

DAVID J. BARTOLI

IBLA 90-161

Decided April 29, 1992

Appeal from a decision of the Alaska State Office, Bureau of Land Management, that the record title interest in placer and lode mining claims AA-24982 et al. had been donated to the United States.

Vacated.

1. Administrative Authority: Generally--Conveyances: Interest Conveyed--Mining Claims: Title--National Park Service: Donations and Gifts

When unpatented mining claims have been donated to the National Park Service by quitclaim deed and the record before BLM discloses a dispute regarding the chain of title to the claims or the existence of encumbrances upon title to the claims, neither the regulations applicable to mining claim recordation nor the regulations governing acceptance of donated interests in real property authorizes BLM to adjudicate title to the claims and a decision purporting to do so is properly vacated.

APPEARANCES: David J. Bartoli, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

David J. Bartoli (Bartoli) appeals from an October 20, 1989, decision of the Alaska State Office, Bureau of Land Management (BLM), holding that

IBLA 90-161

Bartoli has no interest in named placer and lode mining claims because all interest in those claims had been donated to the United States by Douglas D. Kirk (Kirk).

The mining claims involved in this case are the Kennecott Glacier Nos. 1 through 5, Hidden Creek Nos. 1 through 12, and the Donahoe Peak Nos. 1 through 30, AA-24982 through AA-24998 and AA-25449 through AA-25478. These claims are situated in the Wrangell-Saint Elias National Park and Preserve, designated by Congress on December 2, 1980, see 94 Stat. 2377, 2381 (1980), and are specifically described as being in secs. 25 and 36, T. 3 S., R. 13 E., secs. 30 and 31, T. 3 S., R. 14 E., secs. 1 and 5, T. 4 S., R. 13 E., and secs. 6, 28, 29, and 33, T. 4 S., R. 14 E., Copper River Meridian, Alaska.

In March and May 1979, copies of the notices of location for the claims were filed with BLM pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1988). The location notices stated that the claims had been located by C. Gordon Burdick, d.b.a. the Burdick Resources Company (Burdick), in July 1973. Sheets attached to the location notices stated that the then-current owners of the claims also included Melvin N., Francis W., and Paul J. Barry, d.b.a. the Silver Star Mining Company. 1/

---

1/ In response to a BLM request, Melvin N. Barry indicated that the Barrys had purchased the Kennecott Glacier claims from Burdick in 1973, and that the location notices had been posted by him, at their insistence, in July 1973. The location notices for the Kennecott Glacier claims also reflected a June 1963 location date, which was presumably the date Burdick originally located the claims.

On September 6, 1984, BLM received a copy of a deed dated April 10, 1984, in which the Barrys, Richard R. Benson, and Helen Shannon, quitclaimed their interest in the claims to Douglas D. Kirk. <sup>2/</sup> BLM subsequently received a copy of another deed dated April 13, 1984, in which Burdick also quitclaimed whatever interest he then had in the claims to Kirk.

Other than the 1985 affidavits of annual labor filed September 30, 1985, there is nothing in the record indicating that BLM would have been aware that Bartoli had any interest in the mining claims before May 21,

1986. <sup>3/</sup> On that date, BLM received a notarized statement executed on May 19, 1986, by William O. Vallee (Vallee), a minerals title examiner and BLM-certified title abstracter. In his statement, Vallee states:

