

Appeal from a decision of the California State Office, Bureau of Land Management, declaring the Middle Fork Placer #2, Middle Fork Placer #3, and Middle Fork Placer #4 mining claims null and void ab initio in whole or in part (CAMC 92968, CAMC 92969, and CAMC 92970).

Affirmed.

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 Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Wild and Scenic Rivers Act

Under sec. 9(a)(iii) of the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. | 1280(a)(iii) (1982), Federal lands within one-quarter mile of the bank of a river designated as a "wild" river are withdrawn from all forms of appropriation under the mining laws. Mining claims located thereafter on such lands are properly declared null and void ab initio.

2. Estoppel--Laches--Mining Claims: Recordation

The acceptance of a mining claim filing for recordation does not preclude BLM from subsequently declaring the claim to be null and void ab initio upon a finding that the land on which the claim was located was withdrawn from the location of mining claims at the time the claim was located.

APPEARANCES: Don and Dawn Wilhelmy, Thomas E. and Joyce A. Worthington, and Robert L. Payne, pro sese.

#### OPINION BY ADMINISTRATIVE JUDGE GRANT

Robert L. Payne, Don and Dawn Wilhelmy, and Thomas E. and Joyce A. Worthington appeal from a decision of the California State Office, Bureau of Land Management (BLM), dated July 17, 1987, declaring the Middle Fork Placer #2, the Middle Fork Placer #3, and the Middle Fork Placer #4 mining claims null and void ab initio in whole or in part because the lands were withdrawn from mineral entry pursuant to the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. || 1271-1287 (1982).

The notices of location for the three claims specify that each claim embraces 160 acres and that all three claims were located on July 28, 1981.

On a map accompanying the notice of location for the Middle Fork Placer #2 claim, the claimants depict the claim as being located in the SW<sup>^</sup> sec. 25 and the NE<sup>^</sup> sec. 36, T. 18 N., R. 4 E., Humboldt Meridian. The map shows the Middle Fork Smith River running through the area claimed and places the claim within one-quarter mile of the river. On the map accompanying the notice of location for the Middle Fork Placer #3 claim, the claimants show the claim as being situated in the SE<sup>^</sup> and the SW<sup>^</sup> sec. 26, T. 18 N., R. 4 E., Humboldt Meridian. The map also shows the Middle Fork Smith River running through the area claimed. Review of the map shows the claim to be situated within one-quarter mile of the river. On a map accompanying the notice of location for the Middle Fork Placer #4 claim, the claimants show the claim as being located in the NE<sup>^</sup> and the NW<sup>^</sup> sec. 27, T. 18 N., R. 4 E., Humboldt Meridian. Again, the claimants drew the Middle Fork Smith River through the area claimed indicating that the claim is located within one-quarter mile of the river.

As noted in BLM's decision, the record indicates that on July 18, 1980, pursuant to section 2 of the Wild and Scenic Rivers Act of 1968, 16 U.S.C. | 1273 (1982), the Governor of California petitioned the Secretary of the Interior to add all or portions of the Smith River, among others, to the National Wild and Scenic Rivers System. The record discloses that effective January 19, 1981, the Smith River was designated as a State-administered component of the National Wild and Scenic Rivers System to be managed in accordance with the classification determined in the Final Environmental Impact Statement. See 46 FR 7484 (Jan. 23, 1981). BLM stated in its decision that the Middle Fork Smith River from the middle of sec. 6, T. 17 N., R. 5 E., Humboldt Meridian, to one-half mile upstream from the confluence with Knopki Creek is classified in the Environmental Impact Statement of December 9, 1980, as a wild river. BLM noted that new mining claims are prohibited within one-quarter mile of the river. Based on this information, BLM found that the Middle Fork Placer #2 and the Middle Fork Placer #3 mining claims appear to be wholly within the withdrawn area and declared the claims null and void in their entirety. BLM further declared that portion of the Middle Fork Placer #4 mining claim situated within the withdrawn area null and void ab initio.

