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.

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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.

check for trails, RST, shorespace, sales muni entitl., etc

NP 62

Also, review any IC's or patents issued to Native co 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); Quzinkie 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** *After Survey is completed.

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 or not negotiate some type of settlement with the applicant. See Stip. 11 and Chapter II. K. Settlement and Release Agreements, for an in-depth discussion. PL 102-415

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).

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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

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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).