

UNITED STATES  
v.  
ROBERT A. PETTIGREW

IBLA 81-299

Decided April 17, 1981

Appeal from a decision of Administrative Law Judge R. M. Steiner granting permission to engage in placer mining on lands withdrawn for power development. CA MC 60454.

Reversed.

1. Mining Claims: Powersite Lands--Mining Claims: Surface Uses--Mining Claims Rights Restoration Act

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a mining claim on land withdrawn for power development or powersites, where unrestricted placer mining on such land would result in substantial interference with the use of the land for recreational purposes.

2. Mining Claims: Powersite Lands--Mining Claims: Surface Uses--Mining Claims Rights Restoration Act

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the

Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

APPEARANCES: James E. Turner, Esq., Office of the Solicitor, U.S. Department of the Interior, Sacramento, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The United States through the Bureau of Land Management (BLM), Department of the Interior, appeals from a decision of Administrative Law Judge R. M. Steiner, dated January 7, 1981, granting permission to Robert A. Pettigrew to engage in placer mining on lands withdrawn for power development. Judge Steiner's decision was issued following a public hearing pursuant to the provisions of the Act of August 11, 1955, 30 U.S.C. §§ 621 through 625 (1976), also known as the Mining Claims Rights Restoration Act of 1955. The claim at issue, the Retirement Crevice No. 1, was located on January 15, 1980, in S 1/2 SW 1/4 SW 1/4 sec. 22, T. 11 N., R. 10 E., Mount Diablo meridian, El Dorado County, California. <sup>1/</sup>

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<sup>1/</sup> An examination of Government Exhibit 3 reveals that the lands sought by the claimant were, as of the date of the hearing, within the boundaries of a withdrawal for Power Project 2761 Proposed. Section 2 of the Act of August 11, 1955, *supra*, excepts from mineral location those lands, *inter alia*, which are under examination and survey by a prospective licensee of the Federal Power Commission, if such prospective licensee holds an uncanceled permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to

[1] Pettigrew's claim was located pursuant to the Act of August 11, 1955, supra, which provides for location of mining claims on lands withdrawn for power development or powersites. The Act requires any person who locates a mining claim on such lands after August 11, 1955, to file a copy of the notice of location in the district land office within 60 days of location. 30 U.S.C. § 623 (1976). A person who files a placer mining claim with BLM may not conduct mining operations on the claim within 60 days after filing in the land office, in order to give the Secretary the opportunity to decide whether a hearing should be held on the question of "whether placer mining operations would substantially interfere with other uses of the land included within the placer claim." 30 U.S.C. § 621(b) (1976). If the Secretary decides to hold a hearing, mining operations on the claim must be suspended until the hearing has been held and an appropriate order issued which

shall provide for one of the following: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator shall, following placer operations, restore the surface of the claim to the condition in which it was immediately prior to those operations; or (3) a general permission to engage in placer mining.

30 U.S.C. § 621(b) (1976). See also 43 CFR Subpart 3730.

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fn. 1 (continued)

such lands and such permit has not been renewed in the case of such prospective licensee more than once. While the file does not reveal the status or existence of the permit involved, it is possible that the lands sought by claimant were closed to mineral location pursuant to section 2 at the time of claimant's filing of his location notice. If so, his location was void ab initio. The Government's decision to challenge the Retirement Crevice claim and our holding herein make unnecessary further inquiry into this issue.

At the hearing, BLM presented evidence that mining operations would interfere with rafting activities on the South Fork of the American River. The claim at issue includes land on both sides of this river. Interference would be caused by cables anchoring the claimant's dredge to the banks of the river (Tr. 23). Such cables would not only interfere with rafting, but would also interfere with access to the shore (Tr. 31) and enjoyment of a special use permit issued by BLM to a third party (Tr. 19). Evidence was further offered that private use of the South Fork of the American River for rafting activities totaled approximately 15,000 passengers during 1978.

We note that while the subject lands are withdrawn for power development, the phrase "other uses of the land included within the placer claim" in section 621(b) is not restricted to power development uses. Although the Mining Claims Rights Restoration Act applies by its terms to land within power development withdrawals, all uses of the land are to be considered in determining whether placer mining operations will substantially interfere with the use of the land. United States v. Cohan, 70 I.D. 178, 179 (1963). In fact, the decisions considering whether to prohibit placer claims on power site classifications have been concerned with uses other than power development. United States v. Western Minerals & Petroleum, Inc., 12 IBLA 328 (1973) (use of the land for watershed); United States v. Bennewitz, 72 I.D. 183 (1965) (use of the land for recreational purposes); United States v. Cohan, *supra* (use of the land for recreational and homesite purposes). On the basis of the language of section 621(b) and the Departmental decisions which interpret it, it must be concluded that the "other

uses" to which that section refers are not restricted to power development or powersites. Therefore, placer mining which would substantially interfere with recreational use of the withdrawn land is properly prohibited.

Based upon the evidence summarized above, Judge Steiner concluded that the Government had failed to establish that placer mining on the Retirement Crevice No. 1 would substantially interfere with other uses of the land. Judge Steiner found instead that the claimant showed by a preponderance of the evidence that mining operations on the subject claim would not so interfere. Permission was granted to the claimant to engage in placer mining on the condition that the locator, following placer operations, restore the surface of the claim to the condition in which it was immediately prior to these operations. While we might acknowledge that claimant Pettigrew's mining operation would be unlikely to substantially interfere with other uses of the lands, we do not believe this is the real issue here.

[2] The Mining Claims Rights Restoration Act of 1955, supra, 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 substituted 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, *supra* at 188; *accord*, United States v. Weigel, 26 IBLA 183 (1976); Boyd McGinn, 25 IBLA 188 (1976); United States v. Western Minerals & Petroleum, Inc., *supra*.

We agree with appellant that unrestricted mining on the claim site would substantially interfere with recreational uses of the lands. In so holding, we are looking not only to the claimant's proposed operations but also to potential operations involving additional dredges and different mining techniques. The grant of permission to the claimant to engage in placer mining is hereby revoked.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of Judge Steiner is reversed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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C. Randall Grant, Jr.  
Acting Administrative Judge

