U. S. Department of the Interior
Bureau of Land Management

Originally issued 1992
Reprinted November 1998

Alaska State Office
222 West 7th Avenue, #13
Anchorage, Alaska 99513

Aguilar and Title Recovery Handbook for Native Allotments

TABLE OF CONTENTS

5. Sample Rejection Decision - Applicant Waived Right to Hearing
6. Standard Hearing Notice (Glossary 62a)
7. Sample Subpoena
8. Hearing Information - General (Glossary 729a)
9. Sample Decision - Allotment Found Valid
10. Sample Decision - Allotment Rejected Following Hearing
11. Standard Decision Following Hearing (Glossary 37a)
12. Standard Request for Voluntary Reconveyance (Glossary 266a)
13. Sample QCD From State
14. Sample QCD From Corporation
15. Sample QCD for Portion of U.S. Survey
16. Sample Request for Solicitor's Office to Initiate Suit to Recover Title
17. Sample Request for Fair Market Value
18. Sample Appraisal Opinion
19. Form 1510-18, Purchase Order Requisition
20. Sample Letter to Title Company
21. Sample Preliminary Title Opinion Request
22. Sample BLM Form 2200-5, Certificate of Inspection & Possession
23. Sample Level I Survey
24. Sample Request for Final Title Opinion
25. Sample Final Title Opinion
26. Sample Certificate of Allotment

Appendices

1. Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979)
2. Aguilar Stipulated Procedures
3. A Guide to Aguilar Proceedings
4. Ground Rules for Hearings
5. Regional Solicitor's Advice Regarding Accepting Affidavits at Hearing
6. Regional Solicitor's Opinion on BFP's, January 27, 1986
7. Regional Solicitor's Opinion on BFP's, May 1, 1987
8. Regional Solicitor's Opinion on BFP's, June 8, 1987
9. Regional Solicitor's Opinion on BFP's, February 1, 1991
10. Regional Solicitor's Opinion on Settlement and Release Agreements, June 24, 1991
11. Standard Wording for Agreements Reserving Oil, Gas and/or Coal
12. Standard for the Preparation of Title Evidence in Land Acquisition by the United States
13. List of Approved Title Companies
14. List of Costs for Title Insurance
15. Sample Court Approval of Settlement and Release Agreement

Alphabetical Index

Serial No._____

AGUILAR AND TITLE RECOVERY CHECK LIST

	YES	NO
A. DO THE AGUILAR PROCEDURES NEED TO BE FOLLOWED?		
1. Is the land conveyed or is there an Omnibus Road (aplt's. use predates road)?	____	____
2. Was there an adjudicative error made at time of the conveyance? (see definition in Chapter I.B.)	____	____
3. Was the allotment excluded from the conveyance in a different location and signed title affirmations (corps.) received or concurrence given (State)? (Chapter I.B.)	____	____
4. Was the allotment legislatively approved (title passed after Dec. 2, 1980 and other ANILCA criteria met)? (Chapter I.B)	____	____

If the answer to No. 1 is YES and to Nos. 2, 3, and 4 are NO, follow all the Aguilar procedures. If Nos. 2 or 4 are YES go straight to No. B.8. below. A YES to No. 3 does not require title recovery.

B. AGUILAR STEPS:		
1. Is the application legally defective? (Chapter II.B.)	____	____
If YES, reject application. Rejected_____		
2. Is the applicant deceased? (Chapter II.C.)	____	____
If YES, obtain probate order from BIA. Probate rec'd._____		
3. Does the applicant claim use and occ. began after a wdl. or segregation? (Chapter II.D.)	____	____
If YES, issue a Stip. 3 Letter. Letter issued_____		
4. Did applicant receiving a Stip. 3 letter submit evidence showing use prior to wdl. or seg.?	____	____
If NO, reject application. Rejected _____		
5. For all cases showing use and occ. prior to a segregation, issue Stip. 4 ltr (Chapter II.E.) Letter issued _____		
UNLESS: Titleholder has agreed to reconvey. If so, no Stip. 4 letter is necessary - proceed to Step 8.		
6. Is the preliminary conclusion that the apln. is valid?	____	____
If YES, send file to Regional Solicitor's office for opinion. (Chapter II.G.) Sent _____		
Does Solicitor's office agree? If so, proceed to Step 8	____	____
7. Is there insufficient proof of entitlement?	____	____
If YES, continue with the next steps:		
a. Is the parcel only partially on conveyed lands?	____	____
If YES, use Govt. contest proceedings and do not use the rest of Step 7 (Chapter II.H)		
b. Is a field examination necessary?	____	____
If YES, order a field exam		
Ordered _____ Received_____		
c. Issue a hearing notice (Chapter II.H.2.). Issued_____		

	YES	NO
d. Has applicant declined to have a hearing?	___	___
If YES, reject application. Rejected _____		
e. Hearing held:_____		
f. Issue decision based on written opinion of hearings officer (Chapter II.H.2.)		
Application rejected?	___	___
Application valid? If YES, proceed to Step 8.	___	___
8. Request the landowner to vol. reconvey if draft QCD not in file. (Chapter II.J.)	___	
9. Is there a settlement and release agreement (if needed) and draft QCD? (Chap. II.K.)	___	___
If YES, proceed to C.		
10. Has the landowner refused to reconvey or failed to respond to request? (Chapter II.L)	___	___
If YES, request Solicitor's office to initiate a suit. Requested _____		

C. TITLE RECOVERY

1. If landowner has indicated vol. recon. has the District been notified? (Chapter III)	___	___
2. Have you received the draft QCD, signed certificate of title (State), completed corporate resolution (corporation), executed settlement & release agreement (if needed)?	___	___
If YES, are all documents in acceptable order? (Chapter III.A.)	___	___
3. Has a prelim. title insurance or abstract been ordered (corp. or private entity)? (Chapter III.A)	___	___
4. If a corp., has Ak. Dept. of Commerce been contacted regarding corp. standing?	___	___
5. Has preliminary title opinion been requested? (Chapter III.A.)	___	___
Received_____		
6. Have all defects noted in preliminary title opinion been cured?	___	___
7. Has draft QCD been returned to titleholder for final?	___	___
8. Has the settlement & release agreement been approved by District Court, if necessary?	___	___
9. Has the cert. of inspection & poss. and haz. mat. report been requested? (Chapter III.B)	___	___
Received C. of I.&P._____ Received Haz. Mat. Report_____		
10. Has the executed QCD been received? (Chapter III.C.)	___	___
If YES, is the deed correct?	___	___
If YES, have Branch Chief accept title. Title accepted _____		
11. Copy of deed taken to Public Room to establish case file?(Chapter III.C.)	___	___
12. Has deed been sent to be recorded? (Chapter III.D.)	___	___
Received_____		
13. Has final title insur. policy or abstract been requested (corp. or private entity)? (Chapter III.C.)	___	___
Received_____		
14. Has copy of recorded deed been sent to titleholder w/ ltr. regarding acreage credit?	___	___
15. Has final title opinion been requested? (Chapter III.E.)	___	___
Received_____		
16. If all is in order, ISSUE CERTIFICATE OF ALLOTMENT (differences noted in Chapter IV)	___	
Send certified true copy of QCD to BIA Title Plant along with cert.	___	

CHAPTER I - INTRODUCTION

A. Background. In 1971, Ethel Aguilar timely filed a Native allotment application with the Department of the Interior. The Bureau of Land Management (BLM) rejected her application, along with seven others, because the lands for which these applicants applied were patented to the State of Alaska in the early 1960's. The Interior Board of Land Appeals (IBLA) affirmed BLM's decision in Ethel Aguilar et al., 15 IBLA 30 (1974), stating that even though a patent may have been issued by mistake, it vested title in the State and removed from jurisdiction of the Department of the Interior the right to inquire into and consider any disputed issues. The applicants challenged the IBLA decision in U. S. District Court.

In 1979, the District Court in Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979) (see Appendix 1), remanded the cases back to the Department of the Interior with instructions to adjudicate. In the decision, Judge von der Heydt held that use and occupancy prior to a State selection gave Native allotment applicants a preference right which was not eliminated simply because the State filed an application prior to the Native filing an application. (See Native Allotment Handbook, Chapter II. A. Effect of Filing a Native Allotment Application for more information on preference rights.) Therefore it was ruled that the Department of the Interior has a responsibility to determine whether land conveyed to the State of Alaska was mistakenly or wrongfully conveyed based on the fact that a Native allotment application, filed subsequent to the conveyance, claims use prior to the State selection application. The court ordered the Department to adjudicate the allotment claims and found that, if the allottees have a superior claim "it is the responsibility of the defendant [United States] to recover the land."

In 1983, the parties in the Ethel Aguilar case, agreed to Stipulated Procedures for the implementation of the 1979 order (see Chapter II and Appendix 2). These stipulations are the basis for the Aguilar procedures and guidelines set out in Chapter II of this handbook.

Title recovery is not always associated with the Aguilar process. It can be used in certain instances with Native allotments where following the Aguilar stipulations is not necessary (see below under B. Scope) or it can be used with other case types. Chapter III of this handbook is intended to cover all title recovery steps involving Native allotments. The 1985 Title Recovery and

Conveyance Correction Handbook is still current and should be used for all other case types and for document correction.

B. Scope. Although the Aguilar stipulations address the process for adjudication of Native allotment claims on land patented to the State, they also fulfill the due process requirements for adjudication of allotment applications in similar situations, such as land tentatively approved (TA'd) to the State, patented or interimly conveyed (IC'd) to a Native corporation, or patented to a private party. See State of Alaska v. 13.90 Acres of Land, 625 F. Supp. 1315, 1319 (D. Alaska 1985); State of Alaska v. Thorson (On Reconsideration), 83 IBLA 237, 254, 91 I.D. 331, 341 (1984). Therefore, the use of the Aguilar stipulations has been extended to all types of conveyed land.

Aguilar procedures will also be used for lands approved to the State under the Mental Health Enabling Act. These approvals must be treated like tentative approvals (see Tyonek Native Corp. v. Secretary of Interior, 836 F. 2d 1237 (9th Cir. 1988) and Solicitor's opinion of April 11, 1988).

The Aguilar procedures will not be used if title recovery is required due to adjudication error (e.g., failure to exclude a valid allotment with the correct location shown on the record at the time the land was conveyed to another party). In these cases, go directly to title recovery.

Aguilar procedures also do not apply if the allotment is on TA'd land in a core township.

If an allotment was excluded from a TA or an IC, and as a result of survey the legal description of the allotment has shifted within the TA'd or IC'd boundary, it is not necessary to follow the Aguilar process if the State concurs in or if the Native corporations affirm the TA'd or IC'd boundary, respectively, as excluding the allotment as surveyed. See Native Allotment Handbook, Chapter VIII. Title Affirmation/Concurrence, for special procedures in these cases.

If an allotment was not excluded from a conveyance but was legislatively approved pursuant to the Alaska National Interest Lands Conservation Act (ANILCA) (i.e. title passed from the United States after June 1, 1981 and all ANILCA criteria are met), do not follow the Aguilar procedures and proceed directly to requesting voluntary reconveyance (see Chapter II. J. Request for Voluntary Reconveyance). Since the applicant is not required to prove use and occupancy on a legislatively approved allotment, a stipulation no. (Stip.) 4 letter is not necessary.

C. Illustrations and Use of Standard Documents. Many documents included as illustrations in this handbook represent those glossaries most frequently used for Aguilar and title recovery cases. The illustrations also include sample decisions and other documents which have been issued. When preparing a document, adjudicators should refer to the most current Native allotment glossaries available. Most of the wording in the glossaries has been approved through coordination with the Office of the Regional Solicitor. However, changes are encouraged if they are necessary for a specific situation. Proposed changes to standard wording which will be used on a routine basis must be submitted to the Native Allotment Coordinator, who has the responsibility to finalize any changes with input from all the Branches.

CHAPTER II - ADJUDICATION

Adjudication of Aguilar cases is controlled by the 1983 stipulations. Therefore, the adjudicative process outlined in this chapter will be tied to the stipulations which are quoted verbatim in bold type. These stipulations can also be found in numerical order in Appendix 2.

The adjudication of all other issues involving a Native allotment case file should be completed prior to beginning the Aguilar process. These other issues would include notice of a proposed relocation or reinstatement (past closure possibly due to rejection or relinquishment) and subsequent decision accepting or rejecting the proposed relocation or reinstatement. These decisions are appealable to IBLA.

At the first indication that an Aguilar case might involve a potential bona fide purchaser or that there is occupancy of the land by someone other that the applicant, that case file is to be given the **highest priority**.

A. Notification Requirements.

Aguilar Stipulation No. 13

> **Copies of all notices sent to the applicant will be sent to Alaska Legal Services, applicant's private counsel, if any, the Bureau of Indian Affairs, and the State.**

The original of all notices or decisions sent pursuant to the Aguilar procedures will be sent to the applicant in care of either the applicant's private counsel or Alaska Legal Services Corporation (ALSC) (Anchorage office). If the applicant has private counsel, a copy of the documents will be sent to ALSC. Copies of the documents will be sent to the applicant (or the heirs) at his/her address of record and the Bureau of Indian Affairs (BIA) or its contractor. The party receiving the original conveyance from the government will be sent an original of the Stip. 4 letter, and a certified copy with original signature of a hearing decision; they will receive copies of all other documents, unless noted differently in the glossaries. If the State is involved, send the documents to the Title and Contracts Section of the Division of Land.

Aguilar Stipulation No. 14

> **If at any point the BLM becomes aware of the identity of a third party claiming an interest in the land, whether independently or through purported conveyance by the State, it shall afford the third party the same notice and procedural rights as those afforded the State under this stipulation.**

If any third parties claiming an interest in the land are identified at any time, those individuals or entities become parties to the action and will receive the same notification and service of documents as provided the original grantee (see above). Third parties are defined and discussed further in Chapter II. E. Stip. 4 Letter.

B. Legal Defects.

Aguilar Stipulation No. 1

> **The Bureau of Land Management (BLM) will review each allotment application file to determine whether there are any legal defects in the application. Legally defective applications which are incapable of being corrected will be rejected, and rejection by the authorized BLM official shall be final for the Department.**

In reviewing a case file for legal defects, the same rules apply that are used on regular Native allotment adjudication. The only difference is that when the application is rejected pursuant to Stip. 1, Aguilar is cited in the decision and the decision is final rather than appealable (see Illustration 1, Glossary 708a).

A legal defect refers to a situation where an application must be rejected for failure to comply with a provision of law or regulation. In these cases, there are no material issues of fact that can be resolved through an oral hearing and the evidence of record clearly supports the reason(s) for rejection.

Legal defects include applicant birth date or use and occupancy that postdates the effective date of a withdrawal or other segregative action or entry. The only exception would be if the withdrawal was subsequently revoked or modified to open the lands to Native allotment filings, and the applicant timely filed an application and used and occupied the lands at some point in time during the

opening. Another legal defect is assertion of independent use at the age of five or younger, if use commenced just prior to segregation of the land. Floyd L. Anderson, Sr., 41 IBLA 280, 86 I.D. 345 (1979). Before rejecting because use and occupancy did not predate a withdrawal or other segregative action, see Chapter II. D. Stip. 3 Letter.

If an application was originally rejected because the applicant's claimed use and occupancy did not predate a withdrawal or segregation, the application should not be (or should not have been) reinstated. These rejection decisions had a right of appeal and if the applicant did not take advantage of that right or pursued an appeal unsuccessfully, the decision is final under the doctrine of administrative finality (see Native Allotment Handbook, Chapter II. B. 7. a. Properly Closed Files). See also Franklin Silas, 117 IBLA 358 (1991). If the applicant does not claim use prior to a segregative action and the case file has been reopened, issue a rejection decision pursuant to Stip. 1.

Rejection of a legally defective application under stipulation 1 of Aguilar is final for the Department. Therefore, a statement to that effect must be included in the decision and no appeal period is given.

C. Deceased Applicants.

Aguilar Stipulation No. 2

> **Where an applicant whose application is not rejected pursuant to paragraph 1 of this stipulation is deceased, the Office of Hearings and Appeals will determine the applicant's heirs before BLM proceeds.**

A verification of death should be of record for deceased applicants; a written statement from BIA is sufficient. Do not have a copy of the death certificate in the file (see Native Allotment Handbook, Chapter X. B. Deceased Applicants). If the file does not contain verification of death, request it from BIA. Stipulation 2 requires a determination of the applicant's heirs by the Office of Hearings and Appeals before BLM proceeds further with the procedures. This determination should be obtained through BIA. Since probate orders can be confusing at times, verify that the order lists actual heirs and not only potential ones. Once heirs have been identified, they should be included on the distribution list, both individually and through their attorney of record, if any, with all notices and decisions.

If the titleholder has indicated it will reconvey 100% of the title (no easements, oil or gas, etc. reserved) and no settlement and release agreement is necessary, request probate but proceed with the title recovery process without waiting for probate to be received.

D. Stip. 3 Letter.

Aguilar Stipulation No. 3

Where the merits of the application turn on whether the applicant's use and occupancy predate the commencement of the rights of the State, the BLM will examine the file. The examination, and all further proceedings until a federal court action to cancel the State's patent is initiated, shall be for investigatory purposes only and shall not constitute an administrative agency adjudication of the rights of third parties. If the application and contents of the file indicate that the applicant's use and occupancy began after the rights of the State arose, the BLM will inform the applicant by letter of the date of commencement of the State's rights and that the application will be rejected unless the applicant files an affidavit within ninety days alleging, with particularity, specific use prior to the date on which the rights of the State arose.

Under stipulation No. 3, if the case file indicates that the applicant's use and occupancy began after the withdrawal or segregation of the land, the applicant will be informed by letter and given 90 days to provide evidence of specific use prior to the date of withdrawal or segregation (Glossary 63a).

If the applicant does not allege use prior to a segregative action, issue a rejection decision pursuant to Stip. 1 (see Chapter II. A. Legal Defects, above). Again, no appeal right is given.

E. Stip. 4 Letter.

Aguilar Stipulation No. 4

If the application and contents in the file indicate that use and occupancy began before the State's rights arose, or if an affidavit to that effect is received pursuant to section 3

of this stipulation, the BLM will send a letter to the applicant informing the applicant that based upon the file, it appears that the application may be found valid. The letter will invite any additional evidence such as witness statements and photographs, which the applicant may wish to present to bolster the claim. At the same time, the BLM will send a letter to the State stating that it appears that the application may be found valid and inviting any evidence or comments the State may have to dispute the claim of the applicant. Both the State and the applicant will have ninety days to respond.

If the titleholder has indicated it will reconvey the land to the United States or directly to the applicant, it is not necessary to issue a Stip. 4 letter (see Stips. 10 and 11 and Chapter II. J. Voluntary Reconveyance).

If the titleholder has not indicated it will reconvey and there are no legal defects, issue 90-day Stip. 4 letters to the applicant and all other interested parties (see Illustration 2, Glossary 699a).

The letter gives the applicant an opportunity to submit information to bolster the claim, while other parties have the opportunity to submit information to dispute the claim. Send a sketch map and/or USGS quad map to each party to show the location of the claim.

The 90-day comment period can be extended, if so requested, and all relevant evidence must be considered even if it received after the 90-day deadline. There is no legal authority authorizing the BLM to ignore late filed evidence or to reach any presumption due to the lack of a timely filing.

Before the letters are prepared, the party that appears to have jurisdiction over the lands should be contacted to determine if interests in the lands have been transferred to third parties (stipulation No. 14). If the party/parties cannot be contacted by telephone or fail to respond within a reasonable period of time, send them 90-day Stip. 4 letters and then follow up with 90-day Stip. 4 letters to any third parties identified in their responses. If there is indication the original titleholder has transferred its interest in the land, it may be necessary to verify who the current landowner is by either contacting the tax assessor (if land is in a taxing area) to find out who is paying taxes on the property or by researching the recording office records.

Also, review any IC's or patents issued to Native corporations to determine if there were any State-created third party interests on land previously tentatively approved to the State.

Enclose a guide to the Aguilar procedures (Appendix 3) in all 90-day letters sent to third parties.

In the event there is a question as to whether all parties have been contacted, a notice to unidentified third parties should be published once a week for four consecutive weeks in a newspaper closest to the land. The final date for submission of information (90 days from first publication) should be specified in the notice. (See Illustration 3).

Third parties are those individuals or entities other than the original nonfederal titleholders who now hold a property interest in the lands. Identifying the original grantee and the current owner(s) are the most important steps. It is not critical to research for owners between the original grantee and current owner unless there is some indication this entity reserved any property interests.

"Property interests" may also include less than fee interests, such as leases, rights-of-way, pipelines, telecommunication lines, etc. These less-than-fee interests will not be found on the master title plat (MTP) unless the interest was created while the land was still in Federal ownership. A review of the State's status plats may help reveal many of these interests. The State usually informs BLM of any State created interests in response to the 90-day letter.

F. Reviewing Evidence of Use and Occupancy. After the expiration of the 90-day period, or any extension of that period, review the entire case file to determine if the applicant has met the requirements of the 1906 Native Allotment Act. See Native Allotment Handbook, Chapters III. C. Use and Occupancy, III. D. Abandonment and Cessation of Use, and V. C. Under Act of 1906 for guidance. The fact that the applicant and/or interested parties did not respond to the 90-day letters is not reason enough to find the application valid or invalid.

G. Finding Application Valid.

Aguilar Stipulation No. 5

If, either because no comments or evidence are received questioning or disputing the claim of the applicant or, if on the basis of the case file and comments and evidence

received, the BLM concludes that the application is valid, the BLM will find the application valid and refer the matter to the Solicitor's Office for settlement or referral to the Department of Justice.

If, through the review of the case file, the adjudicator has preliminarily concluded that there is sufficient evidence to support the application, send the case file to the Regional Solicitor's office for a legal opinion on whether the evidence meets current legal standards for the granting of the allotment (see Illustration 4, Glossary 64a). To be acceptable, there must be at least minimally sufficient evidence to support the claim to the allotment. Evidence which would be insufficient if it was disputed, may be sufficient if it is undisputed and also minimally establishes entitlement to the allotment (e.g., a statement by applicant that he generally used and occupied the land would probably not be sufficient if the claim was specifically disputed by knowledgeable witnesses). If the Regional Solicitor's office finds that the evidence is legally sufficient, it will so advise BLM and delegate to BLM the authority to seek voluntary reconveyance set forth in Aguilar Stipulations 5 and 8. If the Regional Solicitor's office wishes to pursue reconveyance themselves, it will specifically advise BLM of that. See Chapter II. J. Voluntary Reconveyance.