In their statements of reasons, all appellants assert that they have maintained their claims and filed the proper assessment work notices on a regular basis. Don and Dawn Wilhelmy state that they have never made an attempt to disrupt the flow of the river and have always made it easy for campers and hikers to enjoy the area. Thomas and Joyce Worthington add that since they have cleaned up after campers who "infest the area and leave their trash," the Wild and Scenic Rivers Act should not apply to them. Appellants contend that BLM should have promptly notified them that their claims could not be recorded and should not have allowed them to work their claims.

[1] The Wild and Scenic Rivers Act of October 2, 1968, as amended, 16 U.S.C. || 1271-1287 (1982), creates a Wild and Scenic Rivers System to preserve and protect certain rivers in a free-flowing condition. Section 2 of the Act, 16 U.S.C. | 1273 (1982), sets forth a procedure by which the governor of a state may petition the Secretary of Interior to designate a

river as a state-administered component of the National Wild and Scenic Rivers System. Section 9 of the Act provides in part that, subject to valid existing rights, the minerals in Federal lands which are situated within one-quarter mile of the bank of any river designated a wild river are withdrawn from all forms of appropriation under the mining laws. 16 U.S.C. | 1280(a)(iii) (1982).

On July 18, 1980, the Governor of the State of California petitioned the Secretary to add the Smith River to the Wild and Scenic Rivers System. By notice dated January 19, 1981, published in the Federal Register (46 FR 7484) (Jan. 23, 1981)), five California rivers, including the Smith River, were designated as State-administered components of the Wild and Scenic Rivers System. The notice specified that "[d]esignation will also prohibit new mining claims on Federal lands within a quarter mile of segments classified as 'wild.'" Since appellants' claims were located on July 28, 1981, after the date the lands were withdrawn from appropriation under the mining laws, they are null and void ab initio to the extent they embrace lands situated within one-quarter mile of the wild segment of the Middle Fork of the Smith River. See John R. Lynn, 106 IBLA 317 (1989); Barry C. Binning, 39 IBLA 390 (1979); Robert Cornett, 36 IBLA 84 (1978).

A review of the maps in the case file, including the maps accompanying appellants' notices of location, together with the description of the segments of the Smith River affected by the Federal Register notice, indicates that the Middle Fork Placer #2 and the Middle Fork Placer #3 are wholly within the area withdrawn and are therefore null and void ab initio. Although it appears from the maps attached to the notices of location filed for recordation with BLM that all lands embraced in the claims under appeal are situated within one-quarter mile of the river bank, there is some question whether a part of the Middle Fork Placer #4 claim may be situated within one-half mile of the confluence with Knopki Creek and, thus, outside the "wild" segment of the river withdrawn from mining. Accordingly, we must affirm the BLM decision declaring the Middle Fork Placer #2 and #3 claims null and void ab initio in their entirety and the Middle Fork Placer #4 null and void ab initio to the extent the lands are situated within the withdrawn area.

[2] Appellants state that they have maintained their claims and performed assessment work and that BLM should have notified them that the land was withdrawn. It appears that appellants are raising an estoppel defense to BLM's decision to declare the claims null and void, i.e., that they have relied to their detriment on BLM's failure to notify them that the land had been withdrawn. Estoppel does not lie in this situation because appellants had constructive knowledge that the land had been withdrawn since this information was published in the Federal Register and was, therefore, a matter of public record. See 44 U.S.C. | 1507 (1982). Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 385 (1947); Mac A. Stevens, 84 IBLA 124, 126 (1984).

Further, BLM is under no affirmative duty to mineral locators to promptly check the legal status of every claim filed by them and apprise such claimants of its conclusions. Hugh B. Fate, Jr., 86 IBLA 215 (1985);

Mac A. Stevens, supra. It is expressly provided by regulation that the failure of the Government to notify the owner of a claim upon recordation of the claim with BLM that the claim is located on land withdrawn from mining shall not prevent BLM from later declaring such claim void in accordance with due process of law. 43 CFR 3833.5(f). Moreover, as a general rule, the Government holds the public lands in trust for all people, and is not to be deprived of this property by such defenses as laches and estoppel. Hallenbeck v. Kleppe, 590 F.2d 852, 855 (10th Cir. 1979), citing United States v. California, 332 U.S. 19, 40 (1947); see United States v. Weber Oil Co., 68 IBLA 37, 58, 89 I.D. 538, 549 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.  
Administrative Judge

I concur:

James L. Burski  
Administrative Judge