

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES - Division of Land and Water Management

TO: SEE DISTRIBUTION LIST

DATE: December 30, 1986

FILE NO:

562-2522

TELEPHONE NO.

Fanny Barr Class

Native Allotments

FROM: *TH* Tom Hawkins
Director

RETURN SUBJECT

INTERSECTION
OFFICE
NO. 100

In U.S. District Court, a settlement was reached regarding certain Native allotments and how they would be handled. This class action case centered around the fact that certain federal agencies and assistance groups had accepted applications for land under the Native Allotment Act, but these agencies and groups failed to properly file the applications with the Bureau of Land Management. The Court through stipulation set out a period of time for all of these applicants to re-file their claims and about 550 applications have been submitted.

The Court also provided an opportunity for review and protest by the state, and various directly affected individuals and Native corporations. The effect of a protest would be to require that the application be field examined and adjudicated pursuant to Native allotment procedures rather than the legislative approval process specified in Section 905 of ANILCA. It also cannot assure that eventual conveyance of the application will include the exceptions or reservations specified in the protest. However, the protest does put BLM on notice that there could be areas of public use that should be examined to see if the claimed use is "exclusive" as specified in the application. We have had some success in getting many of these areas either "excluded from" or made "subject to" certain reservations in final conveyances.

We include with this memo the fourth list of these "Fanny Barr" allotments which have been legally noticed by BLM and need to be reviewed for access and established public use conflicts. The remainder will be noticed periodically. We will notify you each time a new notice is sent out.

The attached list are those applications that should be reviewed.

ANILCA Section 905(a)(5)(B) states that legislative approval will not apply if, "the State of Alaska files a protest with the Secretary stating that the land described in the allotment application is necessary for access to lands owned by the United States, the State of Alaska, or a political subdivision of the State of Alaska, to resources located thereon, or to a public body of water regularly employed for transportation purposes, and the protest states with specificity the facts upon which the conclusions concerning access are based and that no reasonable alternatives for access exist." (emphasis added)

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This same section in paragraph (C) states: "A person or entity files a protest with the Secretary stating that the applicant is not entitled to land described in the allotment application and that said land is the situs of improvements claimed by the person or entity.

We also include with this memo a Native Allotment Review Checklist. Access route or public use area conflicts and any state improvements on these claimed lands should be identified with this form and sent to this office for processing and formal transmittal to the appropriate BLM office. There is no provision for the imposition of public easements through the claimed allotment unless it can be conclusively demonstrated that public use of the easement pre-dates the initiation of the allotment claim and continues through the use and occupancy period. It is necessary to have specific information pertaining to the conflict attached to the review form.

It will also be necessary to review each application for evidence that the applicant is not eligible for an allotment, according to the Fanny Barr class requirements. Pursuant to the Stipulation of Settlement, the court will receive evidence and make findings as to the eligibility of each applicant. However, any evidence submitted to the court must relate to one or more of the following requirements:

1. Did the applicant give a Native allotment application to a Rural CAP worker before December 18, 1971; and was the application delivered to the United States Government?
2. Is the applicant a full or mixed-blood Native and 21 years of age?
3. Has the applicant already received a Native allotment?
4. Did the applicant send a letter to the court before November 11, 1982? and
5. Did the applicant submit a consent to adjudication and limited waiver to BLM?

Compliance with requirement number 1 (above) is based on the applicant's statement. If you present evidence that the applicant did not give, or could not have given, an application to a Rural CAP worker it may prevent eligibility. For example, you may know of evidence that the applicant was out of the state when the application could have been given. A certified affidavit is acceptable evidence. The Rural CAP worker must have received the application by December 18, 1971. In some areas the rural CAP workers started taking applications as early as 1970.

Compliance with requirement number 2 is also based on the applicant's statement that he/she is a Native, for which there may be contrary evidence. The applicant must be 21 years old, or the head of a household.

Compliance with requirements number 3, 4, and 5 can be checked with file records.

I'd also like to stress that establishing that someone knowingly abused the system will be difficult. Therefore, you must be as specific as possible should you decide to submit evidence. Furthermore, it is counterproductive to attempt to use this process to oppose a native allotment application which presents a real or potential access or management problem to your agency, unless you can base your concern solely upon one or more of the five Fanny Barr eligibility criteria noted previously.

It is very important that affected State agencies work together to avoid duplication and interagency conflict. To assure that the state files protests within the legal time limits we need to receive your information no later than March 31, 1987.

If you have any further questions, please contact Jim Culbertson at 562-2522 in Anchorage.

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Same Means, CRA

Attachments

TH/JC/cmw

CHECK LIST FOR NATIVE ALLOTMENT REVIEW

(Please Print)

Serial No. _____ Name: _____

Location: _____

	Conflict		Explanation/Comments Source of Information	Documentation Attached	
	Yes	No		Yes	No
Existing Highway					
Existing Road					
Existing Trail					
Granted Right-of-Way					
Existing Railroad					
Existing Port Facility					
Existing Boat Launch					
Existing Airstrip					
Existing Seaplane Base					
ANCSA 17(b) Easement					
State Funded Improvement State Funded Activity and/or 3rd Party Interest					
Fish and Game Facility					
Public Use Site					
Other					

Does the land form the only reasonable access to publicly-owned resources?

Yes/No: _____ Why: _____

Submitted By: _____ Date: _____

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