

RECON MINING COMPANY, INC.

IBLA 2003-291

Decided October 6, 2005

Appeal from a decision of the Nevada State Office, Bureau of Land Management, denying a request for refund of claim payments. NMC 605257 et al.

Affirmed in part; reversed in part; set aside and remanded in part.

1. Accounts: Refunds--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Title

Under 43 CFR 3833.1-1 (2003), maintenance and location fees are not returnable or refundable unless the mining claim or site has been determined, as of the date the fees were submitted, to be null and void, abandoned by operation of law, or otherwise forfeited. Since the Department has no jurisdiction to determine questions regarding the right of possession between rival claimants, the ruling of a state court of competent jurisdiction that a claimant has no ownership interest in various mining claims constitutes a determination that the claimant's claims are null and void. A BLM decision denying a requested refund of the claim maintenance fees paid on the voided claims will be reversed as to the fees paid subsequent to the date of the court's ruling. BLM's decision denying the requested refund of fees paid before the date of the court's ruling will be set aside and remanded to BLM for further analysis where the record contains conflicting evidence of BLM's interpretation of and practice under the applicable regulation.

2. Accounts: Refunds--Mining Claims: Rental or Claim Maintenance Fees: Generally

A BLM denial of a request for interest on a refund of claim maintenance and other fees and charges will be affirmed because, absent a statutory provision authorizing the payment of interest, no interest may be paid by the Government on such refunds.

APPEARANCES: William G. Rogers, Esq., Dayton, Nevada, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Recon Mining Company, Inc. (Recon), ^{1/} has appealed the portion of a June 10, 2003, decision of the Nevada State Office, Bureau of Land Management (BLM), denying its request for a refund of the claim payments it remitted to BLM between September 1990 and February 2003, for 137 mining claims (NMC 605257-605330, 605489-605490, and 605856-605916), plus interest. Recon does not appeal the part of the decision closing those claims on the official BLM records.

In 1986 and 1987, Recon located 108 lode mining claims in T. 36 N., R. 19 E., Washoe County, Nevada. See SOR, Ex. B. Recon failed to file timely either notices of intention to hold the mining claims or affidavits of assessment work prior to December 31, 1989, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (2000), and BLM declared those claims abandoned and void pursuant to 43 U.S.C. § 1744(c) (2000). See SOR at 2; see also SOR, Ex. L, Recon Mining Company, Inc. v. Prichard, CV92-1403, Second Judicial District Court, State of Nevada (Special Master's Decision and Recommendation May 4, 1995) (Special Master's Decision), at 4.

On July 16, 1990, James C. Prichard located 27 claims corresponding exactly to 27 of Recon's abandoned claims. (Special Master's Decision at 4.) Prichard located claims coincident to the remainder of the abandoned claims on September 20, 1990. Id. at 7; see also SOR, Ex. N, Recon Mining Company, Inc. v. Prichard, CV92-01403, Second Judicial District Court, State of Nevada (Findings of Fact, Conclusions of Law, and Judgment Sept. 18, 2002) (2002 Judgment), at 4. According to the location notices in the case file, Recon similarly relocated all the

^{1/} Recon is owned by John E. Spencer and has also been known as Spencer Mining. See Statement of Standing and Reasons for Appeal (SOR) at 2.

abandoned claims on September 20, 1990. See also Special Master's Decision at 5-6. On March 6, 1992, Recon filed an action in Nevada state court seeking to quiet title to the mining claims. See 2002 Judgment at 1; see also Special Master's Decision at 1. Prichard failed to pay the 1993/1994 claim maintenance fees for his claims required by 30 U.S.C. § 28f (2000), and the claims were forfeited by operation of law in accordance with 30 U.S.C. § 28i (2000). See SOR at 3; 2002 Judgment at 5. In November 1995 Prichard relocated his forfeited claims; Recon did not attempt to relocate its claims after Prichard's claims were forfeited. Id. at 4; see SOR at 3.

The state court action was bifurcated, and the court-appointed Special Master held a three-day trial on the first phase of the matter beginning on April 17, 1995. On July 28, 1995, the state court adopted the Special Master's May 4, 1995, Decision and issued a final judgment holding that, as of September 24, 1990, ^{2/} Recon had no right, title, or interest in any of the mining claims, which the court found were owned by Prichard. (SOR, Ex. M, Recon Mining Company, Inc. v. Prichard, CV92-01403, Second Judicial District Court, State of Nevada (Judgment Quieting Title July 28, 1995) (1995 Judgment), at 1-2.) ^{3/} On September 16, 2002, after completion of the remaining phase of the action, the court issued its 2002 Judgment quieting title to the claims in favor of Prichard. (2002 Judgment at 8.) ^{4/} Although Recon appealed the 2002 Judgment to the Nevada Supreme Court, the Court dismissed the appeal on February 24, 2003.

