#28.5

MEMORANDUM State of Alaska

TO: David W. Haugen
Deputy Commissioner
Central Region
DOT/PF, Anchorage

DATE: January 9, 1984

FILE NO: 566-084-84

TELEPHONE NO: 452-1568

FROM: Norman C. Gorsuch
Attorney General

By: _____
E. John Athens, Jr.
Assistant Attorney General
Transportation Section, Fairbanks

SUBJECT: Condemnation of Uncertified Native Allotments

You have requested an opinion from this office on whether DOT/PF can condemn an uncertificated Native allotment. You have also requested information on what procedures would be involved and in which judicial system would the condemnation action be filed. The short answers to your questions are as follows:

1. DOT/PF may condemn land in an uncertificated Native allotment, provided it has either been legislatively approved under § 905 of ANILCA or administratively approved by the BLM.

2. Conversely, DOT/PF may not condemn an uncertificated allotment which has not been approved.

3. Generally, the procedure and law involved in the condemnation of an approved but uncertificated Native allotment is the same State law and procedure applicable to other State condemnation actions.

4. A condemnation action involving a Native allotment (whether certificated or merely approved) must be filed in a U.S. District Court.

The following explains in some detail the foregoing. Additionally, the last section of this memorandum sets forth a number of considerations DOT/PF should be aware of concerning Native allotments.

1-17-84K

I. WHERE A NATIVE ALLOTMENT HAS BEEN LEGISLATIVELY APPROVED OR APPROVED BY THE BLM, BUT A CERTIFICATE OR PATENT HAS NOT YET BEEN ISSUED, THE LAND IS PROBABLY SUBJECT TO THE EMINENT DOMAIN LAWS OF THE STATE AND MAY BE CONDEMNED.

It is clear that where a certificate or patent has been issued, a Native allotment may be condemned by a State. 25 U.S.C. § 357 provides:

> Lands allotted in severalty to Indians may be condemned for any public purpose under the laws of the State or Territory where located in the same manner as land owned in fee may be condemned, and the money awarded as damages shall be paid to the allottee. 1/

The question, then, is at what point in the application process do lands become "allotted." It is to be noted that this statute does not require a patent or certificate to be issued in order to become operative. For the following reasons it is submitted that when an allotment application is legislatively approved or approved by the BLM, 2/ the land is "allotted" for purposes of 25 U.S.C. § 357.

1. Although probably earlier, at least at the time of approval the allottee has a vested right in the land for which he applied. Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976); Hutchings v. Lowe, 82 U.S. 77 (1873). For a patent or certificate to

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1/ An argument has been advanced that this statute cannot be used to condemn a right-of-way across a Native allotment. See, Federal Indian Law, 1982 Edition, U.S. Dept. of the Interior, p.622 n.109. However, one federal court has held that the statute is not so limited. Nicodemus v. Washington Water Power Co., 264 F.2d 614 (9th Cir. 1959).

2/ According to a Memorandum of Understanding between the BIA and BLM effective as of 1979 (attached hereto as Exhibit A and hereinafter referred to as MOU), "an allotment application is officially considered to be approved when survey is requested, even though the Certificate of Allotment does not issue until the survey is approved." As of the date of this opinion the MOU has not been terminated.

be issued, all that remains to be done after approval is a survey of the land. See MOU and § 905(a) of ANILCA. See also Utah Intern., Inc. v. Andrus, 488 F. Supp. 976 (D.C. Colo. 1980), citing Stockly v. United States, 260 U.S. 532 (1922), which held that "the Secretary [of the Interior] had no discretion to grant or deny a patent once an entry man had fulfilled the statutory requirements of the Homestead Act." At page 986. Thus, the land is in effect "allotted" upon approval.

