordingly, 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:

James L. Burski
Administrative Judge

Newton Frishberg
Chief Administrative Judge

^{1/} Appellant alleges the original withdrawal was in connection with the Tiger Creek Power Project, which is upstream from his claim and has long been completed.

