

TETLIN NATIVE CORP.

IBLA 82-1144

Decided May 16, 1985

Appeal from a decision of the Alaska State Office, Bureau of Land Management, reserving site easement designated EIN 2 C5 in a decision to issue conveyance to a village corporation, F-20518.

Recommended decision of Administrative Law Judge L. K. Luoma affirming BLM easement designation adopted as a decision of the Board.

1. Alaska Native Claims Settlement Act: Conveyances: Easements--  
Alaska Native Claims Settlement Act: Easements: Decision to

Reserve

Sec. 17(b) of the Alaska Native Claims Settlement Act authorizes the Secretary, when issuing a conveyance for lands to a village corporation under sec. 19 of the Alaska Native Claims Settlement Act, to reserve such easements as are reasonably necessary to guarantee access to major waterways and publicly owned lands. BLM's reservation of a site easement for such purpose will not be disturbed in the absence of a showing that the BLM determination is erroneous.

2. Administrative Procedure: Administrative Review--Alaska Native Claims Settlement Act: Native Land Selections: Village Selections

Where the facts and the law are properly set forth in an Administrative Law Judge's decision recommending affirming a BLM decision to reserve a site easement pursuant to sec. 17(b) of the Alaska Native Claims Settlement Act, the recommended decision may be adopted as the final decision of the Board.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Tetlin Native Corporation (Tetlin) appealed to the Alaska Native Claims Appeal Board (ANCAB) a decision of the Alaska State Office, Bureau of Land Management (BLM), dated September 24, 1980, to reserve site easement

designated EIN 2 C5 when conveying land to Tetlin under section 19 of the Alaska Native Claims Settlement Act (ANCSA). 1/

By order of ANCAB dated May 14, 1981, the easement appeal was referred to the Hearings Division for assignment of an Administrative Law Judge to conduct a full hearing on the issue of whether reservation of the site easement designated EIN 2 C5 was authorized by section 17(b) of ANCSA and the regulations promulgated thereunder. The ANCAB order instructed the Judge to prepare a recommended decision, stating that upon receipt of the transcript and recommended decision, the Board would then make a final determination of the easement matter.

A hearing was held on September 18, 1981, at Tok, Alaska, a community nearby the Tetlin Indian Reservation. Judge Luoma issued a decision on May 6, 1982, recommending that BLM's decision to reserve site easement EIN 2 C5 be affirmed. Judge Luoma served his decision on the parties giving each 30 days to file exceptions with ANCAB.

[1, 2] None of the parties filed any response to the Judge's recommended decision. We have thoroughly reviewed the record, and arguments advanced by appellant. The recommendation decision sets out a full summary of the facts and applicable law, and is supported by the evidence presented. The Board of Land Appeals 2/ with one exception, adopts the recommended decision as the final decision of the Board. 3/ A copy of the Judge's decision is attached hereto.

---

1/ The Tetlin appeal addressed several other issues including an objection to BLM's determination to make the conveyance of U.S. Survey No. 2779 subject to a business lease covering 20 acres of that survey and an objection to BLM's failure to identify and adjudicate as invalid a mineral lease which purports to be applicable to all three surveys which BLM proposes to convey to Tetlin. On Apr. 14, 1981, ANCAB issued Tetlin Native Corp., 5 ANCAB 197 (1981), dismissing that portion of the appeal as to the issue of the mineral lease by finding that BLM is not required to identify or adjudicate third-party interests derived from sources other than the United States or the State of Alaska. On May 6, 1981, Tetlin filed a motion to dismiss the portion of its appeal relating to the business lease. Tetlin Native Corp., 5 ANCAB 299 (1981), granted that motion thus leaving for future determination only that portion of Tetlin's appeal regarding site easement EIN 2 C5.

2/ The Board of Land Appeals assumed the functions and responsibilities of ANCAB effective June 30, 1982, 43 FR 26390 (June 18, 1982).

3/ That exception is the quotation on page 8 of the recommended decision from the order in Appeal of Goldbelt, Inc., ANCAB G 80-1 (Oct. 9, 1981), that a "decision to reserve easements must be affirmed unless the appellant shows by substantial evidence that such decision was arbitrary and capricious." This statement and one based on it in Northway Natives, Inc., 69 IBLA 219 89 I.D. 642 (1982), were overruled in United States Fish and Wildlife Service, 72 IBLA 218, 220-21 (1983). The Board, on behalf of the Secretary, has plenary authority to review de novo all official actions and to decide appeals on the basis of a preponderance of the evidence in cases involving substantive rights, or on the basis of public policy or public interest in cases involving the exercise of discretion. Id. at 220.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the recommended decision is adopted as the final decision of the Board.

