

Editor's note: Reconsideration denied by Order dated March 29, 1989

ANDREW VAN ATTA
MINDY WEKSELBLATT

IBLA 87-362

Decided January 5, 1989

Appeal from a decision of the California State Office, Bureau of Land Management, declaring placer mining claims null and void ab initio. CA MC-127234, et al.

Affirmed.

1. Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Wild and Scenic Rivers Act--Withdrawals and Reservations: Effect of

BLM properly declares a placer mining claim null and void ab initio where it was located within one-quarter mile of a wild river clearly designated prior to the date of location by the Secretary of the Interior under the Wild and Scenic Rivers Act, as amended, 16 U.S.C. || 1271-1287 (1982), and thereby statutorily withdrawn from appropriation under the mining laws.

APPEARANCES: Robert A. Skitol, Esq., Washington, D.C., for appellants.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Andrew Van Atta and Mindy Wekselblatt have appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated February 11, 1987, declaring the McClellan Mine, South Fork Pocket P.M.C., Sample P.M.C., and Gold Bar placer mining claims (CA MC-127234, CA MC-127235, CA MC-127237, and CA MC-127238), null and void ab initio.

The subject mining claims were originally located on March 17 and 27 and April 19, 1983, and copies of notices of location were filed for recordation with BLM on June 9, 1983. According to the map submitted with the location notices, such claims are situated in sec. 6, T. 1 N., R. 7 E., and sec. 31, T. 2 N., R. 7 E., Humboldt Meridian, Trinity County, California, straddling the South Fork of the Trinity River. All the claims are located within the Trinity National Forest, which is administered by the Forest Service.

In its February 1987 decision, BLM declared the claims null and void ab initio because they were located along a section of the river which had been designated as part of a "wild" component of the National Wild and Scenic Rivers System prior to the location of the claims, thereby precluding subsequent location of mining claims within one-quarter mile of the bank of the river and rendering the subject claims null and void ab initio. Van Atta and Wekselblatt have appealed from the February 1987 BLM decision.

The record indicates that the Secretary of the Interior published a notice in the Federal Register on January 23, 1981 (46 FR 7484), that he was, pursuant to a petition of the Governor of California, designating the "South Fork of the Trinity [River] from the junction of the river with State Highway 36 to the river mouth near Salyer" as a component of the National Wild and Scenic Rivers System, in accordance with section 2 of the Wild and Scenic Rivers Act, as amended, 16 U.S.C. | 1273 (1982). The effective date of the designation was January 19, 1981. The Federal Register notice explained that

[f]or purposes of inclusion in the National Wild and Scenic Rivers System and as management direction to Federal agencies administering Federal lands adjacent to the [designated river] segments, the designated rivers will be managed in accordance with the classifications "wild," "scenic" and "recreational" as determined appropriate by the Heritage Conservation and Recreation Service and as stated in Appendix D of the Final Environmental Impact Statement, INT FEIS 80.53, "Proposed Designation of Five California Rivers in the National Wild and Scenic Rivers System."

Appended to the February 1987 BLM decision is a copy of a page taken from Appendix D of the FEIS classifying the following section of the South Fork of the Trinity River as "wild": "From Naufus Creek confluence in Section 8 T1N R7E to Johnson Creek confluence near the boundary of Sections 13 and 14 T2N R6E." Under section 9(a) of the Wild and Scenic Rivers Act, as amended, 16 U.S.C. | 1280(a) (1982), the minerals in Federal lands which are situated within one-quarter mile of the bank of a designated "wild river" are, subject to valid existing rights, "withdrawn from all forms of appropriation under the mining laws."

In their statement of reasons for appeal (SOR), appellants do not challenge the fact that designation of a section of a river as a "wild river" withdrew the Federal lands situated within one-quarter mile of the bank of that river from mineral entry, in accordance with section 9(a) of the Wild and Scenic Rivers Act, or that their mining claims are situated within one-quarter mile of the bank of the South Fork of the Trinity River. Rather, appellants contend that the subject designation did not effect a withdrawal where the FEIS failed to describe an existent section of the South Fork of the Trinity River and, thus, failed to provide effective public notice of the withdrawal as required by the National Environmental Policy Act of 1969, as amended, 42 U.S.C. || 4321-4347 (1982), and the United States Constitution.

Appellants explain, referring to a Forest Service map: "There simply is no 'Naufus Creek confluence in Section 8 T1N R7E.' The place described does not exist. Indeed, there is no place anywhere along the Trinity where any creek named 'Naufus' joins the river" (SOR at 3). In the alternative, appellants contend that, even if their mining claims are no longer valid, they are entitled to compensation for the "time and money they have devoted to [the] claims" in the absence of notification that the subject designation precluded appropriation under the mining laws (SOR at 6).

[1] The premise of both of appellants' arguments is that the FEIS did not provide a proper description of the section of the South Fork of the Trinity River classified and subsequently designated by the Secretary as "wild," and therefore, the public, including appellants, did not have notice of the section of the river affected. We disagree. Indeed, we note that the Forest Service map submitted by appellants with their location notices clearly depicts Naufus Creek and its confluence with the South Fork of the Trinity River in sec. 8, T. 1 N., R. 7 E., Humboldt Meridian, Trinity County, California, as well as the location of the Johnson Creek and its confluence near the boundary of secs. 13 and 14, T. 2 N., R. 6 E., Humboldt Meridian, Trinity County, California. Appellants' map clearly places the subject mining claims along that portion of the river classified as "wild" in the FEIS and subsequently designated by the Secretary as a "wild" component of the National Wild and Scenic Rivers System. ^{1/}

In these circumstances, we conclude that the FEIS provided an adequate description of the section of the South Fork of the Trinity River classified as "wild." As subsequently incorporated by reference in the notice published in the Federal Register, that description was sufficient to put the public on notice of the section of the river designated as a "wild" component of the National Wild and Scenic Rivers System. Accordingly, appellants must be deemed to have been aware, at the time they located their claims, that the land had been withdrawn from appropriation under the mining laws, pursuant to section 9(a) of the Wild and Scenic Rivers Act. 44 U.S.C. | 1507 (1982); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Venlease I, 99 IBLA 387 (1987). They could have had no reasonable expectation regarding the validity of their claims which would either render the claims valid or entitle appellants to compensation for the effort expended.

The effect of the statutory withdrawal was to render the affected land unavailable for the location of mining claims and any claim located thereafter must be deemed null and void ab initio. Kathryn J. Story, 104 IBLA

^{1/} Appellants' belief that there is no Naufus Creek stems from a Forest Service map to which they refer in their SOR, which map is attached to the SOR as Exhibit A. That map shows Plummer Creek running into the South Fork of the Trinity River in sec. 8, and does not depict either Naufus or Johnson Creek. However, the more detailed Forest Service map submitted with appellants' location notices, shows Plummer Creek running into Naufus Creek, which then runs into the South Fork of the Trinity River.

313 (1988); Harold E. De Roux, 94 IBLA 350 (1986); Clarence E. Fitzgerald, 55 IBLA 31 (1981). Therefore, we conclude that BLM properly declared appellants' four placer mining claims null and void ab initio.

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.

John H. Kelly
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge