

LAMAR AND CHRISTINE BURNETT

IBLA 85-442

Decided December 4, 1986

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring 15 placer mining claims null and void ab initio in their entirety and declaring portions of 4 other placer mining claims null and void ab initio. IMC 99571 through IMC 99579, and IMC 99581 through IMC 99590.

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 Mining Claims: Lands Subject to--Mining Claims: Powersite Lands--Mining Claims: Withdrawn Land--Mining Claims Rights Restoration Act--Withdrawals and Reservations: Effect of--Withdrawals and Reservations: Powersites

Lands withdrawn for a powersite reservation, with certain exceptions, are open to entry for location and patent of mining claims with a reservation of power rights in the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 the case remanded for appropriate action.

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

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Lamar and Christine Burnett have appealed from a decision dated February 7, 1985, of the Idaho State Office, Bureau of Land Management (BLM),

declaring 15 placer mining claims null and void ab initio in their entirety, and declaring portions of 4 other placer mining claims null and void ab initio.

Appellants originally located 20 placer mining claims along the Salmon River in Tps. 25 and 26 N., R. 1 E., Boise Meridian, Idaho, on February 1, 1983. ^{1/} In a decision dated June 2, 1983, BLM declared all 20 placer mining claims null and void ab initio, because they were situated within the one-fourth mile corridor on each side of the Salmon River, Idaho, subject to protective withdrawal I-7322, filed by BLM under the Wild and Scenic Rivers Act of October 2, 1968 (WSRA), 16 U.S.C. §§ 1271-1278 (1982), or that they were located on lands patented without a mineral reservation. Appellants filed an appeal addressing only 8 of the 20 claims. ^{2/}

In Lamar & Christine Burnett, 78 IBLA 349 (1984), the Board ruled that three of those eight claims were properly declared null and void ab initio because they were clearly within one-quarter mile from the banks of the Salmon River, and therefore within the lands withdrawn by BLM under authority of the WSRA and implementing regulations. Further, the Board affirmed BLM's determination as to two of the eight claims because they were located on lands patented without a mineral reservation. Portions of the three remaining claims were found to lie more than one-quarter mile from the river and, thus, were not affected by BLM's protective withdrawal I-7322. Those areas were situated within a powersite withdrawal, however. The Board set aside the BLM decision as to those three claims and remanded them to BLM for a consideration of "the effect of Secretarial restoration orders or 30 U.S.C. § 621" (1982) on those portions of the claims. Id. at 352.

Appellants located the 19 claims subject to the instant appeal on August 10 and 11, 1984. ^{3/} In the decision now being challenged, BLM pointed out that the claims named Gaucho #1, #2, #3, #4, #7, #8, #9, #11, River Prig Polly #2, Johnson Bar Placer, and John Day Bar Placer are new locations of mining claims with the same names and legal descriptions filed by appellants on April 22, 1983. BLM stated that the 19 claims now subject to appeal are located along the Salmon River in protective withdrawal I-7322; that portions of Gaucho #1, #3, #6, #7, #8, #9, #13, #14, #15, Johnson Bar Placer, John Day Bar Placer, Upper Butcher Placer, Black Hawk Placer, and Buckskin Spring Placer are also located in Federal Power Commission Power Project Withdrawal 2273, dated August 20, 1960; and that a portion of Black Hawk Placer is located in Recreational and Public Purposes (R&PP) lease I-7503 which was segregated from mineral entry on August 8, 1974, and leased on November 25, 1974.

^{1/} Claim names, serial numbers, and legal descriptions of appellants' original locations are set forth in Appendix A to this decision.

^{2/} Those eight claims which appellants appealed to the Board are marked with an asterisk at Appendix A.

^{3/} Claim names, serial numbers, and legal descriptions of those 19 claims, all of which are subject to this appeal, are set forth in Appendix B to this decision. For the sake of clarity, these claims will be referred to simply by their names in this opinion.

BLM disposed of the 19 claims as follows:

As the Gaucho #1, Gaucho #3, Gaucho #4, Gaucho #6, Gaucho #7, Gaucho #8, Gaucho #9, Gaucho #13, Gaucho #14, Gaucho #15, River Prig Polly #1, River Prig Polly #2, Johnson Bar Placer, John Day Bar Placer, and Buckskin Spring Placer were located after the land was closed to mineral entry, they are invalid and declared null and void ab initio in their entirety.

As the Gaucho #2 and Gaucho #11 were located after the land was closed to mineral entry, those portions of the claims located within withdrawal I-7322 are invalid and declared null and void ab initio.

As the Upper Butcher Placer was located after the land was closed to mineral entry, those portions of the claim located within withdrawal I-7322 and power project withdrawal 2273 are invalid and declared null and void ab initio.

As the Black Hawk Placer was located after the land was closed to mineral entry, those portions of the claim located within withdrawal I-7322, power project withdrawal 2273, and R&PP lease I-7503 are invalid and declared null and void ab initio. [Emphasis in original.]

[1] Appellants' attempt to again locate claims within the one-fourth-mile corridor on either side of the Salmon River which is closed to mineral location must be rejected for the same reasons discussed in Lamar Christine Burnett, supra. Review of the master title plats for the townships in question reveals that BLM properly declared the following 14 mining claims null and void ab initio because they were located entirely within that corridor: Gaucho #1, Gaucho #3, Gaucho #4, Gaucho #6 through #9, Gaucho #13 through #15, River Prig Polly #1, River Prig Polly #2, Johnson Bar Placer, and John Day Bar Placer.