---

<sup>2/</sup> Kirk is named as the owner of the claims and president of the GoFur Mining and Development Company, Inc. (GoFur), on affidavits of annual labor, filed by Bartoli in 1984, and Bartoli is referred to as GoFur's "Alaska Operation Manager." In the 1985 affidavits filed by Bartoli, Kirk and Bartoli are listed as co-owners, and in the 1986 and subsequent affidavits and notices of intent Bartoli is named as the sole owner. <sup>3/</sup> On Nov. 29, 1984, BLM received a copy of a "Contract and Assignment" executed by Bartoli and Kirk in 1983. That document provided for assignment of "options" on the Donahoe Peak claims and other claims not involved here, from Bartoli to Kirk, and for Bartoli to assist Kirk in obtaining certain "mining rights." Id. at 1. The expressed purpose of the contract was to allow Kirk to conduct operations on the consolidated properties. Kirk agreed to pay 5 percent "of all operations pertaining to the mines" to a "designated trust account." Id. It is unclear whether Bartoli was the beneficiary, because the contract later says that no more than 5 percent "royalties" are to be paid to the "original claim holders." Id. at 3. At the time, the Donahoe claims were apparently owned by Burdick and the Barrys. Bartoli was to receive a salary and the reimbursement of all justified expenses. On Oct. 11, 1983, Bartoli submitted a copy of a June 17, 1983, handwritten "pre-contract agreement," in which Kirk agreed to give Bartoli 5 percent "of the total operation," but we are not sure what was meant by "total operation." In any case, the agreement provided that it would be replaced by a formal contract, which we assume to be the 1983 contract. Nothing in that contract indicates that Bartoli held an interest in the title to any of the claims.

"[I]n consideration of court testimony heard in the Alaska Superior Court, Case number 3AN-84[-]11463, Gofur Mining and Development Company, Inc. vs. David J. Bartoli, and pursuant to 30 U.S.C. 28 (1982), it is my opinion that David J. Bartoli is a valid Co-owner of [the] mining claims." <sup>4/</sup> (Emphasis added.)

An assignment from Kirk, acting personally and on behalf of GoFur, to Bartoli (Assignment) was attached to Vallee's statement. The stated reason for entering into the Assignment was partial settlement of the GoFur-Bartoli lawsuit. <sup>5/</sup> Paragraph 2 of the Assignment provides for payment of "five percent (5%) of any and all net profits realized from the sale of any of the [subject] mining claims, or sale of any ore or minerals produced from any ore extracted under said mining claims." <sup>6/</sup> Id. In furtherance of this intent, Bartoli was granted the right to inspect the claims and to audit Kirk's books regarding the claims. At paragraph 7 the Assignment provides:

In the event that Assignor shall determine that any interest they have in the above claims no longer ha[s] profitable value and it is their intention to forfeit any right or interest they may have in the above claims, they shall assign to Assignee any and all interest to the above claims that Assignor has, to the extent permitted by law.

---

<sup>4/</sup> In his May 1986 statement Vallee incorrectly refers to the claims as "lode" claims. The Kennecott claims are placer claims.

<sup>5/</sup> Paragraphs 1(H), 4, 8, and 11 of the assignment were evidently incorporated to comply with a Sept. 18, 1985, order by Superior Court Judge Milton M. Souter in GoFur v. Bartoli, supra, granting Bartoli's "Motion to Decide Assignment Language." A copy of the order was submitted to BLM on June 23, 1987.

<sup>6/</sup> The assignment includes other named claims and mines, and any other mining claims in the Wrangell Mountains, Chitina Recording District, owned by Kirk.

Id. at 2. Paragraph 8 of the same document provides that Kirk is to file all required reports regarding the claims, including annual affidavits of labor, and is to notify Bartoli if he intends not to do so. Finally, paragraph 11 provides that

any conveyance or sale of said mining claims shall be made in good faith in exchange for legal tender of the United States, or, if said claims are bartered, shall be a good faith exchange for goods having marketable title, and Assignee shall be entitled to a security interest on his portion of the value of net profit.