H. Finding Insufficient Proof of Entitlement.

Aguilar Stipulation No. 6

If the BLM concludes that the applicant has failed to provide sufficient proof of entitlement, the BLM will conduct a hearing. The applicant will be notified of the hearing date and the reasons for the proposed rejection. The hearing will be informal with a designated BLM decision maker as the presiding officer. The presiding officer may ask questions, and the applicant and the State shall have the opportunity to present evidence and cross-examine witnesses. The hearing will be taped, but not necessarily transcribed by BLM. Based on evidence presented at the hearing or contained in the case file, the BLM presiding officer will make a decision to reject or refer the claim to the Solicitor's Office, which decision shall be final for the Department, provided that the hearing examiner may not rely on any matter not admitted in

evidence at the hearing to reject the application.

Aguilar Stipulation No. 7

The BLM shall have discretion to order a field report before a hearing, in order to gather evidence or to more accurately determine the location. All parties referenced in paragraph 13 of this Stipulation shall be notified of the field exam, given the opportunity to be present, and provided a copy of the report.

Pursuant to Aguilar Stipulation No. 6, if it is concluded that the applicant has failed to provide sufficient proof of entitlement, a hearing will be held before a hearings officer, who will be an employee of either BLM or the Office of Hearings and Appeals (OHA) pursuant to delegation from BLM.

If a parcel is partially on lands conveyed out of U. S. ownership but a hearing is needed on the entire parcel, use the Government contest proceedings for the entire claim (see Native Allotment Handbook, Chapter V. D. 1). Alert the Regional Solicitor's Office that a portion of the parcel is Aguilar both in the transmittal of the proposed complaint and in the file sent to them once the complaint and answer is sent to OHA.

An applicant may waive the right to a hearing. If this happens be sure BIA has concurred. Applicants who waive their right to a hearing will have their applications decided on the existing record which will normally result in rejection. (See Illustration 5 for a sample decision). There is no right of appeal.

1. Field Examination.

If it is determined a supplemental field examination is necessary prior to the hearing, request one from the appropriate district office pursuant to Stip. 7. (The original field examination must be accomplished prior to the initiation of the Aguilar procedures.) The district will notify all parties referenced in Stips. 13 and 14 (Chapter II. A. Notification Requirements) of the examination. Upon receipt of the field report in adjudication, provide a copy of the report to all parties.

2. The Hearing Process.

If an Aguilar hearing will be held, issue a hearing notice (Illustration 6, Glossary 62a), citing all the reasons for the proposed rejection (e.g., failure to demonstrate 5 years of substantial, actual use and possession of the lands as head of household or independent person, at least potentially exclusive of others, and not merely intermittent use; cessation of use which permitted the land to return to an unoccupied state).

If the case file indicates the possible existence of a bona fide purchaser (BFP), a hearing should also be held. When scheduling a hearing due to the possible existence of a BFP, the hearing notice should contain reference to the possible existence of the BFP and a statement that since the question of the existence of a BFP is closely related to the question of the applicant's use and occupancy of the land and the validity of the application, the applicant should introduce all additional evidence regarding use and occupancy of the land and entitlement to the allotment, as well as rebutting evidence presented by the potential BFP. There should be no separate hearing on the validity of the application. See Chapter II. I. Bona Fide Purchasers for a detailed discussion of the subject.

The hearing notice normally will not specify any dates or times. It will state that if the applicant fails to appear at the hearing or requests in writing (with concurrence of BIA) that a hearing not be held, a decision will be issued based on the existing record.

Notice will be given by certified mail to the applicant or to the heirs of deceased applicants; ALSC; applicant's private counsel, if any; BIA or its contractor; the State or any other non-federal title holder; and any known third party claiming an interest in the land.

Send a copy of the hearing notice to the hearings officer, if the hearing is to be conducted by BLM, and to the Native Allotment Coordinator.

The Native Allotment Coordinator will coordinate the hearing schedules. This will be done with input from the branches as to priorities. Any case involving a potential bona fide purchaser will be given highest priority. A list of the proposed hearing cases will be set

up, identifying allotments in order of priority (and geographic area), and containing at least twice the expected number of hearings to be held during a given time frame (i.e. the fall hearing schedule). Applications referred for hearing should include only those that have been processed through the Aguilar steps up to the point of hearing (i.e. probate orders received, screened for legal defects, 90-day letters issued, hearing issues determined). The list will be given to BIA and the State (if the State is involved in any of the hearings) at least 5 months ahead of the time planned for the hearings. Give BIA and the State a certain time frame in which to work together to see if any settlements can be agreed to. If there are any other landowners, they should also be contacted to see if there can be a settlement. If a meeting is necessary, schedule it with all parties attending. Once it is determined which allotments will have to go to a hearing, the list of case files can be finalized.

If at any time after the hearing notice is issued and prior to the hearing, there is written notification filed by the applicant, the heirs, or the applicant's attorney that the applicant will not attend the hearing, issue a formal notice, copying all parties, stating the hearing is cancelled and a decision will be issued based on the evidence in the record. If notification is received so close to the hearing date that cancellation is impractical, notify all parties that the hearing will be held.

If the applicant has not declined to have a hearing, the hearings officer (if BLM employee) or the BLM Coordination Staff (if OHA judge is hearings officer) will:

a. In consultation with BIA or its contractor establish a date and location for the hearing that is convenient for the parties.

b. Locate and arrange for a facility to conduct the hearing in consultation with BIA or its contractor.

c. Retain the services of a registered professional court reporter. If there is no existing contract, submit a requisition to procurement at least 2 months prior to the hearing. Associated per diem and transportation costs for the reporter will be at the BLM's expense.

d. Arrange travel and lodging for the court reporter, hearings officer and support staff.

e. Once the above arrangements are finalized, obtain the original case file and a dummy case file (if OHA is involved) from the adjudicator and issue a notice naming the location, date and time not less than 30 days following the date of the notice. When an OHA judge is the hearings officer, send him/her a copy of the hearings notice along with the dummy case file. The original case file will be given to the judge prior to the hearing.

The adjudicator will make a dummy file which will be bar coded and kept in the office when the original file is taken to the hearing. If an OHA judge is the hearings officer, this means two dummy files will be made unless the judge is asked to bring the dummy file with her/him and left here while the hearing is being conducted.

Pre-hearing meetings will be arranged, if needed, by the hearings officer. If an OHA judge is the hearings officer, arrange a meeting or teleconference between the judge and other parties the day prior to any hearings being held. If subpoenas are necessary, they will be issued by the hearings officer (see Illustration 7). If a hearings officer is unavailable when a subpoena is requested to be signed, the DSD, Conveyance Management has the option of signing.

The hearings officer will conduct the hearing. The hearings officer should pass out the ground rules (see Appendix 4) and may also wish to pass out hearing information to those attending the hearing. Glossary 729a (Illustration 8) may be used for this purpose, although it is optional. The proceedings of the hearing shall be recorded verbatim by the court reporter, transcribed and made part of the record. The record shall include a showing of the names and addresses of all interested parties who appeared and testified at the hearing. Each party shall pay for its own copy of the transcript. The original copy of the transcript will be filed in the official BLM case file.

All oral testimony shall be under oath and witnesses shall be subject to cross-examination. The hearings officer may question any witness

and may curtail irrelevant or repetitive testimony. Affidavits may be accepted at a hearing; however some discretion is necessary. See Appendix 5 for Regional Solicitor's Office advice.

At the commencement of the hearing, the hearings officer will state for the record the case name and case file number, the identity of the parties participating in the hearing, and the reasons for the proposed rejection as set forth in the notice of hearing. The hearings officer shall introduce the entire BLM case file as evidence for the record of the hearing, shall identify the most recent document in the case file and shall instruct the court reporter that the case file need not be copied and attached to the transcript. The applicant will present his/her evidence (including testimony from others) on the facts at issue, following which the titleholder and other interested parties will be given the opportunity to present their evidence (including testimony from other witnesses). Documentary evidence may be entered and received as exhibits if pertinent to any issue. All parties will have the right to cross-examine and rebut.

It must be emphasized that the stipulated hearing process is informal and therefore any procedural guidelines are general in nature. Furthermore, at any time before, during or after the hearing, the parties may decide to settle the case. The hearings officer should not be involved in any settlement negotiations.

Written briefs addressing the issues and evidence introduced at the hearing may be filed by the applicants, their legal counsel, or other interested parties of record. All briefs must be filed with the hearings officer no more than 30 days after the hearing date or by a date set by the hearings officer. Extensions of time for filing of post-hearing briefs may be granted by the hearings officer upon request in writing.

The ultimate burden of proof as to entitlement to a Native allotment rests with the applicant. The applicant must prove entitlement by a preponderance of evidence. The question of the potential existence of a BFP is not an issue of entitlement and is not an issue where the applicant has the burden of proof. For BFP issues, the Aguilar hearing is used as an opportunity to hear evidence from all parties. See Chapter II. I. Bona Fide Purchasers.

Following the filing of post-hearing briefs, the hearings officer will

write an opinion analyzing the law and evidence and recommending that the application be found valid or be rejected. See Illustrations 9 and 10 for sample opinions, formerly called decisions and formerly including BLM's decision on the validity of the application. A draft of all opinions written by a hearings officer shall be submitted, along with the case file, to the Regional Solicitor's office, through the Paralegal Specialist, Branch of Coordination (961), for review for legal sufficiency prior to signature and circulation. After the Regional Solicitor's office reviews the opinion, that office will forward the opinion to the hearings officer, through the Paralegal Specialist, for appropriate action.

Once the signed opinion is received, the adjudicative branch shall issue a decision either finding the application valid or rejecting the application (see Illustration 11, Glossary 768a). If the Regional Solicitor's office has concurred in an opinion that an application is valid, that office will advise BLM to pursue voluntary reconveyance pursuant to the authority of Stipulations 5 and 8, if a validity decision is issued unless that office wishes to pursue reconveyance itself. A copy of each decision must go to the appropriate District office. All decisions are final for the Department.

If a hearing has been held to also determine the existence of a BFP, the opinion must include both the recommendation as to validity of the allotment based on evidence of use and occupancy, and the determination of the existence of a BFP. Both findings of validity (or invalidity) and the facts showing a BFP should be clearly and fully articulated and explained. If the hearings officer recommends the allotment be found valid and there is a BFP, the opinion will state the findings of validity but not recommend title recovery because of the BFP. The decision that is issued will terminate title recovery procedures and close the case.

I. Bona Fide Purchasers. For purposes of Aguilar reviews, a BFP is someone who purchases real property in good faith for valuable consideration without knowledge of any defects and who did not acquire title directly from the United States. Knowledge can be actual, implied or constructive. See the Regional Solicitor's Office opinions dated January 27, 1986, May 1, 1987, June 8, 1987 (Appendices 6, 7, and 8, respectively) and October 8, 1990 for in-depth discussions on the criteria for determining bona fide purchasers.

If the record indicates that the present owner appears to be a BFP, a hearing will be required in order to afford both the applicant and the potential BFP the opportunity to present evidence either supporting or refuting the BFP status. See Chapter II. H. 2. Hearing Process, for wording to use in the hearing notice. "No one is categorically a BFP. Rather, any party who has acquired property from the original patentee is a potential BFP. A case specific factual determination is always necessary to decide if a party actually qualifies for the BFP defense" (emphasis in original). (Solicitor's opinion dated May 1, 1987, Appendix 7.)

The existence of a BFP is not an element of allotment validity and does not mean the applicant was not "entitled" to an allotment. However, as stated earlier, the question of the existence of a BFP is closely related to the questions of the applicant's use and occupancy of the land.

A purchaser who receives a deed from the federal Townsite Trustee is receiving land directly from the federal government and does not qualify as a BFP (see Aleknagik Natives Ltd. v. Andrus, 648 F.2d 496, 502 (9th Cir. 1980); Ouzinkie Native Corporation v. Watt, Civ. No. A80-196 (D. Alaska 1984).

Village corporations within the Cook Inlet Region which have received title pursuant to a reconveyance from Cook Inlet Region, Inc. (CIRI) under the Terms and Conditions for Land Consolidation and Management, ratified January 2, 1976 by P.L. 94-204, as amended, 43 (U.S.C. 1611 n) are not BFPs. CIRI received a patent from the United States on its own behalf and as agent for the village corporation.

Furthermore, the University of Alaska may or may not be a BFP depending on the situation. Lands granted to the State under the Act of January 21, 1919, were held in trust for the University and the State was simply a "conduit" when it transferred title to the University. Therefore, in this case, the University is not a BFP. There could be other situations (i.e. the University purchased recreation land from the State) where the University would be a BFP. See Regional Solicitor's opinion of February 1, 1991 (Appendix 9).

When the case file discloses the possible existence of a BFP, a hearing should be held following the procedures set forth in Chapter II. H. 2. The Hearing Process.

J. Request for Voluntary Reconveyance. Voluntary reconveyance or the request for voluntary reconveyance can occur at three different times:

1. **Aguilar Stipulation No. 10**

> **If at any time the State wishes to quitclaim all of its interest in the land and tenders a valid and appropriate deed, the United States shall accept the quitclaim and issue an allotment to the applicant, and the acreage shall be credited to the State entitlement under which the lands were originally conveyed. Provided, this paragraph shall not apply to any application which would be determined invalid for legal defects as described in paragraph 1.**

According to the above stipulation, if at any time the landowner wishes to quitclaim the land, BLM will accept reconveyance, unless there are any legal defects. It is not necessary to determine the validity of the allotment; it is necessary only to ensure there are no legal defects. The landowner must, however, reconvey the land the applicant applied for; it may not substitute other land. (Currently there is proposed legislation before Congress that will allow the State to substitute different lands with the concurrence of BIA and the applicant.) The landowner may negotiate some type of settlement with the applicant. See Stip. 11 and Chapter II. K. Settlement and Release Agreements, for an in-depth discussion.

If there is evidence that a direct conveyance to the allottee from the titleholder has been proposed, check with BIA or its contractor on the status of negotiations. A direct conveyance will probably not be a routine alternative since the allotment would not then contain the normal restrictions. However, if it appears that a direct reconveyance is likely, try to ensure that relinquishment of the Native allotment application is included as part of the settlement. This will require the approval of BIA. Then close the case and clear the records. If a relinquishment cannot be obtained, get a copy of the settlement agreement and issue a notice closing the file due to the settlement.

2. Voluntary reconveyance can be requested if the allotment was legislatively approved. This can occur if the land was conveyed out of U.S. ownership after December 2, 1980 (the date of ANILCA). Furthermore, all the criteria of ANILCA have to have been met. Ninety-day letters are not needed in these situations. Request voluntary reconveyance stating that the allotment was legislatively approved (do not state that the allotment was valid).

3. Voluntary reconveyance can also be requested once an allotment has been determined valid, with or without a hearing. See Chapter II. F. Reviewing Evidence of Use and Occupancy and Chapter II. H. 2. The Hearing Process. Be sure to always refer to the claim as being valid, not approved, because technically an allotment cannot be approved when the land is not federal land.

Aguilar Stipulation No. 8

The Solicitor's Office will attempt to settle the allotment claims referred to it by BLM, by requesting a quitclaim of the land from the State.

The Solicitor's office will indicate to BLM which office should request voluntary reconveyance. The majority of the time, BLM will request it.

When BLM is requesting voluntary reconveyance, issue one of several letters established for this purpose. See Illustration 12, Glossary 266a as an example of the letter that is issued to the State if a claim is found valid prior to a hearing. Other glossaries, not made a part of this handbook, include the following:

Glossary 710a: to State after a hearing
Glossary 728a: to State for Fanny Barr claim
Glossary 747a: to Native corporations for Fanny Barr claim
Glossary 757a: to Native corporations after a hearing
Glossary 758a: to Native corporations prior to a hearing.

The letter requesting voluntary reconveyance must also request permission to go on the land to survey the allotment and to make a field check for the completion of the certificate of inspection and possession and a hazardous material survey. Permission to go on the land and the agreement to reconvey must be approved by an authorized officer of the State or corporation. The permission and agreement from a corporation must be accompanied by a corporate resolution authorizing the signing officer(s) to grant such permission or make such an agreement.

The letter must also specify that compensatory acreage will be allowable (unless the titleholder retains a portion of the title, i.e. State or regional corporation retains oil and gas). Compensatory acreage is only available where there remains acreage to be conveyed in the account. There may be exceptions to the compensatory acreage provision for lands conveyed to Cook Inlet Region, Inc. and village corporations therein through certain provisions of the Terms and Conditions for Land Consolidation and Management, ratified January 2, 1976,

by P. L. 94-204, as amended, 43 U.S.C. 1611 n.

The titleholder should also be asked to give a preliminary indication that they still own the property and what, if any, third party interests may have been created, including use of the land as collateral. It may not be possible to accept a quitclaim deed (QCD) if substantial third party interests have been created.

The landowner should be asked to take no further action to alienate the land or permit uses of it. If the land is presently affected by legal problems, resolution or advice should be sought before title recovery action is initiated.

Include a copy of the permission to go on the land with any request for survey or field check.

The request for voluntary reconveyance will also set out that the titleholder's reconveyance package should consist of the following: a draft QCD and a completed certificate of title (State) or completed corporate resolution (Native corporations) authorizing reconveyance and specifying who may sign the QCD. The QCD must be made out to the "United States of America and its Assigns," be unsigned, contain no reservations or exceptions not authorized by law or approved by BLM, and recite the true consideration (i.e. state that the true and actual consideration paid in terms of dollars is zero). The QCD must also contain a statement, after the description, that the land is being acquired for administration by the Bureau of Land Management. If from a Native corporation, the draft QCD must also include a corporate acknowledgement. The grantor's address must appear somewhere on the deed. See Illustrations 13 and 14 for sample QCD's.

If the titleholder will voluntarily reconvey the land, the process may include negotiations with the Native allottee. See Chapter II. K. Settlement and Release Agreements for further discussion.

If the State is considering reconveying the land, it publishes a best interest determination to solicit public comments on the proposed quitclaim. Although the United States is not involved in this step, keep in mind that it does add a few months to the reconveyance process. Once the State has determined that it is in its best interest to reconvey the lands, the State issues an appealable Director's decision. The decision also lists the actions leading to conveyance to the State, recites that it appears the applicant has a valid claim, and lists the easements and reservations to be included in the quitclaim deed. Review the Director's decision for accuracy before the appeal period expires. Immediately notify the State Title

and Contracts Section if there are any needed corrections. If there are no appeals, the State will continue with the title recovery process (see Chapter III. Title Recovery).

K. Settlement and Release Agreements.

Aguilar Stipulation No. 11

> **If at any time the State is willing to convey a portion of the allotment, or the entire allotment subject to reservations, in settlement of the applicant's claim and tenders a valid and appropriate deed, the Solicitor's Office will forward the offer to the applicant and coordinate the settlement. Counseling for the applicant will be available from the BIA. Provided, this paragraph shall not apply to any application which would be determined invalid for legal defects as described in paragraph 1.**

Aguilar Stipulation No. 12

> **If after counseling, the applicant wishes to accept the settlement, a settlement agreement will be drawn up and submitted to the Court for approval. Acreage received by the applicant shall be credited to the State entitlement under which the lands were originally conveyed.**

A settlement and release agreement is not needed if reconveyance encompasses everything for which the applicant applied. The agreements are most common with the State but can be utilized by any titleholder who is willing to voluntarily reconvey the land under certain conditions.

If a titleholder wishes to reconvey something less than full fee, it needs to negotiate with the Native allottee through the attorney, if one is of record, or through BIA or its contractor. The titleholder may ask the applicant to relinquish easements, a portion of the claim, or other interests the titleholder wished to retain. Both the applicant and the BIA sign the relinquishment(s) and forward them to BLM for filing in the Native allotment case file. A settlement and release agreement is then drafted. There are certain restrictive covenants that are not authorized in the agreements. Some samples of these covenants are discussed in the Regional Solicitor's opinion of June 24, 1991 (see Appendix 10). Any questionable provisions listed in an agreement should be brought to the

Regional Solicitor's attention.

There is standard wording for State settlement agreements reserving oil, gas and/or coal which has been approved by State and the Regional Solicitor's Office (see Appendix 11). Any deviations must be called to the Native Allotment Coordinator's attention and will most likely need to be reviewed by the Regional Solicitor.

If an easement is necessary to access public land (federal or State), such as an extension of an ANCSA Sec. 17(b) easement, the appropriate District Office or federal agency should be contacted to initiate interagency contacts and review the need for retention of an easement. The District Office or federal agency should contact the State, as a courtesy, for its comments. Specific routes that are negotiated should be incorporated with other reservations into one complete settlement agreement.

The settlement and release agreement must be reviewed thoroughly and must be accurate and precise. Factual errors or ambiguity in a settlement and release agreement can usually be taken care of by returning a marked-up copy to the initiating party (if the State, return to the Title and Contracts Section of the Department of Natural Resources) under cover of a letter listing the requested changes.

Although it should be standard practice to have the allotment surveyed prior to the agreement, it is possible to use a very accurate metes and bounds description in the agreement. However, a surveyed description must be used in the draft QCD (this is BLM's policy - it is not a legal requirement and there may be rare exceptions). Reference needs to be made in the agreement for utilizing the surveyed description (see Regional Solicitor's opinion, Appendix 10). The surveyed description could be a U.S. Survey, an aliquot part description based on a rectangular net survey, a State survey or private survey approved by BLM.

If an allotment parcel is surveyed but only a portion of it needs reconveyance, it is not necessary to have a supplemental survey done. The description in both the settlement and release agreement and the QCD can read, for instance, "That portion of U. S. Survey No. ____". See Illustration 15 for sample wording.

If the applicant is deceased, the designated heirs (or their guardian, if a minor, or agents), as shown on the Probate Order in the case file, must sign the settlement agreement and appropriate modification should be made to the settlement language, for example, "heirs of x" should be used in place of "x".

Once the settlement and release agreement is correct, send it by memorandum to BIA for signature by the applicant (or designated heirs, guardians, or agents) and by BIA. Any attorney of record should be sent a copy of the proposed agreement. The BIA will return it to BLM after all parties sign. Review the document to determine if it is properly executed. When it has been properly executed, the appropriate branch chief will sign. The agreement is then returned to the titleholder for signature. When this agreement goes to the U.S. District Court for approval (see Chapter III. A. Preliminary Title Insurance and Preliminary Title Opinion), the court will obtain ALSC's approval if that firm represented the applicant.

The State routinely prepares settlement and release agreements even if it is reconveying full fee title without any conditions. This type of agreement does not need court approval. Court approval is only needed where less than full fee estates are being recovered.