2. The BLM and BIA treat land after approval as "allotted" land. The MOU provides that "The BIA will assume all trust responsibility for tenure and management of approved allotments effective on the date of BLM's approval letter." This necessarily means that the land is "individually owned land" as defined by 25 C.F.R. § 161.1(b) since the land is "held in trust by the United States for the benefit of individual Indians." Under 25 C.F.R. § 161.3(b) the Native is treated as the "owner" of "individually owned land" and has complete power to prevent a right-of-way from crossing his land. The owner of lands can hardly be considered to be anyone other than one to whom the land has been "allotted."

3. Other indicia that the lands are "allotted" upon approval are the facts that approval creates a probatable estate (See MOU); and that the lands are no longer public lands (See 43 C.F.R. § 2800.0-5(d) and MOU).

4. § 14(h)(6) and § 18(b) of ANSCA provide that approval, and not issuance of patent, is the operative fact which causes the allotment acreage to be charged against the two million acre grant. This is legislative recognition that lands are "allotted" when there is approval, not when the patent or certificate is issued.

5. Various court decisions have construed "allot" to be a term of apportionment of that to which parties are entitled as of right, and not a term of sale or grant. Importantly, these decisions construed "allot" in cases interpreting statutes for the allotment of lands to Indians. See Parr v. United States, 153 F. 462, 468 (1907); Millet v. Bilby, 237 P. 859, 861 (Okla. 1925). See also Worcester v. State of Georgia, 31 U.S. 515, 582 (1832); State of Minnesota v. Hitchcock, 185 U.S. 373 (1902). In Affiliated Ute Citizens v. United States, 406 U.S. 142 (1972) the U.S. Supreme Court held that "[An allotment] means a selection of specific land awarded to an individual allottee from a common holding". Significant in the U.S. Supreme Court's definition of

"allotment" is the absence of a requirement for a patent or certificate. 3/

6. The statutory and regulatory scheme is set up such that the BLM has authority to issue rights-of-way across all public land except as noted in 43 C.F.R. § 2800.0-5(d). See also 25 U.S.C. § 323. With respect to the exception regarding land held for the benefit of Indians (which includes an approved Native allotment) the BIA takes the position that a right-of-way can only be granted upon its approval and the consent of the Native. See MOU and 25 C.F.R. § 161.3(b). If "allotted" in 25 U.S.C. § 357 is not interpreted to include approved Native allotment applications, then a right-of-way grant could be vetoed by a Native and the State would have no recourse to condemnation. This would mean that a right-of-way could not be obtained either administratively or by condemnation. It is submitted that such an interpretation would run counter to the apparent purpose of the statutes and regulations to provide an administrative means to obtain a right-of-way across public land, and when the land is no longer public and the Indian owner refuses consent, to allow for condemnation. It makes little sense to have a category of land - an approved Native allotment application - where there can be no condemnation and an individual has absolute veto power over the administrative grant of a right-of-way, but once the certificate is issued a condemnation action may be maintained.

Most allotment applications have been legislatively approved pursuant to § 905(a) of ANILCA rather than approved by

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3/ It is also noteworthy that in 25 U.S.C. § 345, which allows a suit to be maintained by a person who claims to have been wrongfully denied an allotment, an allotment is considered to be effective upon approval by the Secretary. This statute in pertinent part states:

> . . . and the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him. . . .

With respect to when land is allotted this can hardly be interpreted to mean anything other than that land is allotted upon approval.

the BLM. 4/ Subject to certain limited exceptions, under ANILCA all Alaska Native allotment applications pending on or before December 18, 1971 are approved, and only survey and issuance of the certificate remains to be done. Significantly, even allotment applications that had previously been rejected appear to be approved by this Act. The exceptions to this approval are technical and apply generally to land that was

a) unreserved on December 13, 1968
b) mineral land
c) National Park land
d) land patented to the State
e) land subject to a timely protest

Whether an allotment application is legislatively approved or administratively approved by the BLM the effect of approval is the same: for purposes of 25 U.S.C. § 357 the land is "allotted".

The strongest argument against construing "allotted" in 25 U.S.C. § 357 to mean "approved" is the rule of construction that eminent domain statutes are to be strictly construed against the taking party (the State), particularly where the land sought to be taken belongs to Indians. See U.S. v. 2,005.32 Acres of Land, Etc., 160 F. Supp. 193 (D.C.S.D. 1958). See also U.S. v. Clarke, 63 L.Ed.2d 373 (1980) which construed "condemned" in 25 U.S.C. § 357 narrowly. Notwithstanding the foregoing it is felt that lands are "allotted" upon "approval" since there is virtually no distinction between a certificated allotment and an approved allotment in the rights and responsibilities of the BIA and the allottee, 5/ the certificate is treated by statute

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4/ See the BLM Memorandum dated November 16, 1981, attached hereto as Exhibit B, as to the date of legislative approval and the date of approval when there is a conflict between two or more Native allotment applications and/or there has been no field check.

5/ Technically, an approved allotment is in the nature of a trust allotment because the BIA has a trust responsibility to the allottee. (See MOU). But once the certificate is issued, the allotment is in the nature of a restricted allotment. See 43 C.F.R. § 2561.3. However, the U.S. Supreme Court has declared the federal government's responsibility to be essentially

(Footnote Continued)

(§ 905(a) of ANILCA, § 14(h)(6) and § 18(b) of ANSCA) as a mere ministerial formality, 6/ and 25 U.S.C. § 357 by its terms does not require a certificate or patent as a pre-condition to condemnation.

II. WHERE AN ALLOTMENT HAS NOT BEEN LEGISLATIVELY APPROVED OR APPROVED BY THE BLM, AND A CERTIFICATE OR PATENT HAS NOT BEEN ISSUED, THE LAND IS NOT SUBJECT TO CONDEMNATION BY THE STATE ABSENT THE CONSENT OF THE UNITED STATES.

Because the exceptions to legislative approval under ANILCA are narrow, it is felt that relatively few uncertificated Native allotments will fall into this category. The fundamental reason that the State cannot condemn this category of land is the sovereign immunity of the United States. Nichol's, The Law of Eminent Domain, 3rd Edition, § 2.22 states:

> The power of a state to condemn federal lands within its territorial limits is at present denied no matter what the existing federal use may be unless the federal government consents to such condemnation.

Lands which have not been approved are federal public lands, and hence cannot be considered to have been allotted. See 43 C.F.R. § 2800.0-5(d) which defines "public lands" as

> any lands or interest in land owned by the United States and administered by the

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(Footnote Continued)
identical in both types of allotment. United States v. Ramsey, 43 S.Ct. 559, 560 (1926). See also § 905(a) of ANILCA which provides that after survey a trust certificate will be issued to the allottee. This indicates that the federal government has the same trust responsibility after the certificate is issued as during the time when the allotment is approved. See also Felix S. Cohen's Handbook of Federal Indian Law, 1982 Edition, p.618.

6/ Significantly, the legislative history of § 905(a) of ANILCA does not even mention the issuance of a certificate, the certificate apparently being of little moment as opposed to the significant event of approval.

> Secretary through the Bureau of Land Management, without regard to how the United States acquired ownership, except: (1) Lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

Although an unapproved Native allotment application segregates the land applied for (43 C.F.R. § 2561.1(e)), this land is not land held for the benefit of Natives since there is no trust responsibility of the BLM or BIA until approval. 7/ See MOU. There are no regulations which impose a trust responsibility on the BLM or BIA on unapproved lands. Although 43 C.F.R. 2561.0-2 makes the Secretary of the Interior responsible for protecting the applied for lands from encroachment, it does not go so far as to impose a trust responsibility on the department. Further, a 1963 opinion by the Office of the Solicitor of the Department of the Interior, confirmed by a 1977 opinion, concluded that lands subject to a Native allotment application are public lands. 8/

For the foregoing reasons it can be fairly concluded that lands subject to a Native allotment application which has not been legislatively or BLM approved is federal land. Consequently, such land is not subject to condemnation by the State absent the consent of the United States.

Ordinarily, when the State needs federal public lands for a right-of-way, it would be able to obtain the right-of-way from the BLM under 43 C.F.R. Part 2800. See also 23 U.S.C. § 317. See also the aforementioned 1963 Solicitor's opinion. The MOU provides that "The BLM will retain administrative jurisdiction, including trespass abatement and the granting of less than fee interests, over lands included in pending Native allotment applications."

7/ It should be noted that various court decisions do make reference to the federal government's special duty to Native Americans, which duty is in the nature of the duty of a trustee. See Aguilar v. United States, 474 F. Supp. 840, 846 (D. Alaska 1979). However, this is not the actual trust relationship contemplated by the BLM and BIA regulations.

8/ These opinions, read in conjunction with the 1979 MOU, must
(Footnote Continued)

Although there would seem to be no legal impediment to the BLM granting the State a right-of-way pursuant to 43 C.F.R. Part 2800 over land subject to an unapproved Native allotment application without the consent of the allottee, it is to be doubted that BLM would grant a right-of-way over the objection of the allottee. In this situation DOT/PF would have the following options:

1) Wait until the allotment is approved, and then condemn;

2) Secure the consent of the Solicitor to sue the United States to condemn the land;

3) Reroute the project to avoid the allotment;

4) Attempt to secure the allottee's relinquishment of that part of his allotment application needed for the right-of-way. This would have to be done through the BIA (See MOU), and presumably would require the payment of consideration to the allottee. Upon relinquishment the State could then obtain the needed right-of-way from the BLM.

The option DOT/PF chooses would doubtless depend on the circumstances of each case. DOT/PF should probably obtain from the BLM an estimate on when approval of the allotment can be expected before deciding on any of the options.

In regard to the second option, it should be noted that U.S. v. 10.69 Acres of Land, Etc., Yakima County, 425 F.2d 317 (9th Cir. 1970) casts some doubt on whether the United States can consent to a condemnation action involving unallotted Indian land. This case turned on the court's interpretation of 23 U.S.C. § 107 and 23 U.S.C. § 317, the court holding that "Indian tribal lands may be secured for highway use only by administrative appropriation under sections 107(d) and 317, and not by condemnation under section 107(a)." At page 319, 320. (The court did note that "allotted" lands could be condemned under 25 U.S.C. § 357.) The reasoning of this decision would seem to give the Department of the Interior absolute veto power over approving a right-of-way through unallotted Indian land, and it further bars resort to condemnation.

(Footnote Continued)
must be interpreted to apply only to unapproved Native allotment applications.

III. THE PROCEDURE APPLICABLE AND THE APPROPRIATE JUDICIAL SYSTEM WHERE A CONDEMNATION ACTION INVOLVING "ALLOTTED" LAND MUST BE FILED.

The landmark decision of State of Minnesota v. U.S., 305 U.S. 382 (1940) makes it clear that an action to condemn "allotted" land under 25 U.S.C. § 357 must be brought in a United States District Court rather than in a State court. See also Nicodemus v. Washington Water Power Co., 264 F.2d 614 (9th Cir. 1959). 25 U.S.C. § 357 makes it clear that State law governs the condemnation proceeding. Therefore, the law and procedure governing the condemnation of "allotted" land will be essentially the same as in a condemnation action brought in State court. However, actual practice before the U.S. District Court will be somewhat different than in State court, and the attorney handling the case should refer to the local federal rules and Rule 71A of the Federal Rules of Civil Procedure. These differences in practice will not be of concern to DOT/PF.