Beginning in 1990 and throughout the pendency of the state court proceedings, Recon paid the required mining claim fees to BLM. (SOR at 3 and Ex. J.) Prichard also paid the required fees every year after his 1995 relocation of the

^{2/} The court did not explain why it chose Sept. 24, 1990, rather than Sept. 20, 1990, as the key date for determining claim ownership.

^{3/} Nothing in the record indicates that the 1995 Judgment, which explicitly stated that it was a final judgment on the merits (1995 Judgment at 2), was stayed or otherwise rendered ineffective pending resolution of the second phase of the litigation. The second phase did not revisit the determination that Recon's claims were invalid as of Sept. 24, 1990, although the court did consider and reject Recon's contention that Prichard's failure "to pay the annual assessment for the year 1993/1994 operated to re-vest title to the claims in [Recon]." (2002 Judgment at 5.)

^{4/} According to BLM, the 1995 Judgment covered 110 claims and the 2002 Judgment addressed 132 claims. See BLM Decision at 1 and Exs. A and B.

claims. *Id.* at 3 and Ex. K. On February 20, 2003, citing 43 CFR 3833.1-1 (2003), ^{5/} Recon requested a total refund of all the claim payments ^{6/} it had remitted to the Department over the past 13 years for the 137 claims covered by the request. Recon based its request on the 1995 and 2002 Judgments' declarations that the Recon claims were null and void and that Recon had possessed no right or title to the claims since September 24, 1990. Recon estimated that the amount of the refund due for the period 1990 to 2003 was \$127,155.00, plus any interest.

BLM issued its decision on June 10, 2003. ^{7/} BLM adopted the state court's holding that Recon had been divested of title to its mining claims and closed the 137 mining claims listed on the attached Exhibit C on BLM's official records. BLM rejected the requested refund, however, concluding that, although Recon had paid the claim rental and maintenance fees required by 43 CFR 3833.1-5 (2003), it was not entitled to a refund under 43 CFR 3833.1-1(c) (2003) because it had "failed to provide a sufficient basis to support a determination that the subject claims were either abandoned and void by operation of law, null and void *ab initio*, or otherwise forfeited at the time of *recording*." (BLM Decision at 2 (emphasis in original).) BLM further found that the one-time \$25 per claim location fee mandated by 30 U.S.C. § 28g (2000) and 43 CFR 3833.1-4 (2003) was nonrefundable, and that service charges for recording new claims were not returnable after the received

^{5/} The regulations at 43 CFR Part 3830 were amended effective Nov. 24, 2003. *See* 68 FR 61046, 61064 (Oct. 24, 2003). The provisions addressing refunds are now found at 43 CFR 3830.22.

^{6/} Recon apparently sought the return of not only the rental and maintenance fees it had paid for the claims, but also the \$25 per claim location fee, the service charges for recording new claims, and the service charges for its FLPMA filings.

^{7/} Although BLM sought an opinion from the Field Solicitor's Office concerning the refund request, specifically whether the Nevada state court's decision was equivalent to a BLM null and void *ab initio* decision (Mar. 3, 2003, Memorandum from Nevada State Office, BLM, to Field Solicitor), the case file does not contain a response from the Field Solicitor's Office. The record does include an electronic mail message from the Senior Specialist for Mining Law Adjudication, Washington Office, BLM, acknowledging that BLM was required to accept the state court's decree of title and possession here, but stating that no refund should be allowed because the fees were paid for the claim and not the person; that if the fees were refunded the claims would be forfeited for lack of the required fee payments; and that the rival claimants would have to sort out between themselves who owed what to whom. (May 29, 2003, electronic mail from Roger Haskins, Washington Office, BLM, to Elaine Lewis, Nevada State Office, BLM.)

documents had been docketed and serialized. BLM also denied Recon's request for interest, pointing out that the Government did not pay interest unless it had consented to be liable for such interest by legislation or by contract. (BLM Decision at 2.)