L. Suit to Recover Title.

Aguilar Stipulation No. 9

> **If settlement is not possible the matter will be referred to the Department of Justice with a recommendation that suit to cancel patent be instituted. Nothing in this stipulation or in the procedure which it establishes in any way affects the discretion of the Attorney General of the United States with respect to any such recommendation. The parties referenced in paragraph 13 of this Stipulation shall be notified of the referral.**

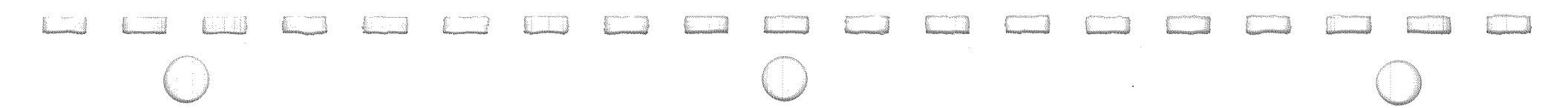
The 6-year statute of limitations on suits brought by the United States to recover title is not applicable to Native allotments (Cramer et al. v. United States, 261 U.S. 219 (1923)).

The BLM will not sue to recover title for Fanny Barr cases; if the titleholder will not voluntarily reconvey, reject the application. The rejection is final for the department.

Otherwise, if the Native allotment claim has been determined to be valid and the landowner will not voluntarily reconvey the land, a suit to recover title will need to be initiated. It is not necessary for the titleholder to put it's refusal to

reconvey in writing in order to initiate a suit. If the titleholder has not responded to the request for voluntary reconveyance within a reasonable time period, follow up with a short letter or telephone call that action is being taken to request that a suit to recover title be filed. The State is formally given 180 days to respond to the request to voluntarily reconvey because of its requirement to publish a best interest decision. However, the corporations and private parties may not need this amount of time. Therefore a "reasonable time period" will be determined by the appropriate branch.

Request, by memorandum, the Regional Solicitor's Office to initiate such a suit (see Illustration 16).



CHAPTER III - TITLE RECOVERY

At the point when the titleholder agrees to voluntarily reconvey the land, a process called "title recovery" is followed to reacquire title. The process is somewhat different depending on whether the reconveyance is from a Native corporation or from the State.

Timing is critical at this point. At the first indication that the titleholder will voluntarily reconvey, notify the appropriate District Office that an on-the-ground inspection and a hazardous material survey will be necessary at some point in the near future (see Chapter III. B. Certificate of Inspection and Possession and Hazardous Materials Report). By receiving early notification, the district can plan for the inspection (i.e. budgeting travel money and personnel). However, the district should be made aware if the allotment has not been surveyed, which may delay the request for inspection. Furthermore, if delays occur with receiving the necessary documents, inspection may not be requested as originally planned.

The detailed guidance for title recovery in general is found in "Standards for the Preparation of Title Evidence in Land Acquisition by the United States" by the Department of Justice (Appendix 12) and Bureau Manuals 2131, 2132, and the 1860 series. Consult these sources if more information is needed.

A. Preliminary Title Insurance and Preliminary Title Opinion. Once BLM has received the draft QCD, which includes the draft acceptance statement, the signed certificate of title (State) or the completed corporate resolution authorizing reconveyance and specifying who can sign the QCD (Native corporations), and the executed settlement and release agreement, if any, (see Chapter II. J. and K., Voluntary Reconveyance and Settlement and Release Agreements, respectively) review the QCD to ensure that it conveys the correct land, that there are no unacceptable reservations or exceptions, that any third party interests have been handled, and that it is otherwise proper. See Chapter II. J. Voluntary Reconveyance for QCD requirements and Illustrations 13 and 14 for sample QCD's.

   If the titleholder is the State, a certificate of title is adequate title evidence. If the reconveyance will be from a Native corporation or private entity, either secure a preliminary commitment of title insurance from an approved title company (see Appendix 13 for list of approved companies) or request an abstract of title from one of the two trained land law examiners in the division. The decision on whether to request an abstract or title insurance should depend on the

perceived complexity of title and the cost of title insurance.

If it is decided to order title insurance, request an opinion of fair market value from the Chief State Appraiser (970A) (see Illustration 17). Once the opinion is received (see sample in Illustration 18), send a purchase order requisition to procurement (Form 1510-18, Illustration 19). The requisition should include the estimated fair market value, the estimated cost of services (determined from the fair market value, Appendix 14), the current land owner(s), a funding code and type of services required. If there are more than one landowner (i.e. surface and subsurface owners) add $200.00 for each additional landowner to the estimated cost of services. The services that will be needed for a particular Native allotment parcel include a preliminary commitment for title insurance, final title insurance, recordation of the QCD, and a conformed copy of the QCD. Along with the requisition, include a letter addressed to the title company, which procurement will send out with the purchase order (see Illustration 20 for an example).

If the titleholder is a corporation (Native or otherwise), verify from the Alaska Department of Commerce that the corporation is in good standing. Document the file with this verification.

Once all documents are received and are in order (those asked for in the request for reconveyance, the preliminary commitment for title insurance or abstract, and a fully executed settlement and release agreement, if appropriate), request by memorandum a preliminary title opinion from the Regional Solicitor (See Illustration 21). The memorandum must list the documents being submitted. "The chief purposes of a preliminary title opinion are to: 1) determine that the grantor has sufficient title; 2) ascertain that the conveyance is proper and in order; and 3) provide detailed guidance on exactly what needs to be done to complete the final transfer of title. All that is done in a final title opinion is to verify that all necessary measures have been completed and to conclude that final title has vested in the United States." (quoted from an opinion from the Deputy Regional Solicitor dated October 25, 1991).

The Regional Solicitor will issue a preliminary title opinion and advise what curative steps are necessary, if any, before proceeding. The Regional Solicitor will also send the settlement and release agreement to the U.S. District Court for approval, if necessary, pursuant to Aguilar stipulation No. 12. See Appendix 15 for sample of court approval.

Cure any defects specified in the preliminary title opinion that can be cured by

BLM. Request the titleholder to cure any additional defects. Once defects are cured and any settlement and release agreement has been approved by the District Court, return the draft QCD to the titleholder for execution of a final QCD. If the titleholder is a corporation and the person signing the deed for the corporation has changed, it will be necessary to obtain a document authorizing the new person to sign for the corporation.

B. Certificate of Inspection and Possession and Hazardous Materials Report. At the same time the draft documents are returned to the titleholder, request an on-the-ground inspection of the land from the responsible District office. The purpose of the inspection is twofold: 1) to complete the certificate of inspection and possession form (see Illustration 22; BLM Form 2200-5); and 2) to complete a a Level I Survey of hazardous materials (see Illustration 23 for sample). The adjudicator may find it advantageous to request the inspection at the same time as, or a little earlier than, requesting the preliminary title opinion (i.e. it is close to the end of field season). Inspection may be done prior to the preliminary title opinion as long as it is done reasonably contemporaneously with acceptance of title. This requires careful coordination with the appropriate District office at the first indication the titleholder will reconvey the land.

The Level I Survey is reviewed by Lands and Renewable Resources (932) and, if there are negative findings, approved by the State Director. If there are any answers on the Level I Survey that are not "negative or nonapplicable", approval by the Assistant Secretary, Policy, Budget and Administration is required. A Level II and Level III report may also be required. Any allotment that has a Level I Survey that does not contain all negative findings will be looked at on a case by case basis.

C. Accepting Title and Serializing QCD. When an executed QCD is received, review it thoroughly (i.e., proper legal description, proper signatures, notarized, etc.). It must agree with the draft and all corrections required by the preliminary title opinion must have been made. If the QCD is correct, and the certificate of inspection and possession has been received, accept the QCD by having the Branch Chief sign the acceptance statement.

When the QCD is accepted, hand carry a copy of the deed to the Public Room to establish an 1860.09 (QCD/Deed of Title to U.S.) case file. (The original QCD will immediately be sent to be recorded (see below)). The primary applicant will be BLM with the Native allottee being the secondary applicant. Route the case file to Title and Land Status (T&LS) for notation of the QCD on the MTP and the Historical Index (HI). The MTP will be noted with both the

original patent and the QCD.

D. Recordation of Deed and Final Title Insurance Policy. If the QCD is from the State, as soon as the QCD is accepted, send the original to the Recording Office nearest the land. If the reconveyance is from a Native corporation or private individual, and a title company is providing an insurance policy, immediately secure a final title insurance policy (issued on the standard form, ALTA U.S. Policy - 1963), and recordation of the deed from the title company. If BLM is doing an abstract of title, immediately send the original QCD to the proper Recording Office for recording. Request a conformed copy of the recorded QCD either from the Recording Office or the title company. When the deed has been recorded, request the designated land law examiner in the division to update the abstract of title.

Once the original deed is returned from the Recording Office, file it in the 1860.09 case file and put a copy of it in the Native allotment file and the proper State or Native selection file. The only documents in the 1860.09 case file will be the QCD, abstract, and current MTP.

By cover letter, send a copy of the recorded deed to the State or Native corporation. In the letter note the acreage to be credited, if applicable. File a copy of the letter in the State or Native selection file.

E. Final Title Opinion. Once the conformed copy of the executed and recorded QCD is received (which will be prior to the original being returned), request final title opinion (see Illustration 24). Send the case file to the Regional Solicitor's office and include the following:

a. Conformed copy of the executed and recorded QCD.
b. The original final title evidence (corporations or private individuals) or updated certificate of title (State)
c. The original certificate of inspection and possession
d. The original hazardous waste/contamination report

The Regional Solicitor's office will issue a final title opinion (see Illustration 25 for sample) advising BLM that the land vested in the United States and that the land can now be conveyed to the Native allotment applicant. File the opinion and accompanying documents in the Native allotment case file.

CHAPTER IV - CERTIFICATE OF ALLOTMENT

As soon as the final title opinion is received from the Regional Solicitor's Office, issue the certificate of allotment. If all of the estate was not returned (i.e. oil and gas was reserved to the State) and/or the QCD was made subject to certain easements or conditions, the certificate will read differently than the standard certificate. The excluded estate will be noted in the first paragraph of the certificate. Use the easement wording as it appears in the QCD. See Illustration 26 for a sample of a certificate of allotment issued after title recovery. The differences are bracketed in the illustration.

Along with the copy of the certificate that is sent to the BIA Title Plant, send a certified true copy of the QCD.

When T&LS notes the MTP with the certificate, the original conveyance and QCD notation will be removed only if the titleholder quitclaimed to the United States all the estate that the United States originally conveyed. If the titleholder quitclaimed only a portion of the estate (i.e. excluding oil and gas), then the original conveyance, QCD and certificate will all show on the MTP. In either case, the complete history of the land status will show in the HI.

CHAPTER V - ACTION CODES AND ACREAGE CONTROL

A. Aguilar Action Codes. The following action codes are to be used in updating the Native allotment abstract, when appropriate. Furthermore, where noted, the proper State or Native selection file abstract also should be updated. The action code title and number correspond with the new interim system.

1. 217 - Conveyance Conflict (formerly 654, 655, 656):
Enter date of conflicting conveyance. Enter type of conveyance causing conflict i.e. patent/State; patent/Native corporation; patent/mineral; patent/private; interim conveyance; mental health approved or tentative approval and document or serial number of conflicting case in action remarks. [Only enter this code once if there are separate conveyances for the same day, i.e. for surface and subsurface.]

2. 413 - 90-day Letter Sent (formerly 657 Title Recovery Commenced):
Enter date 90-day letter is issued pursuant to the Aguilar court stipulations for Native allotments. Enter Stipulation No. in action remarks.

3. 117 - Addtl Evidence Submitted (new code):
Enter date unsolicited evidence is submitted to BLM or response is received from 90-day letter (413) that is utilized to determine the validity of a claim. Use in 2500 and 2650 case types.

4. 731 - Hearing Ordered (formerly 223):
Enter date hearing is scheduled before hearings officer. If BLM is holding the hearing, note in action remarks. Pending entity required. [This code definition will be used for all hearings ordered, not just Aguilar cases. For Aguilar cases, use the date the hearing notice is issued and note date of hearing in action remarks.]

5. 732 - Hearing Held (formerly 222):
Enter date hearing is held. Optional to enter place of hearing in action remarks.

6. 154 - Reconveyance Requested (formerly 645):
Enter date reconveyance package is requested from current landowner. Use this code in both the file under which the original conveyance was

issued and the file under which reconveyance of part/all of the land will be received. Enter "draft" or "final" in action remarks and cross reference the serial numbers in action/general remarks. Use code 868 for final deed. Enter date draft is received and 2nd date type "16" (Received) in 2nd date field. [Use this code for the request from each titleholder so it may be used more than once.]

7. 155 - Reconveyance Offer Recd (new code):
Enter date reconveyance offer is received from current landowner without being asked by BLM. Use this code in both the file under which the original conveyance was issued and the file under which reconveyance of part/all of the land will be received. Cross reference serial numbers in action remarks. [Use this code for each titleholder, if appropriate.]

8. 408 - Reg Sol Opinion/Concur Requested:
Enter date the Regional Solicitor is requested to provide a legal opinion on a specific issue or concurrence as to the validity of a claim. (This can also be used for requesting Final Title Opinion.)

9. 148 - Preliminary Title Opinion Requested (new code):
Enter date preliminary title opinion is requested from Regional Solicitor. Pending entity required. Enter date the opinion is received and 2nd date type "16" (Received) in 2nd date field.

10. 868 - Deed Signed (formerly 151 QCD Received) [input into State or Native selection file also]:
Enter date deed signed by grantor. [Use this code for each deed signed.]

11. 885 - Title Accepted By U.S. (formerly 494) [input in State or Native selection file also]:
Enter date title accepted by the United States. [Use this code for each title accepted.]

12. 876 - Final Title Opinion (new code):
Enter date of final title opinion.

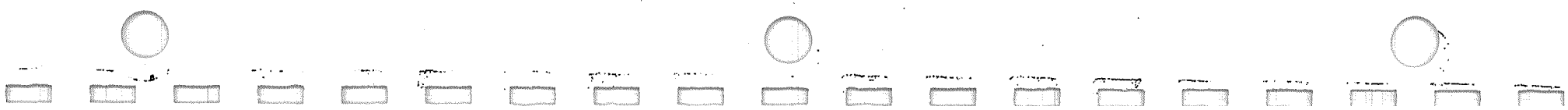
13. 164 - Title Recovery Suit Requested (new code) [input in State or Native selection file also]:
Enter date Regional Solicitor is requested to recommend to the

Department of Justice that suit to cancel conveyance be instituted.

B. OCD Case File Action Codes. The following action codes need to be used in the 1860.09 case file:

1. 001 - Apln Received/Case Established (formerly 387)
2. 885 - Title Accepted By U.S. (formerly 494)
3. 884 - Title Revt/Recon to US (formerly 381)
4. 169 - Adm-Juris Transferred (formerly 071)
5. 970 - Case Closed (formerly 099)

C. Acreage Control. If the titleholder is entitled to receive acreage credit, note in the land description of the appropriate selection file, the disposition code RC (reconveyance credit) with the date of the acceptance of title and the acreage. If credit is not to be given, note RN (reconveyance no credit).



GLOSSARY 708a
April 24, 1992

[LEGALLY DEFECTIVE APLNS REJECTED PURSUANT TO
STIP. NO. 1 AND/OR STIP NO. 3 OF AGUILAR]

Card a

(SC-1)(2561)
96(SC-2))

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

(SC-3) (applicant name; if deceased use name (deceased); (address: c/o private counsel or Alaska Legal Services; (c/o Bureau of Indian Affairs if deceased)	:	(SC-4) Native Allotment Application

(SC-5 y/n) ["y"= Native Allotment Application Rejected Case Closed]

On (SC-6) [date filed with BLM], the Bureau of Indian Affairs filed Native allotment application (SC-7) [serial #] and evidence of occupancy on behalf of (SC-8) [applicant's name]. The application was filed under the provisions of the Act of May 17, 1906, as amended, 43 U.S.C. 270-1 to 270-3 (1970), which was repealed with a savings provision by the Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971, 43 U.S.C. 1601, 1617. The application (SC-9 y/n)["y"=, as amended,] is for (SC-10) acres of (SC-11) [surveyed/unsurveyed] land, described as: (SC-12) [complete description w/parcels, if any].

(SC-13) [Put in segregative history of area applied for here, from date segregated to December 18, 1971. Also, explain why the allotment application was not of record prior to conveyance of the lands to someone else. Explain also any reinstatement].

Card b Option 1/2

Option 1=

On (SC-1) [date], title to the (SC-2 1/2) ["1"=surface estate; "2"=surface and subsurface estates] in the above-described lands was conveyed to (SC-3) [entity that received title] by (SC-4) [identify IC, TA or Patent by number].

Option 2=

On (SC-1) [date], title to the surface estate in the above-described lands was conveyed to (SC-2)[Native corporation] by (SC-3)[IC or patent number] and the subsurface estate was conveyed to (SC-4)[Native corporation] by (SC-5)[IC or patent number].

Card c

Since title to the lands described above was conveyed, the subject Native allotment application has been adjudicated pursuant to the Stipulated Procedures for Implementation of Order in Aguilar v. United States, 474 F. Supp. 840 (D. Alas. 1979) [hereinafter cited as Aguilar].

Card d [occupancy initiated after segregation - Stipulation 3]

On (SC-1)[date], (SC-2)[name of applicant] was notified and given 90 days in which to file an affidavit and/or other evidence alleging, with particularity, that (SC-3)[his/her] specific use was initiated prior to (SC-4)[date lands were withdrawn or segregated] and that failure to submit such evidence would result in rejection of the application. (SC-5 y/n)["y"=To date, such evidence has not been submitted.] [If additional evidence has been submitted which still does not show the applicant predates, explain here.]

Card e Options 1/2/3

Option 1 ((Applicant born after segregation)=

Our records indicate the applicant's date of birth is (SC-1), (SC-2) [years/months] after the time the lands were first segregated on (SC-3) [date]. The Act of May 17, 1906, authorizes allotments not to exceed 160 acres of vacant, unappropriated and unreserved nonmineral land in Alaska. Lands reserved (as described above) are not open to the initiation of Alaska Native allotment claims. No right may be initiated under the Act of May 17, 1906, by occupation and use of lands not open to appropriation. Where a Native was born after lands were withdrawn, the application must be rejected. See Arthur R. Martin, 41 IBLA 224 (1979).

Option 2 (Applicant born before segregation-minor child, 5 years and less)=

Our records indicate the applicant's date of birth is (SC-1). The applicant would therefore have been only (SC-2) [age] at the time the lands were first segregated on (SC-3)[date of segregation]. A child of (SC-4)[age at time of segregation] is properly deemed to be incapable of having exerted independent use and occupancy of the land to the exclusion of others. See Heirs of Doreen Itta, 97 IBLA 261 (1987); and Floyd L. Anderson, Sr., 41 IBLA 280 (1975).

Option 3 (Any other reason(s) to reject)=

(SC-1)

Card f

As the lands within Native allotment application (SC-1) [serial No./parcel] were segregated effective (SC-2) [date], (SC-3) [years/months] (SC-4) [before/after] the applicant's birth, and remained segregated until the repeal of the Act of May 17, 1906, by ANCSA, this application must be and is hereby rejected.

Card g [occupancy initiated after segregation - age not a factor]

Our records indicate that (SC-1)[name of applicant] claims (SC-2 he/she) began using and occupying the land (SC-3)[date of claimed use and occupancy from file], (SC-4)[years/months] after the lands were segregated. Where a Native allotment application declares that the applicant first initiated use and occupancy after the date the land was segregated from appropriation, allowance of the Native allotment application is precluded as a matter of law. See Roselyn Isaac (On Reconsideration), 53 IBLA 306 (1981) and Andrew Petla, 43 IBLA 186 (1979). Application (SC-5) (SC-6 y/n)["y"=, Parcel (SC-7)] is therefore rejected.

Card h

Pursuant to Stipulation No. 1 of Aguilar, this decision is final for the United States Department of the Interior in this matter. (SC-1 1/2)["1"=Case file (SC-2) is therefore closed and the application]["2"=Parcel (SC-3) of application (SC-4)] will be removed from the records.

Option 3= (SC-5) Option 3/4/6/7/8
Ann Johnson
Chief, Branch of Calista Adjudication

Option 4= Chief, Branch of Doyon/Northwest Adjudication
Option 6= Mary Jane Piggott
Chief, Branch of Southwest Adjudication
Option 7= Terry R. Hassett
Chief, Branch of KCS Adjudication
Option 8= Ramona Chinn
Chief, Branch of Cook Inlet and Ahtna Adjudication

Enclosure:
Aguilar

Copy furnished to:

(SC-6) [Applicant] (CM-RRR)
(w/cy of enclosures)

(SC-7 y/n) [use here if not addressee]
["y"=
Alaska Legal Services Corporation (CM-RRR)
(SC-8) [proper office]

Bureau of Indian Affairs (CM-RRR)
Alaska Title Services Center (ATSC)
1675 C Street
Anchorage, Alaska 99501-5198
(certified true copy)

Area Rights Protection Officer
Bureau of Indian Affairs
Juneau Area Office
P.O. Box 3-8000
Juneau, Alaska 99802

Bureau of Indian Affairs
Area Forester
Branch of Natural Resources
P.O. Box 3-8000
Juneau, Alaska 99802

(SC-9) [BIA, appropriate area office, contractor, ALSC if not addressed above]

(SC-10) [Village and/or regional corporation]

(SC-11) [Federal agency, i.e., USFW, if appropriate]

State of Alaska
Department of Natural Resources
Division of Land
Land Title Section
3601 C Street, Suite 960
Anchorage, Alaska 99503

cc:
DM (SC-12)

(SC-13) [ANCSA or State selection case file, as appropriate]

(SC-14) [Serial number and (casetype) of any other related casefile]

Hard copy 0708c

[90-day Aguilar Stip. No. 4 Ltr and 90-day
3rd Party Stip. No. 14 Ltr]

Glossary 0699a
April 24, 1992

(SC-1) (2561)
(96 (SC-2))

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

(SC-3) Name and address of Native allotment applicant. If deceased use: Applicant's Name (deceased), c/o BIA. If Atty, use: Applicant, c/o ALSC, etc.]

(SC-4) [Other possible addressees:

-State of Alaska (Title and Contract Section)
-University of Alaska
-Village Corporation, c/o atty when appropriate
-Regional Corporation, c/o atty when appropriate
-Original Land Owner
-Current Land Owner(s) (and Mortgage/Note Holder) and less-than-fee interest holders (of record with BLM, State, Borough, Assessor), for example: R/W or water rights interest holders, property tax payers, etc.]

(SC-5 y/n) [insert whatever salutation is appropriate or leave it blank if that is preferred]

The Bureau of Land Management has reviewed (SC-6)'s [applicant's name] Native allotment application (SC-7), and has determined that (SC-8 y/n) ["y"=Parcel (SC-9) of] the application falls under the provisions of Aguilar 1/. (SC-10 1/2) ["1"=Parcel (SC-11)] ["2"=The application] contains approximately (SC-12) acres and is located in (SC-13). (SC-14) [applicant's name] claims use and occupancy of the lands from (SC-15) [date].

