NATIVE ALLOTMENT ACT

The Native Allotment Act of May 17, 1906, as amended by the Act of August 2, 1956, authorized the Secretary to allot up to 160 acres of non-mineral land to individual Indians, Aleuts, and Eskimos of Alaska. The Alaska Native Claims Settlement Act repealed the 1906 Act. A grandfather clause in ANCSA required the BLM to adjudicate applications for allotments pending before the Department on December 18, 1971.

More than 80 percent of all Native allotment applications (10,000) in Alaska were filed with the Bureau of Indian Affairs (BIA) in the months preceding enactment of ANCSA. During the district and territorial days, few Alaskans applied for Native allotments. Between 1906 and 1960, the federal government received only fifty-one applications for Native allotments. The number rose significantly in the 1960s as Alaskan Natives attempted to prevent the transfer of traditional hunting and fishing sites from the United States to the new State. Between 1961 and 1971, the BLM received 1,929 applications for allotments. In 1971, the number ballooned to 8,020.

The vast majority of allotments, like villages, are located along the major rivers, streams, and lakes. Claimants generally selected 40-, 80-, or 160-acre parcels. However, some selected many smaller parcels up to 160 acres in the aggregate.

In the early 1970s, the BLM rejected many applications because they failed to show sufficient evidence of use and occupancy or because BLM examiners did not find such evidence on the claimed lands. In addition, the BLM discovered numerous errors in the applications. Lands were described incorrectly; numerous claims conflicted with one another; and some parcels were not adequately described in the applications.

In the 1970s and early 1980s, the courts upset several Departmental policies regarding Native allotment applications. In 1975, the court ruled in the Sarah Pence case that where the application lacked sufficient evidence of use and occupancy, the applicant was entitled to a hearing to provide oral testimony. Cases that had been closed because of factual issues were reinstated for reconsideration under the court's decision. In 1979, the court ruled in the Ethel Aguilar case that for lands conveyed out of federal ownership, the government had the responsibility to determine if a Native had a valid allotment and, if so, to recover title to the land for conveyance to the allottee. These cases may require oral hearings conducted by a BLM hearing officer. Finally, in 1982, as a result of litigation in the Fanny Barr case, the Department agreed to accept some 535 applications which had not been filed with the BIA for transmittal to the BLM at the time that ANCSA was enacted into law.

By 1980, the BLM had issued certificates to little more than 450 parcels, and nearly half of these had been issued before 1970. In ANILCA, Congress attempted to expedite the conveyance process. Section 905 of the Act provided that all applications for Native allotments on file with the Department on or before the date of ANCSA and meeting certain requirements were approved as of June 1, 1981.

Due to various land status conflicts, timely filed protests, and location on potentially mineral-in-character land, many applications for parcels fell outside the scope of Section 905 of ANILCA. The State of Alaska and Native corporations, for example, filed protests on about 6,850 parcels. These must be adjudicated under the 1906 Act. As a result of ANILCA, about 5,385 parcels were legislatively approved.

When in the early 1980s the State and Native corporations began demanding patents, the BLM recognized that the time had arrived to accelerate conveyances of Native allotments. Allotments must be surveyed before the surrounding lands can be patented to the Native corporations or the State. No less important is the fact that many Natives had waited nearly twenty years to receive title to parcels. Many allottees had died, and many more could die before knowing whether they or their heirs would receive parcels. The BLM began to shift its resources to the processing and survey of Native allotments in fiscal year 1983. The shift was completed about 1985 with the adoption of the Patent Plan Process.

Once the survey plat for a parcel is approved, the BLM issues a Certificate of Allotment. Sometimes, certificates cannot be issued immediately after approval of survey plats. In the 1980s, BLM adjudicators frequently requested exclusion surveys of allotments before completing adjudication of the applications. The adjudicator requested the allotment be surveyed so that the surrounding land that had been interim conveyed or tentatively approved could be quickly patented. The allotment would be adjudicated at a later date. Since 1989, the BLM usually adjudicates an allotment before requesting survey. In addition, prior to 1984, the BLM did not reject top filings at the time of approval. This also must be done before certificates to these allotments are issued.

Title Affirmation and Title Recovery Actions

In recent years, the BLM has witnessed an increase in the amount of time to process a Native allotment application. This is due in part to title affirmation and title recovery actions.

Title recovery cases are the result of allotments not being on the plats at the time of conveyances or when correctly plotted upon survey are found to be on lands conveyed to the State or Native corporations. Several court decisions in the 1970s and early 1980s resulted in the reinstatement of hundreds of cases and the establishment of new cases. Many filings were reinstated or located on lands already conveyed, and in some cases where title has transferred to third parties. These cases may require title recovery actions.

Because most Native allotments were not surveyed at the time of interim conveyance, the BLM usually excluded allotments from each interim conveyed section in a township by serial number. If, upon survey, a BLM adjudicator finds that the actual location of an approved allotment deviates from the description of its location at the time of interim conveyance, but is still on land interim conveyed to that same corporation, the BLM must contact the Native corporation (village and region) and request that it affirm the redescription of its property boundaries. If title affirmations are not received, the BLM must initiate the title recovery process. If, upon survey, any part of an allotment is found to be actually located on land conveyed to a different corporation, title recovery is necessary.

Initially, many village and regional corporations failed to respond timely, if at all, to BLM's written requests to affirm redescribed property boundaries, thereby preventing BLM from issuing allotment certificates. However, by working with the corporations more directly and through the BIA and its contractors, the BLM is now achieving greater success in obtaining the corporations' affirmations.

These procedures apply as well to allotments in areas conveyed to the State. With ANILCA, a tentative approval was given the same force and effect as a patent. If the actual location of an approved allotment is different than the one excluded in the State's tentative approval, but is still within the same tentative approval or the same township, the BLM merely obtains the State's concurrence in the redescription of its property boundaries. However, if an approved Native allotment is found in another tentative approval or another township conveyed to the State, the BLM must request the State to reconvey the claimed lands to the United States. In those relatively rare instances where the State refuses, the BLM must initiate a title recovery action.