The allottee, the United States, the Secretary of the U.S. Department of the Interior, the Area Director of the BIA, and the State Director of the BLM should all be named as defendants in an action to condemn allotted lands. State of Minnesota v. U.S., supra, held that the United States is an "indispensable party" defendant to such an action. The Area Director of the BIA should be named as a defendant because of the BIA trust responsibility over an approved (but uncertificated) Native allotment (see MOU) and because of the BIA's general authority over Indian matters (see 25 U.S.C. § 2). The State Director of the BLM should be named as a defendant because of the BLM's remaining jurisdiction to issue the allotment certificate. 9/ See MOU and 43 C.F.R. 2561.0-2 et seq. The Secretary of the U.S. Department of the Interior should be named as a defendant because it is he who has the statutory authority to allot the land. See 43 U.S.C. § 270-1 to 270-3 (repealed with savings clause). Should the allottee be deceased, a determination should be made if his estate has been probated pursuant to 43 C.F.R. § 4, subpart D. (A Native allotment is subject to Indian probate.) If so, the allottee defendants should be named in accordance with determinations made in the Indian probate proceeding.

9/ If an allotment certificate or patent has been issued, the State Director of the BLM need not be named as a defendant.

IV. MISCELLANEOUS CONSIDERATIONS CONCERNING OBTAINING RIGHTS-OF-WAY THROUGH NATIVE ALLOTMENTS.

Although not directly pertaining to the questions posed, it is thought that the following concerns are of sufficient importance that DOT/PF should be made aware of them.

A) There can be no inverse condemnation of a Native allotment. U.S. v. Clarke, 63 L.Ed.2d 373 (1980). The State must, therefore, be absolutely certain of the legality of its right-of-way through a Native allotment.

B) AS 34.60.120(1) requires "every reasonable effort shall be made to expeditiously acquire real property by negotiation" prior to condemnation. Thus, there must be negotiation (through the BIA) before condemnation is initiated against an approved Native allotment.

C) In the situation where the State attempts to administratively secure a right-of-way across a Native allotment, it must always be born in mind that an allottee may at any time refuse his consent or revoke his consent to the right-of-way across his allotment up until the time the right-of-way is approved by the BIA. 25 C.F.R § 161.3(a).

D) Approval of a right-of-way by the BIA must be by the authorized representative of the Secretary of the Interior. 25 C.F.R. § 161.1(a). This is not a BIA Realty Officer, and approval by a Realty Officer is probably invalid. The State should insist on approval by the BIA Area Director.

E) From the time negotiation for a right-of-way begins with the BIA, it may take six to 18 months for approval, at any time during which the allottee can refuse or revoke his consent. In order to fulfill the requirement of AS 34.60.120(1), it is suggested that DOT/PF give the BIA a reasonable time limit to process the application for approval, after which condemnation will be initiated.

F) It is a federal misdemeanor to try to purchase trust land from an Indian. 25 U.S.C. § 202. Presumably, this statute would apply to an "approved" allotment, although it may not apply once a certificate has been issued. In any case, DOT/PF should make it a practice only to go through the BIA when negotiating for a right-of-way whether the allotment is certificated or merely "approved".

G) AS 19.20.040 requires fee simple title for a controlled-access highway. If the route crosses an allotment, neither the BLM nor the BIA have jurisdiction to approve a grant of fee simple title. In the case of an allotment which has neither been approved nor certificated, DOT/PF will not be able to proceed to condemnation. 10/ Conversely, if the allotment has been approved or certificated, then DOT/PF would be able to condemn under 25 U.S.C. § 357.

CONCLUSION

It is suggested that the Attorney General's Office be involved from the very beginning and at every step of the way any time DOT/PF seeks to acquire a right-of-way across a Native allotment. The tangled web of court decisions, the overlapping jurisdictions of the BIA and BLM, the myriad regulations concerning Native allotments in titles 43 and 25 of the Code of Federal Regulations, the many statutes involved in titles 23, 25, and 43 of the U.S. Code, the regulations in the BIA manual, the Memorandum of Understanding between the BLM and BIA, and the various opinions emanating from the Solicitor's Office, all of which may be relevant, make this an area of law "fraught with hazard" for anyone trying to deal with it.