BLM also properly declared the Gaucho #2 and Gaucho #11 claims null and void ab initio to the extent they included lands within the corridor area. ^{4/} Of the three remaining claims, the Upper Butcher Placer, Black Hawk Placer, and Buckskin Spring Placer, the first two were declared null and void ab initio in part and the latter was declared null and void ab initio in its entirety.

BLM's rationale for declaring the Buckskin Placer claim null and void ab initio was that the claim was entirely within either the corridor withdrawal or within Federal Power Commission Power Project Withdrawal 2273, dated August 22, 1960. BLM also declared the Upper Butcher Placer claim null

^{4/} We note the Gaucho #2 and Gaucho #11 are new locations of two of the same claims (Gaucho #2 (IMC-82398) and Gaucho #11 (IMC-82404)) which were the subject of the Board's previous remand. The Gaucho #12 (IMC-82405) which was also remanded to BLM is not part of the present appeal. None of appellants' new locations described lands included in that claim.

and void ab initio to the extent it covered lands included in the corridor or within the power project withdrawal. BLM cited the corridor withdrawal and the power project withdrawal, as well as the fact that part of the claimed lands were included in the R&PP lease, to declare those parts of the Black Hawk Placer claim within those areas to be null and void ab initio.

BLM properly declared null and void ab initio those portions of the three claims lying within the corridor withdrawal and that part of the Black Hawk Placer claim within the R&PP lease. However, to the extent the BLM decision declared portions of those three claims null and void ab initio solely on the basis of the powersite withdrawal, it must be set aside and remanded because there is no indication in the record that BLM took into consideration the effect of the provision of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. §§ 621-625 (1982). 5/ Without evidence of such consideration in the record, we are unable to affirm BLM's action.

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 as to the Gaucho #1 through #4, Gaucho #6 through #9, Gaucho #11, Gaucho #13 through #15, River Prig Polly #1, River Prig Polly #2, Johnson Bar Placer, and John Day Bar Placer. The decision is also affirmed to the extent it declared portions of the Upper Butcher Placer, Black Hawk Placer, and Buckskin Spring Placer null and void ab initio because they were within the corridor withdrawal and because a portion of the Black Hawk Placer was within the R&PP lease. That part of the decision declaring portions of

5/ 30 U.S.C. § 621(a) (1982) 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 Energy Regulatory 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."
(Emphasis in original.)

Although this section provides generally that land withdrawn for power purposes is open to mineral entry, there is no copy of the August 22, 1960, withdrawal in the file so that we may determine whether, as BLM claims, it closed these lands to mineral entry. It is possible that these lands might be closed to location because of the applicability of one of the exceptions in this section; however, the record is silent on that point.

the same three claims null and void ab initio because they were within Power Project Withdrawal 2733 is set aside and the claims remanded to BLM for further action consistent with this decision.

Bruce R. Harris
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Anita Vogt
Administrative Judge
Alternate Member

APPENDIX A

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

APPENDIX B

<u>Claim Name</u>	<u>BLM Recordation No.</u>	<u>Location of Claim</u>
Gaicho #1	IMC-99571	E 1/2 lot 9, sec. 12, T. 26 N., R. 1 E., Boise Meridian
Gaicho #2	IMC-99572	W 1/2 lot 9, sec. 12, 26 N., R 1 E., Boise Meridian
Gaicho #3	IMC-99573	lot 3, E 1/4 lot 4, sec. 13, T. 26 N., R. 1 E., Boise Meridian
Gaicho #4	IMC-99574	lot 1, sec. 14, T. 26 N., R. 1 E., Boise Meridian
Gaicho #6	IMC-99575	lot 9, sec. 1, T. 26 N., R. 1 E., Boise Meridian
Gaicho #7	IMC-99576	lot 2, N 1/2 lot 3, sec. 26, T. 26 N., R. 1 E., Boise Meridian
Gaicho #8	IMC-99577	lot 1, sec. 26, T. 26 N., R. 1 E., Boise Meridian
Gaicho #9	IMC-99578	lot 8, sec. 23, T. 26 N., R. 1 E., Boise Meridian
Gaicho #11	IMC-99579	W 1/2 SE 1/4 SW 1/4, sec. 23, T. 26 N., R. 1 E., Boise Meridian
Gaicho #13	IMC-99581	lot 3, sec. 14, T. 26 N., R. 1 E., Boise Meridian
Gaicho #14	IMC-99582	E 1/2 lot 7, sec. 14, T. 25 N., R. 1 E., Boise Meridian
Gaicho #15	IMC-99583	lot 2, sec. 13, T. 26 N., R. 1 E., Boise Meridian
River Prig Polly #1	IMC-99584 T. 25 N., R. 1 E., Boise Meridian	lot 1, E 1/4 lot 2, sec. 26, lot 3, sec. 27, T. 25 N., R. 1 E.,
River Prig Polly #2	IMC-99585 Boise Meridian	lot 6, sec. 23, T. 26 N., R. 1 E.,
Johnson Bar Placer	IMC-99586 Boise Meridian	lot 2, sec. 23, T. 26 N., R. 1 E.,
John Day Bar Placer	IMC-99587 Boise Meridian	lots 1 and 2, sec. 34, T. 26 N.,
Upper Butcher Placer	IMC-99588 R. 1 E., Boise Meridian	lots 2, 3, 7, and 8, E 1/4 lot 4, Boise Meridian
Black Hawk Placer	IMC-99589 sec. 2, T. 26 N., R. 1 E.,	lot 5, E 1/4 of lot 6, W 1/4 of Boise Meridian
Buckskin Spring Placer	IMC-99590 lot 8, sec. 11, T. 25 N., R. 1 E.,	Boise Meridian

