



MADELAINE DURAND, *ET AL.*

188 IBLA 1

Decided June 6, 2016



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
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MADELAINE DURAND, *ET AL.*

IBLA 2015-244

Decided June 6, 2016

Appeal from a decision of the California State Office, Bureau of Land Management, declaring unpatented mining claims invalid. CAMC 260374 through CAMC 260379, CAMC 261310 through 261330, and CAMC 261333.

Affirmed; petition for stay denied as moot; motion for reconsideration of motion to intervene denied as moot.

1. Mining Claims: Possessory Right

Competing claims of ownership of mining claims must be resolved by a court of competent jurisdiction. BLM has no authority to resolve disputes among rival mining claimants about the possession of mining claims. A judgment issued by a court of competent jurisdiction that a claimant has no ownership interest in a mining claim and that the claim is invalid is a proper legal basis for a BLM decision that a mining claim is invalid, null, and void as of the date of the judgment.

APPEARANCES: Madelaine Durand, Edwin Durand, GEM Green Earth Minerals, Inc., and Michael Woods, *pro se*, Reno, Nevada; Nancy S. Zahedi, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE RIECHEL

Madelaine Durand, Edwin Durand, GEM Green Earth Minerals, Inc., and Michael Woods (Appellants) appeal and petition to stay the effect of a July 30, 2015, decision of the California State Office of the Bureau of Land Management (BLM) declaring 30 unpatented mining claims invalid. Because the ownership of the claims was determined by a court of competent jurisdiction, we find that BLM properly relied upon the court judgment to determine that Appellants' claims were invalid, and we affirm BLM's decision.

A California Trial Court Invalidated Appellants' Mining Claims

In April 1999, the Superior Court of California, County of Lassen, issued a judgment determining the rights of possession of the 30 placer mining claims at issue in this appeal.¹ The court determined that, as of April 1, 1999, Appellants Madelaine and Edwin Durand owned only 2 of 30 mining claims: Sierra Lady No. 164 and Sierra Lady No. 165.² The court determined that the 28 remaining claims at issue--Sierra Lady Nos. 101-109, 113, 116-117, 120, 123, 126, 129, 133, 136, 144-145, 147, 156-161, and 166--were invalid because they were situated on lands subject to previous location by other parties to the litigation.³

In 2015, an attorney representing Cal Minerals, Inc., a company holding mining claims and interested in seeking a mineral material sales contract from BLM on land that was subject to Appellants' claims, sent BLM a copy of the state court judgment.⁴ Based upon the state court judgment invalidating Appellants' claims, BLM issued a decision declaring all 30 of Appellants' unpatented mining claims "closed" (*i.e.*, invalid, null, and void).⁵ BLM subsequently issued a decision excluding 2 of the 30 claims from its previous decision, leaving 28 claims at issue in this appeal.⁶ Explaining the delay between the 1999 state court judgment and BLM's 2015 decision, counsel for BLM states that the Bureau was unaware of the private litigation or the state court judgment until it was brought to the agency's attention on May 7, 2015.⁷

¹ Judgment for Permanent Injunction and Determining Right of Possession to Mining Claims, *Syed M. Arif, et al. v. Edwin Durand, et al.*, Case No. 29224, in the Consolidated Court of the State of California in and for the County of Lassen (Judgment).

² *Id.* at 6, ¶ 3 (CAMC 261331 and 261332).

³ *Id.* at 10-11, ¶ 8 (CAMC 260374-260379, 261310-261330, 261333).

⁴ Notice of Motion and Motion to Intervene of [Interest] Income [] Partners, L.P., and Cal Minerals, Inc. at 3 (filed Sept. 25, 2015).

⁵ BLM Decision at unpaginated 1 (July 30, 2015); *see also* BLM Handbook H-3830-1, Administration of Mining Claims, Mill Sites, and Tunnel Sites at III-8 (Oct. 15, 2015) ("Once we have determined that a mining claim/site is abandoned and void, null and void, or otherwise forfeited, ... we will close the case record").

