

LAMAR AND CHRISTINE BURNETT

IBLA 83-820

Decided January 25, 1984

Appeal from decision of the Idaho State Office, Bureau of Land Management, declaring placer mining claims null and void ab initio. IMC-82397 through IMC-82416.

Affirmed in part; set aside and remanded in part.

1. Mining Claims: Determination of Validity -- Mining Claims: Lands Subject to -- Segregation -- Withdrawals and Reservations: Effect of

A mining claim located on land segregated and closed to mineral entry by notation of an application for withdrawal in the official BLM records is null and void ab initio.

2. Mining Claims: Lands Subject to -- Mining Claims: Powersite Lands -- Mining Claims: Withdrawn Land -- Mining Claims Rights Restoration Act -- Withdrawals and Reservations: Effect of -- Withdrawals and Reservations: Powersites

Lands withdrawn for a powersite reservation, with certain exceptions, are open to entry for location and patent of mining claims with a reservation of power rights in the lands to the United States subject to the Mining Claims Rights Restoration Act. Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

3. Administrative Authority: Estoppel -- Federal Employees and Officers: Authority to Bind Government

The erroneous opinion or information of a Federal officer, agent or employee cannot operate to vest any right not authorized by law.

APPEARANCES: Claude Marcus, Esq., Boise, Idaho, for appellants.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Lamar and Christine Burnett have appealed from a decision dated June 2, 1983, of the Idaho State Office, Bureau of Land Management (BLM), declaring 20 placer mining claims located by appellants null and void ab initio. 1/

The claims were located on February 1, 1983. They are situate along the Salmon River in Tps. 25 and 26 N., R. 1 E., Boise meridian, Idaho.

BLM's decision states in pertinent part as follows:

The Wild and Scenic Rivers Act of October 2, 1968, [16 U.S.C. §§ 1271-1278 (1976)] and Bureau of Land Management proposed withdrawal (I-7322) dated October 1, 1973, withdrew a one-fourth mile corridor on each side of the Salmon River, Idaho, from mineral entry. The above-listed claims are situated within these withdrawals.

Prior to the enactment of P.L. 90-542, the following lands within T. 26 N., R. 1 E., B.M., were closed to mineral entry: A Material Site right-of-way was granted 9/26/1961, for lot 5 sec. 13; patent issued 9/25/1907, for lot 3 sec. 12; and patent issued 10/5/1906, for lots 5 and 8 sec. 12.

The appeal addresses only 8 of the 20 claims. 2/ Appellants assert that no withdrawal of the area in which the claims are located has been effected by BLM. Appellants contend that three claims (IMC-82398, IMC-82424, and IMC-82405) are situate further than one-quarter mile from the Salmon River, and that parts of five other claims (IMC-82400, IMC-82408, IMC-82410, IMC-82412, and IMC-82413) are situate further than one-quarter mile from the Salmon River. Appellant Lamar Burnett also states that he was assured by BLM officials that the lands embraced by the claims could not qualify for wilderness withdrawal.

In 1968 the Salmon River, from the town of North Fork to its confluence with the Snake River, was designated as a potential addition to the national wild and scenic rivers system by section 5(a)(23) of the original Wild and Scenic Rivers Act (WSRA). 16 U.S.C. § 1276(a)(23) (1976). Under the WSRA, all land constituting the bed or banks or situate within one-quarter mile of the banks of a designated river was withdrawn from all forms of appropriation including appropriation under the mining laws, until October 2, 1978, or, if a study report regarding the river were submitted to the President and Congress, for up to an additional 3 years to allow congressional consideration of the report. 16 U.S.C. §§ 1278(b), 1280(b) (1976 and Supp. V 1981).

The Forest Service conducted a study upon which, in 1977, the President recommended that all of the Salmon River designated as a potential addition

1/ Claim names and serial numbers are set forth in Appendix A to this decision.

2/ Those claims subject to this appeal are marked with an asterisk at Appendix A.

to the wild and scenic rivers system in the WSRA be included in the system. However, Congress limited its designation to a 125-mile portion extending from the town of North Fork to Long Tom Bar. 16 U.S.C. § 1274(a)(24) (Supp. V 1981).