Gail M. Frazier  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

R. W. Mullen  
Administrative Judge

May 6, 1982

Appeal of Tetlin Native Corporation From Decision of the Bureau of Land Management  
F-20518 (September 24, 1980)

ANCAB VLS 80-46 Site Easement EIN 2 C5

RECOMMENDED DECISION

Appearances: Martha F. Neville, Esq., Anchorage, Alaska for the Bureau of Land Management; and  
Frederick H. Boness, Esq., Anchorage, Alaska for Tetlin Native Corporation.

Before: Administrative Law Judge L. K. Luoma

By order dated May 14, 1981, the Alaska Native Claims Appeal Board (ANCAB) pursuant to 43 CFR 4.911(c) referred this matter to the Hearings Division for hearing and a recommended decision on the issue of whether reservation of the site easement designated EIN 2 C5 was authorized by § 17(b) of the Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971, 43 USC § 1616(b) (1976), and the regulations promulgated thereunder. 43 CFR 2650.4-7.

A hearing was held on September 18, 1981, at Tok, Alaska, a community nearby the Tetlin Indian Reservation.

The land constituting the former Tetlin Reserve was legislatively conveyed to Tetlin on May 18, 1981, when Tetlin filed an election to receive conveyance pursuant to section 1437 of the Alaska National Interest Lands Conservation Act of December 2, 1980 (94 Stat. 2371, 2546). Formal patent under authority of section 19(b) of ANCSA and pursuant to section 1437(c) the 1980 Act was issued on August 25, 1981. The patent contains a reservation of an easement to the United States, the subject matter of this proceeding, which reads as follows:

Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 (Stat. 688, 708; 43 U.S.C. 1601, 1616(b)), as amended, the following public easement, referenced by easement identification number (EIN) on the easement map attached to this

document, a copy of which will be found in case file F-20518-EE, is reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for this type of easement. Any uses which are not specifically listed are prohibited.

One Acre Site: The uses allowed for a site easement are: vehicle parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading or unloading shall be limited to 24 hours.

(EIN 2 C5) A site easement upland of the ordinary high water mark in previously protracted Sec. 25, T. 18 N., R. 14 E., Copper River Meridian, on the left bank of the Tanana River. The site is one (1) acre in size with an additional twenty-five (25) foot wide easement on the bed of the river along the entire waterfront of the site. The uses allowed are those listed above for a one (1) acre site easement.

The patent stems from BLM decision F-20518 issued September 24, 1980. Tetlin filed a notice of appeal from that decision on October 24, 1980, and in its statement of reasons filed November 24, 1980, it objected to the decision for the reason, inter alia, that "the one-acre site easement reserved to the United States pursuant to Section 17(b) of ANSCA, on the grounds that this easement is not authorized by Section 17(b) and the regulations promulgated thereunder." This gave rise to ANCAB's order of May 14, 1981 and the hearing that followed. <sup>1/</sup>

#### Findings of Fact

The Tanana River meanders across the Tetlin Reserve on a generally northwest-southwest course for a distance of approximately 36 river miles. The Alaska Highway, the public highway connecting Alaskan population centers with Canada and the lower 48 states, also crosses the Tetlin Reserve, on a course roughly similar to that of the river. The river is navigable by various types of watercraft including canoes, rowboats, motorboats, jet boats, air boats and barges. It is classified by the BLM as a major waterway, providing access to a vast area of public, private and native lands. This stretch is used mainly by

---

<sup>1/</sup> The patent containing the site easement reservation was issued subsequent to the date of the appeal. At the hearing counsel for Tetlin stated that Tetlin agreed to inclusion of the easement in the patent in order to gain title to its land rapidly but that Tetlin in no way accepts or agrees that it is a proper inclusion (Tr. 9).

the residents of Tetlin, Tok and Tanacross, the three main communities in the area, as well as by other travelers of the Alaska Highway. The main purposes for this water travel are for hauling freight from Tok to Tetlin, hunting, fishing, trapping and general recreation.