EJA:ja

10/ If waiting for approval is not feasible, DOT/PF should attempt to secure from the allottee (through the BIA) a relinquishment, and then apply to the BLM for a right-of-way. Notwithstanding the requirement of fee simple title in AS 19.20.040, DOT/PF's practice has been to accept from the BLM a less than fee simple grant for a controlled-access highway. Such grants are made under authority of 23 U.S.C. § 317 and 43 CFR Part 2800.

BLM Agreement No.
AK-950-AG9-323

MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE BUREAU OF LAND MANAGEMENT (BLM) AND THE BUREAU OF INDIAN AFFAIRS (BIA) ON DIVISION OF RESPONSIBILITIES FOR NATIVE ALLOTMENTS

A. Purpose

The purpose of this MOU is to establish jurisdictional responsibilities for approved Native allotments and pending allotment applications.

B. Background

The Native Allotment Act of May 17, 1906 (34 Stat. 197), as amended, authorized the Secretary of the Interior, in his discretion, to allot not to exceed 160 acres of land to Alaska Natives. Few applied for land until the late 1960's. During the period 1970-71, about 8500 applications were filed. The Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971 (85 Stat. 688), as amended, repealed the allotment act but recognized those applications still pending before the Department of the Interior. Thus there was created a heavy backlog of filings, involving an estimated 21,000 separate parcels of land. To comply with section 14(h)(6) of ANCSA, an allotment application is officially considered to be approved when survey is requested, even though the Certificate of Allotment does not issue until the survey is approved. The number of approved allotments is becoming significant.

Coupled with the Secretary's responsibility for protection of allotted or applied for lands from encroachment by others (43 CFR 2561.0-2) is the increasing state wide economic activity and the resultant reports of alleged trespass on these lands. Thus far, neither BLM nor BIA has been able to react adequately.

The following legal and policy considerations have emerged in connection with these problems:

1. The Regional Solicitor ruled that either Bureau could legally initiate trespass action (opinion of April 19, 1977).

2. The BIA has been assigned responsibility to approve relinquishments (Secretarial letter to Senator Stevens).

3. An Administrative Law Judge ruling states that a probatable estate is created when BLM approves an allotment and so states in writing.

4. The BLM suggested that BIA should assume trespass responsibilities on approved allotments (SD's February 22, 1977 memo to Regional Solicitor).

5. The BIA Area Director feels that, pursuant to the general authority over Indian matters in 25 USC 2, BIA has administrative responsibility over approved Native allotments (memo to Commissioner of Indian Affairs of April 27, 1977).

6. The Associate Solicitor, Indian Affairs agrees with No. 5 above although indicating that the Secretary must make the ultimate jurisdictional decision (Opinion of October 2, 1978).

C. Responsibilities

The State Director, BLM and Area Director, BIA agree to the following division of responsibilities for approved Native allotments and pending Native allotment applications:

BUREAU OF LAND MANAGEMENT:

1. The BLM will coordinate the adjudication of allotment applications with BIA.

2. The BLM will continue to issue letters to the applicant when an allotment is approved.

3. The BLM will survey and issue Certificates of Allotment for all approved allotments as expeditiously as possible.

4. The BLM will retain administrative jurisdiction, including trespass abatement and the granting of less than fee interests, over lands included in pending Native allotment applications.

5. The BLM will coordinate with BIA when processing applications for less-than fee interests where any such application involves both an approved allotment and adjoining lands under BLM jurisdiction, including pending allotment applications.

BUREAU OF INDIAN AFFAIRS:

1. The BIA will assume all trust responsibility for tenure and management of approved allotments effective on the date of BLM's approval letter. This will include the granting of rights of way pursuant to 25 CFR 161, approval of leases and permits pursuant to 25 CFR 131, performance of probate functions pursuant to 43 CFR 4, subpart D, the abatement of trespass, exchanges pursuant to 25 CFR 121, and other actions as appropriate. Sales will not be made.