The conference report on the central Idaho Wilderness Act of 1980, P.L. 96-312, 94 Stat. 948 (July 23, 1980), stated that the conferees believed that the President's recommendations as to the remaining segment of the river had considerable merit but that "it was deemed desirable to defer action * * * until further public hearings [could] be held." H.R. Rep. No. 1126, 96th Cong., 2d Sess., as printed in 126 Cong. Rec. H5580, H5587 (daily ed. June 24, 1980). Based on this statement, the Board concluded in J. Pat Kaufman, 71 IBLA 183 (1983), that Congress intended that the segment of the Salmon River designated for study but not included in the wild and scenic river system on July 23, 1980, i.e., the lands constituting the bed and banks and situated within one-quarter mile of the banks of the Salmon River from Long Tom Bar to the confluence of the Snake River, were withdrawn from mining location under the WSRA for the full 3 years following October 2, 1978, or until October 2, 1981, for congressional study.

[1] The withdrawals provided for in the WSRA, as originally enacted, only extended for 5 years. WSRA, §§ 7(b), 9(b), 82 Stat. 914-15. Although legislation to extend the withdrawals was under consideration in 1973, it did not appear that the proposed legislation would be enacted before October 2, 1973. As a result, BLM and the Forest Service acted to protect the wild and scenic values of the Salmon River by filing applications for protective withdrawal. ^{3/} These applications were noted officially on the land status records pursuant to 43 CFR 2351.3 (1973). The notation of the applications temporarily segregated the lands from entry, including location under the mining laws, to the extent that the withdrawal, if effected, would prevent such entry, 43 CFR 2091.2-5 (1973). The lands will remain segregated until October 20, 1991, unless terminated sooner. See 43 U.S.C. § 1714 (1976); 43 CFR 2310.2 (1982). BLM's withdrawal I-7322 is the same as that considered in J. Pat Kaufman, supra. Appellants' general challenge is thus without merit.

[2] We turn now to an individual analysis of the eight claims identified in the appeal. The first of these, IMC-82398, is described in the location notice as the W 1/2 of lot 9, sec. 12, T. 26 N., R. 1 E., Boise meridian. BLM's master title plat (MTP) reveals that a small portion of lot 9 may be further than one-quarter of a mile from the Salmon River. A notation on the MTP indicates that lot 9 was included in a powersite withdrawal effected by an Executive Order of July 2, 1910. In addition, the legend on the MTP states: "SO [Secretarial Order] 11/29/26 Open to Entry Subj to Sec 24 FPA Pwr S Res 8 EO 7/2/1910." Appellants' claim IMC-82404 is described as the W 1/2 SE 1/4 SW 1/4 sec. 23, T. 26 N., R. 1 E., Boise meridian, and appellants' claim IMC-82405 is described as the E 1/2 SE 1/4 SW 1/4 sec. 23, T. 26 N., R. 1 E., Boise meridian. The MTP indicates that at least a portion of each of these claims lies further than one-quarter of a mile from the banks of the Salmon River. The portion of these claims lying more than one-quarter mile from the river is not affected by BLM application I-7322.

^{3/} See applications I-7317 (FS) and I-7322 (BLM).

Although land reserved for powersite purposes by a 1910 Executive Order issued pursuant to the "Pickett Act" of June 25, 1910, 43 U.S.C. §§ 141, 142 (1976), remained open to the location of mining claims for metalliferous minerals, that Act was superseded by section 24 of the Federal Power Act of June 10, 1920, 16 U.S.C. § 818 (1976). This Act closed such lands to all mineral location, subject to restoration to entry for mining locations by order of the Secretary of the Interior upon recommendation of the Federal Power Commission under section 24 of the Federal Power Act or to location of the claims after August 11, 1955, pursuant to the provisions of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1976). See United States v. Gassaway, 43 IBLA 382, 387 (1979). The latter Act had as its purpose "[t]o permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development." After enactment of the statute on August 11, 1955, such lands were open to mineral location (with certain exceptions). 4/ George L. Hawkins, 66 IBLA 390 (1982). There is no indication in the record that the effect of the Secretarial restoration orders or 30 U.S.C. § 621 on the powersite withdrawals was considered with respect to appellants' claims embracing lands further than one-quarter mile from the Salmon River. Therefore, as to IMC-82398, IMC-82404, and IMC-82405, the decision will be set aside and remanded for further action. See Robert D. Upton, 38 IBLA 90 (1978).

IMC-82410 and IMC-82412 are described as lots 5 and 8, respectively, sec. 12, T. 26 N., R. 1 E., Boise meridian. As the Idaho State BLM decision points out, these tracts were patented in 1906 and are therefore not subject to mineral entry.