However, these lands were conveyed on (SC-16) to (SC-17). (SC-18) [explain briefly why allotment was not excluded when lands were conveyed.] The case file indicates that (SC-19)'s [applicant's name] claimed use and occupancy began prior to (SC-20), the date the lands were segregated by (SC-21) [i.e., State selection AA-55555]

The court in Aguilar determined that if an applicant can support the facts which would establish (SC-22 1/2) ["1"=his] ["2"=her] right to an allotment then the United States has the responsibility to recover title to the land.

1/ Stipulated Procedures for Implementation of Order in Aguilar v. United States, 474 F. Supp. 840 (D. Alas. 1979).

Therefore, all parties (including (SC-23)) [applicant's name] who have an interest in the above-described land are hereby given 90 days from receipt of this letter to submit additional evidence or comments in support of or disputing the Native allotment claim. At the end of the 90-day period we will review the Native allotment case file and all evidence submitted.

If (SC-24)'s [applicant's name] application is found valid, we will request voluntary reconveyance of the land from the current land owner. If we find that the evidence is not sufficient to support the application, or if there are disputed issues of fact, (SC-25) will be offered an opportunity for an oral hearing before further action is taken on the case.

Sincerely,

(SC-26 3/4/6/7/8)

option 3= Ann Johnson
Chief, Branch of Calista Adjudication
option 4= Donald E. Runberg
Chief, Branch of Doyon/Northwest Adjudication
option 6= Mary Jane Piggott
Chief, Branch of Southwest Adjudication
option 7= Terry R. Hassett
Chief, Branch of KCS Adjudication
option 8= Ramona Chinn
Chief, Branch of Cook Inlet and Ahtna Adjudication

[NOTE: Be sure to check MTP plotting so that it matches the description stated herein.]

Enclosures:
Master Title Plat
Aguilar Stipulations
A Guide to Aguilar proceedings

Copy furnished to:

(SC-27) (CM-RRR) [Name and address of Native allotment applicant]
(w/copy of enclosures)

(SC-28) [If applicant is deceased BIA would be addressee so use ALSC here, otherwise, ALSC is addressee]
Alaska Legal Services Corporation (CM-RRR)
(SC-29)
(w/cy of MTP)

Bureau of Indian Affairs (CM-RRR)
Alaska Title Service Center (ATSC)
1675 C Street
Anchorage, Alaska 99501-5198
(certified true copy w/cy of MTP)

(SC-30)
State of Alaska
Department of Natural Resources
Division of Land
Title and Contract Section
3601 C Street, Suite 960
Anchorage, Alaska 99503
(w/cy of MTP)

[Use when not an addressee and letter deals with ANCSA land affected by 17(b), or when a State protest was filed.]

(SC-31)

[BIA Contractor or adjoining land interest holder, with or without enclosures determined on a case-by-case basis]

cc:

(SC-32) [Land Managing Agency, e.g., Fish and Wildlife Service]

DM-(SC-33) [BLM District Office]

(SC-34) [Affected case file(s), e.g., village/state selection files]

Hard copy 0699c

AA-40056 (2561)
F/1 See appendix
(968)

OCT 07 1987

Anchorage Daily News
1001 Northway Drive
Anchorage, Alaska 99508

Gentlemen:

Enclosed is a notice to be published once each week for four (4) consecutive weeks in the Anchorage Daily News.

In order to reduce your republication expense, please send a tear sheet of the first published notice immediately to this office (Attention: Branch of Cook Inlet and Ahtna Adjudication for proofing and verification. If there are errors in the first published notice, corrections must be made before the next publication.

After the fourth publication, please submit your invoice and appropriate tear sheets, together with one copy of our Advertising Order/Requisition Order.

A standard affidavit or proof of publication (notarized) must also be submitted for inclusion in our administrative file. Please send this and the documents listed in the paragraph above to the attention of Office Services (974A).

If you have any questions, please call Steve Flippen at 271-5656.

Sincerely,

/s/ OLIVIA SHORT

Olivia Short
Chief, Branch of Cook Inlet and Ahtna Adjudication

Enclosures:
Notice for Publication
Advertising Order/Requisition Order (3)

Appendix

AA-40107, AA-40051, AA-47907, AA-49958, AA-40050, AA-8168, AA-40053, AA-50507, AA-52566, AA-50503, AA-46550

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
ALASKA

Notice for Publication
North Kenai Peninsula Area
Alaska Native Allotments

Notice is hereby given that the following claims have been filed under the Alaska Native Allotment Act of May 17, 1906 (43 U.S.C. 270-1 (1970)), for lands that have been conveyed to the State of Alaska or other entities. The applicants claim use and occupancy prior to application or entry by the grantees under the public land laws.

Applicant Name:	Katherine Pederson Boling
Case File No.:	AA-40056
Use and Occupancy Date:	1955
Land Description:	NW¼, Sec. 29, T. 5 N., R. 8 W., Seward Meridian, Alaska. Also known as the Ferguson Subdivision, according to Plat 75-51, in the Kenai Recording District, Third Judicial District, State of Alaska.
Applicant Name:	Walter Pederson (Deceased)
Case File No.:	AA-40107
Use and Occupancy Date:	1954
Land Description:	W½NE¼, Sec. 29, T. 5 N., R. 8 W., Seward Meridian, Alaska.
Applicant Name:	Fiocla M. McCurdy
Case File No.:	AA-40051
Use and Occupancy Date:	1956

AA-40056

Land Description:	W½SW¼, Sec. 29 and Lot 2, NW¼NW¼, Sec. 32, T. 5 N., R. 8 W., Seward Meridian, Alaska. A portion of which is also known as Martin Acres Subdivision according to plat No. 76-40, filed in the Kenai Recording District, Third Judicial District, State of Alaska.
Applicant Name:	Marjorie Jordan
Case File No.:	AA-47907
Use & Occupancy Date:	Parcel A - April 1955, Parcel B - 1958
Land Description:	Parcel A - Lots 4 and 5, Sec. 18, T. 8 N., R. 10 W., Seward Meridian, Alaska. Parcel B - Lots 1 and 2, SE¼NE¼, Sec. 1, T. 7 N., R. 11 W., Seward Meridian, Alaska. A portion of Parcel B is also known as North Country Subdivision according to plat No. 86-43 filed in the Kenai Recording District, Third Judicial District, State of Alaska.
Applicant Name:	Samuel Holstrom
Case File No.:	AA-49958
Use & Occupancy Date:	April 1945
Land Description:	Lot 1, W½SE¼, Sec. 18, T. 8 N., R. 10 W., Seward Meridian, Alaska.
Applicant Name:	Delcie Richardson (Deceased)
Case File No.:	AA-40050
Use and Occupancy Date:	1952
Land Description:	S½NE¼, N½SE¼, Sec. 20, T. 5 N., R. 11 W., Seward Meridian, Alaska.
Applicant Name:	George Pederson
Case File No.:	AA-51862, Parcel B
Use and Occupancy Date:	1949
Land Description:	Lots 2 and 3, Sec. 28, T. 7 N., R. 11 W., Seward Meridian, Alaska. Also known as the Douglas Lake Subdivision according to Plat 76-89, in the Kenai Recording District, Third Judicial District, State of Alaska.

Applicant Name:	Warder Showalter III (Deceased)
Case File No.:	AA-8168, Parcel B
Use and Occupancy Date:	1940
Land Description:	Lot 10, Sec. 30 and NE¼NE¼, Sec. 31, T. 7 N., R. 11 W., Seward Meridian, Alaska.
Applicant Name:	Elsie K. Marrs
Case File No.:	AA-40053
Use and Occupancy Date:	1953
Land Description:	E½SE¼, Sec. 31 and W½SW¼, Sec. 32, T. 7 N., R. 11 W., Seward Meridian, Alaska.
Applicant Name:	Annie D. Spracher
Case File No.:	AA-50507
Use and Occupancy Date:	December 1952
Land Description:	Lot 3, SW¼NE¼NW¼, W½SE¼NW¼, S½NW¼NW¼, Sec. 17, T. 7 N., R. 11 W., Seward Meridian, Alaska.
Applicant Name:	Edward C. Greenhalgh
Case File No.:	AA-52566
Use and Occupancy Date:	1956
Land Description:	E½NW¼, Sec. 32, T. 8 N., R. 11 W., Seward Meridian, Alaska.
Applicant Name:	JoAnn I. Warren
Case File No.:	AA-50503
Use and Occupancy Date:	July 1958
Land Description:	Lots 1, 2, 3, 4, 5, 16, 20 and 21, NE¼NE¼, SE¼NW¼NE¼, NW¼SW¼NE¼, S½SW¼NE¼, SE¼NE¼, T. 8 N., R. 11 W., Seward Meridian, Alaska.

Applicant Name: Michael O. Johnson

Case File No.: AA-46550

Use and Occupancy Date: 1957

Land Description: NE¼SE¼, Sec. 31 and W½NW¼, NW¼SW¼, Sec. 32, T. 8 N., R. 11 W., Seward Meridian, Alaska.

All of the listed claims are similar or identical to the defined Aguilar class in Ethel Aguilar v. United States of America (474 F. Supp. 840 (D. Alas. 1979)) and will be processed in accordance with the Stipulated Procedures for Implementation of Order approved by the District Court for the District of Alaska on February 9, 1983. Stipulation 14 provides that:

> If at any point the BLM (Bureau of Land Management) becomes aware of the identity of a third party claiming an interest in the land, whether independently or through purported conveyance by the State, it shall afford the third party the same notice and procedural rights as those afforded the State under this stipulation.

A review has been made of the above Native allotments and it appears that the applications may be found valid. The State of Alaska and third parties of record have been invited to submit evidence or comments to dispute the claims of the applicants'. The applicants have been given 90 days in which to submit additional evidence which will bolster their claims.

Any party claiming an interest in the lands is invited to submit information concerning the interest being claimed along with evidence or comments to dispute the claims of the applicants'. All correspondence must be submitted to the attention of the Chief, Branch of Cook Inlet and Ahtna Adjudication,

Bureau of Land Management. Division of Conveyance Management (968). 701 C Street. Box 13. Anchorage, Alaska. 99513 by January 11. 1988. Please reference the case file number on all correspondence.

This Notice will be published once a week for four (4) consecutive weeks and is considered final notice for third parties under Stipulation 14. Ethel Aguilar v. United States of America.

Olivia Short
Chief. Branch of Cook Inlet and
Ahtna Adjudication

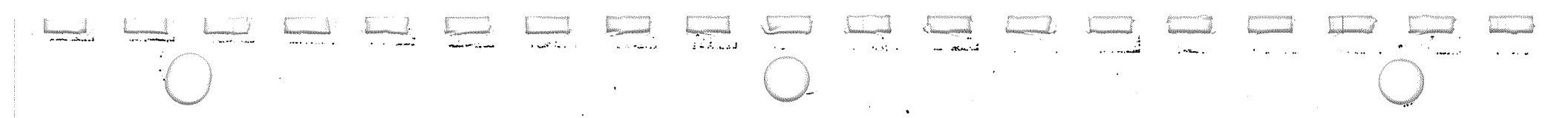


ILLUSTRATION 4

Glossary 64a
May 31, 1991

Card a

(SC-1) (2561)
(96(SC-2))

Memorandum

To: Regional Solicitor, Office of the Solicitor, Anchorage, Alaska

Through: Paralegal (961)

From: (SC-3 [choose 3/4/6/7/8 (from which ever Branch the memo is coming) to get: Chief, Branch of _____ Adjudication (96_)]

Subject: (SC-4) [Serial #], (SC-5) [applicant name (deceased, if applicable)]

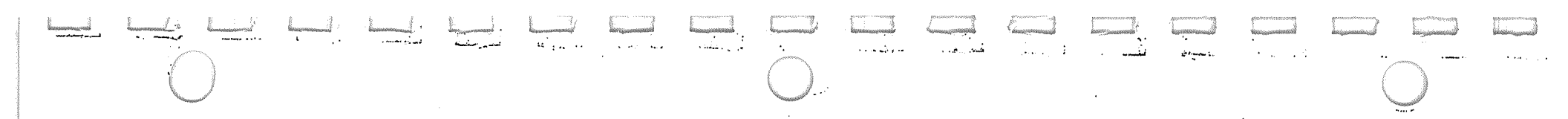
We have reviewed the subject Native allotment file as directed in Ethel Aguilar v. United States of America, 474 F. Supp. 840 (D. Alas. 1979), and have preliminarily concluded that there is sufficient evidence in the file to support this application.

However, before we make a final validity determination, we request a legal opinion as to whether the evidence assembled meets current IBLA and court standards for the granting of a Native allotment application. The case file is attached for your reference.

Enclosure:
Subject case file

_____ Evidence appears legally sufficient. If you find the allotment claim valid, please exercise our authority under paragraph 5 of the Aguilar stipulations and request a voluntary reconveyance of the land.

Hard copy 0064c



AA-47905 (2561)
(968) AGJ/CM

DEC 29 1989

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Eugene Monfor	:	AA-47905
c/o Alaska Legal Services Corporation	:	Native Allotment Application
1016 West Sixth Avenue, Suite 200	:	
Anchorage, Alaska 99501	:	

Native Allotment Application Rejected in Part
Case Closed

On May 6, 1982, the Bureau of Indian Affairs (BIA) filed Native allotment application AA-47905 and evidence of use and occupancy on behalf of Eugene Monfor. The application was filed under the provisions of the Act of May 17, 1906, as amended, 43 U.S.C. 270-1 to 270-3 (1970), which was repealed with a savings provisions by Sec. 18(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1617(a). The application is for 79.48 acres of surveyed land described as lot 3 and the SE¼SW¼, Sec. 18, T. 8 N., R. 10 W., Seward Meridian, Alaska. Use and occupancy of the land is claimed from April 1955. On March 6, 1989, the application was rejected as to lot 3; therefore, this decision addresses only the remaining portion of the application: SE¼SW¼, Sec. 18, T. 8 N., R. 10 W., Seward Meridian, Alaska, containing 40.00 acres.

In an affidavit filed May 6, 1982, the applicant claimed that he had originally applied for his Native allotment in 1970 or 1971. Evidence in the case file shows that on May 25, 1971, BIA returned Mr. Monfor's application to his representative and stated that the application did not comply with Bureau of Land Management (BLM) regulations. On March 8, 1982, BIA determined that this act was beyond the jurisdiction of its agency and advised Mr. Monfor to resubmit his application. On May 6, 1982, Mr. Monfor submitted a reconstructed application to BIA. The application was dated as of reconstruction and was accompanied by his affidavit affirming that his original application had been lost. The Bureau of Indian Affairs certified that the original application was before its Anchorage Agency Office on December 18, 1971.

On November 17, 1959, the State of Alaska filed mental health grant selection application A-050580, pursuant to the Mental Health Enabling Act of July 28, 1956, 70 Stat. 709. An amendment, which selected the lands in question, was filed on August 16, 1962. The amendment was later corrected, by letter dated September 3, 1962, to add Sec. 18, T. 8 N., R. 10 W., Seward Meridian, Alaska, to the selection.

On July 6, 1961, Leslie L. Krome filed homestead entry application A-055051 for the lands in question and subsequently received title under patent No. 50-67-0085, issued August 5, 1966. Since title to the land had been transferred, Mr. Monfor's Native allotment application was adjudicated pursuant to the Stipulated Procedures for Implementation of Order in Aguilar v. United States, 474 F. Supp. 840 (D. Alas. 1970) [hereinafter Aguilar].

The Act of May 17, 1906, as amended August 2, 1956, 43 U.S.C. 270-1 to 270-3 (1970), and the regulations thereunder, specifically 43 CFR 2561.2(a), provide that an allotment will not be made until the applicant or the authorized officer of the Bureau of Indian Affairs has made satisfactory proof of substantially continuous use and occupancy of the land for a period of five years by the applicant. The term "substantially continuous use and occupancy" is defined in 43 CFR 2561.0-5 as contemplating:

> . . . the customary seasonality of use and occupancy by the applicant of any land used by him for his livelihood and well-being and that of his family. Such use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not merely intermittent use.

In his reconstructed application, Mr. Monfor stated that his use and occupancy began in April 1955, and that he used the land from September to November 1955 for hunting, from April to August 1955 for fishing, and from May to September 1955 for berrypicking. No further years of use were provided.

A field examination conducted on December 16, 1985, found resources to support the applicant's claim in the form of berry varieties, moose, rabbits, grouse, and a consistent red salmon run in Bishop Creek (located slightly north of the parcel). However, there were no signs of fire pits, firewood cutting or cabins on the parcel to indicate that the land had been used. Existing trails were identified as game trails. The field examiner was unable to conclude from the evidence that the applicant met the requirements of five years' use and occupancy, potentially exclusive of others.

The applicant's claimed use and occupancy of April 1955 predated State selection application A-050580, filed November 17, 1959, as amended, and the homestead entry of Leslie L. Krome (A-055051), filed July 6, 1961. Therefore, on December 15, 1986, a letter was issued pursuant to Stipulation No. 4 of Aguilar, inviting the applicant and all adverse parties to submit evidence supporting or refuting Mr. Monfor's claim. On November 26, 1986, Alaska Legal Services Corporation, acting for the applicant, submitted an affidavit from the applicant, as well as affidavits from Robert Mamaloff (the applicant's brother) and Albert Baktuit (a friend of the applicant). An additional supporting affidavit from Vic Antone (friend of the applicant), was submitted

on November 13, 1986. Affidavits opposing Mr. Monfor's claim were received from the State of Alaska on March 9, 1987, and from Mr. Leslie L. Krome, on May 5, 1987.

The Bureau of Land Management's review of the record found the applicant's evidence lacking in specific dates or periods of use which would support five years' use and occupancy, and more than occasional use of the land potentially exclusive of others. In addition, the evidence failed to show that the applicant had continued to use the land and to maintain it in an occupied state such that Mr. Krome, upon entering the land in 1962, would have been aware that it was occupied. United States v. Flynn and Heirs of Orock, Deceased, 53 IBLA 208 (1981). In his affidavit filed May 5, 1987, Mr. Krome stated, "At no time have I ever seen Mr. Monfor, any member of his family, or any native on my property . . . It [the land] has no evidence of trails such as the cat trail or use prior to my claim . . . I have not seen a bush camp on my property . . . . " Thus, BLM concluded that the applicant had not provided sufficient evidence or proof of entitlement to support his Native allotment claim. Pursuant to Stipulation No. 6 of Aguilar, Alaska Legal Services Corporation, as counsel for the applicant, was notified of these findings by letter dated March 17, 1989, and a hearing was scheduled for April 21, 1989. The claim was proposed for rejection for the following reasons:

1. Evidence of cessation of use which permitted the land to return to an unoccupied state; and

2. Insufficient evidence of five years of substantial actual use and possession of the land at least potentially exclusive of others, as head of household or independent person and not merely intermittent use.

On May 12, 1989, the Bureau of Indian Affairs notified BLM that Mr. Monfor waived his right to a hearing and elected to have his entitlement to an allotment determined from the existing record.

Since the applicant failed to provide any conclusive evidence of five years' use and occupancy of the subject lands and waived his right to a fact-finding hearing under Aguilar, Native allotment application AA-47905 must be and is hereby rejected. Pursuant to the Stipulated Procedures for Implementation of Order in Aguilar v. United States, 474 F. Supp. 840 (D. Alas. 1970), this decision is final for the United States Department of the Interior. Case file AA-47905 is therefore closed and the application will be removed from the records.

/s/ Suzanne L. McWilliams

Ramona Chinn
Chief, Branch of Cook Inlet
and Ahtna Adjudication

Enclosure:
Cy Aguilar Stipulations

Copy furnished to w/enclosure (Certified Mail - Return Receipt Requested):

Eugene Monfor
Route 1, Box 155
Kenai, Alaska 99611

Leslie L. Krome
c/o Smith, Coe and Patterson
814 West Second Avenue
Anchorage, Alaska 99501

Leslie L. Krome
1827 Banister Drive
Anchorage, Alaska 99501

Bureau of Indian Affairs
Anchorage Agency, Realty Officer
1675 C Street
Anchorage, Alaska 99501-5198

State of Alaska
Department of Natural Resources
Division of Land and Water Management
Land Title Section
3601 C Street, Suite 960
Anchorage, Alaska 99503

Bureau of Indian Affairs
Native Allotment Coordinator
1675 C Street
Anchorage, Alaska 99501-5198

State of Alaska
Department of Natural Resources
Division of Land and Water Management
State Interest Determinations Unit
P.O. Box 107005
Anchorage, Alaska 99510-7005

cc:

Bureau of Indian Affairs
Alaska Title Services Center (ATSC)
1675 C Street
Anchorage, Alaska 99501-5198
(certified true copy)

Borough Attorney
Kenai Peninsula Borough
144 North Binkley
Soldotna, Alaska 99669

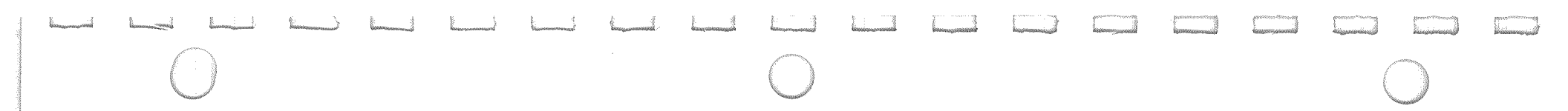
Bureau of Indian Affairs
Area Forester
Branch of Natural Resources
1675 C Street
Anchorage, Alaska 99501-5198

Hearings Officer (968)

DM-A (040)

A-050580 (2626)

A-055051 (2567)



GLOSSARY 62a
April 24, 1992

Card a

(SC-1) (2561)
(96(SC-2))

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

(SC-3) [Applicant c/o private counsel or Alaska Legal Services. If deceased, applicant's name (deceased), c/o appropriate BIA agency]

(SC-4 y/n)
["y"=
State of Alaska
Department of Natural Resources
Division of Land
Title and Contract Section
3601 C Street, Suite 960
Anchorage, Alaska 99503]

(SC-5) [Native corporation or other known parties]

Subject: Native Allotment Application of (SC-6) [Applicant's name, serial number and parcel]

A review of Native allotment case file (SC-7) [serial number] has been completed by the Bureau of Land Management (BLM) as directed in Aguilar v. United States, 474 F. Supp. 840 (D. Alas. 1979) [hereinafter cited as Aguilar].

