

CLARENCE E. FITZGERALD

IBLA 81-493

Decided May 28, 1981

Appeal from the decision of the California State Office, Bureau of Land Management, declaring the Tri-Venture #3 mining claim null and void. CA MC 27671.

Affirmed.

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 Mining Claims: Withdrawn Land -- Wild and Scenic Rivers Act.

Sec. 9 of the Wild and Scenic Rivers Act withdraws from appropriation under the mining laws the minerals in Federal lands which constitute the bed or bank, or are situated within one-quarter mile of the bank, of any river listed as a potential addition to the Wild and Scenic Rivers System or actually designated as a wild river under the system. Land constituting the bed and banks and within one-quarter mile of the banks of the North Fork of the American River from Cedars to the Auburn Reservoir has been withdrawn from mineral location and entry since January 3, 1975.

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 Mining Claims: Determination of Validity -- Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.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: Clarence E. Fitzgerald, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Clarence E. Fitzgerald 1/ has appealed the decision of the California State Office, Bureau of Land Management (BLM), dated March 25, 1981, declaring the Tri-Venture #3 placer mining claim, CA MC 27671, null and void ab initio because it embraces land withdrawn from entry under the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271-1287 (1976). The location notice for the claim indicates that it was located on May 10, 1979, and is situated in the Tahoe National Forest in part of secs. 4 and 5, T. 15 N., R. 12 E., and part of the S 1/2 S 1/2 sec. 32, T. 16 N., R. 12 E., Mount Diablo meridian. 2/ The locators of the claim filed a copy of their notice of location and a map for recordation with BLM on June 28, 1979, and subsequently filed timely proofs of labor for 1979 and 1980.

The BLM decision states that the Wild and Scenic Rivers Act, supra, was amended on January 3, 1975, to include the North Fork of the American River from Cedars to the Auburn Reservoir for potential addition to the wild and scenic rivers system and indicates that section 9(b) of the Act, 16 U.S.C. § 1280(b) (1976), withdraws all lands constituting the bed or banks or situated within one-quarter mile of the bank of any river listed for potential inclusion in the system from all forms of appropriation under the mining laws.

In his statement of reasons, appellant argues that section 9 of the Wild and Scenic Rivers Act authorizes the Secretaries of Agriculture and Interior to regulate mining activities on claims not perfected before their inclusion in the system and indicates that perfection of a claim means the discovery of a valuable mineral deposit on the claim. He urges that the Tri-Venture #3 claim was perfected on May 10, 1979, the date of its location, "well before this area was included in the

1/ Appellant is also known as C. E. Fitzgerald-Risley. The other current claimants of record are Jon Miller and Virgil J. Cooley.

2/ Secs. 4 and 5 of T. 15 N., R. 12 E., Mount Diablo meridian, are irregular sections. The notice of location for the claim describes its exact location as follows:

"Discovery monument is located as follows: 400 ft. east of the NW corner of Section 5 on the township boundary of T. 16 N., and T. 15 N., R. 12 E., MDM. Starting at this point the claim is described as follows: 1100' east -- 600' north (into section 32, T. 16 N., R. 12 E., MDM) 1800' east -- 200' south -- 1600' east -- 400' south -- 3200' east (which is the NE corner of section 4, T. 15 N., R. 12 E., MDM) -- 800' south -- 4000' west -- 800' north -- 2000' west -- 400' south -- 1600' west -- 400' north to point of discovery."

The claim as described encompasses land on both sides of the North Fork of the American River in secs. 4 and 5, T. 15 N., R. 12 E., and sec. 32, T. 16 N., R. 12 E., Mount Diablo meridian.

Wild and Scenic River System enacted by public law 96-580 dated December 23, 1980." Finally, appellant contends that the public lands of the United States cannot be closed to mineral location unless Congress specifically closes them.