Id. at 3. The Assignment was executed by Bartoli on October 7, 1985, but the document in the file was not executed by Kirk. 7/

Also attached to Vallee's statement is an October 22, 1985, letter in which Bartoli notified Kirk that October 22 was the last day to "honor the \* \* \* settlement" of the lawsuit. In addition, Bartoli notified Kirk that he had "spent \$141.00 saving the unpatent[ed] claims from loss by [the] timely and correct filing of assessment [work affidavits] which was to be done by Kirk." 8/ Finally, Bartoli directed Kirk to notify him before November 1, 1985, whether Kirk intended to operate the claims in 1986, so that Bartoli could file timely operating plans if Kirk did not intend to do so. He also stated: "I will \* \* \* assume that if you do not plan to operate in 1986 following no operations in 1985, you are abandoning your

---

7/ We are not sure that Kirk signed the "Assignment." However, in his Nov. 30, 1987, memorandum to the National Park Service (NPS), the Deputy Regional Solicitor stated that Kirk signed that document on May 20, 1986.

8/ Bartoli filed the 1985 assessment year affidavits of annual labor. All of the affidavits stated that not less than \$100 per claim in assessment work had been performed by Kirk, Bartoli, and others.

interest in the claims. As per Page 6 of the court transcript and Paragraph 7 of the Assignment, I assume this would be your intent to forfeit."

On June 4, 1986, Bartoli filed a petition with BLM seeking to have BLM declare him the sole owner of the claims. Bartoli asserted that he and Kirk had been co-owners of the claims (Petition at 1), and Kirk had forfeited his interest to Bartoli pursuant to 30 U.S.C. § 28 (1988), when Kirk had failed to contribute his share of the expense of assessment work performed by Bartoli during the 1985 assessment year, after having received notice to do so in the October 1985 letter. 30 U.S.C. § 28 (1988) provides in relevant part:

Upon the failure of any one of several co[-]owners to contribute his proportion of the expenditures required hereby [\$100 worth of labor or improvements], the co[-]owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing \* \* \* and if at the expiration of ninety days after such notice in writing \* \* \* [he] should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made the required expenditures.

By letter dated June 26, 1986, the Deputy Regional Solicitor responded to Bartoli's petition on behalf of BLM, stating that BLM has no jurisdiction to resolve private-party disputes regarding ownership of mining claims, and thus has no right to resolve a dispute between co-owners involving the forfeiture provisions of 30 U.S.C. § 28 (1988). The Deputy Regional Solicitor correctly noted that these disputes must be resolved by the parties, and, if necessary, the parties must resort to a local court of competent jurisdiction.

On December 17, 1986, BLM received donations in the form of quitclaim deeds signed by Kirk on September 12, 1986. Kirk donated all of his right, title, and interest in the claims, if any, to the United States. By notice dated May 26, 1987, BLM, on behalf of the United States, accepted the donation of Kirk's interest in the mining claims, stating: "However, the case files will not be closed in order to protect whatever interest, if any, Mr. Bartoli has in these claims." This notice was also served on Bartoli.

On June 23, 1987, Bartoli objected to BLM's acceptance of the donation, contending that Kirk had no interest in the claims to donate to the United States. He specifically stated that the donation was prohibited by paragraphs 7 and 11 of the Assignment and by Judge Souter's September 1985 order incorporating paragraph 11 in the Assignment. He also asserted that Kirk's co-ownership interest terminated under 30 U.S.C. § 28 (1988), effective January 1, 1986.

In a November 30, 1987, memorandum the Deputy Regional Solicitor gave NPS his opinion regarding whether Bartoli had a title interest in the claims when Kirk made his donation to the United States. He noted that, under the forfeiture provisions of 30 U.S.C. § 28 (1988), Bartoli must have been a co-owner of the claims in order to have acquired the full title interest. After reviewing all of the evidence then before him, including documents submitted by Bartoli, the Assignment and Judge Souter's September 1985 order, the Deputy Regional Solicitor stated:

We cannot conclude from the available evidence that Bartoli is an owner of the claims under consideration. All that the

documents prove is that he has a right to certain royalties. If that is his only interest, he was never a co-owner and Kirk's donation passed complete title to the United States.

(Memorandum to the Regional Director, Alaska Region, NPS, dated Nov. 30, 1987, at 3).