The remaining three claims, IMC 82400, IMC-82408, and IMC-82413 are shown on the MTP's to be clearly within one-quarter mile from the banks of the Salmon River, and therefore within the lands withdrawn pursuant to BLM's application I-7322.

[3] Appellants' allegation that BLM made assurances as to the status of the lands in question is to no avail. The erroneous opinion of a Federal officer, agent, or employee cannot operate to vest any rights not authorized by law. George Hawkins, supra.

4/ 30 U.S.C. § 621(a) (1976) provides in part:

"All public lands belonging to the United States heretofore, now or hereafter withdrawn or reserved for power development or power sites shall be open to entry for location and patent of mining claims * * *: Provided, That all power rights to such lands shall be retained by the United States: * * * And provided further, That nothing contained herein shall be construed to open for the purposes described in this section any lands (1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other Act of Congress, or (2) which are under examination and survey by a prospective licensee of the Federal Power Commission, if such prospective licensee holds an uncanceled preliminary permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to such lands and such permit has not been renewed in the case of such prospective licensee more than once."

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed as to the claims found to be wholly within tracts withdrawn from mineral entry and as to the claims located on land patented without a reservation of minerals. As to mining claims IMC-82398, IMC-82404, and IMC-82405, the decision is hereby set aside and the case is remanded to BLM for further action consistent herewith.

R. W. Mullen
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge
Alternate Member

C. Randall Grant, Jr.
Administrative Judge

Appendix A

<u>BLM Recordation No.</u>	<u>Claim Name</u>	<u>Location of Claim</u>
IMC-82397	Gaicho # 1	E 1/2 lot 9, sec. 12, T. 26 N., R. 1 E., Boise meridian
IMC-82398 *	Gaicho # 2	W 1/2 lot 9, sec. 12, T. 26 N., R. 1 E., Boise meridian
IMC-82399 Boise meridian	Gaicho # 3	lot 3, E 1/4 lot 4, sec. 13, T. 26 N., R. 1 E.,
IMC-82400 *	Gaicho # 4	lot 1, sec. 14, T. 26 N., R. 1 E., Boise meridian
IMC-82401 Boise meridian	Gaicho # 7	lot 2, N 1/2 lot 3, sec. 26, T. 26 N., R. 1 E.,
IMC-82402	Gaicho # 8	lot 1, sec. 26, T. 26 N., R. 1 E., Boise meridian
IMC-82403	Gaicho # 9	lot 8, sec. 23, T. 26 N., R. 1 E., Boise meridian
IMC-82404 *	Gaicho # 11	W 1/2 SE 1/4 SW 1/4, sec. 23, T. 26 N., R. 1 E., Boise meridian
IMC-82405 *	Gaicho # 12	E 1/2 SE 1/4 SW 1/4, sec. 23, T. 26 N., R. 1 E., Boise meridian
IMC-82406	Gaicho # 13	lot 2, sec. 13, T. 26 N., R. 1 E., Boise meridian
IMC-82407	Gaicho # 14	lot 5, sec. 13, T. 26 N., R. 1 E., Boise meridian
IMC-82408 *	Gaicho # 15	lot 3, sec. 14, T. 26 N., R. 1 E., Boise meridian
IMC-82409	Gaicho # 16	lot 3, sec. 12, T. 26 N., R. 1 E., Boise meridian
IMC-82410 *	Gaicho # 17	lot 5, sec. 12, T. 26 N., R. 1 E., Boise meridian
IMC-82411	Gaicho # 18	E 1/2 lot 7, sec. 14, T. 25 N., R. 1 E., Boise meridian
IMC-82412 *	Gaicho # 19	lot 8, sec. 12, T. 26 N., R. 1 E., Boise meridian
IMC-82413 *	River Prig Polly #1	lot 1, E 1/4 lot 2, sec. 26, T. 25 N., R. 1 E., Boise meridian, E 1/2 lot 2, sec. 27, T. 25 N., R. 1 E., Boise meridian
IMC-82414 Polly #2	River Prig	lot 3, sec. 27, T. 25 N., R. 1 E., Boise meridian
IMC-82415	John Day Bar	lot 2, sec. 23, T. 26 N., R. 1 E., Boise meridian
IMC-82416	Johnson Bar	lot 6, sec. 23, T. 26 N., R. 1 E., Boise meridian

* Subject of this appeal.