On appeal Recon contends that the 1995 Judgment conclusively established that it was divested of any right, title, or interest in or to the claims at issue as of September 24, 1990, and that, from the date of the 1995 Judgment through the continued litigation, it gained no benefit from continuing to pay the fees. (SOR at 4.) Recon proffers three justifications for refunding the payments. First, it avers that the abandonment by operation of law of the original claims for failure to file the required FLPMA affidavit entitles it to a refund pursuant to 43 CFR 3833.1-1(c) (2003).^{8/} Second, Recon maintains that the fees paid after the 1995 Judgment must be refunded because those fees were paid on claims determined to be null and void. Third, Recon asserts that since both it and Prichard paid fees for the same claims from 1990 through 2002, 43 CFR 3833.1-1(d) (2003) mandates that the duplicate payments be returned. (SOR at 4-6.)

BLM did not file an answer or otherwise respond to Recon's SOR.

[1] The refundability of service charges, location fees, and rental and maintenance fees is governed by 43 CFR 3833.1-1 (2003). That regulation provides:

(a) Service charges submitted for new recordings under § 3833.1-2 [mining claim location notices] are not returnable or refundable after the document has received the processing for which the service charges were paid.

(b) Service charges submitted with documents to be filed pursuant to §§ 3833.2 [FLPMA annual filings] and 3833.3 [notices of transfers of interest] are returnable or refundable if, at the time of submission, the affected mining claim or site is determined to be null and void or abandoned by operation of law.

(c) Maintenance and location fees are not returnable or refundable unless the mining claim or site has been determined, as of the date the fees were submitted, to be null and void, abandoned by operation of law, or otherwise forfeited.

^{8/} This argument is irrelevant since none of the fees paid between 1990 and 2003 are attributable to the abandoned mining claims.

(d) Maintenance fees, location fees, or service charges made in duplicate for the same claim or site or otherwise overpaid are returnable or refundable. The money will be returned or refunded to the party who submitted it. The authorized officer may apply the fee to a future year if so instructed by the payor.

Recon has requested a refund of all the fees it paid for the claims from 1990 through 2003, apparently including service charges, location fees, and rental and maintenance fees. Since location notices for the relocated claims “received the processing for which the service charges were paid” when they were recorded with BLM on September 21, 1990, the service charges for processing those location notices are not refundable or returnable under 43 CFR 3833.1-1(a) (2003), and we affirm BLM’s decision to the extent it rejected the refund request for those service charges. Additionally, the location fees Recon paid for its relocated claims are not refundable under 43 CFR 3833.1-1(c) (2003) because the location notices indicate that the claims were located on September 20, 1990, while the state court invalidated those claims as of September 24, 1990. Since the claims were not null and void on the date the location fees were paid, BLM properly rejected Recon’s request for a refund of the location fees, and we affirm BLM’s decision to the extent it rejected the refund request for the location fees.

The fate of Recon’s request for a refund of the rental and maintenance fees paid for the claims turns on the interpretation of the clause “unless the mining claim or site has been determined, as of the date the fees were submitted, to be null and void, abandoned by law, or otherwise forfeited.” 43 CFR 3833.1-1(c) (2003). The regulation clearly requires a determination of claim invalidity before a refund can be allowed,^{2/} and the placement of the phrase “as of the date the fees were submitted” appears to indicate that the invalidity determination must have been made as of the date the fees were submitted for those fees to be refundable. In this case, the Nevada state court declared Recon’s claims null and void on July 28, 1995. See 1995 Judgment at 1. Recon therefore is entitled to a refund of the fees it paid after July 28, 1995, since the mining claims had “been determined, as of the date the

^{2/} The current refund regulation, 43 CFR 3830.22, does not require a determination that the claim is void:

“(b) BLM will refund maintenance and location fees if:

“(1) At the time you or your predecessor in interest located the mining claim or site, the location was on land that was not open to mineral entry or otherwise was not available for mining claim or site location; or

“(2) At the time you paid the fees, the mining claim or site was void.”

[post-July 28, 1995,] fees were submitted, to be null and void.” 43 CFR 3833.1-1(c) (2003).