However, because of lingering doubts regarding Bartoli's interest in the claims on the date of donation, the Deputy Regional Solicitor outlined three possible courses of action NPS might take to resolve the matter: (1) a BLM show cause order, (2) a Government contest, or (3) a quiet title action. <sup>9/</sup> He then recommended that BLM issue an order to show cause requiring Bartoli to demonstrate that he had a title interest in the claims at the time of donation.

By memorandum dated December 10, 1987, NPS formally sought BLM action to resolve the question of ownership pursuant to the Deputy Regional Solicitor's recommendation. By order dated May 2, 1989, BLM directed Bartoli to show cause why the claims should not "remain as a donation to the United States," affording him 30 days from receipt of

---

<sup>9/</sup> The Deputy Regional Solicitor's apparent uncertainty stemmed from the following stated concerns:

"Bartoli does have a statement from a title abstracter concluding he is a co-owner. The statement does not set out the basis for the conclusion but does raise the possibility that there are title documents we have not seen which support Bartoli's claim of ownership. There is, for one thing, the statement on the 1985 affidavits of annual labor that Bartoli and Kirk are co-owners. These affidavits are, however, signed only by Bartoli and could be self-serving. Along the same line, while the State court litigation has not resulted in a determination that Bartoli is a co-owner, it has also not yet resulted in a decision to the contrary." (Memorandum to the Regional Director, NPS, dated Nov. 30, 1987, at 4).

the order to submit evidence "that he has an actual title interest \* \* \* in the \* \* \* claims." BLM concluded: "Failure to respond within the time allowed will result in the mining claims being accepted as donated to the United States by the legal owner and the case files will be closed." 10/

Bartoli responded to BLM's show cause order on July 5, and again on October 11, 1989, voicing his opposition to BLM's acceptance of Kirk's donation of the mining claims. 11/ He argued that Kirk was not an owner of any of the claims at the time of the donation, reiterating his contentions that Judge Souter's September 1985 order, the Assignment, and 30 U.S.C. § 28 (1988), precluded Kirk from conveying a title interest in the claims.

Relying on the Deputy Regional Solicitor's November 1987 memorandum and the fact that Bartoli had submitted no additional evidence, BLM issued its October 1989 decision that Bartoli had no interest in the claims and that the record title interest in the claims had been donated to the United States. Bartoli has appealed the October 1989 BLM decision.

At the outset, we note the nature of BLM's October 1989 adjudication. BLM did not undertake that adjudication to determine whether the claims are valid under the general mining laws. That duty is clearly committed to the

---

10/ The record indicates that the May 1989 show cause order was sent to Bartoli's last address of record and was signed for by another individual on May 15, 1989. It is deemed to have been received on that date. See 43 CFR 1810.2(b); Lloyd M. Baldwin, 75 IBLA 251, 252-53 (1983).

11/ Bartoli also informed a BLM employee in July 1989 that he "would go speak to Judge Milton M. Souter to see about getting proof of title" (Memorandum to the files from Robert D. Merrill at 2). There is no record of Bartoli submitting additional evidence regarding this litigation.

Department. See Best v. Humboldt Placer Mining Co., 371 U.S. 334, 336-38 (1963); Ideal Basic Industries, Inc. v. Morton, 542 F.2d 1364, 1367-68 (9th Cir. 1976). Absent record evidence clearly showing invalidity, the validity of mining claims can be determined only through a contest proceeding, after giving notice to and affording all of the claimants an opportunity for a hearing. See Bruce W. Crawford, 86 IBLA 350, 376, 92 I.D. 208, 222 (1985). As validity was not in issue, a contest was not called for.