The Bureau of Land Management has concluded that (SC-8) [name of applicant] failed to provide sufficient evidence or proof of entitlement to support (SC-9 his/her) Native allotment claim located in (SC-10) [legal description]. The claim is therefore proposed for rejection for the following reasons: (SC-11 1/2/3)

[Some possible reasons to include. Choose on a case-by-case basis.]

Option 1. Evidence of cessation of use which permitted the land to return to an unoccupied state(SC-13 1/2/3)["1"=.]["2"=;]["3"=; and]

Option 2. Insufficient and/or conflicting evidence of five years of substantial actual use and possession of the land at least potentially exclusive of others, as head of household or independent person and not merely intermittent use(SC-14 1/2/3)["1"=.]["2"=;]["3"=; and]

(SC-15 1/2)
[1=

According to paragraph 6 of the Stipulated Procedures for Implementation of Order in Aguilar, dated February 9, 1983, BLM will conduct an informal hearing, with a designated BLM hearings officer, if it has concluded an applicant has failed to provide sufficient evidence or proof of entitlement. The hearings officer may ask questions, and the applicant and any party claiming an interest in the land shall have the opportunity to present evidence and cross-examine witnesses.]

[2=
In accordance with paragraph 6 of the Stipulated Procedures for Implementation of Order in Aguilar dated February 9, 1983, BLM will conduct an informal hearing with an Administrative Judge from the Office of Hearings and Appeals as the hearings officer. The hearings officer may ask questions, and the applicant and any party claiming an interest in the land shall have the opportunity to present evidence and cross-examine witnesses.]

(SC-16 y/n["y"=
There is the possible existence of a bona fide purchaser (BFP). Since the question of the existence of a BFP is closely related to the question of the applicant's use and occupancy of the land and the validity of the application, the applicant should introduce evidence regarding use and occupancy of the land and entitlement to the allotment, as well as rebutting evidence presented by the potential BFP.]

Based on evidence presented at the hearing and contained in the case file, a decision will be made (which shall be final for the Department of the Interior) either to reject this application or refer the claim for settlement.

Card b Option 1/2

["1"=
At a later date, you will be notified of the date and location of the hearing and the name of the hearing officer. The hearings are tentatively scheduled (SC-1) [month or other general timeframe]. For further information, please contact (SC-2) [adjudicator] at (SC-3) [phone #].]

["2"=
The hearing is scheduled to be held at (SC-1), [place] in (SC-2) [city/town] Alaska, commencing at (SC-3), [time] on (SC-4) [date].

This letter is considered to be the official notice to all interested parties of the scheduled hearing. Parties claiming an interest in the land who plan to testify at the hearing should inform the designated hearings officer for this case, (SC-5) [name of hearing officer], orally or in writing, at the following address no later than (SC-6) [date]:

(SC-7 1/2)[1=

Department of the Interior
Bureau of Land Management
Branch of (SC-8) Adjudication (96(SC-9))
Federal Building
222 West Seventh Avenue, #13
Anchorage, Alaska 99513-7599
Telephone: (907) 271-(SC-10)]

[2=

Office of Hearings and Appeals
Interior Board of Land Appeals
4015 Wilson Boulevard
Arlington, Virginia 22203

If for any reason the applicant or the applicant's representative fails to appear at the scheduled hearing or requests in writing (with concurrence of the Bureau of Indian Affairs) that a hearing not be held, a decision, which will be final for the Department of Interior, will be issued based on the existing record].]

Card c

Sincerely,

(SC-1 3/4/6/7/8)

Option 3= Ann Johnson
Chief, Branch of Calista Adjudication

Option 4= Donald E. Runberg
Chief, Branch of Doyon/Northwest Adjudication

Option 6= Mary Jane Piggott
Chief, Branch of Southwest Adjudication

Option 7= Terry R. Hassett
Chief, Branch of KCS Adjudication

Option 8= Ramona Chinn
Chief, Branch of Cook Inlet and Ahtna Adjudication

Copy furnished to:

(SC-2) [applicant] (CM-RRR)

(SC-3 y/n) [Use here if not an addressee]
["y"=
Alaska Legal Services Corporation (CM-RRR)
1016 West Sixth Avenue, Suite 200
Anchorage, Alaska 99501]

(SC-4 y/n) [use here if State is not addressee]
["y"=
State of Alaska (CM-RRR)
Department of Natural Resources
Division of Land
Title and Contract Section
3601 C Street, Suite 960
Anchorage, Alaska 99503]

(SC-5 y/n)[use here if State is addressee)
[y= Assistant Attorney General (CM-RRR)
(SC-6)[name of Assistant Attorney General]
State of Alaska
Department of Law
1031 W. Fourth Avenue, Suite 200
Anchorage, Alaska 99501]

(SC-7 y/n)[y=
Administrative Judge (SC-8)
Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
4015 Wilson Boulevard
Arlington, Virginia 22203
(w)dummy file)]

Bureau of Indian Affairs
Alaska Title Services Center
1675 C Street
Anchorage, Alaska 99501-5198

(SC-9) [any other interested party]

cc:
Senator Frank H. Murkowski
Federal Building and Courthouse
222 West Seventh Avenue, #1
Anchorage, Alaska 99513

Alaska Programs Staff (310)
Main Interior Building, Room 3653

Deputy Regional Solicitor
Alaska Region

Chief, Public Affairs (912)

Native Allotment Coordinator (961)

SUBPOENA

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

(CASE NAME)) (ALLOTMENT NO.)

TO:

YOU ARE HEREBY COMMANDED to appear before Hearing Officer of the Bureau of Land Management, Department of the Interior, at _____ in the City of _____, at the hour of _____ M., on the _____ day of _____, 19 , to testify on behalf of _____, in the above entitled matter.

_____, 19

_____
Hearing Officer

_____
Attorney for

_____
Address

ILLUSTRATION 7, page 2

S U B P O E N A

Service of the within subpoena is hereby admitted by the delivery of a true copy to me this ____ day of _____. 19___. at _____

_____

_____. Witness

_____

_____

* I certify that I served this subpoena in (NAME OF CITY. BOROUGH. OR JUDICIAL DISTRICT), in the State of Alaska on the ___ day of _____. 19 ___. by personally delivering a copy to the named witness

_____

* This certificate not necessary if witness admits personal service (See above)

ILLUSTRATION 8

Glossary 729a
April 24, 1992

NOTE: Can be used for passing out at an Aguilar hearing. Use is optional among branches.

Card a

Hearing Information

The hearing scheduled for today is required by the U.S. District Court for the District of Alaska (Ethel Aguilar, et al. v. U.S., 474 F. Supp. 840), to complete a determination concerning the validity of the Native allotment claim for (SC-1) [applicant name], (SC-2) [serial #], filed under the Act of May 17, 1906, as amended, 43 U.S.C. 270-1 through 270-3 (1970), for (SC-3) acres of land described as (SC-4) [land description]. The lands are currently owned by:

(SC-5) [list all landowners and parcel, if necessary]

The lands are also encumbered by the following interests:

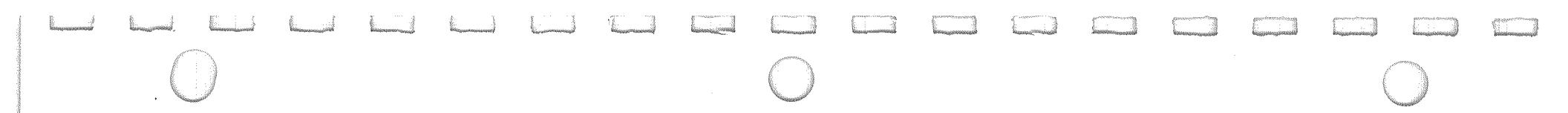
(SC-6) [list all interests]

The applicant (or heirs) and present or former property interest holders may testify, introduce witnesses, and ask questions of opposing parties concerning the applicant's use and occupancy of the land. Any written evidence introduced will be maintained as part of the official hearing record.

Following the hearing and submission of written transcripts and briefs, the testimony and other evidence will be evaluated and a decision will be issued which either rejects the applicant's claim or approves it with a recommendation for title recovery. The decision will be final for the Department of the Interior and the applicant or others affected by it will be required to seek any further legal remedies through the federal courts.

If the claim is determined to be valid and title recovery cannot be negotiated with the current titleholders, the claim will be forwarded to the Department of Justice for further action.

Hard copy 0729c



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
ALASKA STATE OFFICE
222 W. 7th Avenue, #13
ANCHORAGE, ALASKA 99513-7599

TAKE PRIDE IN AMERICA

A-04612 (2561)
(967)

August 31, 1990

Jim King (Deceased) c/o Alaska Legal Services Corporation 1016 West Sixth Avenue, Suite 200 Anchorage, Alaska 99501	:	Native Allotment Application A-04612
Martin Epstein, Director Statewide Office of Land Management Butrovich Building, Suite 21 410 Yukon Drive University of Alaska Fairbanks, Alaska 99775	:	

DECISION

Appearance: Joseph D. Johnson, Alaska Legal Services Corporation, Anchorage, Alaska, for the applicant

Before: Linda Resseguie, Bureau of Land Management Hearing Officer

Statement of the Case

On February 17, 1989, the Bureau of Land Management (BLM) proposed to reject the Native allotment application of Jim King, case file A-04612, and scheduled a hearing pursuant to Stipulation No. 6 of the procedures for implementation of the Court's order in Aguilar v. United States, 474 F. Supp. 840 (D. Alas. 1979).[1/]

1/ The Stipulated Procedures for Implementation of Order are hereinafter referred to as the Aguilar procedures.

The hearing was held on March 31, 1989, in Haines, Alaska.[2/] Counsel for the applicant has filed a post-hearing brief. Although the University of Alaska was notified, it did not participate in the hearing nor has it offered any evidence to refute the claim of Jim King.

Case File Contents Summarized

On March 17, 1921, Jim King filed a Native allotment application in the U.S. Land Office at Juneau, Alaska, which was serialized as case file J-04612 (later changed to A-04612). The application was for 160 acres of land located near the mouth of Herriman Creek, a tributary of the Kleehena River,[3/] approximately 8 miles from Klukwan and 32 miles from Haines, Alaska. The applicant claimed occupancy of this land beginning in 1912.

Jim King died on April 10, 1922.

On August 15, 1923, Walter B. Heisel, Special Agent, General Land Office, examined the land described in application A-04612. The examiner found the land to be "non-mineral, heavily timbered, partly subject to overflow from the Klaheena River."

The creek identified as Herriman Creek in the application was corrected to Herman Creek in this report. The examiner stated that an old log cabin was located on the land but noted that he had been unable to ascertain the identity of the person responsible for erecting the cabin. He also stated that the cabin was occasionally used by prospectors. "Conditions on the ground indicate place has been abandoned for years. Claimant's wife is working at the Haines Packing Co. cannery and it would be impossible for either of them to make a living on the land." The examiner had contacted a G.W. Hinchman, U.S. Commissioner at Haines at the time the application was filed, who advised that the "claimant only went on land occasionally."

2/ Stipulation No. 2 of the Aguilar procedures requires a determination of heirs prior to BLM's proceeding. Immediately prior to hearing, it became apparent that a determination of Jim King's heirs had not been made. With concurrence of Alaska Legal Services Corporation, the hearing was held. On February 15, 1990, copies of the hearing transcript were furnished to all potential heirs identified by probate order dated January 11, 1990. The record was reopened for 60 days to allow submission of additional evidence by potential heirs. No additional evidence has been received.

3/ There are a number of spelling variations for this river found throughout the case file. Dictionary of Alaska Place Names 1971 edition lists the preferred spelling as Klehini. It is clear from the file that all variations refer to the same river.

On November 8, 1923, the General Land Office issued a decision holding the application for rejection and allowing the right to appeal providing the following rationale:

> The papers on file with this case show that neither the applicant at the time of his death, nor his heirs since then, have cultivated or improved the land embraced in this application sufficiently to meet the requirements of the regulations governing allotments of lands in Alaska by native Indians or Eskimos.

The decision was sent by registered mail to Charles Hawkesworth, Superintendent of the Bureau of Education, and Jim King, the applicant.

The rejection decision was not appealed, and the case was closed on August 13, 1924.

On August 25, 1952, the Territory of Alaska filed selection application A-022256 for certain lands, including the lands identified in King's allotment application, pursuant to the Act of January 21, 1929, Ch. 92, 45 Stat. 1091-93, formerly codified at 48 U.S.C. 354a (1952). That Act gave the Territory of Alaska, for the benefit of the Agricultural College and School of Mines, now the University of Alaska, 100,000 acres of "vacant nonmineral surveyed unreserved public lands in the Territory of Alaska to be selected, under the direction and subject to the approval of the Secretary of the Interior . . . ." These lands were later conveyed to the Territory of Alaska by Clear List No. 9 on May 12, 1958.

On September 1, 1981, the Bureau of Land Management reinstated case file A-04612 pursuant to Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976).

On March 10, 1982, Central Council of the Tlingit and Haida Indian Tribes of Alaska (Central Council), submitted a copy of King's application along with a statement by Susie Nasook. This lengthy statement taken October 5, 1946, includes the following information relevant to this application:

> I have helped my husband build canoes. He got logs on the Klenini River at a place called gayanhin, where James King has a cabin. This formerly belonged to the taklawedi.[4/]

On June 18, 1982, the BLM notified the Bureau of Indian Affairs (BIA) that the application had been reinstated and asked the BIA to provide a plottable land description for the claim. On June 30, 1982, the Central Council provided the following description:

> SE¼, Sec. 29, T. 28 S., R. 55 E., Copper River Meridian, Alaska.

On July 12, 1983, Alaska Legal Services Corporation (ALSC) filed affidavits executed by Richard King, Charles King, and Fred Donnelly which are summarized below.

4/ The hearing testimony shows that Susie Nusuq (Nasook) was the wife of applicant Jim King. Their son, James King, used the land and cabin described in the allotment application following his father's death. (TR 15, 47)

Richard King was born August 26, 1912, at Haines and lived in Klukwan until 1923 when his grandfather, Jim King died. He recalled living with his grandfather and accompanying him to his allotment. They traveled by dog team to the cabin, and his grandfather trapped on that land. Richard went with his grandfather over Christmas holidays, but his grandfather made trips by himself when Richard was in school. Richard did not know when his grandfather built the cabin, but it was "pretty old" when he first went there.

* * *

Charles King was born February 12, 1915, and vaguely recalled going to his grandfather's allotment claim when he was very young. He clearly recalled his grandmother telling him in 1938 about the lands his grandfather had applied for, including the fact that these lands "had already been marked or surveyed."

* * *

Fred Donnelly was born July 6, 1913. On one occasion he helped Jim King "bring a big load of furs to town." Jim King had a cabin and used to spend the entire winter there trapping, stopping at Donnelly's parents' roadhouse on his trips to and from the cabin. According to Donnelly, King caught salmon off his land and hunted for bear.

* * *

On June 13, 1984, the State of Alaska issued a quit claim deed which transferred its interest in the property to the Board of Regents of the University of Alaska. The land description given in the deed for Sec. 29, T. 28 S., R. 55 E., Copper River Meridian, is described as being "Subject to: Native allotment BLM Serial No. A-04612."

In 1984, the BLM conducted a field examination of the land claimed. The examiner identified the parcel as lots 5 and 7, E½SW¼, and SW¼SE¼ of Sec. 30, T. 28 S., R. 55 W., Copper River Meridian, Alaska, approximately 1¼ miles west of the description given by the Central Council on June 30, 1982. Fred Donnelly accompanied the examiner to the parcel. No cabin was found; however Donnelly stated that it had been destroyed in 1964 during logging operations. The examiner noted that the road leading to the Porcupine Mine, constructed in or around 1904, crossed the parcel. The examiner was unable to conclude whether the applicant had met the requirements of the Native Allotment Act.

On June 12, 1987, ALSC, filed an affidavit executed by Annie Hotch. Mrs. Hotch, at age 86, recalled that Jim King died when she was a young woman. She also remembered that he had a cabin "up the Klehini River" from which he trapped and caught and smoked salmon.

On June 26, 1987, the BLM issued a letter pursuant to Stipulation No. 4 of the Aguilar procedures giving BIA, as representative of the deceased applicant, and the State of Alaska, the opportunity to file additional information concerning this claim.

On January 25, 1988, the BLM provided a copy of the June 26, 1987, letter to the University of Alaska allowing 90 days from receipt thereof for the University to file additional evidence in the case.

On February 17, 1989, the BIA was notified that the BLM had determined that the applicant had failed to provide sufficient evidence or proof of entitlement to support his claim and that his application was proposed for rejection. The reason given for the proposed rejection was:

> Insufficient and/or conflicting evidence of five years of substantial actual use and possession of the land at least potentially exclusive of others, as head of household or independent person and not merely intermittent use.

Discussion and Findings

The Native Allotment Act of 1906, as amended, 43 U.S.C. 270-1 through 270-3 (1970), granted the Secretary of the Interior authority to allot, "in his discretion and under such rules as he may prescribe," vacant, unappropriated, unreserved nonmineral land in Alaska to any Indian, Aleut, or Eskimo of full or mixed blood who resided in and was a Native of Alaska and was head of a family or was 21 years of age. The Allotment Act gave any qualified applicant a "preference right to secure by allotment the nonmineral land occupied by him not exceeding one hundred and sixty acres." (Emphasis added.)

Initiation of use and occupancy creates an inchoate preference right under the Allotment Act which becomes vested upon the completion of the required 5 years of use and occupancy coupled with the filing of a Native allotment application. Golden Valley Electric Association (On Reconsideration), 98 IBLA 203 (1987). United States v. Flynn, 88 I.D. 373 (1983). Further, the filing of a Native allotment application segregates the land, and subsequent conflicting applications for the same land are to be rejected. 43 CFR 2561.1(e).

In this case, Jim King filed his application for allotment in 1922 claiming use and occupancy from 1912. The result was a vested preference right relating back to his initial use and occupancy date, and a segregation of the land from all further entry. But King's claim was rejected, closed, and removed from the records in 1924 based on a determination by the General Land Office that he had failed to meet the use and occupancy requirements of the Allotment Act.

The Native Allotment Act of 1906 was repealed by Sec. 18(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1617, with a savings provision for claims pending before the Department of the Interior on December 18, 1971.

King's application remained closed until it was reinstated in 1981 pursuant to BLM's interpretation of Pence, supra.

In Pence, the Ninth Circuit Court found:

> An Alaska Native who meets the statutory requirements on land statutorily permitted to be allotted is entitled to an allotment of that land, and the Secretary may not arbitrarily deny such an applicant. Due process does apply.

It further ruled BLM's practice of rejecting allotment applications on factual issues without opportunity for an oral hearing to be a violation of the applicant's right to due process.

Relying on Pence, the BLM reinstated all Native allotment applications, or portions thereof, which had been closed on factual issues without benefit of an oral hearing, including the application of Jim King.

Although Pence did not specifically direct reinstatement of closed cases, any ambiguity concerning this point was removed by the court's decision in Mary Olympic v. United States, 615 F. Supp. 990 (D. Alaska 1985) in which Judge James M. Fitzgerald relied on Sec. 905(a) of the Alaska National Interest Lands Conservation Act of December 2, 1980 (ANILCA), Pub. L. 96-487, 94 Stat. 2311, 2435, as authorization for reinstatement of allotment claims . . . pending before the Department of the Interior on or before December 18, 1971 . . . . (Emphasis added.)

In Matilda Titus, 92 IBLA 340 (1986), the Interior Board of Land Appeals reviewed the findings in the Aguilar decision as to the Government's responsibility regarding previously rejected allotment applications:

> In Aguilar v. United States, 474 F. Supp. 840, 846 (D. Alaska 1979), the court stated: "The protection of Indian property rights is an area where the (Government's) trust responsibility has its greatest force." In Aguilar certain Alaska Natives challenged the Department's decision to reject their Native allotment applications without holding a hearing to review the facts supporting their claims. The stated basis for rejecting the application without rendering a determination on the claimants' rights was that the subject lands had been conveyed to the State of Alaska. The court found that the Native claimants' due process rights were violated because a Native claimant who can establish the facts which he alleges would establish his right to an allotment has an equitable interest in such allotment. Id., at 846. The court concluded that if the United States mistakenly or wrongfully conveyed land to the State of Alaska to which Alaska Natives had a "preference right" under the Allotment Act based on use and occupancy, the Government has a responsibility to recover that land. Id., at 847.

Jim King must show satisfactory proof of substantially continuous use and occupancy of the land for a 5-year period. If King met the use and occupancy requirements of the Allotment Act, he has held a vested preference right since 1922, and the United States had no authority to convey the land he claimed to the Territory of Alaska.

Departmental regulation 43 CFR 2561.0-5(a) defines the phrase "substantially continuous use and occupancy" as follows:

> The term "substantially continuous use and occupancy" contemplates the customary seasonality of use and occupancy by the applicant of any land used by him for his livelihood and well-being and that of his family. Such use and occupancy must be substantial actual possession and use of the land at least potentially exclusive of others, and not merely intermittent use.

Substantially continuous use and occupancy is a factual determination and "cannot be defined in any more detail than in the regulations." Memorandum from Jack O. Horton, Assistant Secretary, Land and Water Resources, to the Director, BLM, dated October 18, 1973, regarding "Adjudication of Pending,

Alaska Native Allotment Applications," cited in John Nanalook, 17 IBLA 353, 356 n.3 (1974). In the Horton memorandum, BLM is directed to consider Native traditional and customary occupancy. Evidence of a cabin, food cache, campsite, fish wheel, dock or boat landing, fish-or-meat-drying racks, berry picking, animal bones, as well as the vegetation, climate and resources on the land should all contribute to a use and occupancy determination.

The only evidence which stands in contradiction to this claim is that found in the 1923 field report. The original field examiner opined that the claim was abandoned and "it would be impossible for either of them (the applicant or his widow) to make a living on the land." He further stated that the applicant had not resided upon, cultivated, or improved the land during his lifetime as contemplated by the act--nor had the applicant's heirs since his death. By his own admission, however, he did not fully investigate the matter because he believed that the family would not appeal an adverse decision. Certain details included in the field report actually support the claim, e.g., the existence of the cabin and confirmation from the U.S. Commissioner at Haines that King did use this land.

The 1984 field report was inconclusive based on a lack of physical evidence--not surprising, considering that the applicant had been dead for over 60 years.

In support of the claim are 4 affidavits: 3 from individuals who were children at the time of King's death, and one from Annie Hotch, who was a young woman living in Klukwan at the time. In addition there is a statement from the applicant's wife which documents the existence of the cabin. Also to be considered is the testimony of two hearing witnesses, Richard King and Margaret Stevens, grandchildren of the applicant.

The testimony and affidavits offered by the applicant's grandchildren give a very clear and specific picture of how Jim King used these lands to obtain food for his family and as a base camp for a trapping operation that provided the family with an important source of cash income. The hearing testimony was credible, uncontradicted, and replete with details which show that King fully met the requirements of the Allotment Act.