The highway crosses the river once within the Tetlin Reserve, at a bridge adjacent to site easement EIN 2 C5 (hereinafter "the site easement"). In fact that is the only point where the highway and river cross within a distance of at least 50 highway miles either way. Within the Reserve the site easement offers the only point of transfer between highway and river traffic. The site easement is approximately 11 miles east of Tok, the largest community in the area. It is improved with a cleared area suitable for vehicle parking, temporary camping and launching and landing types of boats used in conjunction with the river. It has a short access road within the highway right-of-way connecting the site easement to the highway. While the record does not disclose as to when the site came into existence in its present form, the bridge crossing at the site has been there at least before 1960 (Ex. B-1). The site has been used for launching and landing of boats for many years and for transferring of freight from highway transport to river boat for shipment upstream to the native village of Tetlin.

Proceeding westerly from the site easement the next point of transfer between highway and river traffic is the Tok River Wayside, a public parking, camping and boat launching site owned by the State of Alaska. This site is six highway miles and roughly 16 river miles westerly of the site easement. This site requires use of four miles of the Tok River, a tributary of the Tanana, in order to reach the Tanana from the highway. The four-mile stretch of the Tok River is described variously as "very swift", "shallow", "tricky" and as being a "downstream stream" or a "good float creek", suitable for downstream travel by canoe but impossible to travel by motorboats normally used on the Tanana River.

The next point of transfer going westerly is what is referred to as **the River Road**. This road joins the Alaska Highway at Tok, 11 miles from the site easement, and meets the Tanana River, four and one-half miles to the northeast, at the point where the Tok River enters the Tanana. That point is roughly 12 river miles downstream from the site easement. The launch site at the end of the road has a sharp or steep mud bank making it difficult to launch and land boats other than canoes. It is described as "not even comparable" to the site easement for purposes of launching and landing boats. The River Road itself is in poor condition, with potholes and bad ruts. It is likened to a muddy trail, most of the summertime not passable by an ordinary two wheel drive passenger vehicle. At best it is passable by a four wheel drive pickup truck.

The next point of transfer going westerly is the Tanacross Airport which is 22 1/2 highway miles and 45 river miles from the site easement, and approximately 11 1/2 miles westerly of Tok. It is reached from the Alaska Highway by way of an access road, about one and one-half miles long, which serves the village of Tanacross. While not specifically described by any witness the site appears to be a point where the north end of the airport proper adjoins the Tanana River (Ex. T-2). It is suitable for launching large boats and in the opinion of one witness it is second best in the area to the site easement. State of Alaska has an application pending for patent to the airport and, if granted, will not be available to the BLM for reservation as a launching site. Also the native village of Tanacross has selected the land encompassing the area and that matter is presently in litigation.

Proceeding westerly from Tanacross the next point of transfer is the Cathedral Bluffs site where the highway and the Tanana River are in close parallel proximity for about three miles. That site is 36 highway miles and 67 river miles from the site easement, and 26 highway miles west of Tok. There is no boat launching site as such but a person could carry a canoe down from the road and launch it in the river.

Moving now in a southeasterly direction upstream from the site easement the nearest point of transfer which was discussed is the Riverside site. It is approximately 25 highway and 38 river miles distant. At Riverside is a lodge which has been closed for about four or five years. At one time this was a major launching site for river boats but in recent years the river has been cutting so hard into the bank that the landing site has been washed away. It can no longer be considered a suitable site for launching river boats.

The next point of transfer upstream is Northway which is 39 highway and 57 river miles from the site easement, and 50 highway miles from Tok. A site easement similar to the one at issue has been recommended for reservation in the conveyance which will be issued to Northway Natives Incorporated. That group is opposed to such reservation. The site is suitable for launching large river boats.

#### Applicable Law

Under section 17(b) of ANCSA, *supra*, the Secretary of the Interior is authorized and directed to reserve such public easements across lands selected by Village Corporations and Regional Corporations and at periodic points along the course of major waterways as he determines are necessary for the right of public use and access for recreation, hunting, transportation,

utilities, docks and other important public uses. To implement this provision of the Act the Secretary issued regulations, 2/ the relevant ones of which are set forth below for ease of reference.

§ 2650.4-7 Public easements.

(a) General requirements. (1) Only public easements which are reasonably necessary to guarantee access to publicly owned lands or major waterways and other public uses which are contained in these regulations \* \* \* shall be reserved.