[1, 2] BLM has correctly stated that the North Fork of the American River from Cedars to the Auburn Reservoir was designated for potential addition to the wild and scenic rivers system on January 3, 1975. See P.L. 93-621, 88 Stat. 2094 (amending 16 U.S.C. § 1276 (1976)). BLM also properly noted that pursuant to section 9(b) of the Act, 16 U.S.C. § 1280(b) (1976), such designation withdrew all land constituting the bed or banks or situated within one-quarter mile of the banks of the river from all forms of appropriation under the mining laws. This information does not reflect the correct status of the area, however. Congress, by section 706 of P.L. 95-625, 92 Stat. 3528, officially designated the North Fork of the American River as a wild river in the wild and scenic rivers system on November 10, 1978. 16 U.S.C. § 1274(a)(21) Supp. II (1978). ^{3/} This designation included lots 1-6, sec. 4, and lots 1-8, sec. 5, T. 15 N., R. 12 E., and the S 1/2 S 1/2, sec. 32, T. 16 N., R. 12 E., Mount Diablo meridian, California, among other lands along the North Fork of the American River. See 45 FR 58634 (Sept. 4, 1980).

----- FOOTNOTES ----- END FOOTNOTES

Section 9(b) of the Wild and Scenic Rivers Act, 16 U.S.C. § 1280(b) (1976), provides for withdrawal from the operation of the mining laws of lands designated therein as potential additions to the system during the period of time that the lands are under study to determine their suitability for inclusion. Since appellant's claim was located after the formal inclusion of the area in the wild and scenic rivers system, section 9(b) is not applicable to the appeal herein.

Section 9(a), 16 U.S.C. § 1280(a) (1976), referred to by appellant, describes the applicability of the mining laws to the components of the system. The section reads in part as follows:

(a) Nothing in this chapter shall affect the applicability of the United States mining and mineral leasing laws within components of the national wild and scenic rivers system except that --

^{3/} Appellant indicated in his statement of reasons that the North Fork of the American River was designated part of the wild and scenic rivers system by P.L. 96-580, 94 Stat. 3370 (Dec. 23, 1980). This statute amends the Wild and Scenic Rivers Act, *supra*, to authorize the acquisition of certain lands in Douglas County, Wisconsin, for the purposes of the Act and has nothing to do with the area at issue in this appeal.

(i) all prospecting, mining operations, and other activities on mining claims which, * * * in the case of a component hereafter designated pursuant to this chapter or any other Act of Congress, are not perfected before its inclusion in the system * * * shall be subject to such regulations as the Secretary of the Interior or, in the case of national forest lands, the Secretary of Agriculture may prescribe to effectuate the purposes of this chapter;

* * * * *

(iii) subject to valid existing rights, the minerals in Federal lands which are part of the system and constitute the bed or bank or are situated within one-quarter mile of the bank of any river designated a wild river under this chapter or any subsequent Act are hereby withdrawn from all forms of appropriation under the mining laws including, in both cases, amendments thereto. [Emphasis added.]

Section 9(a)(iii) permanently withdraws from appropriation under the mining laws all minerals in Federal lands which constitute the bed or banks or are situated within one-quarter mile of the bank of a designated wild river. Thus, no new claims may be located on such Federal lands following the river's inclusion in the wild and scenic river system. Section 9(a)(i) does recognize and protect possessory rights to claims already on other Federal lands designated as part of the system, even though not perfected, but the claims are subject to such regulation as the Secretaries of Interior or Agriculture may prescribe to carry out the purpose of the Act. Valid existing rights to a mining claim within the meaning of section 9(a)(iii), however, only arise upon discovery of a valuable mineral deposit and physical location of the claim. See Davis v. Nelson, 329 F.2d 840 (9th Cir. 1964); Harry H. Wilson, 35 IBLA 349 (1978).

The North Fork of the American River as described previously was designated for study on January 3, 1975, and became part of the wild and scenic rivers system on November 10, 1978. Therefore the bed or banks and land situated within one-quarter mile of the river have been withdrawn from appropriation under the mining laws since January 3, 1975. Since appellant and the other locators of the Tri-Venture #3 mining claim did not locate the claim until May 10, 1979, they had no valid existing rights to the claim on January 3, 1975. A mining claim located on land previously withdrawn from appropriation is null and void ab initio. Barry C. Binning, 39 IBLA 390 (1979); Robert Cornett, 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 of the California State Office is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