⁶ BLM Decision (Aug. 27, 2105) (included as Exhibit 5 to Appellant's NOA and Petition for Stay); *see also* BLM Answer to Statement of Reasons (Answer) (filed October 22, 2015) at 2 n. 1.

⁷ Answer at 3-4.

Appellants filed a notice of appeal and petition to stay BLM's decision declaring all 30 of Appellants' unpatented mining claims invalid. Because BLM's subsequent decision exempted 2 of the 30 claims from invalidation, we address only the remaining 28 claims in this appeal.

Appellants filed a statement of reasons (SOR) for their appeal, and BLM filed an opposition to the stay and an answer to the SOR. Cal Minerals, Inc. and Income Investment Partners, L.P. filed a motion to intervene, which the Board denied.⁸ Cal Minerals and Income Investment Partners seek reconsideration of that denial.⁹

The State Court Judgment Supports BLM's Decision

[1] The issue in this appeal is whether BLM erred in declaring Appellants' 28 mining claims closed as a result of the state court judgment. Under Federal law, competing claims of ownership of mining claims must be resolved by a court of competent jurisdiction.¹⁰ The Department of the Interior has no authority to resolve disputes among rival mining claimants about the possession of mining claims.¹¹ Accordingly, a judgment issued by a court of competent jurisdiction that a claimant has no ownership interest in a mining claim and that the claim is invalid is a proper legal basis for a BLM decision that a mining claim is invalid, null, and void as of the date of the judgment.¹²

⁸ Order (Oct. 8, 2015)

⁹ Notice of Motion and Motion for Reconsideration of Interest Income Partners, LP, and Cal Minerals, Inc. (filed Oct. 16, 2015).

¹⁰ *Recon Mining Company, Inc.*, 167 IBLA 103, 109 (2005); *Primus Resources, L.C.*, 144 IBLA 364, 365 (1998); *W.W. Allstead*, 58 IBLA 46, 48 (1981); *see also* 30 U.S.C. § 30 (2012) (in the context of adverse claims in patent proceedings, "a court of competent jurisdiction ... determine[s] the question of the right of possession").

¹¹ *Recon Mining Company, Inc.*, 167 IBLA at 109; *Primus Resources, L.C.*, 144 IBLA at 365; *W.W. Allstead*, 58 IBLA at 48.

¹² *See LaRue Burch*, 134 IBLA 329, 333 (1996) ("The findings of a state court on the right of possession are binding on parties to the lawsuit."); *W.W. Allstead*, 58 IBLA 46, 48 (1981) ("the Department is bound not to recognize the claim of the unsuccessful litigant in such actions."); *see also* 30 U.S.C. § 30 ("After such judgment shall have been rendered ... [and] certified by the register to the Director of the Bureau of Land Management, ... a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess.")

In this case, a court of competent jurisdiction issued the judgment determining that Appellants did not possess the 28 mining claims that are the subject of this appeal and consequently declared the claims invalid.¹³ Based on this state court judgment, BLM properly determined that Appellants' claims were no longer valid and declared them closed.

Appellants argue that the Board should reverse BLM's decision for several reasons. Appellants' primary argument is that BLM may not "enforce" a judgment that has expired under state law.¹⁴ In support of this argument, Appellants cite the California Code of Civil Procedure, which states that "a money judgment or a judgment for possession or sale of property" may not be enforced "upon the expiration of 10 years after the date of entry."¹⁵ This state law does not apply to BLM's decision.

First, the provisions of the state court judgment that BLM relied upon are not ones that require subsequent enforcement. The state court case was in the nature of a quiet title action or declaratory judgment, declaring the legal rights of the parties to that action.¹⁶ Each enumerated paragraph of the state court judgment declares the rights of the parties to the mining claims.¹⁷ At the end of the state court judgment, the court permanently enjoined Edwin and Madelaine Durand from entering the invalid claims and declared that they "own or possess no right, title, estate, interest or lien, whatsoever, in any of the [28] claims."¹⁸ The state court judgment was not "a money judgment or a judgment for possession or sale of property" that, for example, evicted Appellants from real property or awarded money to compensate for property damage, which are typically the kinds of actions that require post-judgment enforcement.¹⁹

¹³ Judgment at 10, ¶¶ 7 – 8.