[1] In this case BLM was considering the ownership of the claims. When attempting to determine what Kirk had donated to NPS, BLM undertook an adjudication of Bartoli's interest in the claims and held that Bartoli held no record title interest. Thus, the decision purported to determine that Bartoli held no "title" interest in the claims. 12/ However when making this determination BLM also held that contractual rights held by Bartoli were not an encumbrance upon that title. 13/

Because the question adjudicated by BLM was one of the ownership acquired by NPS by and through a conveyance from Kirk, we will briefly

---

12/ Bartoli's claim of title is apparently based in part on his contention that he had acquired Kirk's co-ownership interest under the forfeiture provisions of 30 U.S.C. § 28 (1988). Bartoli points to no document constituting a conveyance of a title interest executed by Burdick, the Barrys, or Kirk placing him squarely in the chain of title. To be deemed the sole owner under that statute, one must first have been a "co-owner." See Turner v. Sawyer, 150 U.S. 578, 584-85 (1893); Repeater & Other Lode Claims, 35 L.D. 54, 56 (1906). We make no ruling on whether Bartoli held an interest under State law, State court action, or by an agreement.

13/ The "title" to real property includes encumbrances flowing with the land. Thus, if under state law some contractual right becomes an encumbrance flowing with the land, a party taking title by quitclaim deed will generally take title subject to that contractual encumbrance. See 4 American Law of Property §§ 18.78, 18.81 (1952).

describe the conveyance document. On September 12, 1986, Kirk executed a document titled "Donation," by which he donated or conveyed "all right, title, and interest, if any, in the [listed] mining claims" to the United States. This document is akin to a quitclaim deed, as no warrants are expressed, and the language of the document indicates that Kirk may not hold any interest in the claims. Kirk conveyed only what he had, and his conveyance was subject to any encumbrances that may have attached prior to conveyance.

No statutory basis for the donation or the acceptance of the donation was stated in either the donation document or the May 26, 1987, decision accepting Kirk's donation. However, we assume that the donation was made pursuant to the provisions of 16 U.S.C. § 6 (1988), which authorizes the Secretary of the Interior to accept property within various national parks. There are no regulations applicable to donation of land in 36 CFR Parts 1 through 199, the CFR parts applicable to the National Park Service, but the scope of the regulations found at 43 CFR Part 2110, and the actions of the parties clearly give support for the conclusion that those regulations are applicable to donations of real property under 16 U.S.C. § 6 (1988).

43 CFR Subpart 2110 addresses the Secretary's authority to accept gifts of property and Subpart 2111 sets out the procedures for offering and accepting a donation of real property. A common thread running through all sections of Subpart 2111 is the safeguards established to ensure that the offeror owns the property being donated free of any encumbrances or adverse claims by third parties. Under 43 CFR 2111.1,

an offeror must submit a statement "showing that [he] is the record owner \* \* \* of [the interest] so offered, free and clear of all encumbrances [, and] that there are no persons claiming the [interest] adversely to the offeror" when offering to convey an interest in land to the United States. BLM must then decide whether acceptance of the offer would be consistent with the public interest. See 43 CFR 2111.2. If BLM decides to accept, the offeror must submit a deed of conveyance of the interest offered, and an affidavit stating that he "has not conveyed or encumbered the [interest] in any manner from the time of making the offer up to and including the date of recordation of the deed." Id. (emphasis added). "Upon acceptance of the deed of conveyance, the lands or interests so conveyed will become property of the United States." 43 CFR 2111.4 (emphasis added).

This case involves the donation of whatever interest Kirk had in the claims at the time of conveyance, if any. There is no evidence that either NPS or BLM ever sought or received either the initial or the closing statements attesting to ownership of the interest conveyed, free of any encumbrances or adverse claims by third parties. 14/ The reason is clear. The conveyance document was so limiting that none was needed. Kirk conveyed only what he had, if anything, and whatever he conveyed remained subject to all outstanding encumbrances. BLM noted in its May 1987 notice accepting the donation that Kirk did not purport to convey his interest in the claims free of any encumbrances or adverse claims. It is also evident from the May 1987 notice that, when BLM accepted the donation of Kirk's interest in the

---

14/ The only documents submitted were the donation deeds executed by Kirk. See 43 CFR 2111.3.