Both witnesses testified that other people acknowledged King's claim to the cabin and sought his permission before using it. (TR 15, 22, 46) The affidavits of Annie Hotch and Fred Donnelly corroborate this testimony and support a finding of potential exclusivity.

I find that the applicant has unequivocally met his burden of proof. There are, however, three issues which require further discussion.

The first concerns the road leading to the Porcupine Mine. In 1984, the field examiner found this road to cross the claim. According to his report, the road was constructed in 1904, approximately 8 years before the claimed date of use and occupancy given in the application. Based on this, the examiner recommended that the allotment, if approved, be subject to the road. The 1923 field exam makes no mention of the road.

While neither witness had firsthand knowledge of whether King's use began before construction of the road, both believed the road was built following the route King used to reach his claim. (TR 23, 35-37) It was Richard King's understanding that the land had been "handed down" to his grandfather by his grandfather's forebears. (TR 35-37) Neither the State of Alaska nor the University has provided any information which would refute an earlier use and occupancy date. The death certificate for Jim King gives his age at time of death as, "Unknown. Probably 60." In the "Order Determining Heirs" dated January 11, 1990, the birthdates for King's sons are listed as 1884 and 1887. The applicant's probable birthdate and the testimony of Richard King lead me to believe that Jim King used the land not only before 1912 but before 1904, as well. Therefore, I find that King's use and occupancy commenced prior to the construction of the Porcupine Road, and the allotment, when granted, will not be subject to the road.

The second issue concerns the approved acreage for this allotment. As described in the 1984 field report, the allotment application includes 173.76 acres of land. The maximum acreage available to an individual allotment applicant is 160 acres. The plat of survey for this land was approved June 29, 1926, five years after the applicant had filed his application. In situations such as this, the BLM applies what is known as the "rule of approximation" authorized in 62 I.D. 417, 421:

> Any excess must be less than the deficiency would be if the smallest legal subdivision were eliminated.

The description now includes the following:

Lot 5 - 13.23 acres.
Lot 7 - 40.53 acres.
E½SW¼ - 80 acres.
SW¼SE¼ - 40 acres.

Eliminating lot 5, reduces the allotment to 160.53 acres, which is still more than the maximum entitlement. Eliminating the next smallest subdivision (any 2.5-acre aliquot part) would reduce the allotment to 158.03 acres (1.97 acres less than applied for). In this case, the excess .53 acres is less than the deficiency, 1.97 acres; therefore, the allotment may be approved for no more than 160.53 acres. Another possibility is retention of lot 5 and elimination of 15 acres from the lands described by aliquot part. The University of Alaska and counsel for the Estate of Jim King may stipulate to the exact legal description as long as no additional survey is required, and the acreage to be conveyed does not exceed 160.53 acres.

Finally, the University of Alaska, having been put on notice of the existence of this claim in its conveyance document from the State of Alaska, is precluded from asserting the defense of a bona fide purchaser.

Findings and Conclusions Summarized

The applicant has met the requirements of the Native Allotment Act of 1906 and is entitled to an allotment not to exceed 160.53 acres.

This decision is final for the Department of the Interior. The Bureau of Land Management will seek to recover title from the University of Alaska in order that this allotment may be conveyed.

Linda Resseguie

Hearing Officer

Copy furnished to:

Joseph D. Johnson (CM-RRR)
Alaska Legal Services Corporation
1016 West Sixth Avenue, Suite 200
Anchorage, Alaska 99501

Martin Epstein, Director (CM-RRR)
Statewide Office of Land Management
Butrovich Building, Suite 21
910 Yukon Drive
University of Alaska
Fairbanks, Alaska 99775

State of Alaska (CM-RRR)
Department of Natural Resources
Division of Land Management
State Interest Determinations Unit
P.O. Box 107005
Anchorage, Alaska 99510-7005

Bureau of Indian Affairs
Alaska Title Services Center
1675 C Street
Anchorage, Alaska 99501-5198
(certified true copy)

Realty Office
Bureau of Indian Affairs
Southeast Alaska Agency
P.O. Box 3-8000
Juneau, Alaska 99802

Realty Officer (CM-RRR)
Central Council of the Tlingit and
Haida Indian Tribes of Alaska
320 West Willoughby Avenue, Suite 300
Juneau, Alaska 99801

Margaret Stevens
Box 368
Haines, Alaska 99827

Richard King
Box 367
Haines, Alaska 99827

Eugene King
895 12th Street
Mountainview #308
Juneau, Alaska 99801

Ernestine Djallah
247 Curry Street
Richmond, California 94801

Joseph Luke King, Jr.
Box 525
Haines, Alaska 99827

Mariann Daisy King
c/o Fausto M. Gascon
P.O. Box 6978
Stockton, California 95206

Karen Lynn King
2033 Camden Place
Santa Ana, California 92704

Charlene King Katzeek
Box 215
Haines, Alaska 99827

Charles Edward King, Jr.
Box 818
Haines, Alaska 99827

Eugene Russell King
c/o Box 818
Haines, Alaska 99827

AA-46550 (2561)
SM (961)

JAN 30 1991

Applicant

Michael O. Johnson 530 Northeast Geraldine Drive Hillsboro, Oregon 97124	: : :	Native Allotment Application AA-46550

DECISION

Appearances: Mark Butterfield, Esq.
Alaska Legal Services Corporation
Anchorage, Alaska
for Michael Johnson

Lance B. Nelson
Assistant Attorney General
Office of the Attorney General
Anchorage Branch
for the State of Alaska

Before: Suzanne McWilliams
Hearings Officer
U. S. Bureau of Land Management
Anchorage, Alaska

As directed by the U. S. District Court (Alaska) in Aguilar v. U. S., 474 F. Supp. 840, 847 (1979), this action fulfills the requirement of the Department of the Interior to adjudicate Michael Johnson's claim of entitlement to a Native allotment.

BACKGROUND

Prior to December 18, 1971, Michael Johnson filed a Native allotment application with the Anchorage Agency of the Bureau of Indian Affairs (BIA) under provisions of the Act of May 17, 1906, as amended, 43 U.S.C. 270-1 to 270-3 (1970) (repealed with a savings provision for pending applications by the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1617).

The BIA's normal course of action following receipt of Michael Johnson's application would have been to certify his eligibility to receive an allotment and forward the application to the Bureau of Land Management (BLM) for adjudication and notation to the records. Instead, by letter of May 25, 1971, the BIA notified George Miller (representative for Native allotment applicants in Kenai, Alaska and other areas), that it was returning Michael Johnson's application and 116 others, without referral to BLM for adjudicative action. The BIA explained that the applications were received from many people in the Kenai area for lands "that are not vacant unreserved Federal public domain; that is, land which has been patented, land selected by the State of Alaska and land withdrawn for the Moose Range." The BIA summarized the type of evidence that would be necessary to substantiate the claims (some of this information was erroneous) and directed those who could provide supporting data to return their applications with the needed information. There is no indication in the record that Michael Johnson then resubmitted his application or attempted to provide additional evidence. However, on October 14, 1981, BIA forwarded the original application to BLM for reinstatement and adjudication under the Aguilar procedures.

The application was signed by Michael Johnson on December 13, 1970 and contained the required certification that he is a Native entitled to an allotment. An attached metes and bounds description and sketch map showed the applicant's claim to encompass approximately 160 acres of land within Secs. 31 and 32, T. 8 N., R. 11 W., Seward Meridian. Conformed to the plat of survey approved June 26, 1923, the lands are officially described as:

Seward Meridian, Alaska

T. 8 N., R. 11 W.,

Sec. 31, NE1/4SE1/4;
Sec. 32, W1/2NW1/4, NW1/4SW1/4.

Containing 160.00 acres.

The claimed property is located about 1/2 mile east of the eastern Cook Inlet shore at Nikishka Bay and approximately 12 miles north of the City of Kenai. The southwest corner of the parcel is located 1/4 mile north of the North Kenai Road.

A review of the land status revealed that the entire area was reserved for the Chugach National Forest in 1909. It was subsequently eliminated from the Forest in 1925. On December 17, 1941, Executive Order 8979 withdrew and

reserved lands on the Kenai Peninsula, including T. 8 N., R. 11 W., for the Kenai National Moose Range (now Kenai National Wildlife Refuge) as a refuge and breeding ground for moose. Township 8 N., R. 11 W., Seward Meridian and other areas were designated as an "excepted zone" which was to remain open to settlement or other disposition under the public land laws.

No further change in the land status occurred until November 17, 1959, when the State of Alaska filed selection A-050580 for the area claimed by Michael Johnson and other lands as a portion of its entitlement under the Mental Health Enabling Act of July 28, 1956, Pub. L. No. 830, 70 Stat. 709, 711. The State's selection immediately segregated the lands from further appropriation under the public land laws. Notification of the selection was published in the Anchorage Daily Times in May and June 1961 and October and November 1962, but no adverse claimants came forth. The selection was officially approved on July 2, 1963 and conveyed to the State on August 1, 1963 (Patent No. 1232789).

The next action pertaining to the lands occurred as a result of the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area (hereinafter Terms and Conditions), a land exchange approved by Congress to settle Cook Inlet Region, Inc.'s entitlement under the Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971, 43 U.S.C. 1601, et seq., as amended by the Act of January 2, 1976, 43 U.S.C. 1611 n. and further amended by Sec. 3(a) of the Act of November 15, 1977, Pub. L. No. 95-178, 91 Stat. 1369. As provided by Paragraph II, Appendix C.I.A. (5) (Kenai Pool) of the Terms and Conditions, on September 5, 1979, the State of Alaska executed a Deed of Title reconveying the NW1/4NW1/4, Sec. 32 to the United States for transfer to Cook Inlet Region, Inc. These lands were eventually patented to the Regional Corporation on November 16, 1979 (Patent No. 50-80-0011), as revised May 18, 1984 (Patent No. 50-84-0511) to reserve easements identified under Sec. 17(b) of ANCSA. It was later determined that Cook Inlet Region, Inc. had transferred the surface estate to Salamatof Native Association, Inc., by Quit Claim Deed dated April 16, 1982, under authority of the Terms and Conditions and the Lake Clark Land Trade Agreement of February 2, 1976.

The record indicates that the State patented the NE1/4SE1/4, Sec. 31 to George Ripley Bliss on December 29, 1983 (Patent No. 7414) pursuant to the terms of a contract of sale executed September 30, 1974.

The rule for processing Native allotment claims for lands no longer under federal jurisdiction was set forth by the U. S. District Court (Alaska) in Aguilar, 474 F. Supp. at 846. The Court directed that the Department of the Interior, in the exercise of its trust responsibility to Native Americans, must adjudicate the applicants' claims of entitlement. In those instances where factual questions arise regarding the merits of the claims, the applicants must be granted an opportunity for an oral hearing to present to the ultimate

decisionmaker evidence which supports the application. Pence v. Kleppe, 529 F.2d 135, 143 (9th Cir. 1976); Aguilar at 847. If through an adjudication an applicant can establish the facts which establish a right to an allotment, he or she has an equitable interest in such allotment and it is the responsibility of the government to recover the land. Aguilar at 846, 847.

Stipulations approved by the U. S. District Court (Alaska) on February 9, 1983 (hereinafter Aguilar Stipulations) specify the procedures to be followed by the Department of the Interior in processing the applications. Although the Aguilar Stipulations address the adjudication and settlement of Native allotment claims on lands patented to the State of Alaska, they also fulfill the due process requirements for adjudication of allotment applications in similar situations. See State of Alaska v. 13.90 Acres of Land, 625 F. Supp. 1315, 1319 (D. Alaska 1985); Elizabeth G. Cook, Eya Osterhaus, 90 IBLA 152, 157 (1985); State of Alaska v. Thorson (On Reconsideration), 83 IBLA 237, 254, 91 I.D. 331, 341 (1984). Michael Johnson's claim was therefore processed according to the Aguilar Stipulations. 1/

The Bureau of Land Management first determined that the application was timely filed and was not barred on purely legal grounds. Evidence was then solicited from the applicant and the present and former landowners of record to determine whether there were additional facts which should be considered in the adjudication of the claim. The State responded by confirming former and present interests in the land, including two right-of-way permits for powerlines, a public use permit for gravel extraction, section line easements, and access roads. Salamatof Native Association, Inc. verified its current ownership and George Ripley Bliss submitted evidence of title.

Due to the complex land status in the Kenai area and the possible existence of unidentified third parties, the BLM undertook a final precaution. Notice of Michael Johnson's claim (and others) was published in the Anchorage Daily News once each week for four consecutive weeks. The notice included an invitation to those with an interest in the claimed area to submit additional information. No additional parties in interest were identified as a result of the publication.

1/ The Aguilar Stipulations require review of the application and evidence to determine if there are immediate legal grounds for rejection; determination of heirs (for deceased applicants); requests for additional evidence from the applicant and present and former holders of fee and nonfee interests in the land; and hearings to determine additional facts. Following the hearing, a BLM decisionmaker issues a final decision on the validity of the claim. There are also provisions for full or partial settlement and the Department may sue to recover title to a valid claim.

PRE-HEARING EVIDENCE OF RECORD

The BLM adjudicative staff reviewed the evidence in the case to determine the validity of Michael Johnson's claim and the need for a fact-finding hearing to gather additional information (Aguilar Stipulations Nos. 5 and 6). This evidence is summarized as follows:

Michael Johnson was born January 15, 1947. On his application he listed periods of actual residence on the land from 1957 to 1970, June through August. Uses claimed (for the same periods) were: Hunting, snaring, trapping, fishing, berrypicking, and use of wood and timber. He noted that he did some of these things by himself, but others he did with his dad "since I was quite young when we first used this land." Listed improvements were a pole leanto and tent, made in 1957 and valued at $200. Periods of absence were to return to permanent dwelling after seasonal use, attendance at college, and residence in Washington State while his wife was finishing school. He stated his intent to return to the land.

A field exam of the claimed area was conducted on September 5, 1982; a report was prepared on December 22, 1982. The examiner was accompanied to the tract by Daniel Johnson, the applicant's father. It was noted that Daniel Johnson claimed to have marked the four corners of the allotment area with jars fastened to blazed trees. Observed access to the parcel was a dirt road leading in from the North Kenai Road used as a hunting trail prior to the applicant's move to Kenai. The existence of another access road was also indicated, and sketched on the field report site plot. A powerline was found along the section line between Secs. 31 and 32. Signs of use were not found. Resources for berrypicking and hunting were found and the potential for traditional Native use was observed. It was admitted that a burn in the area "around 1973" could have destroyed evidence and that a tent frame built in 1957 "could well have collapsed in the intervening twenty-five years." However, the field examiner concluded that the applicant had not complied with the requirements of the Native Allotment Act.

There are five affidavits of record, filed by the applicant, his parents, and friends. The statements are supportive, but fairly unspecific as to time, place, and amount of use.

A form affidavit signed by Dean Rounds (friend of the applicant, and then 29-year resident of Kenai), on April 19, 1986, attests that use commenced in 1957 for hunting, berrypicking, wood and food gathering, and wood cutting.

He saw the applicant use the land and reported the existence of a campsite, tent, and trails. He reported that the applicant used the land every year since 1957, and that others do not use the area.

Robert W. Porter, another friend of the applicant's and a then 34-year resident of the area, executed a similar affidavit on June 3, 1986. He stated that he and Michael Johnson had grown up together and camped and hunted on the land on many occasions. He attests the applicant commenced use in 1958 and that a campsite and trails are on the land. Uses listed are berrypicking, food gathering, and wood cutting and gathering. Trapping is also listed. He verified that the allotment claim is located on the north side of Mary and Dean Rounds' homestead. A second affidavit, signed by Robert Porter on April 12, 1988, describes hunting activities with the applicant in the Native allotment area and other areas. Temporary shelters were made from branches. Their joint activities ceased in 1966 or 1967 after graduation from high school.

The affidavit submitted by the applicant's father and mother, Daniel and Goldie Johnson, was executed on December 11, 1986. The statements were apparently written by Daniel Johnson, although signed by both parents. They verified that their homestead is located across the road from Michael's allotment claim and that they moved to the homestead full time in the spring of 1958. Moose were hunted from mid-August to the end of September and for a few weeks in November (the late season was later "cut out" by the State). They also hunted for rabbits and spruce hens. Michael used a .22 until high school when he was allowed to use a .30-.30. He picked berries, although a fire around 1970 burned out most of the bushes. He went out with both of his parents, the Rounds' boys (Eric and Danny), who were older, and ____ Porter [first name indecipherable]. Michael sometimes camped there, but Daniel Johnson was not exactly certain of the location. Daniel Johnson verified that he marked the corners of the claimed area with slips of papers in glass jars nailed to trees. He stated that he was able to find one during the field exam, but that the others may have been destroyed in the fire.

Michael Johnson's affidavit was executed on March 5, 1987. He stated that his parents relocated from Anchorage to North Kenai in the Spring of 1957. He was ten years old at the time and began general exploration and use of the area. Uses included the following (repeated verbatim):

1. Hunting - initially this activity was with my father during moose season and for rabbits and spruce hens. As my ability and skills developed I became more independent and hunted alone or with friends from the area. I pursued this activity, on the land in question, every year I was in the area from 1957 through 1971.

2. Trapping - during the winter months I ran a snare line for rabbits in several areas, this tract being one of them. We supplemented our diet with the rabbit and I sold the pelts to Mr. Guy Moore.

3. Gathering of berries - at one time there were some nice patches of currents in that area which I would gather along with cranberries and rosehips. My preference was the currents but you take what you find when berry picking.

4. Wood cutting - when preparing the winters wood supply I did occasionally remove some dead trees from that area. Our main wood supply, however, came from my parent's homestead. The wood gathering process was mainly my responsibility. I did not cut wood from the land I have filed on every year.

5. Camping - a[t] one point, and I really cannot remember the year this occurred, I built a shelter of the land and camped there several times as a requirement for Boy Scouts. The shelter was built from materials available on the land and has since been destroyed by a forest fire.

At this time I do not remember any further other activities that would demonstrate my 'use of the land.' All of the above listed activities occurred on a yearly basis except #4 and #5 which were intermittent.

Statements were also submitted by the State of Alaska and George Ripley Bliss, the record owner of the NE1/4SE1/4, Sec. 31. The State contended that Michael Johnson had not established entitlement to a Native allotment and suggested that a hearing might be necessary "to determine if Mr. Johnson is entitled to any of the claimed area," and to give the State an opportunity to cross-examine witnesses.

George Ripley Bliss verified that he had made payments of over $3,000 per year for his property since September 1974 and that it was paid for in full in October 1983. Mr. Bliss documented his ownership with copies of the signed patent, the patent transmittal letter, the final receipt for payment, the State notice of availability of the land for purchase, and the contract of sale. Salamatof Native Association, Inc. submitted a statement voicing support for Michael Johnson's claim.

LEGAL STANDARDS FOR REVIEW AND EVALUATION OF PRE-HEARING EVIDENCE

The Native Allotment Act, as amended, authorizes the Secretary of the Interior to allot, in his discretion and under such rules as he may prescribe, up to 160 acres of vacant, unappropriated and unreserved nonmineral land in Alaska to Indians, Aleuts, or Eskimos. 2/

To qualify for an allotment an applicant must show substantial actual use and possession of the land for a period of five years as an independent person, at least potentially exclusive of others, taking into consideration traditional Native uses and life styles. Galbraith (On Reconsideration), 105 IBLA 337, 338 (1988); Eleanor H. Wood, 46 IBLA 373, 380 (1980). Although the five years use and occupancy need not be consecutive, it must be substantially continuous and not merely intermittent. U. S. v. Flynn and Heirs of Orock, 53 IBLA 208, 223 (1981).

The evidence required to establish substantial actual use and possession, at least potentially exclusive of others, depends on the circumstances of each case. United States v. Estabrook, 94 IBLA 38, 40 (1986). However, there must be such evidence of use on the land that there is a public awareness and acknowledgment of the applicant's superior right to the land. Id. at 53. Just as a visual sighting of a Native using a parcel of land would serve to apprise other individuals that the land was under occupancy, physical evidence of such use would be equally effective in alerting third parties to the existence of an outstanding claim to the land even when the Native was not present. Galbraith (On Reconsideration), 105 IBLA at 335.

The standard of proof in this case is preponderance of the evidence. Estabrook, 94 IBLA at 52. The burden is therefore on the applicant to show, given all of the facts related to his use and occupancy, that it is more probable than not that he met the requirements of the Native Allotment Act. Woods Petroleum Co., 86 IBLA 46, 50 (1985).

2/ As provided by the Act of March 8, 1922 (42 Stat. 415; 48 U.S.C. 376-377), an applicant may also be granted title to vacant, unappropriated, and unreserved public lands valuable for coal, oil, or gas. The lands claimed by Michael Johnson were deemed valuable for oil and gas, but without value for other minerals.

The evidence of record indicated that Michael Johnson had used the land since the age of 10 or 11. At the time of the State's selection, in November 1959, he was 12 years old, the latest time he could have established qualifying use and occupancy on the claimed area prior to its segregation. In the State of Alaska a person is considered to have arrived at majority at the age of 18, and thereafter has control of his or her own actions and business. Alaska Statute 25.20.010. 3/ A Native applicant who is a minor child is not precluded from establishing use and occupancy of the land applied for; however, such use and occupancy must be achieved as an independent citizen in his own right. See generally, Shields v. United States, 698 F.2d 987 (9th Circuit 1983), cert. denied, 104 S. Ct. (1983); William Bouwens et al., 46 IBLA 366 (1980); Eleanor H. Wood, 46 IBLA at 380; Sarah A. Pence, 43 IBLA 266, 269 (1969). Additional evidence of use and occupancy under this standard was required to support Michael Johnson's application.

The record was also lacking in evidence of substantial use and possession of the land at least potentially exclusive of others. Varying reports indicated that Michael Johnson, his parents, and acquaintances used the land and other areas for hunting trapping, woodgathering, fishing, berrypicking and camping. but there was no evidence that he consistently used the specific area claimed in his application in a manner that would have established his superior interest in the land.

Because there was no indication of how the State of Alaska could have been aware of Michael Johnson's claim in 1959 (assuming the State had examined the land), the question of cessation of use was also a factor in evaluating the application. Under this rule, even though qualifying use and occupancy may have been initiated or completed, in the absence of an application, cessation of use or occupancy for a period of time sufficient to remove evidence of a present claim, terminates the applicant's right to a Native allotment. U. S. v. Flynn and Orock, 53 IBLA at 239; Jonas Ningeok, 109 IBLA 347, 351 (1989).