¹⁴ SOR at 3-8.

¹⁵ CAL. CIV. PROC. CODE § 683.020(a) (Deering 2016); SOR at 3-4.

¹⁶ See CAL. CIV. PROC. CODE § 1060 ("Any person ... who desires a declaration of his or her rights ... in, over or upon property, ... may... bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises"); CAL. CIV. PROC. CODE § 760.020(a) ("An action may be brought under this chapter [Quiet Title] to establish title against adverse claims to real or personal property or any interest therein."); Judgment (titled "Judgment for Permanent Injunction and Determining Right of Possession to Mining Claims").

¹⁷ See Judgment at 2-11, ¶¶ 1-9.

¹⁸ *Id.* at 12.

¹⁹ See, e.g., CAL. CIV. PROC. CODE § 681.010 (provisions for enforcing judgments).

Judgments that only declare the legal rights of parties, like the one relied upon by BLM here, do not need to be enforced.²⁰

Second, even if the state court judgment could be enforced, BLM's decision is not an enforcement action. Instead, BLM's decision recognizes the court's declaration of the legal rights of the parties to that action, which bound those parties accordingly.²¹ The 1999 state court judgment was effective immediately and terminated Appellants' interest in the mining claims. BLM's 2015 decision only documents that event. Because BLM's decision does not enforce the state court judgment, the California Code of Civil Procedure provision cited by Appellants is inapplicable here.

Appellants also challenge BLM's decision relying on the state court judgment on the basis that the mining claims of the prevailing parties in the state court litigation were invalid and, further, those parties no longer own the claims at issue and therefore cannot enforce the state court judgment.²² These arguments are not relevant to BLM's decision. As BLM correctly notes, its decision is not contingent upon any competing rights others may have, or may have had in the past, to the claims at issue or conflicting mining claims.²³ BLM's decision addresses only the status of Appellants' claims.

Appellants' remaining arguments center on their belief that the state court judgment was improperly decided. Appellants argue that, because the state court judgment was incorrect, BLM should not give effect to it.²⁴ As mentioned above, federal law and our precedent make clear that this Board has no authority to determine the question of the right of possession to claims as between rival claimants.²⁵ Furthermore, the Board does not have jurisdiction to overrule the state court judgment. Consequently, Appellants' argument regarding the propriety of the state court judgment has no bearing on this appeal and does not provide a basis to challenge BLM's decision before this Board.

²⁰ See *Williams v. Spence*, 296 P.2d 577 (Cal. App. 2d Dist. 1956) (plaintiff is not entitled to enforce part of a judgment that declared his rights).

²¹ See *LaRue Burch*, 134 IBLA 329, 332-33 (1996) ("The findings of a state court on the right of possession are binding on parties to the lawsuit") (citing *Estate of Arthur C. W. Bowen*, 14 IBLA 201, 210, 81 I.D. 30, 33 (1974)); CAL. CIV. PROC. CODE § 764.030 (judgments in quiet title actions bind the parties to the action).

²² SOR at 8-12, 18-24.

²³ Answer at 7-8.

²⁴ SOR at 12-18.

²⁵ *Recon Mining Company, Inc.*, 167 IBLA at 109.

Conclusion

BLM properly relied upon the state court judgment to find Appellants' 28 unpatented mining claims invalid. Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,²⁶ we deny the appeal and affirm BLM's Decision as modified by the agency on August 27, 2015, to exclude the Sierra Lady No. 164 and Sierra Lady No. 165 claims. We also deny as moot Appellants' petition for stay and the motion of Interest Income Partners, LP, and Cal Minerals, Inc., to reconsider the denial of their motion to intervene.

/s/

Silvia M. Riechel
Administrative Judge

I concur:

/s/

James F. Roberts
Deputy Chief Administrative Judge

²⁶ 43 C.F.R. § 4.1.