claims, BLM was aware that Bartoli was exerting a claim against Kirk which may or may not affect Kirk's claim of title, that ownership of the claims was the subject of litigation in the state court, and that the title was encumbered by agreements. NPS had accepted Kirk's interest subject to encumbrances, contractual obligations, and outstanding court orders. The Department had been placed on notice of these facts by Bartoli's June 1986 petition claiming sole ownership under 30 U.S.C. § 28 (1988), and, more importantly, by Vallee's May 19, 1986, sworn statement regarding the proceedings in the Alaska Superior Court in GoFur Mining & Development Co. v. Bartoli, *supra*.

The conveyance did not preclude the possibility that Bartoli may have had an interest in the claims, the possibility that Bartoli might automatically acquire title to the claims by the terms of an outstanding agreement, or even the possibility that Bartoli was then the sole owner. Thus, we cannot say that appellant asserted, at the time of donation, a claim adverse to the interest actually conveyed by Kirk. Title to Kirk's interest together with any concomitant encumbrances upon Kirk's title became the property of the United States upon acceptance of the deed of conveyance.

BLM's May 1987 notice that it had accepted Kirk's donations expressly limited acceptance to "all right, title, and interest, if any, which [he] may have in the mining claims." Notwithstanding this fact, in 1989, at the insistence of NPS, BLM sought to adjudicate title (including the existence

of encumbrances on the title) by issuing a show cause order and its October 1989 decision. BLM thus attempted to remove any cloud or encumbrance existing at the time of Kirk's donation by requiring Bartoli to prove to BLM's satisfaction that the Department did not have unencumbered title to the claims. After concluding that he had failed to do so, BLM declared (presumably under Federal law) that Bartoli had no interest in the claims at the time of donation or thereafter and, that "all legal title to the \* \* \* claims was donated to the United States \* \* \* by the existing owner of record, Douglas D. Kirk" (Decision at 2 (emphasis added)). Crucial to the determination that Kirk had donated the complete legal title was the conclusion that appellant had no title interest at the time of donation or thereafter.

BLM's decision declaring the donation free and clear of any claim of ownership on the part of Bartoli was clearly beyond the authority granted under the regulations found at 43 CFR Subpart 2110. Those provisions authorize acceptance of donations and provide the mechanism to ensure that a donated interest is free of any third party adverse claims before acceptance of the donation. If the Department knowingly accepts a donation of property with a clouded title it accepts title subject to any existing adverse claims and encumbrances. There was no grant of authority to declare adverse claims of ownership invalid. This is exactly what BLM attempted to do when it issued a decision that Bartoli had no interest in the claims because Bartoli had not satisfied BLM that the unencumbered title had not vested in the United States.

Under certain circumstances, the Department does have authority to determine mining claim ownership (as opposed to the status of Federal lands). For example it has this authority when two parties claim ownership of a mining claim and BLM must decide whether one of the parties, who is a patent applicant, is entitled to patent. When there is a dispute between two parties claiming a title interest in a mining claim and patent is being sought, the conflicting interests do not constitute "adverse claim[s]" under 30 U.S.C. § 30 (1988). See Thomas v. Elling, 25 L.D. 495, 498 (1897). The Department may consider evidence to determine whether the mineral patent applicant is entitled to a patent. <sup>15/</sup> See E. J. Ritter, 37 L.D. 715, 717 (1909); Coleman v. Homestake Mining Co., 30 L.D. 364, 367 (1900); Thomas v. Elling (On Review), 26 L.D. 220, 221-22 (1898). This determination does not bar a subsequent action in the courts seeking title under the doctrine of constructive trust, however.