3/ Territorial age of majority was 21 - amended to 19 in 1959 (Sec. 1, ch 37, Session Laws of Alaska (SLA) 1959), and 18 in 1977 (Sec. 5, ch 63, SLA 1977). For the purposes of this decision I defer to the current State standard since it gives the best possible advantage to the applicant.

A fourth issue was the status of current land owners George Ripley Bliss, Cook Inlet Region, Inc. and Salamatof Native Association, Inc. If it can be established that their interests were acquired for consideration, in good faith, and without actual or constructive notice of the applicant's claim, their status as bona fide purchasers is a legal defense in suits to recover title on Michael Johnson's behalf. Colorado Coal Mining Company v. United States, 123 U.S. 307, 8 S. Ct. 131, 31 L.Ed. 182 (1887); United States v. Kolenl, 226 F. 180 (8th Cir. 1915); United States v. Detroit, 200 U.S. 321, 26 S. Ct. 282, 50 L. Ed. 499 (1906). 4/

Although there was sufficient information to support Michael Johnson's general use of the land in the vicinity of his residence and the surrounding area for camping and subsistence, the question of his independent, substantial, and potentially exclusive use of the 160-acre tract claimed in Secs. 31 and 32, the possibility of cessation of use, and the unresolved status of current titleholders were the basis for concluding that a validity determination could not rest on the written record alone.

NOTICE OF HEARING

As provided by Aguilar Stipulations Nos. 6 and 14, Michael Johnson, the State of Alaska, Cook Inlet Region, Inc., Salamatof Native Association, Inc., and George Ripley Bliss received notice that Native allotment application AA-46550 was proposed for rejection and that an oral hearing would be conducted on April 21, 1988, to allow those with an interest in the land to introduce witnesses and present additional information related to the claim. The issues in question were identified as insufficient evidence of five years substantial independent use and possession of the land at least potentially exclusive of others and not intermittent use; evidence of cessation of use; and possible existence of bona fide purchasers. At the request of the applicant, the hearing was conducted in Kenai, Alaska, at the former Kenaitze Tribal Headquarters. The applicant, George Ripley Bliss, and the State of Alaska were in attendance. Cook Inlet Region, Inc. and Salamatof Native Association, Inc. did not testify. Post-hearing briefs were filed by counsel for the applicant and the State.

4/ Cited in Memorandum of Deputy Regional Solicitor, Alaska Region, Subject: Procedures for Determining and Dealing with Third Party Purchasers of Land Claimed as a Native Allotment (January 27, 1986).

EVIDENCE AT HEARING

Testimony was taken from Michael Johnson and his parents, Goldie and Daniel Johnson. George Ripley Bliss testified on his own behalf and for the State of Alaska.

The applicant stated that he first knew about the Native Allotment Act in 1970 and first intended to claim the land in his application at that time. Although he was then residing out-of-state, his parents contacted him about the requirements and told him they would supply him with the necessary papers and information. At that time, it was his intent to return to Alaska, but he was only able to come back for short periods. (TR 121-124).

The applicant verified that he was first on the land in 1957, prior to his family's actual move to Kenai in 1958. His initial activities were mostly to explore the area. Actual use commenced in 1958. He was unable to remember the exact time he learned to shoot and trap, but stated that he hunted with his father in 1958. Game species hunted were moose, rabbits, and spruce hens. He stated that he first hunted on his own in 1959 or 1960, but on cross-examination stated with certainty that this did not occur prior to 1959. (TR 124-125, 152)

He did not hunt every week and there was no preset schedule. However, hunting of spruce hens and rabbits was year-round since it was not regulated by season: "You could shoot those whenever you found them."
When asked about specific hunting periods the applicant stated he had hunted in the area from 1958 through high school. During the first few years he was generally accompanied on hunting trips to the area by his father or friends. No one in particular was responsible for deciding where they would hunt. (TR 126-128)

The applicant set rabbit snares in the allotment area during two winters. Rabbit runs would sometimes last a week or two and he ran the lines about a total of a month each winter. He checked the snares daily or every couple of days. He wore snowshoes during these outings which would have left tracks. (TR 128-129)

The applicant felt responsible for the firewood. He learned to use a chainsaw in 1958 or 1959. The wood was brought out with his father's truck (which was usually operated by his father). Wood gathering took place year-round. Wood was taken from the allotment area a couple of times - usually just north of the edge of the Rounds' homestead clearing and along the jeep trail. (TR 131-132, 134, 141-142, 144)

Michael Johnson testified that he used the land every year, but did not see others using the area for wood cutting, rabbit snaring, or berrypicking (TR 136). He described two overnight camping experiences on the allotment area with another boy to meet boy scout requirements for a merit badge (TR 139-140). Fishing was attempted from a lake adjoining the Rounds' property; however, there were no fish (TR 131).

On cross-examination Michael Johnson confirmed that he gathered wood, hunted, and picked berries in other areas besides the allotment claim (TR 144-145, 150). He also verified that the main wood cutting supply was on his father's homestead, especially after 1962 when his father got a "cat" (TR 148). Although he was unable to remember the year he camped on the property, he identified the location on a BLM sketch map as lying within the Native allotment claim area just north of and co-extensive with the Rounds' homestead and clearing (TR 146).

He provided the following information on the duration of the camping experience:

> A They weren't 2 nights in a row, no. It was separated by -- I'm not sure how long it was. . . we did it because we both had to do it, and we wanted to do it twice so that we could each say we initiated our own camping experience.
>
> (TR 147)

During the camping experiences, shelter was made with "a pole between a couple of trees and poles up and branches over it." The shelter was then taken down and no other sign of use was left. (TR 152-153)

Michael Johnson stated that he did not think that he was using the claimed area as his own at the ages of 11, 12, or 13 (TR 152). He testified as follows on signs of use in 1959:

> Q [Mr. Nelson] If someone had come back there in 1959 and walked over the whole allotment, would they have seen signs of your use, do you think?
>
> A 1959, probably not.
>
> Mr. Butterfield: Maybe it might go by season.

Q Well, the whole year of 1959.

A If you mean, did someone see something that would say that there's definitely Mike over here using the land, no.

(TR 160)

According to the applicant "when we went out, we didn't look for any markers to say we are definitely within the bounds of any particular area" (TR 162).

Regarding George Ripley Bliss' knowledge of the claim, the applicant indicated that he did not know how Mr. Bliss would have been aware of it prior to receipt of the government notices in the mid 1980s (TR 164).

Goldie Johnson testified that the family homestead is about 1/4 mile south of the claimed area. They relied on wood and gas lamps for heat and light, hunted, gardened, berrypicked, fished, and canned. Timber was brought in from the highway. Michael contributed to all of these activities and as the eldest child was more responsible for assisting with daily living activities than the others. Although he wasn't turned loose completely on his own at the age of 10 or 11, he gradually became more independent after the requisite homestead acreage (10 to 12 acres or about 1/16 of the total) was cleared (in Fall 1958) and spent a lot of time outdoors. (TR 11-14, 28, 32-33, 58)

Michael hunted with his father across the road (TR 16). She stated that the area was selected because Michael used it - nobody else was using it at the time that they were aware of and it was sort of like their back yard (TR 19). However, she did not see him use the land prior to segregation by the State in 1959 (TR 37). She verified the presence of a cleared section line and a jeep trail on the allotment property that probably existed before they arrived. She and the children used the road to go to the beach. She supposed others did too since "that's where it ended up." (TR 30, 38)

On cross-examination the following exchange took place regarding Michael Johnson's intent to claim the allotment area:

Q When was the first time that Mike, to your knowledge, began to claim this land as his own?

A When we filed for it as --

Q When he filed his application?

Q Yes. He really didn't have any reason to think of it as anybody's before that, because there it was, free and open and not posted and few people in the area and so you used it, you know. Sort of the Daniel Boone type thing.

(TR 39)

It was Goldie Johnson's opinion that a 10 or 11 year old would not think that he was going to claim the land when he grew up: "You don't have any reason because the land is there and it's free to use" (TR 41).

Daniel Johnson stated that he taught Michael how to snare rabbits while they were in Anchorage. When they first went to Kenai, Michael did not set snares independently or initially go out by himself. (TR 64- 65) Regarding use of the jeep trail that passed through the claimed area to the beach, he reported:

A There was a lot of people go through that, you know. We're not - we weren't the only ones in that area, but I don't remember anyone else besides Dean and I and Milo and Peterson that fished down there, went through that area.

(TR 66)

He confirmed that Michael's major task, year-round, was getting wood. At first he was responsible for acquiring a quarter of the wood supply and progressed from there. (TR 69) He cut wood where it was accessible - along the road and along the homestead clearing (TR 73). When asked if Michael went into the area alone to get wood in 1957 through 1959, Daniel Johnson responded:

A Like I said before, I was out trying to make a living and I can't honestly say that he was -- he's ever gone in there by himself.

(TR 93)

Michael's hunting ammunition was supplied by his parents. He would hunt rabbits and spruce hens, but Daniel Johnson did not know exactly where Michael got them when he went out by himself. (TR 71)

Daniel Johnson provided information on use of the jeep road:

Q Were there signs on the road, could you tell that people had been using it quite a bit during the -- from '57 through 1960?

A Oh yeah. If you didn't use a road in that condition it would grow up, so --

Q And it wasn't grown up?

A No.

(TR 94)

He also mentioned that the road went to the Daniel's property at Boulder Point [a homestead about 2 miles due north of the allotment area] (TR 111). When asked if the neighbors recognized Michael's right to the land, Mr. Johnson replied that it probably "never entered their mind" (TR 99). Daniel Johnson was queried on his claimed posting of the land with paper in glass jars nailed to trees. He was unable to remember if this was done, but testified that it would have occurred before the fire. He also verified that the applicant used more than the Native allotment area: "He used pretty much of the whole area in there." (TR 101-102)

Concerning camping in the area, he (Daniel) remembered once using a tent that he pulled from tree to tree. The tent did not have a frame and was not a permanent set up. It was used for shelter, but they did not stay overnight. (TR 99-100, 115)

George Ripley Bliss testified that he purchased his land from the State "in good faith" in 1974. The parcel was a State over-the-counter offering. He did not conduct an on-the-ground inspection before purchase. His knowledge of the configuration of the land and its terrain was acquired from a quad map. He made annual payments for the land until it was paid off. The total price was about $37,500. He was only aware of Michael Johnson's Native allotment claim in 1986 or 1987 when he was notified by BLM. When he finally inspected the land he saw the jeep road, but connected it with access to the beach. When he talked to Mrs. Rounds she did not mention a Native allotment claim and he did not see evidence of a claim when he walked the property (in 1975). The parcel is still recovering from the fire and is contiguous to developed areas. (TR 177, 181-184, 186, 190, 193)

DISCUSSION

The threshold issue in this case is whether Michael Johnson established independent, substantial use and possession of the claimed area at least potentially exclusive of others prior to segregation of the lands by the State's application in November 1959.

Overall, Michael Johnson's use of the 160 - acre parcel in Secs. 31 and 32 was indistinguishable from that of any other resource user in the area and is properly characterized as intermittent. E.g., Estabrook, 94 IBLA at 53. While it is my belief that he conducted some of his activities in an independent manner prior to the State's application, this by itself, without the requisite use of the area claimed, is insufficient to initiate a preference right to a Native allotment.

The record and testimony are clear that his first experiences in the area, in 1957 (at the age of 10), were limited to exploration. Although he eventually participated in extensive subsistence activities and could use a gun and chainsaw, he used other areas besides the allotment claim. Spruce hens and rabbits were taken where he found them. While he gradually acquired primary responsibility for woodgathering, this activity occurred in the allotment area, along the North Road, and on the family homestead. As he testified, the primary woodcutting area was the homestead, especially after 1962, when his father acquired a "cat."

Michael Johnson engaged in two brief camping experiences (year unknown) on the allotment area to earn boy scout merit badges. Resources from the land were used for shelter. He snared rabbits on the claim during two winters, for a period of one month each. Assuming, at best, that these activities occurred just prior to the State's selection in 1959, it is doubtful that the slight evidence of use would have alerted the State or others to his potentially exclusive interest in the land. Indeed, the applicant testified that others would probably not have seen signs of use in 1959 and his parents were unable to verify his presence on the land at any given time.

The jeep road that went through the property pre-existed the applicant's move to Kenai and provided access to the beach and a homestead almost two miles north/northeast of the area (at Boulder Point). It was also known as a hunting road. It was not grown over, suggesting more than occasional use by others.

Lastly, it is evident from the testimony that the applicant did not intend to claim the area until notified by his parents in 1970 of his right to apply for an allotment. By the applicant's admission he was not aware of the Native Allotment Act until that time. While it is not necessary to have the intent to

establish an allotment when a Native commences use and occupancy of land, the lack of such intent may be considered in determining whether the Native has satisfied the allotment requirements. Id. at 48.

Even if the applicant had satisfied the requirements of the Native Allotment Act, there is no evidence in the record or testimony that George Ripley Bliss was or could have been aware of Michael Johnson's claim prior to his notification by BLM in the 1980s. The application was not noted on BLM records prior to its receipt in 1981. Although Mr. Bliss did not immediately conduct a field check of the land, upon later inspection (when the land was recovering from a fire) he had no reason to believe that the area was in the use and possession of another. Michael Johnson testified that he did not know how Mr. Bliss would have known of his claim and Mrs. Rounds (wife of the adjacent homesteader) did not mention the Johnson application when Mr. Bliss traveled to Kenai to walk the property. The evidence indicates that at all times Mr. Bliss acted in good faith in his belief that the property was free of adverse claims. He had no reason to question the veracity of the State's records, a purchase price of over $30,000 was duly paid, and he received title without protest from the applicant or others. It is therefore my conclusion that he meets all of the conditions for the bona fide purchaser defense. Under the rule previously cited, his status as such would preclude title recovery of the NE1/4SE1/4, Sec. 31 even if Michael Johnson had met the requirements of the Native Allotment Act.

As to the status of Salamatof Native Association, Inc. and Cook Inlet Region, Inc., it is my conclusion that they do not meet the requirements for the bona fide purchaser defense as to their respective interests in the NW1/4NW1/4, Sec. 32. In the Aguilar context, the defense arises when the United States knowlingly or erroneously conveys land validly claimed as a Native allotment to a patentee such as the State, a homesteader, or a Native Corporation, and the patentee transfers it to a third party. Memorandum of Deputy Regional Solicitor, Alaska Region, Subject: Criteria for Determining Bona Fide Purchasers (May 1, 1987). In this case, Cook Inlet Region, Inc. received a patent from the United States on its own behalf and as agent for Salamatof Native Association, Inc. 5/ Thus, as original patentees, neither party is a third party transferee eligible to assert the bona fide purchaser defense in a suit to recover title.

5/ Where a subsequent donee of real property is a member of the family of the first grantee there is a unity of parties and an implied or quasi-agency relationship exists between grantee and donee. David v. Mullis, 296 F. Supp. 1345 (S.D. Georgia 1969).

CONCLUSION

Based on the record and testimony, it is my decision that Michael Johnson did not meet the use and occupancy requirements of the Native Allotment Act. His application, AA-46550, is hereby rejected in its entirety and closed of record.

As provided by Aguilar Stipulation No. 6, this decision is final for the Department of the Interior.

/s/ Suzanne L. McWilliams

Suzanne McWilliams
Hearings Officer

Copy of Decision (w/Original Signature):
Certified Mail - Return Receipt Requested

Michael Johnson
530 Northeast Geraldine Drive
Hillsboro, Oregon 97128

Alaska Legal Services Corporation
1016 West Sixth Avenue, Suite 200
Anchorage, Alaska 99501
Attn: Mark Butterfield, Esq.

Cook Inlet Region, Inc.
Attn: Land and Resources Department
P.O. Box 93330
Anchorage, Alaska 99509-3330

Salamatof Native Association, Inc.
P.O. Box 2682
Kenai, Alaska 99611

George Ripley Bliss
2900 Boniface Parkway
#526
Anchorage, Alaska 99504

State of Alaska
Department of Law
Office of the Attorney General
Anchorage Branch
1031 West Fourth Avenue, Suite 200
Anchorage, Alaska 99501
Attn: Lance B. Nelson
Assistant Attorney General

State of Alaska
Department of Natural Resources
Division of Land and Water Management
State Interest Determinations Unit
P.O. Box 107005
Anchorage, Alaska 99510-7005
Attn: James Culbertson, Natural Resource Manager

Carol Shobe
Chief, Title and Contract Section
State of Alaska
Department of Natural Resources
Division of Land and Water Management
3601 C Street, Suite 960
Anchorage, Alaska 99503

Copy furnished to:

Realty Officer
Bureau of Indian Affairs
1675 C Street
Anchorage, Alaska 99501-5198

Homer Electric Association, Inc.
280 Airport Way
Pouch 5280
Kenai, Alaska 99611

Kristine A. Schmidt
Deputy Borough Attorney
Kenai Peninsula Borough
144 North Binkley Street
Soldotna, Alaska 99669

Veja Showalter
Route 1, Box 231
Kenai, Alaska 99611

Chief, Right of Way Agent
State of Alaska
Department of Transportation and Public Facilities
Central Region
Division of Design and Construction
Right of Way Branch
4111 Aviation Avenue
P. O. Box 196900
Anchorage, Alaska 99519-6900

Peninsula Clarion
P.O. Box 4330
Kenai, Alaska 99611
Attn: Polly Crawford

Bill Sharrow
c/o Representative Young
Federal Building
222 West Seventh Avenue, #3
Room F-272
Anchorage, Alaska 99513

Lisa Sutherland
c/o Senator Stevens
Federal Building
222 West Seventh Avenue, #2
Anchorage, Alaska 99513

Senator Murkowski
Federal Building
222 West Seventh Avenue, #1
Anchorage, Alaska 99513

David T. Walker, Esq.
326 Fourth Street, Suite B
Juneau, Alaska 99801

James B. Gottstein, Esq.
406 G Street, Suite 206
Anchorage, Alaska 99501

Phillip R. Volland, Esq.
Reese, Rice, and Volland
211 H Street
Anchorage, Alaska 99501

Jeff Jessee, Esq.
615 E. 82nd
Suite 101
Anchorage, Alaska 99518

G. Thomas Koester, Esq.
Office of the Attorney General
State of Alaska
P.O. Box K
Juneau, Alaska 99811

Lujean Diamond
Vice President
Alaska State Bank
Drawer 910
Kenai, Alaska 99611

cc:

Deputy Regional Solicitor
Alaska Region
Attn: Dennis Hopewell

Chief, Alaska Programs Staff (310)
Main Interior Building, Room 3653

Chief, Office of Public Affairs (912)

DSD for Conveyance Management (960)

Chief, Branch of Conveyance Coordination (961)

Chief, Branch of Cook Inlet and Ahtna Adjudication (968)

Native Allotment Coordinator (961)

State/ANCSA Coordinator (961)

DM-A (040)

Martin Hansen, Realty Specialist (040)

Steve Flippen (964)

A-050580 (2626)

AA-29383 (2652)

Glossary 0768a
April 24, 1992

Card a

(SC-1)(2561)
(96(SC-2)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

(SC-3) [Name, c/o Attorney and Address]
(SC-3)
(SC-3)

(SC-4) [Serial #]
Native Allotment
Application

(SC-5y/n)
State of Alaska
Department of Law
Office of the Attorney General
Anchorage Branch
1031 West Fourth Avenue, Suite 200
Anchorage, Alaska 99501

(SC-6 [Serial #]
(SC-7 y/n) State Selection
(SC-8 y/n) [Patent No.]

(SC-9 y/n) [other parties of interest]

(SC-10) 1/2) [1=Native Allotment Application Determined Valid]
[2=Native Allotment Application Rejected]

Based on a review of the entire case file, (SC-11), including all of the evidence taken at the hearing held on (SC-12), and the opinion issued thereon (see enclosure), (SC-13 1/2) [1=the applicant, (SC-14), has met the use and occupancy requirements of the Native Allotment Act and (SC-15 y/n) ["y"=parcel (SC-16) of] application (SC-17) is hereby determined valid. The Bureau of Land Management will seek to recover title from (SC-18).] [2=the applicant, (SC-19), did not meet the use and occupancy requirements of the Native Allotment Act and (SC-20 y/n) ["y" = parcel (SC-21) of] application (SC-22) is hereby rejected (SC-23 y/n) ["y"=and closed of record].

This decision is final for the Department of the Interior.

(SC-24) Options 3/4/6/7/8
Option 3= Ann Johnson
Chief, Branch of Calista Adjudication
Option 4= Donald E. Runberg
Chief, Branch of Doyon/Northwest Adjudication
Option 6= Mary Jane Piggot
Chief, Branch of Southwest Adjudication
Option 7= Terry R. Hassett
Chief, Branch of KCS Adjudication
Option 8= Ramona Chinn
Chief, Branch of Cook Inlet and Ahtna Adjudication

Enclosure:
Opinion dated (SC-25)

cc:

(SC-26)(CM-RRR)
(w/cy of enclosure)
[applicant and all interested parties not named in heading]

(SC-27)(CM-RRR)
(w/cy of enclosure)
[appropriate BIA office and/or contractor]

(SC-28 y/n)(CM-RRR)
State of Alaska
Department of Natural Resources
Division of Land
Title and Contract Section
3601 C Street, Suite 960
Anchorage, Alaska 99503
(w/cy of enclosure)

Deputy Regional Solictor
Alaska Region

Chief, Office of Public Affairs (912)

Chief, Branch of (SC-29)

Native Allotment Coordinator (961)

DM (SC-30)

(SC-31)

Glossary 266a
April 24, 1992

Card a

(SC-1) (2561)
(SC-2)
(96(SC-3))

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Carol Shobe
State of Alaska
Department of Natural Resources
Division of Land
Title and Contract Section
3601 C Street, Suite 960
Anchorage, Alaska 99503

Dear Ms. Shobe:

In accordance with the Stipulated Procedures for Implementation of Order in Aguilar v. United States, 474 F. Supp. 840 (D. Alas. 1979), Native allotment application (SC-4) of (SC-5) has been reviewed and determined to be valid. The Department has determined that the lands were erroneously conveyed to the State by (SC-6 1/2)["1"=Patent No. (SC-7)] ["2"=tentative approval], dated (SC-8). Therefore, we are requesting that you reconvey these lands located in (SC-9), containing approximately (SC-10) acres, to the United States pursuant to AS 38.05.035(b)(9). (SC-11 y/n) ["y"=We recognize that the lands have not been surveyed at this time and that you will not reconvey until this is completed. We will notify you when the plat of survey has been officially filed so that you may then submit your reconveyance package.]