\* \* \*

(3) The primary standard for determining which public easements are reasonably necessary for access shall be present existing use. However, a public easement may be reserved absent a demonstration of present existing use only \* \* \* if there is no reasonable alternative route or site available, or if the public easement is for access to an isolated tract area of publicly owned land. When adverse impacts on Native culture, lifestyle, and subsistence needs are likely to occur because of the reservation of a public easement, alternative routes shall be assessed and reserved where reasonably available. \* \* \*

(4) All public easements which are reserved shall be specific as to use, location, and size. Standard sizes and uses which are delineated in this subsection may be varied only when justified by special circumstances.

\* \* \*

(b) Transportation easements (1) Public easements for transportation purposes which are reasonably necessary to guarantee the public's ability to reach publicly owned lands or major waterways may be reserved across lands conveyed to Native Corporations. \* \* \* If public easements are to be reserved, they shall:

(i) Be reserved across Native lands only if there is no reasonable alternative route of transportation across publicly owned lands.

\* \* \*

(xii) Not be reserved simply to reflect patterns of native use on Native lands;

---

2/ See Alaska Public Easement Defense Fund v. Andrus, 435 F.Supp. 664 (D. Alaska 1977).



(xiii) Not be reserved for the purpose of protecting Native stockholders from their respective corporations.

\* \* \*

(2) Transportation easements shall be limited to roads and sites which are related to access. The use of these easements shall be controlled by applicable Federal, State, or municipal corporation laws or regulations. The uses stated herein will be specified in the interim conveyance and patent documents as permitted uses of the easement.

\* \* \*

(3) Site Easements. Site easements which are related to transportation may be reserved for aircraft landing or vehicle parking (e.g., aircraft, boats, ATV's, cars, trucks), temporary camping, loading or unloading at a trail head, along an access route or waterway, \* \* \* where there is a demonstrated need to provide for transportation to publicly owned lands or major waterways. Temporary camping, loading, or unloading shall be limited to 24 hours. Site easements shall not be reserved for recreational use such as fishing, unlimited camping, or other purposes not associated with use of the public easement for transportation. \* \* \* Before site easements are reserved on transportation routes or on major waterways, a reasonable effort shall be made to locate parking, camping, beaching, or aircraft landing sites on publicly owned lands; particularly, publicly owned lands in or around communities, or bordering the waterways. If a site easement is to be reserved, it shall:

(i) Be subject to the provisions of paragraphs (b)(1) (ii), (iii), (vi), (xii), (xiii), and (xiv) of this section.

(ii) Be no larger than one acre in size and located on existing sites unless a variance is in either instance, otherwise justified;

\* \* \*

(iv) Be reserved only at periodic points on major waterways. Uses shall be limited to those activities which are related to travel on the waterway or to travel between the waterway and publicly owned lands. Also, periodic site easements shall be those necessary to allow a reasonable pattern of travel on the waterway;

\* \* \*

(d) Conveyance provisions. (1) Public easement provisions shall be placed in interim conveyances and patents.

(2) Permissible uses of a specific easement shall be listed in the appropriate conveyance document. The conveyance documents shall include a general provision which states that uses which are not specifically listed are prohibited.

(3) The easements shall be identified on appropriate maps which shall be part of the pertinent interim conveyance and patent.

(4) All public easement shall be reserved to the United States and subject, as appropriate, to further Federal, State, or municipal corporation regulation.

\* \* \*

§ 2650.0-5 Definitions.

\* \* \*

(o) "Major waterway" means any river, stream, or lake which has significant use in its liquid state by watercraft for access to publicly owned lands or between communities. Significant use means more than casual, sporadic or incidental use by watercraft, including floatplanes, but does not include use of the waterbody in its frozen state by snowmobiles, dogsleds or skiplanes. Designation of a river or stream as a major waterway may be limited to a specific segment of the particular waterbody.

(p) "Present existing use" means use by either the general public which includes both Natives and non-Natives alike or by a Federal, State, or municipal corporation entity on or before December 18, 1976, or the date of selection, whichever is later. Past use which has long been abandoned shall not be considered present existing use.

\* \* \*

(r) "Publicly owned lands" means all Federal, State, or municipal corporation (including borough) lands or interests therein in Alaska, including public lands as defined herein, and submerged lands as defined by the Submerged Lands Act, 43 U.S.C. 1301, et seq.

\* \* \*

In addition to these regulations we are bound by certain rulings made by ANCAB in Appeal of Goldbelt, Inc., ANCAB G 80-1 (October 9, 1981). They are:

1. When an appellant appeals a BLM easement determination made pursuant to ANCSA and its enabling regulations, the burden of proof is upon the party challenging the determination to show that the determination is erroneous.