Notwithstanding this authority, the Department will, as a matter of policy, decline to intervene in private disputes, especially when a dispute requires interpretation of state law. See, e.g., Pat Reed, 119 IBLA 338, 342-43 (1991); Charles H. Dorman, 79 IBLA 209, 212 (1984); Nick DiRe, 55 IBLA 151, 154 (1981); Silver Lake Power & Irrigation Co. v. City of Los Angeles, 37 L.D. 152, 153 (1908). This policy extends to disputes

---

<sup>15/</sup> We can cite similar situations arising as a direct result of a pending patent application. See John R. Meadows, 43 IBLA 35 (1979); United States v. Logomarcini, 60 I.D. 371 (1949); Alice Firth Clark, 57 I.D. 244 (1941); Henrietta C. Steele, 53 I.D. 26 (1930); A. P. Smith, 3 L.D. 340 (1885). There is some question whether a co-owner need file an adverse claim, as he may later assert his equities in the patent title. See Thomas v. Elling, supra; Turner v. Sawyer, supra.

between parties claiming ownership of a mining claim when a patent application has been filed if one of the parties has resorted to judicial action. See Brown Land Co., 17 IBLA 368, 376-78, 81 I.D. 619, 622-23 (1974); Coleman v. Homestake Mining Co., *supra* at 367; Thomas v. Elling, 25 L.D. at 498. As the Acting Secretary stated in Coleman v. Homestake Mining Co., *supra* at 367:

[While not accepting] that this Department can not ascertain and determine for itself, in the absence of any judicial determination thereof, who among contending claimants under the same location is the owner of a mining claim for which a patent is being applied for, and therefore whether the applicant is entitled to a patent, it is deemed the better course for all concerned in a case like this, involving disputed claims under a local statute of limitations and questions of fraud due to a claimed secret understanding as to the effect of conveyances of undivided interests in a mining claim alleged to have been made without any consideration, that the parties be given an opportunity to litigate and settle the matter by appropriate judicial proceedings in the courts of the vicinity.

This policy of avoiding involvement in open disputes regarding ownership of a mining claim weighs even more heavily in favor of rejecting any responsibility for determining issues of title ownership when no patent application is pending. In this case the party claiming an interest as a co-tenant cannot assert his equities in the patent title, and the question of title clearly turns on the interpretation of State law, a matter which must ultimately be determined by a State court or by a Federal court applying State law.

We find no basis for concluding that the Department is somehow required to administratively resolve disputes regarding the ownership of an unpatented mining claim because one of the parties to the dispute has quitclaimed

whatever interest he may have, if any, to NPS. NPS accepted whatever title the donor may have held at the time of conveyance and the Department should not use that conveyance as the basis for making an assertion it should not have made if NPS had not been the beneficiary. Nor do we find it necessary or appropriate to address whether NPS may or may not be bound to abide by the terms and conditions of any contract pertaining to the claims by reason of its acceptance of Kirk's interest in the title to those claims.

Either of the other two courses of action proposed by the Solicitor's office is appropriate. BLM should have again declined to address the question of title on the administrative level until a final determination regarding the validity of the claims or until it receives the result of the final disposition of that question in the context of a quiet title action. 16/ Bartoli was given the proper response when BLM advised him that it would not issue the decision he sought. The same answer should have been given to NPS. Prior to conveyance to NPS, BLM had no authority to interpret State law and to issue a binding decision to resolve a dispute between rival owners of an unpatented mining claim. 17/ It gained no additional authority by reason of the quitclaim conveyance to NPS. The BLM decision must be vacated in its entirety.

---

16/ Should NPS desire to determine whether Bartoli has an interest in the claims, it may seek to have the Justice Department institute a quiet title action on its behalf. The court could then decide the extent of the NPS title. Bartoli could also institute a quiet title action. See Alice Firth Clark, supra at 251. In addition, BLM may also initiate a mining claim validity contest.

17/ When holding that BLM should not have declared Bartoli's interest in the claims invalid, we are not finding that Bartoli holds an interest in the claims. We expressly eschew any such analysis.

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 vacated.

---

R. W. Mullen  
Administrative Judge

I concur:

---

C. Randall Grant, Jr.  
Administrative Judge

IBLA 90-161