

Editor's note: Reconsideration denied by Order dated Sept. 27, 1984

UNITED STATES
v.
ROBERT R. EVANS

IBLA 84-69

Decided July 31, 1984

Appeal from decision of Administrative Law Judge L. K. Luoma holding that placer mining operations on land within a power withdrawal would substantially interfere with other uses of the lands. CA MC 58541.

Affirmed.

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Rights Restoration Act of 1955 it is proper to prohibit all placer mining operations on a mining claim located on land withdrawn for power development or powersite where unrestricted placer mining on such land would result in substantial interference with the use of the land for recreation or other 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Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites.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 after placer mining the locator must restore the surface of the claim to its condition immediately prior to mining operations.

APPEARANCES: Robert R. Evans, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Robert R. Evans has appealed from a decision of Administrative Law Judge L. K. Luoma, dated September 30, 1983, holding that placer mining operations on lands within a power withdrawal would substantially interfere with other uses of the land. Judge Luoma's decision issued following a hearing

held on July 28, 1983, pursuant to the Mining Claims Rights Restoration Act of 1955 (the Act), 30 U.S.C. §§ 621-625 (1982). Judge Luoma concluded that mining operations on appellant's Big E (formerly Timber Lane) mining claim, CA MC 58541, would substantially interfere with other uses of the land and, therefore, that placer mining should be prohibited.

The Big E claim was located on October 24, 1979, within powersite classification 187, dated March 14, 1921, power project 2240, dated December 26, 1957. The 40-acre association placer claim spans the North Yuba River, approximately 5 miles downstream and west of Downieville, California. The claim lies in the Tahoe National Forest and the northwest corner intersects a scenic highway, California State Highway 49, including part of a scenic view turnout. The eastern half of the claim's north boundary adjoins proposed recreational withdrawal 050595, dated May 31, 1955.

At the hearing, the Forest Service established that the mining claim straddles primary access to the river from the picnic facilities, parking area, campground, and second home development that all lie within the adjacent proposed recreational withdrawal. The Forest Service characterized appellant's claim as within the zone of influence of this water-oriented recreational area. The Forest Service contended that appellant's operation, though small, could endanger river rafters as well as diminish recreational activities of land-based users, and that the conflict would worsen if the operation expanded. The Forest Service was also concerned with potential water turbidity resulting from claimant's dredges, although it admitted similar "recreational dredging" would be allowed (Tr. 75).

Appellant countered that the only access to his claim is through the campground. He asserts that his trail clearing and maintenance have made river access easier for recreational users. He asserts that he would not add heavier equipment without Forest Service and others' approval. He insists that his intended use does not interfere with recreational activities on his claim.

On appeal, appellant contended he has not interfered with public use of the land "other than the taking of minerals." He also argues his claim lies outside the proposed recreational withdrawal. He claimed that the Federal Government would take his property without compensation and discriminate in violation of the Equal Protection clause. He asserted that a conditional order pursuant to 30 U.S.C. § 621(b) (1982) is appropriate. He objects to the implication that he would remove trees. He further contends that he plans to protect the surface values of the claim and keep his claim in a condition that all can enjoy.

[1] Section 2 of the Act, 30 U.S.C. § 621 (1982), authorizes 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 appropriate BLM land office within 60 days of location. 30 U.S.C. § 623 (1982). A person who locates a placer mining claim on such lands may not conduct mining operations on the claim within 60 days after filing with BLM 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 mining claim." 30 U.S.C. § 621(b) (1982). 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 these operations; or (3) a general permission to engage in placer mining.

30 U.S.C. § 621(b) (1982). See also 43 CFR Part 3730.

We note that while the subject lands are withdrawn for powersites or power development, the phrase "other uses of the land included within the placer claim" in section 621(b) of the Act is not restricted to such uses. Although the Act applies by its terms to land within powersite or 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. Robert E. Ehrman, Jr., 69 IBLA 290, 293 (1982); United States v. Cohan, 70 I.D. 178, 179 (1963). In fact, many previous decisions considering whether to prohibit placer claims on land within powersite classifications have been concerned with uses other than powersites or power development. Robert E. Ehrman, Jr., supra (use of the land for timber production and recreation); United States v. Pettigrew, 54 IBLA 149, 88 I.D. 453 (1981) (use of the adjoining river for rafting activities); United States v. Steward, 54 IBLA 67 (1981) (use of the land for timber harvests and recreational activities); United States v. Weigel, 26 IBLA 183 (1976) (use of the land and river as breeding area for game fish and animals); United States v. Western Minerals & Petroleum, Inc., 12 IBLA 328 (1973) (use of the land for watershed). Therefore, placer mining which would substantially interfere with timber production or recreational use of the withdrawn land is properly prohibited.

[2] The record supports Judge Luoma's decision that unrestricted mining activities on the Big E placer claim could substantially interfere with recreational uses and water quality. In determining this, we do not necessarily reject appellant's assertions that his mining operation would not interfere with other uses of the land. The issue we must consider is not whether appellant's mining operations would substantially interfere with other uses of the land, but whether normal, unrestricted placer operations would so interfere. United States v. Weigel, supra at 186. As we noted above, the Act allows the Department only three alternative courses of action. A conditional order allowing limited operation is not one of the alternatives.

This "all or nothing" approach with respect to placer mining on powersite or power development lands was explained in United States v. Bennewitz, 72 I.D. 183, 188 (1965):

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.

Although appellant insists that he could maintain a practical operation while minimizing visual and other impacts, he did not offer evidence sufficient to rebut the conclusion that unrestricted mining operations could involve significant impacts which would disrupt the scenic and recreational value of the area. Judge Luoma correctly concluded that the only Secretarial alternative which would ensure the protection of other uses is prohibition of placer mining activities on the claim. Appellant has not shown that Judge Luoma's conclusion was erroneous.

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.

Will A. Irwin
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Edward W. Stuebing
Administrative Judge.