2. The BIA will approve or disapprove all relinquishments of pending allotment applications.

3. The BIA will coordinate with BLM when processing an application for less than fee interests where any such application involves both an approved allotment and adjoining public lands under BLM jurisdiction, including pending allotment applications.

D. Effective Date, Termination

This agreement shall become effective upon the date subscribed by the last signatory, and shall remain in effect until terminated by either Bureau upon 90 days written notice. Amendments may be proposed by either Bureau and shall become effective upon joint agreement.

Area Director,
Bureau of Indian Affairs

20 February 1979
Date

State Director,
Bureau of Land Management

18 JAN 1979
Date

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Alaska State Office
701 C Street, Box 13
Anchorage, Alaska 99513

IN REPLY REFER TO
2561 (941)

NOV 16 1981 1105

Memorandum

To: Area Director, BIA, Juneau

From: Chief, Branch of Lands and Minerals Operations, BLM (941)

Subject: Legislative approval, Section 905 of the Alaska Lands Bill of December 2, 1980

Queries are beginning to come into this office from various sources relative to just when legislative approval takes effect on those Native allotment applications that do not fall under any of the exceptions in Sec. 905.

The effective date of legislative approval occurring 180 days following the date of the Act has been determined to be June 1, 1981. Therefore, any of the Native allotment applications that did not fall within the exceptions listed in the Act are under the jurisdiction of the Bureau of Indian Affairs as of June 1, 1981, per the Memorandum of Agreement dated February 20, 1979 as to jurisdiction after approval. The only thing that remains for BLM to accomplish is the survey and issuance of the certificate of allotment. However, those applications which were held for legislative approval but for which there is another Native allotment application conflict and/or no field check are not finally approved until the conflict has been resolved or the field check completed as to location. Confirmatory letters will be issued on these as soon as these actions have been completed.

Since we will be pulling each casefile in order to request survey, we are prepared to issue a confirmatory approval letter to the applicant and each party involved, e.g., village corporations, Regional Corporations, etc., as we have done in the past.

A copy of this memorandum is being sent to each BIA agency, as well as their contractor.

Barbara A Yoffe
Acting

EXHIBIT B

MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE BUREAU OF LAND MANAGEMENT (BLM) AND THE BUREAU OF INDIAN AFFAIRS (BIA) ON DIVISION OF RESPONSIBILITIES FOR NATIVE ALLOTMENTS

A. Purpose

The purpose of this amendment is to clarify jurisdictional responsibilities for approved Native allotments and pending allotment applications as outlined in the original agreement, AK-950-AG9-323.

BLM Agreement No. AK-950-AG9-323, MOU, is hereby amended as follows:

C. Responsibilities

BUREAU OF LAND MANAGEMENT

4. The BLM will retain administrative jursidiction, including all types of trespass abatement and the granting of less than fee interests, over lands included in pending Native allotment applications.

6. The provisions for wildfire protection will continue as outlined in the "Cooperative Fire Control Agreement between the Bureau of Indian Affairs and the Bureau of Land Management," AK-950-AG9-327, dated April 10, 1979, on any subsequent modification of the Fire Control Agreement.

BUREAU OF INDIAN AFFAIRS

1. The BIA will assume all trust responsibility for tenure and management of approved allotments effective on the date of BLM's approval letter. This will include the granting of rights-of-way pursuant to 25 CFR 161, approval of leases and permits pursuant to 25 CFR 131, performance of probate function pursuant to 43 CFR 4, subpart D, the abatement of trespass, exchanges pursuant to 25 CFR 121, forestry activities pursuant to 25 CFR 141, and other actions as appropriate. Land sales will not be made.

D. Effective Date, Termination

This amendment shall become effective upon the date subscribed by the last signatory, and shall remain in effect until terminated by either Bureau upon 90 days written notice.

Area Director,
Bureau of Indian Affairs

12/26/79
Date

State Director,
Bureau of Land Management

1/16/80
Date