Your reconveyance package should include a draft quitclaim deed (QCD) and a completed certificate of title for the subject lands, as described on the approved plat(s) of survey, together with a preliminary indication that you still own the property and a listing of any third party interests you have created. The QCD must be made out to the "United States of America and its Assigns," be unsigned, contain no reservations or exceptions not authorized by law or approved by BLM, make no reference to any type of consideration, and conform to State requirements in AS 34.15.150. (SC-12 y/n)["y"=A copy of the approved plat(s) of survey must be included in your reconveyance package.] [Use only if State survey plats are being used.]

We also request that you take no further action to alienate the land or permit uses of it and that you grant us permission to go on the land for a field check to complete the Certificate of Inspection and Possession. Permission to go on the land and agreement to reconvey must be approved by an authorized officer of the State.

(SC-13 y/n) ["y"=
Correspondence within the file indicates the State's intention is to voluntarily reconvey the lands herein described.] If you do not let us know that you are willing to voluntarily reconvey within 180 days of receipt of this letter, we will assume you are not willing and we will request a suit be filed to cancel the conveyance as to the affected land. (SC-14 y/n) ["y"=We will appreciate your early attention to our request.] [Use if lands are surveyed.] Upon reconveyance of these lands, compensatory acreage will be credited to the State's land entitlement unless the State retains ownership of the minerals.

Thank you for your cooperation and consideration in this matter.

Sincerely,

(SC-15) Option 3/4/6/7/8

Option 3= Ann Johnson
Chief, Branch of Calista Adjudication
Option 4= Donald E. Runberg
Chief, Branch of Doyon/Northwest Adjudication
Option 6= Mary Jane Piggott
Chief, Branch of Southwest Adjudication
Option 7= Terry R. Hassett
Chief, Branch of KCS Adjudication
Option 8= Ramona Chinn
Chief, Branch of Cook Inlet and Ahtna Adjudication

Enclosure:
Master Title Plat

Copy furnished to:

(SC-16) [Applicant, c/o of BIA if deceased]

Alaska Legal Services Corporation
1016 West Sixth Avenue, Suite 200
Anchorage, Alaska 99501

(SC-17) [Other interested parties]

cc:
DM (SC-18)

Hard copy 0266c

State of Alaska

Quitclaim Deed

No. 414567

This Quitclaim Deed made on February 3, 1992, by and between the Grantor, the STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES, 3601 C Street, Suite 960, Anchorage, Alaska 99503, pursuant to AS 38.05.035(b)(9) and the Final Finding and Decision dated January 23, 1992, for good and valuable consideration, does hereby convey and quitclaim unto the Grantee, the UNITED STATES OF AMERICA, whose mailing address of record is 222 West Seventh Avenue, #13, Anchorage, Alaska 99513, and its assigns forever, all right, title and interest, if any, in and to that real property situated in the Barrow Recording District, State of Alaska, and described as follows:

LOTS 1 AND 2 OF ALASKA STATE LAND SURVEY 88-34, CONTAINING 159.96 ACRES, MORE OR LESS, ACCORDING TO THE SURVEY PLAT RECORDED IN THE BARROW RECORDING DISTRICT ON JULY 26, 1989 AS PLAT 89-6.

The Above-Described Land is being acquired by the United States of America for administration by the Bureau of Land Management, Department of the Interior and is subject to the following easements, reservations, exceptions and restrictive covenants:

(a) The State of Alaska hereby expressly saves, excepts and reserves unto itself, its lessees, successors, and assigns forever, all coal, oils, gases, and associated substances which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such coal, oils, gases, and associated substances and it also hereby expressly saves and reserves unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times for the purpose of opening, developing, drilling, and working mines or wells on these or other lands and taking out and removing therefrom all such coal, oils, gases, and associated substances, and to that end it further expressly reserves unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes and to occupy as much of said lands as may be necessary or convenient for such purposes hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved;

(b) the State of Alaska further reserves to itself, its lessees, successors, and assigns forever, all rights granted by the State of Alaska to BP Exploration Company (Alaska), Inc. and Sinclair Oil and Gas Company in oil and gas lease ADL No. 25527 and to Amerada Hess Corporation, Diamond Shamrock Corporation, Placid Oil Company and Texaco, Inc. and their assigns, in oil and gas lease ADL 355038, a copy of which is attached to this Settlement and Release as Appendix 1;

(c) the State of Alaska further reserves to itself the right to royalties under oil and gas leases ADL 25527 and ADL 355038 and the right to regulate, administer, and manage the rights granted under that lease and the right to issue, regulate, administer, and manage additional leases after the termination of ADL No. 25527 and ADL No. 355038;

(d) the State of Alaska further reserves the right to exercise the rights reserved in subparagraphs (a)-(c) pursuant to unit agreements including, but not limited to, the Kuparuk River Unit Agreement;

(e) an easement 50 feet in width each side of the section line common to Section 6, Township 12 North, Range 8 East, Umiat Meridian and Section 36, Township 13 North, Range 7 East, Umiat Meridian, for use as a public highway and for public utilities as established by AS 19.10.010;

(f) in addition, the reconveyance by the state is subject to all other valid existing rights,

In Testimony Whereof the State of Alaska has caused these presents to be executed by the Director of the Division of Land, Department of Natural Resources, State of Alaska, pursuant to delegated authority, this February 3, 1992.

By: _____
Carol L. Shobe
For Ronald W. Swanson, Director
Division of Land

State of Alaska)
) ss.
Third Judicial District)

This Is To Certify that on February 3, 1992, appeared before me CAROL L. SHOBE, who is known to me to be the person who has been lawfully delegated the authority of Ronald W. Swanson, the Director of the Division of Land, Department of Natural Resources, State of Alaska, to execute the foregoing document; that Carol L. Shobe executed said document under such legal authority and with knowledge of its contents; and that such act was performed freely and voluntarily upon the premises and for the purposes stated therein.

Witness my hand and official seal the day and year in this certificate first above written.

_____
Notary Public in and for the State of Alaska

My Commission Expires: _____

Acceptance

Pursuant to Section 205 of the Federal Land Policy and Management Act of 1976 [90 Stat. 2755; 43 U.S.C. §1715 (1982)], the grantee, United States of America, hereby accepts this Quitclaim Deed for the purpose of granting the claim of Gertrude Ahsogeak for a Native Allotment, under the provisions of the Act of May 17, 1906, 43 USC 270.1-270.3 (1970), in accordance with The Stipulated Procedures for Implementation of Order approved by the Court to implement the decision in Ethel Aguilar, et al. v. United States of America, 474 F. Supp. 840 (D. Alaska 1979).

Dated this _____ day of _____, 1992

UNITED STATES OF AMERICA

By: _____
Bureau of Land Management
Alaska State Office
Anchorage, Alaska

State of Alaska)
) ss.
Third Judicial District)

This Is To Certify that on the ____ day of _____, 1992, before me appeared _____, who is known to me and who stated that he/she is the person designated by the United States of America to accept the foregoing Quitclaim Deed pursuant to 43 U.S.C. §1715 (1982), that he/she has accepted the Deed pursuant to the provisions of such law, and that such act was performed freely and voluntarily.

_____
Notary Public in and for the State of Alaska

My Commission Expires: _____

Return Recorded Document to:

United States of America
Bureau of Land Management
222 West Seventh Avenue, #13
Anchorage, Alaska 99513
Attn: Branch of Northwest Adj.

QCD No. 414567
ADL No. 414567
Location Index:
T. 12 N., R. 8 E., U.M.
Section 6
T. 13 N., R. 7 E., U.M.
Section 36

011 756

CONFORMED COPY

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, That

Akhiok-Kaguyak, Inc.
5028 Mills Drive
Anchorage, Alaska 99508

hereinafter called grantor, for the consideration hereinafter stated, does hereby convey, remise, release and quitclaim unto the

United States of America and its assigns

hereinafter called grantee, and unto grantee's heirs, successors and assigns all of the grantor's right, title and interest in the surface estate in that certain real property with the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, situated in the State of Alaska described as follows, to-wit:

F181-185

U.S. Survey No. 9392, located in protracted Sections 2 and 3, Township 37 South, Range 31 West, Seward Meridian, as shown on the plat of survey officially filed January 12, 1990. Kodiak Recording District, Third Judicial District, State of Alaska. Excepting therefrom the subsurface estate as reserved in Interim Conveyance recorded February 2, 1979 in Book 43 at Page 327.

The above-described land is being acquired by the United States of America for administration by the Bureau of Land Management, Department of the Interior.

To Have and to Hold the same unto the said grantee and grantee's heirs, successors and assigns forever. The true and actual consideration paid for this transfer, stated in terms of dollars, is zero.

On construing this deed the singular includes the plural as the circumstances may require. Witness grantor's hand this 23 day of December, 1991.

AKHIOK-KAGUYAK, INC.
Grantor

by: Ralph I Clarke

Title: President

0110 757

RECEIVED

Dec 27 10 47 AM '91

BLM AK SO ST-A

CORPORATE ACKNOWLEDGEMENT

State of Alaska)
) ss:
Third Judicial District)

On this 23rd day of December, 1991, before me personally appeared Ralph L. Eluska, to me known to be President of the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[SEAL]

Notary Public in and for the State of Alaska
Residing at Chuck Creek, Ak

My commission expires 10-21-95

110 758

ACCEPTANCE

Pursuant to lawful authority and Section 205 of the Federal Land Policy and Management Act of 1976 [90 Stat. 2755: 43 U.S.C. 1715 (1982)], the grantee, United States of America, hereby accepts this Quitclaim Deed for the purpose of granting the claim of Larry S. Matfay for a Native allotment under the Act of May 17, 1906, as amended, 43 U.S.C. 270-1 to 270-3 (1970), and the Stipulated Procedures for Implementation of Order, Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979), and by such acceptance, credits the acreage entitlement of Akhiok-Kaguyak, Inc. (Bureau of Land Management case file number AA-6646-A), under the provisions of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1611.

Dated this 31 day of December, 1991.

UNITED STATES OF AMERICA

by: Terry R Hassett

Terry R. Hassett
Chief, Branch of KCS Adjudication
Bureau of Land Management

STATE OF ALASKA)
)ss.
Third Judicial District)

THIS IS TO CERTIFY that on the 31st day of December, 1991, before me appeared Terry R. Hassett, who is known to me and who stated that he is the person designated by the United States to lawfully accept the foregoing Quitclaim Deed, that he has accepted the Deed pursuant to the provisions of law, and that such act was performed freely and voluntarily.

Franklin O. Pederson

Notary Public in and for
the State of Alaska

My Commission Expires: May 13, 1994

92-0093

2-cc

RECORDED-FILED
KODIAK RECORDING
DISTRICT

JAN 10 9 04 AM '92

REQUESTED BY TT

ADDRESS

Grantees Address:

Return Recorded Document to:

Bureau of Land Management
222 West 7th Avenue, #13
Anchorage, Alaska 99513-7599
Attn: Chief, Branch of KCS Adjudication

Case file serial #

Legal description:

U.S. Survey No. 9392, Alaska, located within Secs. 2 and 3, T. 37 S., R. 31 W., Seward Meridian.

STATE OF ALASKA
QUITCLAIM DEED
NO. 835

The Grantor, State of Alaska, pursuant to AS 38.05.035(b)(9), conveys and quitclaims to the grantee, UNITED STATES OF AMERICA and its assigns, the following described real property, including the mineral estate therein, located in the Haines Recording District of the State of Alaska:

That portion of U.S. Survey No. 7314, Alaska, located within unsurveyed Section 9, T. 29 S., R. 58 E., Copper River Meridian, Alaska, excluding Federal Powersite Classification No. 439 as it was described on February 4, 1981, containing 10 acres, more or less, according to the survey plat of U.S. Survey No. 7314, Alaska, accepted by the United States Department of the Interior, Bureau of Land Management, in Anchorage, Alaska, on February 25, 1983.

THE ABOVE-DESCRIBED LAND is being acquired by the United States of America for administration by the Bureau of Land Management, Department of the Interior.

THIS GRANT OF LAND IS SUBJECT TO all valid existing rights.

Dated this 27th day of March, 1986

STATE OF ALASKA

By: Carol L. Shobe
Carol L. Shobe
For the Director
Division of Land and Water Management
Department of Natural Resources

STATE OF ALASKA)
)ss.
Third Judicial District)

THIS IS TO CERTIFY that on the 27th day of March, 1986, appeared before me CAROL L. SHOBE, who is known to me and who stated that she is acting for the Director, Division of Land and Water Management, Department of Natural Resources, State of Alaska, and that she executed the foregoing Quitclaim Deed pursuant to statutory authority lawfully delegated to her and for the purpose stated therein, and that said execution was her free and voluntary act and deed.

Celeste L. Kinser
Notary Public in and for
the State of Alaska

My Commission Expires: 4-4-89

OCD No. 835
ADL No. 104381

4 USC 72

ACCEPTANCE

Pursuant to section 205 of the Federal Land Policy and Management Act of 1976 [90 Stat. 2755; 43 U.S.C. §1715 (1982)], the grantee, United States of America, hereby accepts this Quitclaim Deed for the purpose of granting the claim of Henry E. Reeves under the Homestead Act [43 U.S.C. §270, et. seq. (1970)] and, by such acceptance, credits the acreage entitlement of the State of Alaska under the provisions of the Act of July 7, 1958, section 6(b), for the acreage conveyed herein to the grantee.

UNITED STATES OF AMERICA

By: Michael A. Penfold
Bureau of Land Management
Alaska State Office
Anchorage, Alaska

STATE OF ALASKA)
)ss.
Third Judicial District)

THIS IS TO CERTIFY that on the 31st day of March, 1986, before me appeared Michael A. Penfold, who is known to me and who stated that he is the person designated by the United States to accept the foregoing Quitclaim Deed pursuant to 43 U.S.C. §1715 (1982), that he accepted the Deed pursuant to the provisions of such law, and that such was performed freely and voluntarily.

Francis A. Pekrun
Notary Public in and for
the State of Alaska

My Commission Expires: May 15, 1986

Return Recorded Document to:

Bureau of Land Management
701 C Street, Box 13
Anchorage, Alaska 99513
Attn: Chief, Branch of
Lands (965)

QCD No. 835
AOL No. 104381
Location Index:
T. 29 S., R. 58 E., C.R.M.
USS 7314, Section 9

ILLUSTRATION 16

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
ALASKA STATE OFFICE
701 C STREET, BOX 13
ANCHORAGE, ALASKA 99513-0099

AA-7020 (2561)
A-060929 (2620)
(967)

AUG 22 1989

Memorandum

To: Regional Solicitor, Office of the Solicitor, Anchorage, Alaska

Through: Paralegal (961)

From: Elizabeth Carew, BLM Designated Hearings Officer, Branch of KCS Adjudication (967)

Subject: Title Recovery Proceeding on the lands within Native allotment application AA-7020

Transmitted herewith is the case file for Native allotment application AA-7020. In the case file is a letter dated August 3, 1989, from the State of Alaska, informing me that the State will not reconvey title on the lands within Native allotment application AA-7020.

As directed by Aquilar v. United States, 474 F. Supp. 840 (D.Alas. 1979), I am referring this matter to you for appropriate action.

Elizabeth A. Carew

ILLUSTRATION 17

AA-53581 (2561)
F-17388 (2561)
Parcel C
(963) DD

SEP 16 1991

Memorandum

To: Gary McWilliams, Appraisals (970A)

From: Donna L. Doney, Land Law Examiner
Branch of Calista Adjudication (963)

Subject: Opinion of Fair Market Value for AA-53581 and F-17388, Parcel C

It is necessary to have an opinion of the fair market value to obtain title insurance for title recovery of Native allotments AA-53581 and F-17388, Parcel C.

Please give an opinion of the fair market value for:

AA-53581
Lot 21, U.S. Survey No. 8733, Alaska, located in Sec. 7, T. 23 N., R. 78 W., Seward Meridian. Containing 159.82 acres.

F-17388, Parcel C
Lot 2, U.S. Survey No. 8780, Alaska, located in Sec. 1, T. 22 N., R. 81 W., Seward Meridian. Containing 30.00 acres.

Your expedience in this appraisal is appreciated. Any questions, please do not hesitate to contact me at 271-5687.

/s/ Donna L. Doney

cc:
Sandy Dunn, 041
Ann Johnson, 963
Arvilla McAllister, 961

UNITED STATES DEPARTMENT OF THE INTERIOR
ALASKA STATE OFFICE
BUREAU OF LAND MANAGEMENT
222 WEST 7TH AVENUE, #13
ANCHORAGE, ALASKA 99513-7599

9300 (970A)

SEP 19 1991

Memorandum

To: DSD for Conveyance Management

From: DSD for Support Services

Subject: Opinion of Value for Title Insurance Purposes Native Allotment

As requested, an opinion of value for cases AA-7963, AA-6506-A, AA-53581, F-17388-C has been completed. These reports provide the opinion of value for the subjects and they are approved for use only for the purpose of obtaining title insurance.

If you have any questions or need further information, please call Gary McWilliams at (907) 267-1270.

Attachments

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
ALASKA STATE OFFICE
APPRAISALS (970-A)

Opinion of Value for
Title Insurance Purposes
F-17388-C

A. **Purpose and Function** - This report will provide an opinion of market value needed for title insurance purposes.

B. **Assumptions and Limiting Conditions** - The subject property is assumed to have marketable title and is available for development to its highest and best use. This report meets the minimum requirements set forth in the Bureau Manual (9310).

C. **Rights Appraised** - Fee simple estate.

D. **Legal Description** - Lot 2, U.S. Survey No. 8780, located in Section 1, T. 22 N., R. 81 W., Seward Meridian. Containing 30.00 acres.

E. **Property Description** - This property is located in the Yukon Delta about 12 miles southwest of Mountain Village. The parcel is accessible by small water craft or snowmachine.

F. **Highest and Best Use** - Subsistence purposes.

G. **Valuation** - The value opinion for the subject property is based on a comparison with market sales of similar properties. This market sales data is on file in the appraisal office.

H. **Conclusion** - Based on a review of available comparable market sales it is the appraiser's opinion the subject property has an estimated value as of September 18, 1991, of $20,000.

The subject property was not inspected. Topographical maps, surveys, and master title plats were reviewed. This report is prepared for title insurance purposes only and is not intended for use as a basis for purchase, sale, or lease of the subject property. I certify the amount indicated represents my best unbiased judgment as to the market value of the rights appraised. I further certify I have no present or intended future interest in this property.

Chief State Appraiser

9-1-91
Date

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
ALASKA STATE OFFICE
APPRAISALS (970-A)

Opinion of Value for
Title Insurance Purposes
AA-7963

A. **Purpose and Function** - This report will provide an opinion of market value needed for title insurance purposes.

B. **Assumptions and Limiting Conditions** - The subject property is assumed to have marketable title and is available for development to its highest and best use. This report meets the minimum requirements set forth in the Bureau Manual (9310).

C. **Rights Appraised** - Fee simple estate.

D. **Legal Description** - Lot 4, SW1/4 NE1/4, N1/2 NW1/4 SE1/4 Sec. 36, T. 17 S., R. 44 W., Seward Meridian, Alaska. Containing 96.60 acres.

E. **Property Description** - The property is located about 7 miles southeasterly of King Salmon, Alaska. It is accessible by road or by boat on the Naknek River.

F. **Highest and Best Use** - Recreational/Residential.

G. **Valuation** - The value opinion for the subject property is based on a comparison with market sales of similar properties. This market sales data is on file in the appraisal office.

H. **Conclusion** - Based on a review of available comparable market sales it is the appraiser's opinion the subject property has an estimated value as of September 18, 1991, of $95,000.

The subject property was not inspected. Topographical maps, surveys, and master title plats were reviewed. This report is prepared for title insurance purposes only and is not intended for use as a basis for purchase, sale, or lease of the subject property. I certify the amount indicated represents my best unbiased judgment as to the market value of the rights appraised. I further certify I have no present or intended future interest in this property.

Chief State Appraiser

Date

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
ALASKA STATE OFFICE
APPRAISALS (970-A)

Opinion of Value for
Title Insurance Purposes
(AA-6506-A)

A. **Purpose and Function** - This report will provide an opinion of market value needed for title insurance purposes.

B. **Assumptions and Limiting Conditions** - The subject property is assumed to have marketable title and is available for development to its highest and best use. This report meets the minimum requirements set forth in the Bureau Manual (9310).

C. **Rights Appraised** - Fee simple estate.

D. **Legal Description** - USS 9392, located within protracted Secs. 2 and 3, T. 37 S., R. 31 W., Seward Meridian, Alaska.

E. **Property Description** - This is an 80 acre parcel located on the southern end of Kodiak Island. The parcel is accessible by boat or aircraft.

F. **Highest and Best Use** - Recreational

G. **Valuation** - The value opinion for the subject property is based on a comparison with market sales of similar properties. This market sales data is on file in the appraisal office.

H. **Conclusion** - Based on a review of available comparable market sales it is the appraiser's opinion the subject property has an estimated value as of September 18, 1991, for $160,000.

The subject property was not inspected. Topographical maps, surveys, and master title plats were reviewed. This report is prepared for title insurance purposes only and is not intended for use as a basis for purchase, sale, or lease of the subject property. I certify the amount indicated represents my best unbiased judgment as to the market value of the rights appraised. I further certify I have no present or intended future interest in this property.

Chief State Appraiser

9-19-91
Date

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
ALASKA STATE OFFICE
APPRAISALS (970-A)

Opinion of Value for
Title Insurance Purposes
AA-53581

A. **Purpose and Function** - This report will provide an opinion of market value needed for title insurance purposes.

B. **Assumptions and Limiting Conditions** - The subject property is assumed to have marketable title and is available for development to its highest and best use. This report meets the minimum requirements set forth in the Bureau Manual (9310).

C. **Rights Appraised** - Fee simple estate.

D. **Legal Description** - Lot 21, U.S. Survey No. 8733 located within Sec. 7, T. 23 N., R. 78 W., Seward Meridian, Alaska. Containing 159.82 acres.

E. **Property Description** - This property is located in the Yukon Delta approximately 2 miles northeasterly from Mountain Village and is accessible via the Mountain Village - St. Mary's Road.

F. **Highest and Best Use** - Subsistence with residential potential.

G. **Valuation** - The value opinion for the subject property is based on a comparison with market sales of similar properties. This market sales data is on file in the appraisal office.

H. **Conclusion** - Based on a review of available comparable market sales it is the appraiser's opinion the subject property has an estimated value as of September 18, 1991, of $80,000.

The subject property was not inspected. Topographical maps, surveys, and master title plats were reviewed. This report is prepared for title insurance purposes only and is not intended for use as a basis for purchase, sale, or lease of the subject property. I certify the amount indicated represents my best unbiased judgment as to the market value of the rights appraised. I further certify I have no present or intended future interest in this property.

Robert J. McWilliam
Chief State Appraiser

9-19-91
Date