The fact that the determination was made by the state court and not BLM does not undermine this result. The validity of Recon’s claims depended on whether it or Prichard had the right to possess their respective claims. The Department has no authority to determine the question of the right of possession to claims as between rival claimants; rather, the proper method for resolving such private party disputes is through a suit filed in court of competent jurisdiction, as was done here. See Primus Resources, L.C., 144 IBLA 364, 365 (1998); W. W. Allstead, 58 IBLA 46, 48 (1981); see also 30 U.S.C. § 30 (2000) (providing that adverse claims to patent applications must be resolved by a court of competent jurisdiction and that BLM shall issue a patent for the claim or portion thereof “as the applicant shall appear, from the decision of the court, to rightly possess”). We therefore reverse BLM’s decision to the extent it denied Recon’s refund request for the maintenance fees paid after July 28, 1995. ^{10/}

The refundability of the fees paid between September 24, 1990, and July 28, 1995, is more problematic. The preamble to the 1994 final mining claim maintenance fee regulations, which include 43 CFR 3833.1-1 (2003) (denominated in the proposed regulations as 43 CFR 3833.1-8), contains the following discussion:

One comment asked if fees or charges should be returnable if the claims are still shown as active on BLM records but have been voided or abandoned by operation of law, but for which a decision has not yet been issued. The answer is yes, if for some reason payments are made on such claims.

59 FR 44846, 44853 (Aug. 30, 1994).

This explanation appears to allow fee refunds for periods before issuance of a claim invalidity determination, at least in some circumstances, i.e., when claims are voided or abandoned by operation of law, and supports interpreting 43 CFR 3833.1-1(c) (2003) to permit refunds if the claims were invalid at the time the

^{10/} Regulation 43 CFR 3833.1(b) (2003) governing the refundability of service charges associated with FLPMA filings contains qualifying language similar to that of 43 CFR 3833.1(c) (2003), and our conclusions regarding the latter regulation also apply to Recon’s request for a refund of any service charges it might have paid for FLPMA filings. We note that the current regulations do not authorize refunds of service charges, except for overpayments. See 43 CFR 3830.22(a).

payment was submitted, regardless of when the determination finding the claims invalid was issued. See also 59 FR 24572, 24573-74 (May 11, 1994) (proposed 43 CFR 3833.1-8 (43 CFR 3833.1-1 (2003)) would allow refunds where a payment was made for a mining claim that was void by operation of law at the time the payment was made); cf. 43 CFR 3830.22(b) (omitting any reference to a determination of claim invalidity). BLM's statement in its March 3, 2003, memorandum requesting an opinion from the Field Solicitor's Office that its then current practice was to refund all fees since recordation, except service charges, when it issued a null and void decision on a mining claim also seems to endorse expanded fee refundability. Given the inconsistency between BLM's stated practice and its stance in this appeal, the absence of any explanation by BLM for this inconsistency, and the existence of plausible, alternative interpretations of 43 CFR 3833.1-1(c) (2003), we believe the best course of action is to set aside BLM's decision to the extent it denied Recon's request for a refund of payments made between September 24, 1990, and July 28, 1995, and remand the matter to BLM for further review. ^{11/}

[2] Recon's refund request also sought interest on the refunded payments. Interest does not accrue on a claim against the United States absent a statutory or contractual provision expressly authorizing the payment of interest. United States v. Louisiana, 446 U.S. 253, 264-65 (1980); Amerada Hess Corp., 128 IBLA 94, 98 (1993); Gordon L. Hardy, 106 IBLA 227, 229 (1988); Marathon Oil Co. (On Reconsideration), 103 IBLA 138, 142 (1988); Amoco Production Co., 101 IBLA 152, 153 (1988); Romola A. Jarett, 63 IBLA 228, 230, 89 I.D. 207, 208 (1982). Recon has offered no statutory or contractual authority for the payment of interest in this case, nor have we found any such authority. Accordingly, we affirm BLM's denial of Recon's request for interest.

^{11/} Although Recon maintains that its payments essentially were duplicate payments refundable in accordance with 43 CFR 3833.1-1(d) (2003), its claims and Prichard's claims, despite covering the same ground, were not the same claims, and its payments were not duplicate payments for the Prichard claims. We therefore reject Recon's contention that 43 CFR 3833.1-1(d) (2003) requires BLM to refund the claim payments.

Therefore, 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 in part, reversed in part, set aside in part, and remanded for further action consistent with this opinion. ^{12/}

H. Barry Holt
Chief Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge

^{12/} We note that, although BLM's decision affected 137 mining claims, the 1995 Judgment covered only 110 claims. Our decision impacts only those claims determined to be void by the state court in the 1995 Judgment.