2. A decision to reserve easements must be affirmed unless the appellant shows by substantial evidence that such decision was arbitrary and capricious. Any agency action inconsistent with the statutory and regulatory easement criteria would be arbitrary and capricious.

3. In light of the clear and unambiguous definition of "present existing use" in 43 CFR 2650.0-5(P), any activities which took place after December 18, 1976, are not to be considered in determining present existing use under 43 CFR 2650.4-7(a)(3).

### Discussion

The rulings made by ANCAB in Appeal of Goldbelt, Inc., supra, dispose of burden of proof arguments. Clearly, the burden of proof is upon Tetlin to show that reservation of the site easement by BLM was erroneous. To prevail, Tetlin must show by substantial evidence that BLM's decision was arbitrary and capricious. With regard to the third ruling no one disputes the conclusion that only activities which took place prior to December 18, 1976 may be considered in determining "present existing use" under 43 CFR 2650.4-7(a)(3).

This leads to discussion of the basic issue of whether BLM's decision to reserve the site easement was arbitrarily and capriciously made.

### Present Existing Use

Testimony was presented to show that non-Natives use and have used the site easement for boat launching purposes in recent years. However, this testimony is somewhat tenuous to establish such use prior to the critical time of December 18, 1976. On the other hand the evidence is clear that the site has been used for many years as a point of highway-river transfer of freight shipped between Tok and the native village of Tetlin, and for use generally by the Tetlin Natives in traveling between Tetlin, Tok and other communities. Tetlin argues that such Native use cannot be considered in determining "present existing use", for the reason that 43 CFR 2650.4-7(b)(xii) prohibits reservation of public easements simply "to reflect patterns of Native use on Native lands". This argument is rejected because the hauling of freight and other travel between Tok, an ordinary Alaskan town or village and Tetlin, a native village, constitutes normal commercial and personal activity and can hardly be limited as a pattern of "Native use on Native lands". Such commercial and

other native use clearly falls within the definition found in 43 CFR 2650.0-(P) which states that "'present existing use' means use by \* \* \* the general public which includes both Natives and non-Natives alike \* \* \*."

Tetlin also argues that any use made by non-Natives is non-qualifying for the reason that any such use would have been in trespass in violation of Tetlin's policy prohibiting non-Natives from using Tetlin lands for hunting. This argument also is rejected.

No evidence on the legal status of the Tetlin Reserve, as it existed prior to Tetlin's election on May 18, 1981, to receive conveyance pursuant to the Alaska National Interest Lands Conversation Act, supra, was presented nor any legal argument made. The only evidence regarding this was the testimony of the president of the Tetlin Native Corporation who testified that Tetlin had a policy of prohibiting hunting on the reserve by non-Natives. Whether such hunting would have given rise to trespass action was not shown nor were any such specific incidents alluded to. No contention was made that fishing or boating on the river within the Reserve would have been in trespass, nor would such contention be valid. Alaska Public Easement Defense Fund v. Andrus, supra.

It is my opinion that the site easement meets the standard of "present existing use" for determining whether a public easement is reasonably necessary within the context of 43 CFR 2650.4-7(a).

#### Reasonable Alternative Sites

Tetlin contends that there are several sites which should be found to be reasonable alternatives to the site easement. Geographically, these sites reach from Cathedral Bluffs, 36 highway and 67 river miles westerly of the site easement to Northway, 39 highway and 57 river miles to the southeast of the site easement. Within this reach are the sites of Tok River Wayside, six highway and 16 river miles westerly of the site easement; the River Road, 15 highway/road and 12 river miles westerly; Tanacross Airport, 22 1/2 highway/road and 45 river miles westerly; Riverside, 25 highway and 38 river miles southeasterly of the site easement; and Northway, 39 highway and 57 river miles southeasterly. Of all these sites, only the Tanacross Airport and the Northway sites in my opinion have the physical characteristics reasonably necessary to provide for launching and landing of the various types of river craft used on the Tanana River. Cathedral Bluffs has no boat launching site as such and can be used only as a point for launching canoes carried from the adjoining highway. The River Road site has a steep mud bank making it difficult to launch more than canoes. In addition the four and a half mile long access road is in such poor condition that it can't be considered usable by normal vehicles during the summer months when the river is usable. The Tok River

Wayside while it has suitable launching facilities, is not usable for normal Tanana River traffic because the Tok River which must be traveled for four miles to connect with the Tanana River is suitable only for downstream canoe use and cannot be used by motor boats. The Riverside site, once a major boat launching site, has eroded so badly that it can no longer be used for launching purposes. It appears that Tetlin concedes this.

Of the remaining two sites, Tanacross Airport and Northway, the record is not clear as to whether either will eventually become available as public launching sites. Apparently the State of Alaska is seeking title to Tanacross and the Natives of Northway are contesting BLM's right to establish a site easement there. In any event, assuming that both should materialize into suitable site easements for public launching and parking purposes, they nevertheless would not substitute as reasonable alternatives to the site easement. The distance between Northway and Tanacross is 62 highway and 102 river miles, with the site easement located roughly halfway in between. In my opinion it would be totally unreasonable to deprive the general public of access to and from the river over a distance of 102 miles. The site easement is, in my opinion, admirably positioned and suited to provide local residents including the Natives and the traveling highway public the means for gaining access to and from the Tanana River. It certainly meets the criterion of being a "periodic point" on a major waterway, thus allowing a reasonable pattern of travel on the waterway. Alaska Public Defense Fund v. Andrus, supra.

#### Conflict with Native Lifestyle

Tetlin argues that the site easement would conflict with Native subsistence needs and lifestyle because the public would use the facility for the purpose of hunting and fishing in trespass upon Tetlin lands. Undoubtedly such trespasses could occur in conjunction with use of the site easement and appropriate preventive measures would have to be taken. Nevertheless such fears cannot alter the fact that the general public has the right to use all stretches of the river, including that within the boundaries of Tetlin lands, for water travel, fishing and other recreation. This argument must be rejected.

#### Reservation of Site Easement for Specific Purposes

Tetlin also argues that the site easement is improper and unauthorized because it is not reserved for specific purposes, as required by 43 CFR 2650.4-7(d)(2). This argument is based on the belief that the BLM which owns the easement has no intention of ensuring that the public will not use the easement for entering and trespassing upon Tetlin lands for the purpose of hunting and fishing. I can only conclude that the reservation in the patent clearly and specifically sets forth the uses that can be made of the site and that any uses not specifically listed are

prohibited. If trespasses materialize in the future presumably they will be dealt with by appropriate authorities but such fears cannot detract from the specific language used in the patent reservation. This argument also is rejected.

#### Conclusions of Law

1. The site easement is a public easement reasonably necessary to guarantee access to publicly owned lands and major waterways.
2. The site meets the standard of present existing use, thereby qualifying it as a public easement reasonably necessary for access.
3. There is no reasonable alternative site available.
4. The site easement does not adversely impact on Native culture, lifestyle, and subsistence needs.
5. The reservation of the site easement in the patent to Tetlin properly sets forth the specific purposes and uses of the easement.
6. The site easement is properly located at a periodic point on a major waterway. The use to be made of the site is properly limited to activities related to travel on the waterway and to promote reasonable pattern of such travel.
7. Tetlin has failed to show by substantial evidence that the BLM's decision was arbitrary and capricious.
8. The BLM's decision was not inconsistent with the statutory and regulatory easement criteria.
9. The BLM's reservation of the site easement was authorized by § 17(b) of ANCSA and the regulations promulgated thereunder 43 CFR 2650.4-7.

#### Recommendation

I recommend that the BLM's decision to reserve site easement EIN 2 C5 be affirmed.

---

L. K. Luoma  
Administrative Law Judge

Distribution:

Frederick H. Boness, Esq., Preston, Thorgrimson, Ellis & Holman, 420 L Street, Suite 404, Anchorage Alaska 99501 (Cert.)

M. Francis Neville, Esq., Office of the Regional Solicitor, 510 L Street, Suite 100, Anchorage, Alaska 99501 (Cert.)

Doyon, Limited, Elizabeth S. Ingraham, Esq., Doyon Building, Third Floor, 201 First Avenue, Fairbanks, Alaska 99510 (Cert.)

Department of the Army, Alaska District, Corps of Engineers, NPARE A-Q, P.O. Box 7002, Anchorage, Alaska 99510 (Cert.)

Native Village of Tetlin, Tetlin, Alaska 99779

State of Alaska, Division of Research & Development, 323 E. 4th Avenue, Anchorage, Alaska 99501

U.S. Dept. of the Interior, Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510

Standard Distribution